IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1216 of 2003
With
CRIMINAL MISC. APPLICATION NO. 1 of 2003
In
R/CRIMINAL APPEAL NO. 1216 of 2003
With
R/CRIMINAL APPEAL NO. 493 of 2004
With
R/CRIMINAL APPEAL NO. 73 of 2005
With
R/CRIMINAL APPEAL NO. 74 of 2005
With
R/CRIMINAL APPEAL NO. 924 of 2005
With
R/CRIMINAL APPEAL NO. 925 of 2005
With
R/CRIMINAL APPEAL NO. 926 of 2005
With
R/CRIMINAL APPEAL NO. 2542 of 2005
With
R/CRIMINAL APPEAL NO. 2365 of 2005
With
R/CRIMINAL APPEAL NO. 2366 of 2005

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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ANILKUMAR MORALILAL DUBE
Versus
STATE OF GUJARAT

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Appearance:
MR ASHOK PAREKH for MR. MEHUL A SURATI, MR NEHAL R. JOSHI, MR. YOGESH KANADE for the Appellant
MR PRANAV DHAGAT APP for the Respondent

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

Date : 29/09/2025

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

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

2. The appellants accused – Anil Dube (A2), Rajiv @ Raju @ Sharmaji Suresh Joshi (A3), Binesh Sathwara (A4) and absconding accused Ravindra @ Guddu Soniram (A5), in furtherance of their common intention, as a pre-planned, decided to extort money from the innocent persons of Ahmedabad and as a part of modus-operandi, they used to kidnap the persons, and after keeping them under confinement, they caused voluntary injuries to the persons and after undressed them, they took photographs for blackmailing and in order to satisfy their lust, performed unnatural sex with them.

In these background facts, in the month of August, 2001, three different FIRs namely (i) I. CR No. 198 of 2001 (complainant – Jiya Ulhaq Gulam Mauddin), (ii) I. CR No. 201 of 2001 (complainant – Vitthal Parmar), (iii) I.CR No. 203 of 2001 (complainant – Natvar Vaghela), came to be registered with Karanj Police Station, Ahmedabad for the offences punishable under Sections 364A, 365, 367, 377, 342, 323, 324,

384 of IPC. All three complaints were registered against unknown persons for the alleged act of kidnapping for ransom, wrongful confinement and kidnapping with an intent to cause injuries to the persons and act of unnatural sex and extortion.

During the course of investigation, the involvement of 5 accused namely – (i) Manoj @ Yogesh Joshi, (ii) Anil Morarilal Dube, (iii) Rajiv @ Raju @ Sharmaji Suresh Joshi, (iv) Binesh Sathwara, (v) Ravindra @ Guddu Soniram Khushwal was revealed. The accused Nos. A1 to A4 came to be arrested. The victims as referred above, identified the accused in the test identification parade. The photographs and personal belonging of the complainants seized and recovered at the instance of accused as well as the vehicle used in the commission of crime also seized by the police. The accused A4 Mr. Sathvara was running the office of Anti Corruption Movement at the Odhav area of Ahmedabad and under the garb of anti-corruption movement, he along with co-accused kidnapped the innocent persons and blackmailed them for financial benefits. The victims, who lodged the FIRs, were treated by the Civil Hospital, Ahmedabad and treatment case papers were also being obtained by the police. The accused A5 – the appellant herein Ravindra Khushwal, was declared absconding and therefore, after completion of the investigation, the IO of the case, filed chargesheets against A1 to A4 before the Magisterial Court at Ahmedabad and cases being exclusively triable by the Court of Sessions, committed to the

City Sessions Court at Ahmedabad and same being registered as Sessions Case Nos. 9 of 2002, 10 of 2002 and 11 of 2002. The learned Sessions Court after framing the charges against Nos. A1 to A4, proceeded to record the evidence and after closure of the evidence of prosecution and hearing the parties, the trial Court, vide its judgment and order dated 21.07.2003, held guilty the A1 to A4 for the offences punishable under Sections 365, 367, 342, 384, 377, 392, 323, 506(1) r/w Section 34 and 114 of the IPC and sentenced to undergo maximum 7 years imprisonment with fine. The particulars of the sentence rendered in Sessions Cases read as under:

Anilkumar Morarilal Dube Sessions Case No. 09/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year

Anilkumar Morarilal Dube Sessions Case No. 10/02

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342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
325 r/w 34 and 114 IPC	RI for 2 years	Rs.1,000/-	RI for 1 month
328 r/w 34 and 114 IPC	RI for 7 years	Rs.2,000/-	RI for 1 month

Anilkumar Morarilal Dube Sessions Case No. 11/02

Conviction under Section	Punishment	Fine	In default of fine
365 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-

384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 years
323 r/w 34 and 114 IPC	RI for 1 year	-	-
325 r/w 34 and 114 IPC	RI for 2 years	Rs.1,000/-	RI for 1 year
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year

Rajiv@ Raju s/o Sureshchandra Joshi Sessions Case No. 09/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
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323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
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325 r/w 34 and 114 IPC	RI for 2 years	Rs.1,000/-	RI for 1 year
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year

Bineshkumar Mohanlal Sessions Case No. 09/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year

Bineshkumar Mohanlal Sessions Case No. 10/02

Conviction under Section	Punishment	Fine	In default of fine
365 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
325 r/w 34 and 114 IPC	RI for 2 years	Rs.1,000/-	RI for 1 month
328 r/w 34 and 114 IPC	RI for 7 years	Rs.2,000/-	RI for 1 month

Bineshkumar Mohanlal Sessions Case No. 11/02

Conviction under Section	Punishment	Fine	In default of fine
365 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-

384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
325 r/w 34 and 114 IPC	RI for 2 years	Rs.1,000/-	RI for 1 year
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
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392 r/w 34 and 114 IPC	RI for 7 years	Rs.15,000/-	RI for 1 year

The learned APP of the case submitted an application before the Trial Court, under Section 219 of the Cr.P.C, for trying the accused in one trial. The trial Court by allowing the said application, passed an order to record the evidence in Sessions Case No. 09 of 2002.

