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Exh. :

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| IN THE COURT OF 2 <sup>nd</sup> ADDITIONAL SESSIONS JUDGE, |
| MAHISAGAR AT LUNAWADA.                                     |

SESSIONS CASE No.01/2018

Complainant :-

The State of Gujarat

**V E R S U S**

Accused :-

- (1) Danabhai Jibhabhai Thakor  
Aged :- 55 years, Occupation :- Agriculture,
  - (2) Manubhai Danabhai Thakor  
Aged :- 30 years, Occupation :- Agriculture & Labour,
  - (3) Shamalbhai Shanabhai Thakor  
Aged :- 57 years, Occupation :- Agriculture & Labour,
  - (4) Malharbhai @ Arvindbhai Shamalbhai Thakor,  
Aged :- 39 years, Occupation :- Agriculture & Labour,
  - (5) Jayantibhai Shamalbhai Thakor  
Aged :- 25 years, Occupation :- Agriculture & Labour,
- All are R/o. Vadna Muvada,  
Tal. Balasinor, Dist. Mahisagar.

Appearance :-

Ld. DGP Mr. S. R. Damor for the complainant.

Ld. Advocate Mr. M. M. Shaikh for the accused.

Offence u/Secs. 143, 147, 149, 302 and 337 of Indian Penal Code

**: J U D G M E N T :**

- (1) The brief facts of the present case are under :-

The incident occurred at 09:00 am on dated 19<sup>th</sup> May, 2017 at Vadna Muvada village, complainant was at his home the day before the occurrence the crops of cattle grass existing at the farm of Beniben Mathurbhai Thakor were set ablazed; in pursuant to that they have doubt on my brother Ganpatbhai as a reason Beniben assembled the members of their community as a reason community panch member wherein (1) Natubhai Bhathibhai (2) Shanabhai Shankarbhai Thakor (3) Kanabhai Kodarbhai Thakor along with leader of village and family member's of Beniben namely Shamalbhai Shanabhai Thakor, Manubhai Danabhai Thakor, Danabhai Jibhabhai Thakor, Arvindbhai @ Malharbhai Shamalbhai Thakor and Jayantibhai Shamalbhai Thakor all those persons assembled and they called complainant and asked about set ablazed the cattle grass, broken pole of fencing as well as damaging fencing wire, so quarrel took place between complainant and the family members of Beniben. Thereafter the complainant went to his house thereafter the family members of Beniben rushed towards their house instigated and pelted stones at their houses, at that time father of complainant Bhupat Radhabhai Thakor armed with long handed sickle (in Gujarati known as Dhariyu) and brother of complainant armed with sword followed behind the family members of Beniben and Danabhai Jibhabhai Thakor had inflicted long handed sickle blow to the father of complainant and eventually he sustained injuries. The brother of complainant Ganpatbhai attempted to give sword blow towards the family members of Beniben, meanwhile one community panch members Natubhai Bhathibhai Thakor intervened and he sustained sword injuries, at that time the father of complainant attempted to inflict long handed sickle blow towards Malharbhai @ Arvindbhai Shamalbhai Thakor, meanwhile other community panch member Natubhai Bhathibhai intervened and ultimately he sustained injuries from long handed sickle, thus plenty of blood oozing and when complainant started to go at his home, meantime Malharbhai @ Arvindbhai had thrown big stones towards the back side of complainant's father head and eventually he also sustained injuries. All those persons gave hand/ fist and leg blows and called 108 Ambulance, so the father of complainant Bhupatbhai Radhabhai Thakor was brought at

Balasinor, Govt. Hospital and Medical Officer of Balasinor, Govt. Hospital referred to higher centre and his father was referred at Mahagujarat Hospital, Nadiad for further medical treatment and for better treatment ultimately father of complainant brought at Ahmedabad, Civil Hospital while the medical treatment of deceased was continued, meanwhile approximate at 16:00 hours deceased succumbed to injuries and Medical Expert doctor declared the father of complainant as a dead, so accused Shamalbhai Shanabhai Thakor, Manubhai Danabhai Thakor, Danabhai Jibhabhai Thakor, Malharbhai @ Arvindbhai Thakor as well as Jayantibhai Shamal Thakor by unity constituted unlawful assembly, pelting stones at the house of complainant and his relatives, accused Arvindbhai had thrown big stones towards the back side of the complainant's father's head sustained injuries and the act did by accused with intention and knowledge and such bodily injuries were intention to kill so the act committed by all the accused was culpable homicide which amounts to murder thereby all the accused committed offence under u/Secs. 143, 147, 149, 302 and 337 of Indian Penal Code.

