**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1507 of 2018**
**With**
**R/CRIMINAL APPEAL NO. 1553 of 2017**
**With**
**R/CRIMINAL APPEAL NO. 228 of 2021**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE ILESH J. VORA**

**and**

**HONOURABLE MR. JUSTICE R. T. VACHHANI**

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| Approved for Reporting | Yes | No |
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RAMESH DHANJIBHAI SALAT
Versus
STATE OF GUJARAT

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Appearance:
MR PRATIK B BAROT(3711) for the Appellants
MR JK SHAH APP for the Respondent

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

**Date : 27/01/2026**

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

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

2. Vide judgment and order dated 26.09.2017 passed in Sessions Case No. 68 of 2014, whereby the learned Additional Sessions Court at Valsad, convicted and sentenced the accused A1 Ramesh Salat and A2 Manoj Ramesh for the offences punishable under Sections 302 read with Section 114 of the Indian Penal Code, whereas, the accused Amir Ramesh A3 and accused Gopi Ramesh A4, have been acquitted from the charges of murder, however, the accused A3 Amir has been convicted under Section 323 for causing injuries to the witnesses and sentenced them in the manner stated hereinafter :

| Conviction under Section | Punishment | Fine | In default of fine |
|---|---|---|---|
| 302 of IPC | RI for Life | Rs3,000/- | SI for 6 months |

The sentences of the accused A1 and A2 were ordered to run concurrently.

3. The accused appellant – Ramesh Salat A1 and accused Manoj Salat A2, have also questioned the legality and correctness of the judgment of conviction and order of sentence by preferring Criminal Appeal No. 1507 of 2018 and Criminal Appeal No.228 of 2021 respectively.

4. The State being aggrieved with the acquittal of accused Nos. 3 and 4 from the charges of murder punishable under Section 302 has preferred an acquittal appeal being No. 1553 of 2017.

5. **Factual background** :

On 28.01.2014, the FIR against the 4 persons for the offenses punishable under Sections 302, 323, 504, 506(2) read with Section 114 of the Indian Penal Code came to be registered being CR No.I- 41 of 2014 with Vapi Town Police Station, city : Vapi, District : Valsad. The complainant and accused and witnesses belonged to one family and living in the Kunta area of Vapi. The son of complainant Bharat was killed by the accused namely Ramesh Salat, Manoj Salat, Amir Salat and Gopi Salat, inflicting bodily injuries with the weapons like dagger, iron pipe, knife, iron rod. The incident of murder being occurred on 27.01.2014 at about 10-30 to 10-45 pm nearby the house of complainant party. The motive behind the murder was due amount of Rs.10,000/- allegedly to be paid by the complainant PW-4 to the accused A1 Ramesh, who happened to be his real brother. Prior to the incident, way back in the year 2001, the accused Ramesh filed a criminal complaint against the complainant and others for hurling abusive and causing voluntary injuries to them. The accused Ramesh, as a part of settlement was demanding Rs.10,000/- from his brother complainant towards the expenses of litigation but despite of repeated demand, the complainant PW-4 did not have heed the request and did not have made the payment. It is in these background facts, on 27.01.2014, the accused came at the house of the complainant and made a demand of Rs.10000/- and on that issue heated exchange of words being taken place between PW-4

and accused Ramesh Salat and thereafter, the accused No.1 Ramesh Salat took out weapon dagger and inflicted a repeated blows on the back side of the head of deceased Bharat, who was standing near his house. The accused Manoj A2, inflicted iron rod blow on the head of deceased Bharat and also on the face of the deceased, whereas, accused Amir A3 and accused No. 4 Gopi assaulted the deceased with the weapon iron rod and knife. The wife of the deceased PW-5 Bhavna Rathod and minor daughter aged about 6 yrs – PW-6 Mohini, when intervened for rescual purpose, the accused A3 Amir caused injuries with pipe on both the witnesses.

After the incident, the accused ran away from the place. The deceased Bharat and injured witnesses immediately taken to the Daman Government Hospital and the deceased was brought declared dead by the doctor. The Daman Police had advised to lodge an FIR with the Vapi Town Police Station at Vapi, because, the incident has occurred in the jurisdictional area of Vapi Town Police Station, as a result, on early morning at about 3-00 AM, PW-4 lodged an FIR before PW-11 – PI, Vapi Town Police Station.

