IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 2102 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

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

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Approved for Reporting	Yes	No
		No

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RAMJIBHAI GHUSABHAI AAHIR
Versus
STATE OF GUJARAT

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Appearance:
MR NAUMAN S QURESHI(10669) for the Appellant(s) No. 1
MR SHAKEEL A QURESHI(1077) for the Appellant(s) No. 1
MR JAY MEHTA, APP for the Opponent(s)/Respondent(s) No. 1

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

Date : 21/08/2025

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

1. The correctness of the judgment and order of sentence dated 03.09.2024 passed by the learned Sessions Judge, Surat in Sessions Case No.120 of 2014 is questioned in this appeal. By the impugned judgment, the learned Sessions Judge, Surat convicted and sentenced

the appellant–accused under Sections 302 of the IPC and Section 135 of The Bombay Police Act and sentenced to suffer life imprisonment and directed to pay fine of Rs.10,000/- and in default thereof, to suffer further one month imprisonment.

2. The facts, leading to file the present appeal are as follows:

2.1 The appellant-accused was being a resident of Surat, doing his business in the name and style of “Krishna Vision” and providing TV channel connection in the vicinity of Madhuvan Society, under the jurisdiction of Kapodara Police Station, Surat. Deceased Mukesh had got the connection illegally without informing the accused party. In addition to that, the deceased was having a complaint about visibility of TV channel and on this ground, to address his complaint and resolve the dispute of illegal connection, on 21.01.2001, at about 8:15 p.m., deceased along with one Gopalbhai, went to the office of the accused where there was heated exchange of words being taken place between the parties on the issue of illegal TV connection. The dispute was aggravated, as a result, the present appellant-accused Ramji Ghusa got provoked and went to his house situated nearby his office and came with sharp edge weapon (Katar) and stabbed the deceased for multiple times and in that process, according to prosecution case, the A1 and A3 in order to facilitate the

principal accused – appellant, caught hold the deceased. After the incident, the accused fled from the spot. PW.1 Mansukh Valjibhai being a brother of the deceased received message from his relative about the incident and accordingly, he rushed to the place of incident. The deceased was taken to nearby Private Hospital namely “Ashaktashram Hospital” where the doctor declared him dead on arrival. The Kapodara Police after receiving the message, came at the hospital. Gopalbhai who accompanied to the deceased and had witnessed the incident, informed the PW.1 about the said incident and how the deceased was killed by the accused and others. Based on the input given by Gopalbhai, the FIR came to be lodged, inter alia, alleging the aforesaid facts which was registered as I-C.R.No.26 of 2001 for the offences punishable under Sections 302 and 34 of the IPC and Section 135 of The Bombay Police Act.

The investigation was entrusted to PW.11 – Police Inspector, K.B. Jadeja, Kapodara Police Station. During the course of investigation, he recorded the statements of eye witnesses except Gopalbhai because his whereabouts after the incident was not traceable and after due diligence, the I.O. could not discover his identity as well as his permanent residence and other facts related to his identity. The I.O. sent the dead body for post-mortem, drew the panchnama of scene of offence, arrested the

accused, seized and recovered the weapon used in the commission of crime, sent the seized articles for FSL purpose, obtained the necessary medical case papers and accordingly, chargesheet came to be filed for the offences as mentioned hereinabove. The case being exclusively triable by court of sessions, committed to the Sessions Court, Surat. The Sessions Court framed the charge against the appellants and two others, upon pleaded not guilty by the accused.

3. In order to prove the charge, the prosecution has examined as many as 12 witnesses and exhibited 14 documents:

Oral evidence

PW 1 – Exh.23	Mansukhbhai Valjibhai Bareya, Complainant
PW 2 – Exh.26	Babubhai Bhagwanbhai, panch witness
PW 3 – Exh.28	Rameshbhai Parshotambhai Bareya, panch witness
PW 4 – Exh.30	Manubhai Govindbhai Solanki, panch witness
PW 5 – Exh.32	Lakhabhai Mudjibhai Chauhan
PW 6 – Exh.33	Dhirbhai Trikambhai Makwana
PW 7 – Exh.34	Mohammad Ilsas Ishak Mohammad Sheikh, medical officer
PW 8 – Exh.39	Valabhai Gokulbhai Sathiya
PW 9 – Exh.49	Vijaysinh Shersinh Rajput, panch witness
PW 10 – Exh.52	Ritesh Mohandas Veragi, Constable
PW 11 – Exh.54	Kishorsinh Bhadursinh Jadega, Investigating Officer
PW 12 – Exh.62	Hareshbhai Virjibhai Dabhi

Documentary evidence

Exh.24	Complaint
Exh.27	Panchnama of place of offence
Exh.29	Panchnama of deceased
Exh.31	Panchnama of state of body of accused no.2