- (2) With a view to above section, the complainant has lodged the complaint and PSO of Balasinor, Police Station has registered the complaint and sent to the Investigating Officer for proper investigation. Investigating Officer has recorded the statements of witnesses and also made various panchnamas, collected P. M. Note and FSL reports as well as medical certificates and treatment papers. After completion of the investigation, the accused was charge-sheeted to the Ld. Judicial Magistrate First Class, Balasinor. Copy of the police papers were supplied to the accused under Section 207 of the Cr.P.C. Case was committed to the Court of Sessions u/Sec.209 of Cr.P.C.
- (3) The accused have engaged their own private advocate and they declined to engage advocate provided by Legal Services Authority. This Court has framed the charge under Section 227 of the CrPC, it was read over to the accused. The accused have not pleaded guilty to the charges as per their statements and the case was fixed for prosecution evidence. The evidence were recorded under Section 231 of the Cr.P.C.
- (4) The prosecution have examined the following witnesses :-

| Sr. No. | Name of Witnesses                             | Exh. |
|---------|-----------------------------------------------|------|
| 1       | PW-1-Bharatsinh Sardarsinh                    | 20   |
| 2       | PW-2-Abdulrashid Mastubhai Shaikh             | 27   |
| 3       | PW-3-Rajendrasinh Malsinh Thakor              | 32   |
| 4       | PW-4-Kantibhai Amrabhai                       | 34   |
| 5       | PW-5-Babubhai Kodarbhai Chauhan               | 38   |
| 6       | PW-6-Mahendrabhai Somabhai Chauhan            | 45   |
| 7       | PW-7-Ayubkhan Ahemadkhan Pathan               | 46   |
| 8       | PW-8-Galabbhai @ Dalpatbhai Bhupatbhai Thakor | 47   |
| 9       | PW-9-Dr. Sureshkumar Kantilal Zaveri          | 49   |
| 10      | PW-10-Ranjitbhai Ravjibhai Thakor             | 51   |
| 11      | PW-11-Reshamben Bhupatbhai Thakor             | 52   |
| 12      | PW-12 Parakramsinh Ravjibhai Thakor           | 53   |
| 13      | PW-13 Shanabhai Kodarbhai                     | 54   |
| 14      | PW-14 Vikrambhai Dashrathbhai Thakor          | 55   |
| 15      | PW-15 Shanabhai Shankarbhai Thakor            | 56   |
| 16      | PW-16 Natubhai Bhathibhai Thakor              | 57   |
| 17      | PW-17 Vimalkumar Rajabhai Dangar              | 58   |
| 18      | PW-18 Tersinghbhai Demabhai Machhar           | 59   |
| 19      | PW-19 Dhirajbhai Rameshchandra Patel          | 72   |

(5) The prosecution have produced the following documentary evidence:-

| Sr. No. | Documents                     | Exh. |
|---------|-------------------------------|------|
| 1       | Panchnama of place of offence | 21   |
| 2       | Slip of muddamal article No-1 | 22   |
| 3       | Slip of muddamal article No-6 | 23   |
| 4       | Slip of muddamal article No-3 | 24   |
| 5       | Slip of muddamal article No-9 | 25   |
| 6       | Slip of muddamal article No-5 | 26   |