After registration of the offence against the accused, the investigation of the case was handed over to the PW-11. The IO during the investigation, prepared the panchanama of scene of occurrence, arrested the accused on the same day i.e. 28.01.2014, sent the dead body for the post mortem, seized the weapons

allegedly used in the crime, obtained the necessary injury certificates of the witnesses, recorded the statement of the witnesses, sent the seized articles to the FSL for forensic science analysis and after completion of the investigation, the chargesheet against the accused for the aforesaid offenses filed before the jurisdictional Magistrate.

As the case was exclusively triable by the court of Sessions and it was committed to the court of Sessions at Valsad. The Sessions Court, Valsad framed the charges against the accused, which they did not admit and claimed to be tried.

6. The prosecution in order to prove the charge, adduced the following oral and documentary evidence in support of its case.

**Oral evidence**

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| PW 1 – Exh.9 | Raju Amrat, panch witness |
| PW 2 – Exh.17 | Shankar Channabhai, panch witness |
| PW 3 – Exh.19 | Prema Narayanbhai, panch witness |
| PW 4 – Exh.20 | Varsingh Dhanji, Complainant |
| PW 5 – Exh.21 | Bhavnaben Bharatbhai |
| PW 6 – Exh.22 | Mohiniben Bharatbhai |
| PW 7 – Exh.24 | Dr. Nirankarnath Nevilal |
| PW 8 – Exh.29 | Dr. Prashant Sagar |
| PW 9 – Exh.35 | Kalidas Makan Patel |
| PW 10 – Exh.38 | Bhupatbhai Natubhai, PSO |
| PW 11 – Exh.41 | Govind Nanji Parmar, IO |

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| PW 12 – Exh.45 | Zinga Ramdas, PSO |
| PW 13 – Exh.49 | Ajit Manubhai Parmar |

**Documentary evidence**

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| Exh.10 | Panchnama of place of offence |
| Exh.11-14 | Signed copy of panchnama |
| Exh.18 | Panchnama of state of body of accused |
| Exh.25 | PM Note |
| Exh.26 | Cause of death certificate |
| Exh.27 | PM Yadi |
| Exh.28 | Inq. Form 2B |
| Exh.30 | Medical certificate of Bhavnaben |
| Exh.31 | Medical certificate of Mohiniben |
| Exh.32 | Yadi for medical examination |
| Exh.33 | Case papers of Bhavnaben |
| Exh.34 | Case papers of Mohiniben |
| Exh.36 | Yadi for map of place of offence |
| Exh.37 | Map of place of offence |
| Exh.39 | Station diary |
| Exh.40 | Police yadi |
| Exh.42 | Complaint |
| Exh.43 | Inquest panchnama |
| Exh.46 | Panchnama of clothes recovered from the deceased |
| Exh.47 | Signed copy of panchnama |
| Exh.48 | Station diary |

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| Exh.50 | FSL report |
| Exh.51 | Biological report |
| Exh.52 | Serological report |

7. After closure of the evidence, the statement of the accused under Section 313 of the Cr.P.C, were recorded to which, they stated that they have been falsely implicated in the offence and they are innocent and have not committed any offence.

8. Though the opportunity was extended, no oral evidence being adduced by the appellants accused.

9. **Trial Court's finding**:

After hearing the parties and upon appreciation of the evidence, the accused A1 and A2 i.e. Ramesh Salat and his son Manoj Salat held guilty for the offence of murder and the rest of the accused being acquitted from the charge of murder. However, the trial Court convicted the accused A-3 Amir Salat for causing voluntary injury to the witnesses under Section 323 of the Indian Penal Code. The trial Court while recording the conviction has mainly relied upon the testimonies of eye-witnesses PW-4 Varsing Dhanji, PW-5 Bhavnaben Rathod, and minor daughter Mohini PW-6.

10. **Evidence adduced by the prosecution** :

**Medical Evidence** :

10.1 **PW-7 : Dr. Nirankarnath Nevilal Singh** : This witness being Medical Officer of Government Hospital, Marvad at Daman, had conducted the Postmortum on the body of the deceased Bharat Narsingbhai. The witness noticed the following external and internal injuries :

**External Injuries** :

(i) incise wound of 8x1.5x1.5 cm. in middle of Lt parietal region

(ii) incise wound of 6x1.5x1.5 cm. in middle of Rt parietal region

(iii) incise wound of 4x0.5x0.5 cm. Lt side upper lip

(iv) incise wound of 4x0.5x1 cm. Lt side below mandible

**Internal Injuries**:

(i) incise wound on right and left parietal region;

(ii) fracture on right and left parietal bone;

(iii) Contusion and laceration of brain, cerebral hemorrhage present,

(iv) Incise wound over the left side below mandible (4X0.5X1 cm)

So far as cause of death is concerned, the witness had opined that the cause of death was hammageric shock due to head injury.