3. We deem it to refer the factual aspect of each case.

(A) PW:1 Jiya Ulhaq Gulam Mayuddin (I. CR. No. 198 of 2001 – Sessions Case No. 9 of 2002) ;

Admittedly, the witness was serving in the State Bank of India at its branch at Ahmedabad and before the incident, they came into contact with A1 Manoj Joshi. According to his case, the accused A1 got acquainted with him as he was interested to avail the bank loan with the help of the witness. He was taken to the place of the incident by A2 Anil Dube and the accused five

in person after kidnapping, wrongfully confined him and after undressed him, he had been assaulted by kicks and fists blows as well as by using lathi and belt and thereafter, the accused had performed unnatural sex with him and took his photographs of blackmailing and then, taken away the cash amount of Rs.22,000/- and other personal belongings. The injury certificate Exhs.45 and 46 show that there were 22 simple injuries in the nature of bruise and abrasion and he was examined by Dr. Parikh on 30.08.2001. The another certificate of V.S. Hospital shows that PW:1 was having fracture of 5th right metatarsal. In such circumstances, it is proved and established that PW:1 had sustained injuries on 29.08.2001 for which the FIR came to be filed on 30.08.2001.

(B) Vitthal Parmar (PW:13) (I.CR No. 201 of 2001 – Sessions Case No. 10 of 2002)

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The witness was dashed with the vehicle bike allegedly driven by the accused and thereafter, the another accused came at the place and he was taken to the place of the incident and after his kidnapping, he was wrongfully confined there by the accused and was beaten with hockey and his photographs also, after making him undressed being taken by the accused and the matter ultimately settled with the agreement that he will pay Rs.20,000/- and out of Rs.20,000/-, he had paid Rs.10,000/- and thereafter, he had been letting go. The injury certificate of V.S. Hospital shows that there was a fracture of 5th metatarsal on his

right leg and swelling on the left foot and had taken treatment on 07.09.2001 and before that, he lodged an FIR on 05.09.2001, whereas the incident occurred on 28.08.2001.

(C) Natvar Vaghela (PW:14) (I.CR. No. 203 of 2001 – Sessions Case No. 11 of 2002).

The victim was kidnapped on 24.08.2001 and was illegally confined by the accused at the place of the incident and after undressed him, he severely injured by the accused and then, unnatural sex being performed upon him and also his photographs for the purpose of blackmailing being taken by the accused and asked to pay Rs.5,000/- by the accused and when he assured for the payment, he had been letting him to go. The incident reported to the police on 06.09.2001.

(D) All the victims, as referred above, have identified the accused in Test Identification Parade.

(E) The I.O. - J.R. Raval, has seized the personal belongings to the victims including the nude photographs of the victims and vehicles of the accused, allegedly used in the commission of the crime.

4. In order to prove the charges, the prosecution adduced the following oral and documentary evidence in support of its case:

Oral evidence in Sessions Case no.9,10,11 of 2002

PW 1 – Exh.31	Jiya Ulhaq Gulam Mayurdin Pirzi, Complainant
PW 2 – Exh.33	Jashvantkumar Sanabhai Patel, Executive Magistrate
PW 3 – Exh.37	Jitendrakumar Ratilal Raval
PW 4 – Exh.40	Irfanbhai Ganibhai Chavanivala, Panch witness
PW 5 – Exh.41	Yogeshbhai Govindlal Patel, Panch witness
PW 6 – Exh.42	Samir Jamil Abdulmajid Sheikh, Panch witness
PW 7 – Exh.43	Gandalal Leelabhai Rabari, Panch witness
PW 8 – Exh.44	Mansinghbhai Arvindsingh Thakor
PW 9 – Exh.46	Gabbarsingh Javaharsingh Thakur
PW 10 – Exh.48	Vikramsingh Shivuji Rana, Panch witness
PW 11 – Exh.49	Dr. Parul Rameshbhai Vaghela
PW 12 – Exh.52	Jitendrakumar Vitthalbhai Parmar
PW 13 – Exh.53	Vitthalbhai@ Vinubhai Nathabhai Parmar, Complainant Sessions Case No. 10/02
PW 14 – Exh.56	Natvarlal Laljibhai Vaghela, Complainant Sessions Case No. 11/02
PW 15 – Exh.58	Anwarhusein Lalsa Sheikh, Panch witness
PW 16 – Exh.59	Jayesh Jatashankar Vora, Panch witness
PW 17 – Exh.61	Dr. Vishal Kaushikbhai Bhagat
PW 18 – Exh.63	Selarbhai Najbhai Basiya, PSI
PW 19 – Exh.72	Jitendrakumar Ratilal Raval, IO

Documentary evidence in Sessions Case No. 09/02

Exh.32	Complaint of Jiya Ulhaq Gulam Mayudin Pirzi
Exh.38	Charge report
Exh.85	Panchnama of place of offence by FSL officer
Exh.86	Panchnama of Motorcycle Hero Honda GJ01/CI 2396