Exh.35	Autopsy report
Exh.36	Cause of death certificate
Exh.47	Panchnama of clothes seized of deceased
Exh.48	Panchnama of state of body of accused no.3
Exh.55	List of contents
Exh.56	Forwarding notes
Exh.57	Receipt of articles by FSL
Exh.58	FSL report
Exh.59	FSl Serological report
Exh.60	Notes of investigation officer made during investigation

4. After closure of the prosecution evidence, the accused were questioned under Section 313 of the Cr.P.C. to which they stated that they have been falsely implicated in the offence and in their defence, they pleaded that, PW.8 – Valabhai Sathiya is not eye witness of the incident and after the delay of 15 years, he was produced before the Sessions Court by the original complainant and during the 15 years, he did not disclose the said incident to either I.O. or anyone and now he is claiming that, he being Gopalbhai, had witnessed the incident. The said witness having 15 to 20 past criminal antecedents and he is a got up witness i.e. false witness introduced by the prosecution at a later stage to support its case.

5. Though opportunity was extended, no oral evidence being adduced by the appellant accused.

6. After hearing the parties and upon appreciation of the evidence, the Trial Court held and observed that the

prosecution has successfully proved the charges against the appellant beyond reasonable doubt and by extending the benefit of doubt to the accused no.1 and 3, acquitted them of all charges. The learned trial court found the sole testimony of Vala Sathiya (PW.8) trustworthy and reliable and based on his testimony, the appellant has been convicted and sentenced for the commission of the offence of murder.

7. Being aggrieved by the judgment of conviction and order of sentence, the appellant is before this Court with the present appeal.

8. Mr. Shakeel Qureshi, learned counsel appearing for and on behalf of the appellant-convict, while assailing the impugned judgment of conviction and order of sentence, has submitted that, according to prosecution case, on 21.01.2001 at about 8:15 p.m., the deceased along with Vala Sathiya @ Gopalbhai, came to the office of accused where the dispute arose, as a result, the appellant-accused stabbed the deceased Mukesh with sharp edge weapon. The burden to prove the charge beyond reasonable doubt is on the prosecution. In the facts of the present case, PW.1 – the brother of the deceased had no personal knowledge and was not eye witness of the incident as well as PW.6 and PW.12 did not have any personal knowledge about the incident. The so called eye witness PW.5 – Lakha Chauhan was passerby, was

declared hostile and did not have support to the case of prosecution. The only testimony available is PW.8 – Vala Sathiya. The said witness according to prosecution case, had accompanied to the deceased when incident occurred. The witness identity is questioned in the present case because according to prosecution case, PW.8 is known as Gopalbhai and no one is knowing his full name. After the incident, the witness went to the hospital and narrated the incident to PW.1 and thereafter, he disappeared and was not traceable by the police and his statement could not be recorded under Section 161 of the Cr.P.C. That, in the year of 2016, PW.1, sought further investigation on the aspect of recording the statement of PW.8. The Investigating Officer in response to the request of further investigation, submitted report on 11.07.2016, inter alia, admitting the fact that the whereabouts of Gopalbhai i.e. PW.8 Vala Sathiya could not be traceable and he was never available during the investigation. The request for further investigation was turned down and matter went up to the High Court. The High Court while disposing the matter, reserved the liberty to examine Vala Sathiya (PW.8). That, in these background facts, after a period of 16 years, the chief examination of the witness PW.8 came to be recorded. The witness in his testimony, admitted that, there is no evidence with him to show the facts that he was known as “Gopalbhai” and also admitted 20 criminal antecedents pending in District:

Amreli and other places. Thus, according to submission, the witness PW.8 was false and got up witness, introduced by the complainant party at a later stage to support its case and therefore, the testimony of the witness is not of sterling quality as the prosecution has not satisfactorily explained about the delay in examination of the witness, his unnatural conduct and therefore, the reliance placed by the trial court on the testimony of PW.8, in absence of any other evidence linking the accused to the murder of the deceased, is against the settled principles of law and it would be wholly unsafe to rely on PW.8 to connect the accused. The counsel has placed reliance on the decisions in the case of *Narendrasingh Zala vs. State of Gujarat (2023) 18 SCC 783, Abdulvahid vs. State of Rajasthan (2025) 3 JT 288, Lahukamalkar Patil vs. State of Maharashtra (2013) 6 SCC 417, State of Maharashtra vs. Dinesh (2018) 15 SCC 161, Denybora vs. State of Assam 2014 (14) SCC 42, State of Madhya Pradesh vs. Balvirsingh (2025) 3 JT 221* to contend that, in the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case to be proved beyond reasonable doubt and in case, unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness and his testimony is to be discarded in toto and no amount of corroboration can be cure that defect.