The witness Dr. PW-7 has proved and produced the PM report and certificate of cause of death at Exh. 25 and 26. It is further

opined by the doctor that the external injuries and internal injuries are correlated to each other. According to opinion of the doctor, the injuries mentioned on column no. 17, 18 and 25 of PM report were sufficient in ordinary course of nature to cause death. It is further opined that, the injuries mentioned in column no. 17 could be possible with the weapon dagger and knife and injuries mentioned in column no. 18 and 25 could be possible with the weapon article iron pipe and article iron rod.

In the cross-examination, the witness has admitted that, during the postmortem he did not notice any puncture wound on the body of the deceased. On the aspect of possibility of the injuries of parietal bone with the weapon knife, the witness has opined that it can and it not be possible.

10.2 **PW-8 : Dr. Prashant Rameshbhai Sagar** : This witness had examined the injured witnesses PW-5 Bhavna Rathod and PW-6 Mohini Rathod. The witnesses were examined on 28.01.2014 in the morning at 7-45 am at the Government Hospital, Marvad, Daman. The witness No. 5 Bhavna Rathod, according to opinion of the doctor, she received injury in the nature of contusion 3x1 cm over the forehead and this injury could be possible by hard and blunt object. The witness no.6 Mohini Bharatbhai, as per the examination of the doctor, she received an abrasion (2x1 cm) over right forearm below elbow and same could be possible by hard and blunt object. Both the injuries were simple in nature and the certificates thereof are produced at Exh. 30 and 31 along with

OPD case papers.

**Testimony of the Eye-witnesses**:

11. **PW-4 Varsingbhai Dhanjibhai Halpati** : This witness is the father of the deceased Bharatbhai and admittedly, the deceased was living adjacent to the house of the witness – father. At relevant time, the witness and family of the deceased were present in the house. The accused Ramesh A1 is the real brother of the witness and uncle of deceased Bharatbhai. The rest of the accused are sons of the A1 Rameshbhai. Prior to the incident, the accused Ramesh filed a criminal complaint against the witness and others and on that ground, there was an animosity between the parties and the accused Ramesh was asking the witness to pay Rs.10,000/- towards litigation cost and reasons best known to the witness, he was not ready to pay the amount. It is in these background facts, the witness in his chief examination, has stated that, the accused came to his house and at that time, his son Bharat was standing near the door of his house and was fatally assaulted by the accused. The witness in detail, has stated that the accused Ramesh armed with dagger, gave a blow on the back side of head and face of the deceased, whereas, accused Manoj inflicted blow with iron rod on the head, whereas, accused Amir gave a blow on the chest of the deceased and the accused Gopi caused injuries with the knife on the lips and face of the deceased. The witness has further stated that, the wife of the deceased Bhavna PW-5 and minor daughter Mohini – PW-6, when intervened for rescue, they

also have been assaulted by the accused using iron pipe. The witness has further stated that, the deceased was taken to Daman Government Hospital in the ambulance and the doctor declaring him 'dead' on arrival. The witness has stated that on the advice of Daman Police, the FIR came to be lodged with the Vapi Town Police Station. The witness has identified the accused in the court and seized weapons article nos.2, 3, 4, 6, 9 and 11.

In the cross-examination, the witness has admitted that, the accused Ramesh is his real brother and rest of the accused are his nephew. The witness has denied that before 11 years, he assaulted the accused Ramesh and his family members. It is also admitted by the witness that, the criminal case for causing injury is pending with the Vapi Court and the accused Ramesh was asking Rs.10,000/- from him towards expenses and till date, the amount has not been paid by him. It is denied by the witness that, no such incident as stated in the chief-examination, being occurred and due to the pendency of criminal case, the accused have been falsely implicated by him. It is also denied by the witness that his son is died due to motor accident. It is also admitted by the witness that before the doctor, he did not have disclosed the names of the assailants. It is denied by the witness that, in order to pressurize the accused in the criminal case by creating false story, they have been falsely implicated. On the aspect of delay in lodging the FIR, the witness has stated that, the FIR came to be lodged with Vapi Police Station in the early morning at about 4-00

to 4-30 am.