Exh.87	Panchnama of Cap, handkerchief and slippers of accused
Exh.88	Panchnama of clothes of Ziyaulhaq
Exh.89	Panchnama of clothes of accused no.1
Exh.90	Panchnama of place of offence
Exh.91	Written application by Organisation against corruption to Charity Commissioner
Exh.92	Application and Memorandum by Organisation against corruption
Exh.93	Medical certificate of complainant
Exh.78	Forwarding notes
Exh.79	Receipt of article no.6 by FSL
Exh.80	Receipt of article no.36 by FSL
Exh.81	FSL forwarding letter
Exh.82	FSL Biological report of article no.36
Exh.83	FSL Serological report
Exh.84	FSL forwarding letter
Exh.39	FSL report of article no.6
Exh.34	Test Identification Parade Yadi
Exh.35	Panchnama of test identification parade
Exh.51	Civil hospital case paper of Zoyaulhaq

Documentary Evidence in Sessions Case No.10/02

Exh.54	Complaint of Vitthalbhai@ Vinubhai Parmar
Exh.64	Charge report
Exh.62	VS hospital certificate of Vitthalbhai
Exh.95	Warrant against accused Ravindra under Section 70 of CrPC by Metro Magistrate, Court no.5

Exh.94	Panchnama of place of offence

Documentary Evidence in Sessions Case No.11/02

Exh.57	Complaint of Natvarbhai Laljibhai Vaghela
Exh.65	Charge report
Exh.96	Panchnama of place of offence
Exh.97	Panchnama of clothes of complainant
Exh.98	Civil Hospital certificate of complainant
Exh.73	FSL Forwarding letter
Exh.74	Biological report of article no.22 by FSL
Exh.75	Serological report
Exh.76	Forwarding notes
Exh.77	Receipt of article no.22 by FSL
Exh.99	Arrest warrant of accused Ravindra under Section 70 of CrPC by Metro Magistrate, Court no.5

5. After closure of the prosecution evidence, the accused were questioned under Section 313 of Cr.P.C. to which they stated that they have been falsely implicated in the offence and they were innocent.

6. After hearing the respective parties and upon appreciation of evidence, the trial court came to a conclusion that, the prosecution has succeeded in proving the charge against the accused – appellants and further held that, the appellants accused with the common intention and in connivance with co-accused, had participated in the alleged act of kidnapping, wrongful

confinement, act of unnatural sex and extortion and accordingly, the appellants have been convicted and sentenced for the offences punishable under Sections 365, 367, 342, 384, 323, 325, 506(1), 377, 392 r/w Section 34 and 114 of IPC.

7. Being dissatisfied with the judgment of conviction and sentence passed in three different Sessions Cases as referred above, the appellant A5 has come up with present Criminal Appeals.

8. We may note that in all group of appeals, the counsel who has filed the appeal viz. Mr. Surti an Mr. Kanade, have remained constant absent at the time of hearing. In the matter of co-accused, Mr. A.M. Parekh is appearing. We have appointed Mr. A.M. Parekh as amicus- curie in all group of these appeals.

9. Mr. A.M. Parekh, learned counsel appearing for the appellants accused, while assailing the conviction and order of sentence, has made the following submissions:

(i) That the learned Sessions Judge grossly erred while convicting the accused without appreciating the evidence in right perspective and mechanically, on the basis of suspicion, conjuncture and surmises, convicted the appellant;

(ii) That the appellant accused was not known to the complainants PW-1, PW-13 and PW-14. The offences were alleged to have

been committed on 20.08.2001, 24.08.2001 and 29.08.2001, whereas, the appellant accused came to be arrested thereafter. In the FIRs, no any identification marks or physical description of appellant accused being disclosed. In such circumstances, the evidence of test identification parade, is become doubtful and the mandatory procedure had not been followed by the Executive Magistrate while conducting TI Parade. Thus, the testimonies of eye witnesses, identifying the accused in the court, without any corroboration cannot be termed to be reliable and truthful as their evidence does not inspire confidence. Thus, the identity of the accused is not proved and evidence thereof, is of not in sterling quality.

(iii) That the FIR allegedly lodged by the different victims came to be registered on different dates and there was a delay in lodging the FIRs for which no satisfactory explanation being given by the witnesses which create a doubt on its veracity and truthfulness of its contents as well as prosecution case;

(iv) That, there is no evidence to prove vicarious liability as provided under Section 34 of the IPC, which says that, when the criminal act is done by several persons, in furtherance of the common intention of all, each of such persons, is liable for that act in the same manner, as if it were done by accused alone. In the facts of the present case, different roles assigned to accused; to attract Section 34 of the IPC, the prosecution is under obligation to

establish that their existed common intention, which required pre-arranged plan and conscious meeting of mind of the persons participating in the act to bring a positive result. In the present case, upon careful examination of the oral evidence, the common intention amongst the accused for positive result, has not been established and the essential ingredient of sharing the common intention and meeting of mind are missing in the facts of the present case and therefore, the conviction with the aid of Section 34 read with Section 114 rendered by the trial Court, is not sustainable in law.

(v) The testimonies of the victims – PW-1, 13 & 14 are not wholly reliable and trust worthy. The place of offence is situated in the industrial area of Ahmedabad and having regard to the time of the offence, the independent witnesses though available, could have been examined by the police, but somehow, the witnesses of the neighbouring industrial shed were not cited as witnesses. The offence was committed in the dark hours. The medical evidence of each of the victims are contradictory to the oral version. In such circumstances, the sole testimonies of three victims, without corroboration cannot be acceptable, trustworthy and reliable.

(vi) That there is no evidence against the appellant – accused to prove the act of wrongful confinement, extortion, kidnapping or abducting with intent to wrongfully confine the victims to satisfy their lust and therefore when the prosecution failed to establish the

necessary ingredients of the different sections with which the accused were charged, the judgment of conviction and order of sentence is not sustainable in eye of law.