9. Mr. Shakeel Qureshi, learned counsel appearing for the appellant has submitted that, in the facts of present case, prosecution has failed to prove its case beyond reasonable doubt and as such, the judgment of conviction is liable to be set aside as the findings of the trial court are contrary to the evidence on record and settled principles of criminal jurisprudence and therefore, conviction cannot be allowed to sustain and thus, he prayed that, there being merits in this appeal, that may be allowed and judgment of conviction and order of sentence, be set aside and the appellant may be acquitted of the charges of murder, loot and destroying the prosecution evidence.

10. Mr. Jay Mehta, learned APP vehemently opposed the appeal and contended that, the learned trial court recorded conviction after holding that, the testimony of PW.8 is wholly reliable and the witness being an illiterate person and having his rural background, mere non-explanation of the delay in examination *per se* would not vitiate the case of prosecution. That, the witness was known as Gopalbhai and in absence of any further particulars, the I.O. could not trace the whereabouts of the witness and when the complainant party came to know about his whereabouts, the witness was presented before the court and during his cross-examination, the original facts of incident has not been substantiated and his evidence is not shaken. Thus, it was submitted by the State counsel that, the prosecution clearly established the

charge beyond reasonable doubt against the accused by credible and reliable evidence and therefore, there being no merits in the appeal filed by the accused and same may be dismissed.

11. We have heard learned counsel for the respective parties and perused the case records.

12. Before dealing with the rival contentions of the parties, the following admitted facts are to be considered:

(i) The death of deceased was homicidal in nature as he had been killed by sharp cutting weapon and having regard to the testimony of PW.7 – P.M. Doctor, the cause of death was shock and multiple injuries found on the body of the deceased and the injuries could be possible by the weapon seized by the police and the doctor has further opined that, the injuries were sufficient in ordinary course to cause the death.

(ii) PW.1 Mansukh Baraiya being brother of the deceased, was having no knowledge about the occurrence of the incident and he was not eye witness of the incident.

(iii) PW.5 Lakhabhai Chauhan, despite of his presence at the place, did not notice the role attributed to the present appellant and others,

as a result, he has been declared hostile and has not supported to the case of prosecution.

(iv) PW.6 Dhirubhai Makwana being a relative of the deceased, had come to know from the PW.8 about the incident and role attributed to the present appellant and others in the said murder. Therefore, the evidence of witness is hearsay evidence.

13. In the aforesaid admitted facts, it is proved and established that, on 21.01.2001, at about 8:15 p.m., in the jurisdictional area of Kapodra Police Station, the deceased Mukesh was killed by using sharp cutting weapon. The issue falls for our consideration whether it is proved beyond reasonable doubt that, the accused herein is the author of the crime?

14. On scrutinizing of entire material on record, we found that the conviction is based on sole testimony of eye witness PW.8. The appellant-accused has challenged the reliability and trustworthiness of the said witness, mainly on the ground that, he is not known as Gopalbhai and during the 15 years of the proceeding, he never reported the incident to the police, nor, presented himself to record his statement. The second ground raised is that, soon after the incident, he disappeared himself and despite of his closeness with the complainant, his identity and

permanent residence could not discovered by the police and the third ground raised is that, the witness is having a criminal background as 20 cases under the different penal laws being registered at different police stations against him. Thus, considering his unnatural behaviour and past records and in absence of any explanation of delay in examination of the witness by the prosecution, a witness cannot be categorized as a wholly reliable witness and in absence of any corroboration to his testimony, no reliance can be placed in convicting the accused.

15. We have carefully examined the testimony of PW.8, the sole witness. It is claimed by the witness that, in the year of 2001, he was residing in the Ramrajya Society at Surat and was working as a Diamond Polisher and at relevant time, he was known as Gopalbhai. The witness has also claimed that, he knew the present appellant and co-accused and at relevant time, he was accompanied to the deceased Mukesh who had raised grievance about the TV channel connection with the accused which led to his murder and it was committed by appellant Ramjibhai by using a weapon like knife. In the cross-examination, the witness has admitted that, after the incident, he stayed in Surat hardly for 3 to 4 months and returned back to his native Village: Vanda, District: Amreli and since then, he is doing farming work. He also admits that, his name is registered in the Voters List as well as Revenue Records

as Valabhai Sathiya. The witness has shown his unwillingness to produce any evidence to prove the fact that, he is known as Gopalbhai. The witness has also admitted that, after the incident, he was elected as a “Sarpanch” of his village. The witness was served with the summons through Register A.D. wherein he has endorsed that his name is not Valabhai. The witness has also admitted that, since 1996 to 2013, there are as many as 13 offences registered with Savarkundla Jesal Police Station and in those cases, there was no reference that, he is known as Gopalbhai. The witness has admitted that, after the incident, due to conduct of the police, he went to his house and thereafter, he did not have tried to contact the police. He also admitted that, he has given his address of Surat as well as his village to the complainant Mansukhbhai. He also admitted that, police had never recorded his statement. He has denied to the suggestion that, he being a got up witness, deposed against the accused at the behest of complainant and was never known as Gopalbhai and was not present at the scene of offence.