12. **PW-5 Bhavnaben Bharatbhai Rathod** : This witness is the wife of the deceased Bharatbhai and at the time of incident, she was very much present in the house along with two daughters namely Neha and Mohini (PW-6). The witness in her chief-examination has stated that, on the day of incident, the accused came to their house and by hurling abusive, they demanded Rs.10,000/- from her father-in-law, who is residing in the adjacent to her house and at that time, Ramesh by using dagger gave a blow on the head of deceased and the accused Amir and Gopi along with Manoj, had also assaulted her husband with the weapon pipe, iron rod and knife. She has stated that her husband was assaulted on his head and face and while trying to rescue him, the accused assaulted her as well as a minor daughter Mohini. The witness has stated that, her husband was taken into ambulance at Government Hospital, Marvad. The witness has identified the accused in the court and also identified the weapons allegedly used by the accused in the crime.

In the cross-examination, the defense has tried to prove that at relevant time, there was no sufficient light at the place of occurrence but the witness has denied to the said suggestion and stated that there was sufficient light. On the aspect of due amount of Rs.10,000/-, the witness has stated that since last 13 years, the accused had been demanding the said amount from his father-in-law. It is denied by the witness that, before incident, there was

heated exchange of words between her husband and accused and deceased - her husband hurled abusive. The witness has admitted that, after heated exchange of words, the incident of assault has been taken place. It is denied by the witness that at relevant time, she was not present in the house and on the aspect of assault by the accused, she is telling lie.

13. **PW-6 Mohini Bharatbhai**: This witness is a minor daughter of the deceased and at the age of 9, she had witnessed the incident. Before recording the evidence, the court was satisfied about the maturity to understand the question and answer, as a result, oath was administered to her and thereafter, trial Court had proceeded to record evidence. This witness has stated in her chief-examination that the accused belonged to our family. At the time of incident, the accused Ramesh Uncle, Manoj Uncle and Amir Uncle, assaulted her father with the dagger, pipe and knife. The witness has identified the accused and the seized weapons in the court. She has also stated that, at the relevant time, her grandfather, mother, grandmother and aunt were present. In the cross-examination, the witness has denied that, on earlier occasion, she had been in court to learn the proceedings of the court and how to give deposition. She has also denied that, she learnt from the discussions made amongst the family members on the aspect of how to give deposition. She has also denied that, she was tutored by her mother. She has denied the suggestion that, before the incident could take place, there was heated arguments which lasted for 10 minutes between the accused and her

grandfather. She has also denied that, her grandfather and others were hurling abusive on the accused. She denied to the suggestion that, due to sickness of her grandfather, he was sleeping on the cot. She has denied that, no injury being sustained by her as well as her mother in the said incident. She has admitted the facts that, the accused Ramesh caused injury first in point of time to her father and lastly, Gopi uncle assaulted him. She has stated that, she has witnessed the entire incident. She has denied to the suggestion that, due to drinking habit of her father, he was used to beat her mother. She has denied that, on the day of incident, at about 10:00 p.m. she went into sleep.

14. **PW.11 – Govindji Nanji Parmar** : This witness being a Police Inspector of Vapi Town Police Station, had recorded the complaint of the eye witness Varsingbhai Salat, which he produced at Exh.42. The I.O. also referred the inquest and P.M. proceedings held at Marvad Hospital. The I.O. in his chief-examination has stated that, after the registration of the offence, he was entrusted with the investigation of the case and during the investigation, he had recorded the statements of the witnesses, arrested the accused, seized the weapons used in the crime, sent the seized articles for FSL. In the cross-examination, he has admitted that, the thumb impression of the complainant has not been identified by anyone. The witness has voluntarily stated that, the complainant put the thumb impression before him. The I.O. has admitted that, there is no any distinct identification of the weapon being clarified by the witnesses. The I.O. has admitted

that, the temple is situated near the place of occurrence and he has not recorded the statement of priest or any other responsible person of the temple. In the cross-examination, the I.O. has stated that, during the investigation, the witnesses have not stated that, while lifting the deceased Bharat, their clothes got blood stains. The I.O. has admitted that, during the investigation, it reveals that, the criminal case filed by the accused Ramesh against the complainant is pending and he does not know about the money to be paid by the complainant to the accused. The I.O. has admitted that, most of the witnesses are related to the complainant party.