10. In such circumstances referred to above, Mr. Ashok Parekh, learned advocate has submitted that, the court below was not justified in convicting the appellant accused on the sole testimonies of the victims and in view of the legal infirmities, as pointed out, the prosecution miserably failed to prove the charges against the appellant beyond reasonable doubt and thus, he prayed that, there being merit in these appeals and same may be allowed and judgment of conviction and order of sentence be set aside and appellant may be acquitted of all the charges.

Alternatively, so far as sentence awarded under the different penal provisions of IPC are concerned, it was submitted by learned counsel Mr. Parekh that in the matter of co-accused Ravindra Khushwal, whose session trials on the basis of supplementary chargesheets, concluded independently, and he was found guilty for the offences and sentenced to undergo maximum 5 years imprisonment. Whereas, in the case of A1 to A4 for the same incident and on the basis of same evidence, the trial Court after holding guilty the accused, sentenced them to undergo maximum 7 years imprisonment. In that view of the matter, it was prayed that justice would be met if the sentence awarded may be reduced to the extent whatever deem it necessary to the Court.

11. On the other hand, Mr. Pranav Dhagat, learned State Counsel vehemently opposed the appeals. He would submit that the victims as referred, are injured witnesses and their presence at the place as well as the manner in which the accused kidnapped and keeping in wrongful confinement for the purpose of ransom, caused injuries on their body, and took their photographs and did unnatural sex would establish and prove that, the accused with their common intention has a pre-plan, kidnapped the victims and got positive result after confining them. The version of the complainants being injured witnesses, are truthful and reliable and corroborated by medical evidence on record. The photographs taken by the accused also recovered. In such circumstances, the prosecution has successfully proved the charges against the appellant accused beyond reasonable doubt. The trial Court has not committed any mistake or error either on facts or on law while examining the evidence on record and therefore, there being no merits in the appeals and same may be dismissed.

12. Before adverting to the submissions, we deem it fit to refer the evidence in detailed:

(1) Jiya Ulhaq Gulam Mayuddin (PW-1). In chief-examination, the witness has stated that on 29.08.2001, he came to his Bank's Head Office situated at Lal Darwaja, Ahmedabad and after taking material for examination at about 5-30 pm when he was standing near the city bus stand, near Apna Bazar, A1 Manoj Joshi met him

and at that time, the appellant herein was introduced by A1 as his friend. The witness has further stated that after taking break-fast nearby area, A1 proposed that the appellant accused Guddu will drop you at his house and relying on the words of A1, he sat on the bike as a pillion and instead taking him at Kalupur area, the appellant accused took him at the place of incident i.e. industrial shed situated at Odhav area. The witness has further stated that at that time he was carrying one hand bag, wherein, he kept Rs.22,000/- cash amount, tiffin box and other necessary papers. The witness has further stated that, the accused herein taken him inside the shed and his bag, which he carried was took by him and kept in the other side of the shed. The witness has further stated that, in the shed, A2, A3 and A4 were also accompanied to A1 and A2 and after sometime, they forcefully asked him for oral sex and thereafter, he was beaten up by the five accused persons and they attempted to do unnatural sex with him and was beaten up severely on his right leg as well as on both the eyes and backside of body. The accused had demanded an amount of ransom and took his signature on blank papers and also took his nude photos for blackmailing and extortion. The witness has further stated that, after making a promise to give amount on Monday, he was permitted to leave the place and he had been dropped by A3 nearby his house. The witness has further stated that, due to severe injuries, after reaching the home, he went to V.S. Hospital for treatment and found that, the amount, which was lying in the bag and other personal things being taken away by the accused. The

witness has further stated that on the next day of incident, he approached the Karanj Police Station, where he disclosed the complaint (Exh.15). The witness has identified the accused in the court.

In the cross-examination, it was asked that the appellant accused have did not perform any oral or unnatural sex with him, but the said suggestion has been denied by the witness. The witness in the cross-examination explained that why he went to the house and did not go to the police station for lodging FIR. In the cross-examination on the question of visibility in the shed, the witness has clarified that, there was an electric light and it was on. The witness has also stated that prior to the incident, he was not knowing the appellant accused Guddu.

(2) Vitthalbhai @ Vinubhai Nathabhai Parmar (PW-13). The incident of the victim was arisen on 20.08.2001. On the day of incident, the witness came to District Panchayat Office situated at Lal Darwaja to meet his relatives. The witness has stated in his chief-examination that after meeting, he left the place at about 4-30 pm and was on the way towards his house and he was on his foot and while reaching the office of Congress Party, he was hit by one motor-bike, as a result, he fell on the road and due to said hitting, he sustained severe injuries on his left leg. The witness has further stated that, the rider of the bike offered him for medical treatment and during the conversation with him, the another bike rider came

at the place and after seeing his situation, he had started to scolding the rider of the bike which had caused the accident. The witness has further stated that he was taken by both the bike riders near the tea spot and thereafter, by giving lift in the bike, he was taken to place of incident, where, he had saw other three persons. The witness has further stated that, the persons who had found in the shed, was having a hockey in their hand and on seeing him, they started to beat him and thereafter he compelled to undress himself and taken into office of the shed, where his photographs were being taken for the purpose of blackmailing. The witness has further stated that the accused had demanded Rs.50,000/- money from him and it was settled into Rs.20,000/-. The witness has further stated that before the said demand, he was compelled to sit in the chair and tide with the rope and again given a blow on his both the legs by hockey, which had caused the fracture injury in his right leg. The witness has further stated that the fifth person was speaking in Hindi language and stated that he is running the movement of Anti-corruption Office and asked him to suggest some persons who are indulged in corrupt practice. The witness has further stated that he was kept in the shed upto 4-00 o'clock morning. The witness has further stated that, he was allowed to go at the house of his relatives, accompanied by the accused persons, where he had took Rs.10,000/- and paid to the accused. The witness has further stated that, thereafter he was released by the accused. The witness has further stated that, he took the city bus from Bapunagar to travel to his residence and after reaching the

home, he went to private hospital for treatment and after 7 to 8 days, he made a complaint with the Karanj Police Station. The witness has clarified that, he was scared and he was threatened by the accused for dire consequences if he lodged the FIR and therefore, there was a delay in lodging the FIR. The witness is identified by the appellants – accused and others and stating that they had given a blow by hockey.