16. Before addressing the issue, we consider it appropriate to refer the law laid down by the Supreme Court regarding the evidentiary value of the sole testimony. Recently, in the case of *Rajesh Yadav vs. State of Uttar Pradesh (2022) 12 SCC 200,* the Supreme Court

on the aspect of appreciation of evidence, has indicated different classification of the evidence and divided into 3 categories broadly namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters.

In the said case, the Supreme Court has reiterated the law enunciated in the celebrated decision (Vadivelu Thevar Vs. State of Madras (1957 SCR 981) which reads thus:

> *"In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been*

a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s.134 quoted above. The section enshrines the well-recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally

speaking, oral testimony in this context may be classified into three categories, namely: (1) Wholly reliable. (2) Wholly unreliable. (3) Neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no

reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

17. The facts of this case are to be considered on the touchstone of law which has been laid down by the Apex Court. In the instant case, the witness was never available during the investigation and the police could not even verify his existence and after 15 years, he was produced before the court for which no explanation given by the prosecution for delay in examination and therefore, the behaviour of the witness was not found in natural course of human behaviour. We are conscious about the human behaviour that, after the crime, the witness may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony of such witnesses should not be discarded. The Supreme Court in case of *Lahu Kamlakar Patil vs. State of Maharashtra (2013) 6 SCC 417,* on the similar situation, has held that, the court has to keep in mind that, different witnesses react differently under different situation like some witnesses get shocked, some become perplexed, some start wailing and some run away from the scene and yet some who have courage and conviction, come forward either to lodge FIR or get themselves examined immediately. Thus, according to Supreme Court, it differs from individual to individual. There cannot be any uniformity in human reactions. While the said principle

kept in mind, it also to be born on mind that the if the conduct of the witness is so unnatural and is not accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded.

18. Keeping in mind the aforesaid, we shall proceed to scrutinize the testimony of PW.8. In our opinion, the witness is not wholly reliable and we found the behaviour of the witness is contrary to the normal human behaviour. Our reasons are as follows:

(i) that, his identity as Gopalbhai is not established.

(ii) that, after the incident, he could have reported the incident to the police, or, waited at the place till arrival of the complainant that he did not do it.

(iii) that, he was very much available at the hospital and was closely known to the complainant, despite of this, the complainant could not be able to furnish his full identity along with address to the police.

(iv) that, despite due diligence by the police, he was not discovered and that is why, the police could not record his statement under Section 161 of the Cr.P.C. The Supreme Court in the case of *Ram Lakhan Vs. State of U.P. (AIR SC 1977),* has held that, when the witness is not examined under Section 161 and there is an undue delay in

examination, it is not safe to rely on his evidence. The witness would have on his voluntary presented himself to the police for recording the statement. The witness was having a past criminal record and was knowing fully well about the court proceedings and therefore, there is no reason for him to avoid the investigation process after the incident.

(v) that, the witness was directly produced by the complainant party before the court and was never produced before the police for recording his statement. The law on this aspect is settled that, if statement of any witness by any reason is not recorded, then, before the witness stepped into witness box, the I.O. should have record his statement and then, he or she may be permitted for examination as a witness. The reason is that the defence could contradict the statement of the witness to show his credibility and veracity.

(vi) That, the witness PW.8 admittedly having a number of antecedents in his pocket and he was aware about the court proceedings as well as the process of investigation.

(vii) that, the witness as well as prosecution failed to explain about delay of 16 years in appearance in the court.

19. For the reasons aforementioned, the conduct of the

witness PW.8 is creating a doubt about his version on the aspect of incident and his presence at the place and therefore, the unnatural conduct and unexplained circumstances as referred above, does not inspire confidence to believe the claim of PW.8 about seeing the incident by him and therefore, without independent corroboration, such testimony cannot be act upon.

20. In the result, by allowing this appeal, we have no hesitation to hold that the case against the appellant has not been proved beyond reasonable doubt. The judgment of conviction and order of sentence dated 03.09.2024 passed by Sessions Judge, Surat in Sessions Case No. 120 of 2014 is set aside. The appellant be set at liberty forthwith unless his detention is required any other offence. R & P be sent forthwith to the concerned trial court. The fine amount, if any, be refunded to the appellant-accused.

Sd/-
(ILESH J. VORA,J)

Sd/-
(P. M. RAVAL, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 21/08/2025 12:41:41