15. **PW.12 – Ajitkumar Manubhai Parmar**: This witness being a Police Inspector of Vapi Police Station, except filing of the chargesheet, he did not have further investigate the case.

**Submissions**:

16. We have heard learned counsel Mr. Pratik Barot appearing for and on behalf of the accused and Mr. J.K. Shah, learned Additional Public Prosecutor for the respondent-State.

17. Mr. Pratik Barot, learned counsel while assailing the impugned judgment of conviction and order of sentence, has urged the following submissions:

(a) In the facts of the present case, the prosecution failed to prove the charge beyond reasonable doubt.

(b) The trial court grossly erred while convicting the accused, without appreciating the evidence in the right prospective.

(c) There are apparent contradictions and omissions in the statements of the witnesses and as such, evidence, brought on record by the side of the prosecution cannot be relied upon.

(d) Only related and interested witnesses have been examined, although the independent witnesses were available, but, purposely, they were not examined by the prosecution and their evidence is neither reliable, nor credible which creates a doubt in the prosecution story.

(e) Medical evidence is inconsistent with the ocular evidence.

(f) The presence of the eye witnesses is doubtful and due to animosity, the witnesses are telling lie against the accused.

(g) Recovery of the weapons has not been properly proved.

(h) There was delay in lodging the FIR as the incident according to prosecution case, being occasioned between 10:30 to 10:45 p.m., and FIR came to be filed in the early morning at about 4:00 a.m. and without any satisfactory explanation, the possibility of embellishment or exaggeration in the prosecution version on account of such delay cannot be ruled out, as a result, the prosecution story cannot be accepted as trustworthy.

(i) So far as accused no. 2 Manoj – appellant accused is concerned, it was submitted that, according to prosecution case, Manoj had caused head injury with iron rod. On the same line, the accused Amir Salat caused injuries with iron pipe on the chest of the deceased. There are major contradictions and improvement on the

aspect of injury found in the testimony of eye–witnesses namely PW-4, PW-5 and PW-6 and as per their evidence, the acquitted accused Amir had caused injuries on the body of the deceased with the blunt object. In such circumstances, when on the same set of evidence, the accused no.3 Amir has been acquitted for the charge of murder, the conviction of the appellant accused – Manoj is not sustainable in law.

(j) In alternative, it was prayed that the complainant party despite of repeated demand made by the accused for payment of Rs.10,000/- towards the litigation cost, the said amount was not being considered and on that count, there was long standing dispute between the parties, as a result, in hit of passion, without any intention to kill the deceased, the injury being caused and therefore, if the prosecution case is accepted as it is, then also the case does not fall under the definition of 'murder' but it would fall under Section 304 Part I or II, which punishes the person for culpable homicide not amounting to murder.

18. In such circumstances referred to above, the learned counsel Mr. Barot has prayed that there being merits in these appeals and same may be allowed and appellants accused be acquitted of all charges. So far as alternative prayer is concerned, it was submitted that, the appellants have undergone more than 11 years of their jail imprisonment and if the court comes to the conclusion that, the accused appellants are guilty of culpable homicide not amounting to murder under Section 304 Indian Penal Code then

sentenced may be altered and/or modified to the extent already undergone.

19. On the other hand, opposing the appeals, the learned Additional Public Prosecutor Mr. J.K. Shah, has made the following submissions :

(i) The prosecution has been able to prove the charge of murder and causing injury to the witnesses by sufficient, cogent and acceptable evidence against the appellants accused.

(ii) The testimony of eye-witnesses PW-4 complainant, PW-5 – Bhavnaben and PW-6 child witness – Mohini, are trustworthy and worthy of credence on the aspect of complicity of accused in the alleged crime and their version are consistent with respect to the injury caused by the accused with the respective weapons and as such there is no material contradiction found in their evidence and therefore, the credibility on the aspect of their presence cannot be doubted as in the night hours, everyone was present in the house and their presence at the spot was natural. The wife of the deceased and daughter sustained injuries in the said incident, as they intervened to rescue the deceased and their injuries being proved by examined treating Doctor PW-8 and therefore, their presence at the spot cannot be denied. There was no motive for them to falsely involved the accused in the serious charge of murder and let go the real assailants. At relevant time, except the witnesses, no one had witnessed the incident and therefore, though the witnesses are related to each other but their

evidence cannot be discarded merely on the ground that they are interested or close relative of the deceased.