In the cross-examination, the testimony of the witness is not shaken so far as role attributable to appellant is concerned. The witness has further stated that, before the incident, he never met to the appellant accused. The witness admits that, in the complaint he has not give the description and other particulars of the accused. The witness on the issue of light, clarified that, in the shed, the faces of the accused could be seen. It is stated that, before the doctor, he has not stated the facts of the incident and further stated that, he sustained injuries because he fell from ladder. The witness has denied that due to accident, he sustained the injuries and the accused did not have caused injuries to him by weapon hockey. It is also denied by the witness that, at the instance of police, he identified the accused in the court.

(3) Natvarbhai Vaghela (PW:14). The witness in his chief examination, has stated that on 24.08.2001, the services of City Bus, was disturbed because of strike and when he was standing at

the City Bus-stand of Lal Darwaja, he was given lift by one bike driver and he was taken by him in the area of Odhav and was kept in the industrial shed where other persons were also there. The witness has further stated that the accused persons undressed him and took his snaps and beaten him and thereafter, they performed unnatural sex on him by the accused and out of the accused, one person is sitting in the Court. The witness has further stated that the accused took the signature on paper for assurance of money which they had demanded and thereafter, one of the accused dropped him on Odhav Road from-where he went to his house and due to the fear, he had gone to Rajkot and after returning back to Ahmedabad, he lodged an FIR. The witness has also produced the treatment case papers of civil and private hospital and also admitted that he deposed earlier against the other accused. In the cross examination, he admitted that before the incident, there was no occasion arise to meet accused Manoj Joshi and thereafter, he recollected the memory and stated that the accused Manoj took him on his bike. The witness in his cross examination has stated that there was no light in the godown, but he found light in the outside of the office. The witness has also stated that the other person was also there in the shed to whom the accused beaten him. The witness has also stated that he has not given history to the doctor and after 10 days, the police came to him. The witness has denied to the suggestion that the appellant accused was not present at the place of incident and the injuries which he stated being suffered in the accident.

(4) Dr. Parul Rameshbhai Vaghela (PW:11). The witness was posted as a Medical Officer in the Civil Hospital, Ahmedabad and on the basis of police yadi, she had examined PW:1 Jiya Ulhaq. Upon his medical examination, she found 22 injuries in the nature of bruise, rashes on the body of the PW:1 Jiya Ulhaq and certificate thereof being issued by her at Exh.50. It was opined that the injuries could be possible if the person dragged on the rough surface.

(5) Jitendra Parmar (PW:12). The witness is the son of PW:13, Vitthalbhai Parmar who was kidnapped and illegally confined by the accused. The witness has stated that the incident in question of his father was arose on 20.08.2001 and on the next day, his father came at the house and on seeing him, he found the injuries on his leg and for the treatment of the injuries, his father was taken to the private hospital in the area of Sabarmati and after the examination by the doctor and on the basis of xray report, there was a fracture over the left leg and for the treatment purpose, his father was admitted for two days in the said hospital. The witness has further stated that the reason for the injuries being stated by his father that he met with an accident. The witness has further stated that on 05.09.2001, the Ahmedabad Police came to his house and thereafter, he came to know that his father was kidnapped and after causing injuries by the accused, his cash amount of Rs.10,000/- being extorted by accused. The witness has further stated that his father after giving assurance by the police, disclosed a true facts of the incident and the same being registered

in the form of FIR.

(6) Dr.Vishal Bhagat (PW:17). This witness during the time of incident, was serving as a Medical Officer with V.S. Hospital, Ahmedabad. The witness has stated that on 07.09.2001, Vitthal Parmar (PW:13) was brought before him with police yadi for medical examination. The witness has noted the bruises and swelling on the body of the injured Vitthalbhai and after xray of both the legs, it revealed that the injured sustained a fracture of right 5th metatarsal for which the necessary treatment was given to him. The witness has also produced case papers of treatment at Exh.62. It was the opinion of the doctor that the said injuries could be possible by fists and kick blows and so far as fracture injuries are concerned, it could be possible by blunt weapon.

(7) Jaswantkumar Shanabhai Patel (PW:2). This witness had conducted test identification parade of the accused Binesh Sathwara, Rajiv and Anil Dube. The injured witness PW:1, during the test identification parade, had identified the all three accused who were standing in the office with dummy person. The witness has stated that on the request of the Karanj Police, on 02.09.2001, in his office, the test identification parade was conducted. The witness being Executive Magistrate has narrated the entire procedure and how the witness has identified the accused in his chief examination and the parade panchnama which he had prepared in the presence of panchas was produced at Exh.35.

(8) Mr. Selarbhai Najbhai Basiya (PW:18). This witness was serving as PSI with Karanj Police Station, Ahmedabad and on 05.09.2001, he recorded the complaint of Vitthal Parmar at Exh.54. The witness has further stated that after registration of the offence, he was in-charge of the investigation of the case and had drawn the panchnama of place of incident and also arrested the accused and seized and recovered the photographs, cameras and other personal belongings from the house of accused Manoj Joshi, Anil Dube and Binesh Sathwara. The witness has further stated that during the investigation, he requested the Executive Magistrate to conduct the test identification parade of the accused and sent the seized articles for FSL purpose.