(iii) There is no variance between medical evidence and ocular evidence, as the PM doctor has rightly opined that the internal injuries mentioned in column no. 18 and 25 could be possible with the blunt object and therefore, as per the settled law, the oral evidence given as to get primacy over the medical evidence, as claimed to have been inflicted.

(iv) The plea of parity with the co-accused Amir Salat (A3), cannot be extended to the accused Manoj, as the accused Amir did not have caused any head injury on the body of the deceased.

(v) No case is made out to bring the case within the ambit of any exception to Section 300 as the fatal injuries with intention to kill were being inflicted by dangerous weapons.

(vi) There was no delay and the delay of 3 to 4 hours being sufficiently explained by the complainant and therefore, on this count, the reliable and trustworthy evidence involving the appellants accused herein cannot be discarded.

20. In such circumstances, the State has prayed that there being no merits in the present appeals and same may be dismissed.

21. We have heard at length learned counsels appearing for the respective parties and perused the case records.

22. Undoubtedly, it is a case of homicide, as there is no dispute that the death of the deceased was not homicidal and natural. The

question is whether the prosecution has been able to prove the case against the appellants beyond reasonable doubt?

23. The prosecution case rested on the three eye-witnesses namely PW-4 Varsing Dhanjibhai Halpati, PW-5 Bhavnaben Bharatbhai, and PW-6 – Mohini Bharatbhai. The deceased Bharat and his family was living adjacent to the house of PW-4 Varsing Halpati and the houses of the accused were also situated in the same location of city Vapi. The incident in question occurred on 27.01.2014 at about 10-30 to 10-45 pm. It is in these background facts and upon close scrutiny of the aforesaid three witnesses, we are of the considered opinion that, their presence at the spot cannot be doubted as in the night area, their presence seems to be natural at their home. The PW-4 is the father of the deceased and at relevant time he was in rest, sleeping on the coat. It is not in dispute that, before 12 years of the incident, the accused Ramesh, who is brother of PW-4 filed a criminal complaint against the PW-4 and others for causing injury. It is the case of the prosecution that the accused Ramesh was asking Rs.10,000/- from PW-4 toward litigation cost for which, there was no response and this was the reason for the accused, to come at the house of the PW-4. It is relevant to note that the deceased Bharat was nowhere in picture and he did not have promised nor it was claimed that the deceased was responsible for Rs.10,000/-. The another witness PW-5 being wife of the deceased was inside the room and was taking her dinner with her two daughters and after hearing the

shouting of demanding of Rs.10000/-, she came out in the open area of the house, where the deceased was standing. In such circumstances, the witnesses had an opportunity to closely seen the accused. The witnesses in their respective testimonies have clearly stated that the accused Ramesh caused the head injury with the dagger, whereas, the accused Manoj – appellant armed with iron rod caused head injury. This version of witnesses being corroborated by medical evidence. The cause of death was hemorrhagic shock due to head injury. The witnesses, who intervened to rescue the deceased also sustained injuries. Thus, in our opinion the evidence of witnesses read as a whole appears to have a ring of truth and there is no reason for them to falsely implicate the appellants accused. It is settled position of law that ordinarily, a close relatives would be the last to screen the real culprit and falsely implicate the innocent person. We do not find any discrepancy in their evidence on the aspect of involvement of the accused and number of injuries caused by them and therefore, the version of the witnesses is probable and as such there is no evidence on record that as a result of enmity between the parties on the issue of due amount of Rs,10000/- the witnesses are telling lie. Thus, therefore, though the witnesses are close relatives of the deceased, their evidence does inspire confidence about the presence of the accused at the scene of occurrence and injuries caused by the accused on the body of the deceased. It is also relevant to note that at the time of incident, no one present from the neighbourhood and therefore, the plea of non-examination of

material witnesses would not create a dent in the prosecution case. Even otherwise, the prosecution is not bound to produce all witnesses as material witnesses considered necessary by the prosecution for unfolding the story alone need be produced without unnecessary multiplication of witnesses. So far as evidence of child witness Mohini PW:6 is concerned, the Trial Court appreciated her maturity to understand the questions and answers to be given and thereafter, after administering the oath to her, the Court had proceeded to record her evidence. In our opinion, after close scrutiny of the evidence of child witness PW:6, we do not find any infirmity that she had deposed under the influence of her mother or anyone and we noticed that there is a ring of truth in her evidence and in the cross examination also, her version has not been shaken so far incident is concerned and her evidence has been corroborated by the other eye-witnesses.