(9) Jitendra Ratilal Raval (PW:19). This witness was on duty with Karanj Police Station as PSI and had investigated the case and after completion of the investigation, he submitted the chargesheet before the Court of Magistrate. It has been stated by the witness, during the investigation, he seized the weapon hockey of Rajiv Sharma and initiated the proclamation proceedings against the absconding accused Ravindra Khushwal.

13. We have given thoughtful consideration to the respective submissions and perused the case records and findings of conviction recorded by the Trial Court.

14. Having regard to the facts and circumstances of the present case and evidence on record, question that arises for our consideration

is whether the prosecution has been able to establish to involvement of the appellant accused in the crime in question and succeeded in proving the charge against the accused beyond reasonable doubt ?

15. Now we are examining the credibility and reliability of the injured witnesses. As discussed hereinabove, PWs:1, 13 and 14, who had sustained injuries as mentioned in the medical case papers. We have carefully examined the testimonies of injured witnesses. Their evidence on the aspect of incident, the role attributed to the accused herein as well as co-accused, are seems to be consistent and there is no reason for them to falsely involve the appellant accused. The witnesses had given a clear account of their incident and manner in which, they had been kidnapped and beaten for the purpose of monetary benefits by the accused. PWs:1 and 13, upon whom the act of unnatural sex was performed by the accused, also being narrated by the victims in clear terms and there is no reason for them to made baseless and concocted story of unnatural sex. It is on record that the co-accused Binesh Sathwara was running an anti corruption movement and his institution was registered with the Charity Commissioner and office was shown at the industrial shed where the offence alleged to have been committed. There was a some delay in lodging the FIR, but the witnesses have explained the delay in lodging the FIR and having regard to the circumstances of the case, the manner in which, the atrocities being committed upon the witnesses, it could not be expected

from them for filing prompt criminal case or disclosure of the incident to the family members. In such circumstances, we are satisfied that the oral testimonies of witnesses are truthful and their conduct after the incident were seems to be natural and in that view of the matter, on scrutiny of their evidence, we do not find any infirmities in their evidence. It is relevant to note that the witnesses have sustained injuries allegedly caused by the accused and same has been proved by adducing acceptable medical evidence and therefore, the statements of injured witnesses has a great value and their statements are not to be discarded lightly and their evidence must be given a due credence and one thing is clear that normally injured witnesses would not let go the real culprit by falsely implicating wrong persons. Thus, it is evident that the versions of the witnesses clearly establish the incident and role played by the accused and there is nothing to show that there was inimical relation or for any other reason either to take revenge or with malafide intention, the witnesses are saying lie against the accused. In such circumstances, referred to above, we have no doubt in our mind about the credibility, acceptability and reliability of the version which is otherwise inspiring confidence given by the three injured witnesses. Thus, the prosecution is able to prove, the involvement of the accused – appellant, in the alleged act of kidnapping of the PW.1, 13 and 14 and after kidnapping, they have been wrongfully confined in the industrial shed where they have been beaten by the accused so as to extract the financial benefit and thereafter, also for the purpose of

blackmailing and extortion, they took nude photographs of the witnesses and also performed unnatural sex to satisfy their lust upon the PW.1 and 13 and the manner in which the pre-arranged plan systematically and with all smartness being executed which further rise to presumption that the accused had a common intention to commit the offence.

16. Now we will examine the contentions raised by the accused herein one by one.

17. It is the contention that the ingredients of Section 34 of the IPC are not satisfied and accused appellant cannot be jointly and vicariously liable for the acts of others. The Trial Court with the aid of Sections 34 and 114 of the IPC convicted the appellant accused. Section 34 of the IPC recognizes the principle of vicarious as also joint liability in the criminal act which is an exceptional to the general rule that every person is liable for his acts and not for acts of others. Section 34 makes a person liable for an offence not actually committed by him, but by another person with whom he had shared common intention. The pre-condition for attract of Section 34 is that the act must have been done by two or more persons in the furtherance of common intention and the accused should have participated in the commission of the crime one way or other. The present case appreciated on the touchstone of the aforesaid law and after careful examination of the evidence, it proves that the modus

operandi of the accused was the same and all the victims were being kidnapped from Lal Darwaja area and before kidnapping, as per pre-arranged plan, they got acquainted with the victim and then, under the pretext, either to drop them or to help him out, they used to take at the place of the incident and causing injuries and performing physical atrocities, the victims were compelled to offer some money. Thus, this act could not be possible by any single person and the manner in which the offence being executed, reasonable inference would arise that with pre-arranged plan, the each accused accepted specific role to commit the crime and then, at the end, they got a positive result. Thus, the accused herein had shared the common intention and the offences were done in furtherance of common intention of all and therefore, the contention that Section 34 of the IPC is not attracted in the present case, has no any merits.

18. It is the next contention that FIR allegedly lodged after delay for which there is no explanation coming forth and on this count, prosecution case becomes doubtful. In the facts of the present case, the allegation proved is that the victims were subjected to unnatural sex and threatened by the accused for dire consequences if they report to the police. The victims had been severely injured and they were in shock, which facts being stated by the victims in their respective testimonies. The delay as claimed cannot be termed to be an inordinate delay and therefore, when there was no motive to implicate the accused falsely and in each case, the witnesses have given plausible reasons for delay, the case cannot

be doubted merely on the ground of maximum 4 to 5 days delay in lodging the FIR.