24. For the reasons aforementioned, the presence of the witnesses at the place is proved and established and considering the area where the incident occurred, it would be possible for them to witness the facts deposed by them and there is no anything inherently, improbable or unreliable in their evidence as their version on the aspect of identification of the accused and injuries caused by them on the body of the deceased are consistent and on material particulars, they corroborated to each other.

25. It is the contention of defence that there was a dark due to winter season and it could not be possible for the witnesses to visualize the incident. We do not find any substance in the submissions as the witnesses have categorically stated that there was sufficient light.

26. The another contention raised is that the evidence of witnesses is totally inconsistent with the medical evidence. We have closely scrutinized the medical evidence, more particularly the evidence of P.M. doctor PW:7. Admittedly, two fatal external injuries being found and noted in Column No.17 in the P.M. Report Exh.26 and six internal injuries were being found and noted in column nos.18 and 25 of P.M. report. The witnesses have categorically stated that the accused Ramesh caused injuries on the head of the deceased with weapon dagger and the accused Manoj armed with iron road, caused injuries on the head. It was the opinion of the doctor that the injuries noted in column nos.17, 18 and 25 were consistent with each other and the external injuries could be possible by sharp cutting instrument and the internal injuries could be possible by blunt object. In such circumstances, we do not find any inconsistency between the oral and medical evidence. It is relevant to note that accused Gopi alleged to have inflicted a knife blow on the face of the deceased and the accused Amir gave a blow on the chest of the deceased with iron pipe. In such circumstances, the benefit as claimed with the co-accused cannot required to be extended with the co-accused.

27. The next contention raised is that there was delay in lodging the FIR resulted into embellishment and concoction of the story. In the present case, the incident of 27.01.2014, occurred between 10:30 to 10:45. The deceased and the injured witness were taken to Marvad Daman Government Hospital. In this context, the witnesses have stated that the Daman Police advised them to approach the Vapi Town Police Station as incident being occurred under the jurisdiction of Vapi Town Police Station. The complainant PW:4, came to Vapi Town Police Station in the earlier morning at about 03:30 a.m. In such circumstances, the delay has been properly explained by the prosecution. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case and considering the medical emergency, it is not wise to expect from the complainant party that they should rush to the jurisdiction police station after the occurrence and therefore, the conduct of the complainant was natural in approaching the Vapi Police Station for giving proper report. Thus, therefore, considering the peculiar facts and circumstances of the case and evidence on record, the delay of five hours in lodging the FIR does not create a doubt about the veracity of prosecution case and more particularly where the eyewitnesses are reliable and trustworthy. Thus, mere a delay of five hours would not be a ground to discard the entire prosecution case.

28. In such circumstances, as referred above, it is proved and established that the appellant accused – A1 and A2 caused fatal injuries with the dangerous weapon to the deceased Bharatbhai, as a result, he succumbed to the injuries.

29. The next question that arises for consideration is whether the accused appellants are guilty for the offence of murder as defined under Section 300 Indian Penal Code or death cause was culpable homicide not amount to murder under Section 304 Indian Penal Code ?

30. We have carefully examined the oral as well as medical evidence. The appellants accused are the author of the crime. The cause of death was hemorrhagic shock due to head injuries. The accused A1 Ramesh had stabbed the deceased on his head with dagger and the accused Manoj A2 hit the head with iron rod and the injuries as per the opinion of the doctor were sufficient in ordinate course to cause the death.

31. It is the prosecution to prove the case against the accused that he has committed murder as defined under Section 300 of the IPC. Section 300 provides that, culpable homicide is ‘murder’, if the act by which the death is caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury, as the offender knows to be likely to cause death or if it is done with the intention of causing bodily injury and the said

injury intended to be inflicted is sufficient in ordinary course of nature to cause death or the accused knows that, it is so imminently dangerous that it must, in all probability, caused death or such bodily injury as is likely to cause death.

32. Bearing in mind the legal provision and having regard to the facts and evidence on record, the injuries caused on the body of the deceased was on the vital parts and same was being caused with dangerous weapon like dagger and iron rod. The appellants accused carried with the dagger and iron rod.