19. The another contention raised is that the presence of the accused was doubtful and evidence of T.I. Parade does not inspire confidence and therefore, the identity of the accused is not established. We are not impressed with the arguments. It is no doubt true that except A1, the witnesses were knowing the other accused before the incident. The testimony of Executive Magistrate PW:2 would establish that he had followed the proper procedure while conducting the parade and as such, there was no delay in conducting T.I. Parade. Thus, when the victims had sufficient time to show the accused and after the incident, in the T.I. Parade, the identified the accused and also in the Court, which indicative of the facts that the identification of the accused has been clearly established and the entire process of test identification parade being done genuinely in a fair and reasonable manner.

20. The another contention raised with regard to reliability of the witnesses. It is relevant to note that the witnesses were victims and being injured witnesses, their presence at the time and place of occurrence, in absence of contrary evidence, cannot be doubted. In the case of **Babu Sudam Khalde Vs. State of Maharashtra (2023 SCC Online Supreme Court 355)**, the Apex Court summed up the principles which are to be kept in

mind when appreciating the evidence of injured eyewitness. In Para-26, it was held as follows:

> *"26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:*
>
> *(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
>
> *(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
>
> *(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
>
> *(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*
>
> *(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."*

In the case on hand, the evidence of three eyewitnesses is

consistent on the aspect of involvement of the accused and alleged act of kidnapping and other offences and therefore, in absence of any compelling reasons, their presence at the time and place of the occurrence cannot be doubted. The industrial shed where the incident took place is situated in Odhav Area of Ahmedabad and there is nothing on record to show that the neighbouring owner of the factory and their workers were present at the time of incident. It is settled position of law that, it may be enough to sustain conviction on the testimony of reliable and trustworthy witnesses as witnesses have to be weighed, not counted and in the present case, the version given by the witnesses on the aspect of role played by the accused are consistent and no any inherent improbability of the story being found by us after analysis of their evidence.

21. It is the contention that, the necessary ingredients of the offences charged have not been established and proved. Let us examine the contention by referring the statutory penal provision:

(i) <u>Section 342 of IPC: Wrongful confinement:</u>

Punishment for wrongful confinement which says that whoever wrongfully confines any person, shall be punished with imprisonment for a term which may extend to one year or with fine. The definition of wrongful confinement is prescribed in Section 340 of the IPC which defines that, whoever wrongfully restrain any person and

such restrain must prevent from proceedings beyond certain circumscribing limit. In other words, the offence of wrongful confinement occurs when individual is wrongfully restrained in such manner as to prevent him from proceeding beyond certain circumscribing limit. In the facts of the present case, all three witnesses confined within the limits of industrial shed and according to their version, they have been restrained and/or prevented by the accused and under threat they could not come out from the said area. In that view of the matter, the essential ingredients of wrongful confinement are attracted in the facts of the present case and thus, therefore, we do not find any substance in the submission that, the charge under Section 342 has not been proved and established.

(ii) Section 365 of IPC: Kidnapping or abducting with intent secretly and wrongfully to confine person: In order to prove the offence, the prosecution has to prove that, accused kidnapped or abducted any person and that he did so with intent to cause that person to be confined secretly and wrongfully. In the facts of the present case, the essential ingredients are attracted as all the witnesses on the different dates and time, kidnapped by the accused without informing the accused and their intention was to confine wrongfully the witnesses. Thus, in the facts of the present case, the

prosecution has proved the charge under Section 365 of the IPC.

(iii) Section 367 of IPC: Kidnapping or abducting in order to subject person grievous hurt, slavery or to the unnatural lust of any person: In the facts of the present case, the witnesses were kidnapped by the accused and they caused injuries at the place of incident and also committed and performed unnatural sex upon the PW.1 and 13 and therefore, the ingredients of section are clearly attracted in the present case.

(iv) Section 377 of IPC: Whoever against the will and wish of the person perform the carnal intercourse against the nature with any man, woman or animal shall be punishable: In the facts of the present case, specific allegation being made against the appellant that, he along with co-accused, performed unnatural sex upon PW.1 and 2. In such circumstances, we do not find any merits in the submission that charge under Section 377 is not established against the accused. It is relevant to note that so far as PW:13 Vitthal Parmar is concerned, charge against the accused under Section 377 was not there and the Trial Court also did not believe the charge of unnatural sex. Thus, the charge against the accused under Section 377 qua PW:13 Vitthal Parmar (Sessions Case No.10 of 2002) is not proved and established.

(v) Section 323 of IPC: which provides a punishment for voluntarily causing hurt as defined under Section 322 of the IPC: In the facts of the present case, as per the version of the witnesses, the appellant had caused injuries to them and same is proved by producing medical evidence.

(vi) Section 325 of IPC: provides punishment for voluntary causing grievous hurt. So far as PW:13 Vitthal Parmar he sustained a fracture injury over his leg. However, so far as Natvar Lalji is concerned, there is no specific medical evidence to prove that he has sustained fracture injuries. In such circumstances, the conviction under Section 325 IPC (awarded in Sessions Case Nos.10/2002 and 11/2002), is not sustainable. It is relevant to note that the accused has already been convicted under Section 323 for causing voluntary injuries to the witnesses.

(vii) Section 384 of IPC: which provides a punishment for extortion as defined under Section 383 of the IPC: In order to prove the charge, two things must require to be proved; (i) intentionally putting a person in fear of injury to himself or another; (ii) dishonestly inducing a person so put in fear to deliver to any person any property or valuable security. So far as facts of the

present case are concerned, the witnesses have categorically stated that, after kidnapping, they have been put in fear by causing injuries and then compelled to pay the money demanded by the accused. Thus, the ingredients of section are attracted in the facts of the present case.

(viii) Section 328 of IPC: which provides punishment for causing hurt by means of poison, etc. In the facts of the present case, there is no evidence brought on record to establish that PW:13 Vitthal Parmar was administered a poison or any stupefying or other things with an intent to cause injuries or any other offence. Therefore, in our opinion, the prosecution miserably failed to prove the charge under Section 328 IPC against the accused.

(ix) Section 506(1) of IPC: which provides punishment for criminal intimidation. The definition of criminal intimidation given under Section 503 IPC says that, whoever threaten a person with an injury or his reputation or property with intend to cause that person to do any act which he is not legally bound to do. In the facts of the present case, so far as PW.2 Vitthal Parmar and PW.3 Natvar Vaghela is concerned, the ingredients of Section 506(1) are attracted as the accused threatened them and had caused injuries to make payment.

(x) Section 392 of IPC: which provides a punishment for robbery. The definition of robbery is defined under Section 390 of IPC which says that in all robbery there is either theft or extortion. It further says that the extortion is robbery if the offender at the time of committing extortion, is in the presence of person, put in fear and commit the extortion by putting that person in fear of instant death, of instant hurt, of instant wrongful restrain to that person and by so putting in fear, induces the person so put in fear then and there to delivery up the things extorted. In the facts of the present case, the witnesses PW:1 was compelled to pay Rs.22,000/- which he was carried in his bag. The witness PW:13 and PW:14 also compelled to pay the amount and as per their evidence, the accused received the monitory benefits. In such circumstances, the prosecution is able to prove the necessary ingredients of offence of robbery.

22. For the reasons aforementioned, after analysis and re-appreciation of the evidence, we are satisfied that prosecution has proved its case with sufficient oral and documentary evidence beyond all reasonable doubt that the appellant-accused had participated in the offence as alleged and they acted in furtherance of their common intention and kidnapped PW-1, 13 and 14 and after putting them in fear and by causing injuries, wrongfully confined them and they

were subjected to unnatural sex as well as they extorted the money, whereby committed the offence of robbery. Thus, therefore, we have no hesitation to hold that, the prosecution has proved the charges for the commission of the offences under Sections 365, 367, 342, 384, 323, 377, 392, 506(1) r/w Section 114 and 34 of the IPC against the accused appellants beyond reasonable doubt. The conviction and sentence under Sections 325, 328 rendered in the Sessions Case Nos.10 of 2002, and conviction and sentence rendered under Section 325 of IPC in Sessions Case No. 11 of 2002, is hereby set aside.

23. Now let us deal with the alternative prayer made by the appellants accused for reducing the sentence at par with the co-accused Ravindra Khushwal (Sessions Case No. 152 of 2003). It is no doubt true that the appellants accused and the accused Ravindra Khushwal were prosecuted and convicted for the same incident and evidence recorded by the prosecution are also same. Despite of this, on the same set of evidence, the accused Ravindra Khushwal was awarded maximum 5 years sentence for the offences as referred above. It is on record that the role of the appellants vis-a-vis the A5 Ravindra is not distinct; all stands on the same footing in terms of participation, involvement and culpability in the alleged offence. The trial Court has not assigned any distinguishing factors for awarding 5 years sentence to Ravindra Khushwal. In such circumstances, in our opinion, in absence of any exceptional circumstances, there must be a parity

in the sentence also and therefore, the appellants are entitled to have their sentence brought down to the level of co-accused Ravindra Kushwal. It is relevant to note that the State has not filed any enhancement appeals against the impugned judgment and order of sentence. Hence, in the interest of justice, the sentence awarded by the trial Court in the referred Sessions Cases has been reduced in the following terms. The fine and default imprisonment remain same, as awarded by the trial Court.

Anilkumar Morarilal Dube Sessions Case No. 09/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Anilkumar Morarilal Dube Sessions Case No. 10/02

Conviction under	**Punishment**	**Fine**	**In default of fine**

Section			
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Anilkumar Morarilal Dube Sessions Case No. 11/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 years
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Rajiv@ Raju s/o Sureshchandra Joshi Sessions Case No. 09/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Rajiv@ Raju s/o Sureshchandra Joshi Sessions Case No. 10/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-

384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Rajiv@ Raju s/o Sureshchandra Joshi Sessions Case No. 11/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 years
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Bineshkumar Mohanlal Sessions Case No. 09/02

Conviction under Section	Punishment	Fine	In default of fine
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Bineshkumar Mohanlal Sessions Case No. 10/02

Conviction under Section	Punishment	Fine	In default of fine
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-

506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

Bineshkumar Mohanlal Sessions Case No. 11/02

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
365 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
367 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
342 r/w 34 and 114 IPC	RI for 6 months	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1000/-	RI for 3 months
323 r/w 34 and 114 IPC	RI for 1 year	-	-
506(1) r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year
392 r/w 34 and 114 IPC	RI for 5 years	Rs.15,000/-	RI for 1 year

All the sentences are ordered to be run concurrently.

24. Accordingly, present Criminal Appeals are **partly allowed** in the above terms. The conviction and sentence under Sections 325, 328 rendered in the Sessions Case Nos.10 of 2002, and conviction and sentence rendered under Section 325 of IPC in Sessions Case No. 11 of 2002, is hereby set aside. The appellants accused are

directed to surrender within a period of **eight weeks**, to undergo remaining period of imprisonment as presently they are on bail and their bail bonds stand cancelled. If the appellants accused failed to surrender in a stipulated time, then the Trial Court shall issue warrant for securing their presence. R&P, if any, be sent back to the trial Court forthwith.

25. In view of the order passed in Criminal Appeal No. 1216 of 2003, Criminal Misc. Application No. 1 of 2003 is disposed of accordingly.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

P.S. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 30/09/2025 13:54:21