As per the opinion of the doctor, the external injuries found on the head were sufficient in ordinary course of nature to cause death and it could be possible by the weapons dagger and iron rod. The PM doctor also clarified that, the injuries mentioned in column no. 17 of the PM report, could be possible by sharp cutting instrument, whereas the injuries mentioned in column nos. 18 and 25 could be possible with blunt object. In such circumstances, causing injuries on the vital parts with dangerous weapons lead to inference that the accused with all intent inflict that particular injuries and it is not the case of the accused that, the injuries inflicted were unintentional and intended to inflict on the other part of the body but due to movement of the deceased, the injuries inflicted on the head and other part by accident. The intention of the accused can also be gathered from the circumstances like, their presence at the spot with the dangerous

weapons, the dispute of Rs.10,000/- was with PW-4 and despite of this, the deceased was victimized and was fatally assaulted. It is settled position of law that, when a person performs an act, he is attributed with the intention to cause the natural consequences, that follows from the act performed. We have also noticed the factum of demanding Rs.10,000/- by the accused from PW-4. The criminal case still pending with the competent court and why the accused Ramesh demanding Rs.10,000/- that has not been cleared by either side and therefore, it cannot be said that without premeditation, in a sudden fight, upon sudden quarrel, in a hit of passion, the act was committed.

33. We may profitably refer the law laid down by the Supreme Court in the case of ***Virsa Singh, AIR 1958 SC 465***. In the said judgment, it was held that, a culpable homicide is a murder under Section 300 clause Thirdly, if the prosecution should establish four elements (i) the presence of bodily injury, (ii) nature of such bodily injury (iii) intention on the part of accused to inflict such bodily injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended, (iv) the injury was sufficient to cause death in the ordinary course of nature. The Supreme Court on the question as to how the intention to be inferred, has succinctly stated :

> *"In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and*

*whether with sufficient force to cause the kind of injury found to have been inflicted x x x x The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended some consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question."*

34. In the present case, as discussed above, the injuries were caused with a dangerous weapons on the vital parts of the body and there were fractures on both the side of parietal bones with hemorrhage and the manner in which, the accused assembled near the house of the deceased, the only possible inference would that, the accused intended to inflict the blows on vital parts of the deceased. In other words, the act was done with an intention of causing such bodily injury and bodily injury intended to be inflicted were sufficient in ordinary course of nature to cause death and while inflicting such injury, the accused had taken undue advantage of

the situation and acted in unusual manner.

35. For the aforementioned reasons, we came to conclusion that, the act of the accused fall within the clause thirdly and fourthly of Section 300 of the IPC, and would not fall in any exception to Section 300 of the IPC and same is read as under :

> "Section 300 : xxxxxx
>
> Secondly, .....…
>
> Thirdly, : if it is done with intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of action to cause death
>
> or
>
> Fourthly, - if the person committing the act knows that, it is so imminently dangerous that it must in all probability, cause death or such bodily injury as it likely to cause death and commit such an act, without any excuse for incurring the risk of causing death or such injuries as aforesaid."

36. In view of the aforesaid discussions, after re-analysis and re-appreciation of the evidence and on perusal of the impugned judgment of conviction, we are satisfied that, prosecution has proved its case with sufficient oral and documentary evidence, beyond all reasonable doubt, that the appellants were the author of the crime and the trial Court has rightly found the appellants accused guilty for act of murder punishable under Section 302 read with Section 114 of the IPC. We do not find any scope for interference with the findings of conviction and sentence recorded by the trial Court.

37. The acquittal appeal is being filed against the acquittal of accused Nos. 3 and 4 for the charge of murder. The trial Court while acquitting the accused, did not find acceptable and trustworthy evidence against the accused for proving the charge of murder. We have also examined the evidence on this aspect and we do not find any legal infirmity, perversity or fundamental error in appreciation of the evidence undertaken by the trial Court and therefore, the view taken by the trial Court is possible and plausible view and the trial Court was justified in acquitting the accused.

38. In the result, this conviction appeals being Criminal Appeal No. 1507 of 2018 and Criminal Appeal No. 228 of 2021stand dismissed, whereas, the acquittal appeal being Criminal Appeal No. 1553 of 2017 stands dismissed. R&P, if any, be sent back to the trial Court forthwith.

**(ILESH J. VORA,J)**

**(R. T. VACHHANI, 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 27/01/2026 14:49:56