|    |                                                            |         |
|----|------------------------------------------------------------|---------|
| 7  | Inquest panchnama                                          | 28      |
| 8  | Panchnama as to recovered muddamal from dead-body          | 29      |
| 9  | Slip of muddamal article No-13                             | 30      |
| 10 | Slip of muddamal article No-1                              | 31      |
| 11 | Panchnama as to physical condition of accused (Danabhai)   | 33      |
| 12 | Slip of muddamal article No-10                             | 35      |
| 13 | Slip of muddamal article No-12                             | 36      |
| 14 | Panchnama as to physical condition of accused (Malharbhai) | 39      |
| 15 | Slip of muddamal article No-17                             | 40      |
| 16 | Slip of muddamal article No-19                             | 41      |
| 17 | Slip of muddamal article No-18                             | 42      |
| 18 | Slip of muddamal article No-16                             | 43      |
| 19 | Slip of muddamal article No-14                             | 44      |
| 20 | Complaint                                                  | 48      |
| 21 | P. M. Note of deceased                                     | 50      |
| 22 | Letter for addition of section                             | 59-A    |
| 23 | Suchipatra                                                 | 60      |
| 24 | Primary report of FSL, Vadodara                            | 61      |
| 25 | Police report to Medical Officer for post-mortem           | 62      |
| 26 | Forwarding letter of authority                             | 63      |
| 27 | Cause of death certificate                                 | 64      |
| 28 | Letter by Medical Officer to FSL, Ahemedabad               | 65      |
| 29 | Receipt of muddamal received                               | 66      |
| 30 | Medical certificates                                       | 67 & 68 |
| 31 | Letter by FSL, Vadodara to PSI for receiving muddamal      | 69      |
| 32 | Biology report by FSL, Vadodara                            | 70      |
| 33 | Serology report by FSL, Vadodara                           | 71      |

- (6) Further statement of the accused recorded under Section 313 of the CrPC after closing of prosecution evidence. The accused has denied to commit any offence.
- (7) In view of above facts and circumstances, following points arisen for my determination.
- i. Whether prosecution proves beyond reasonable doubt that at 09:00 am on dated 19<sup>th</sup> May, 2017 at Vadna Muvada village, all the accused have created unlawful assembly, committed mischief by fire, despite of knowing that it to be likely cause the destruction of farm house, set the grass of farm house on fire of the complainant and thereby committed offence under Sections 143, 147, 149 of IPC?
  - ii. Whether prosecution proves beyond reasonable doubt that above mentioned time, date and place the death of deceased was culpable homicide?
  - iii. Whether prosecution proves beyond reasonable doubt that above mentioned time, date and place accused were intentionally or knowingly causing death of deceased by the act of culpable homicide which amounts to murder under Sec.302 of the Indian Penal Code?
  - iv. Whether prosecution proves beyond reasonable doubt that above mentioned time, date and place accused causing hurt by act endangering life or personal safety of others and thereby committed the offence under Sec.337 of IPC?
  - v. What order?
- (8) My findings on the above points are as under with the reasons mentioned herein under :-
- i. In negative.
  - ii. In negative.
  - iii. In negative.
  - iv. In negative.

v. As per final order.

**- : REASONS :-**

**Points Nos.1 to 4 :-**

- (9) Points Nos.1 to 4 are interconnected and the sequence of events with regards to one transaction looking to the sequence and series of the evidence as to commission of offence are inter-connected, therefore for the sake of brevity, all the points discussed jointly hereinafter.
- (10) Case under Sec.302 of IPC, first of all, for prosecution, in order to bring home, the charges leveled against accused, has to establish beyond reasonable doubt.
- 1) The death of some human-being has taken place.
  - 2) That such death was neither suicidal nor accidentally but it was homicidal.
  - 3) That it was accused whose act or the consequences of his act, caused such death.
  - 4) That the accused had no legal excuse or defence for causing such death or for causing such injury.
  - 5) That the accused did such an act
    - a) with the intention of causing death or
    - b) with the intention of causing such bodily injury
    - i) as the accused knew it likely to cause death or
    - ii) (a) that such an injury was sufficient in the ordinary course of nature to cause death or
    - (b) that the accused caused death by doing an act which he knew, in all probabilities, to cause death
    - iii) or the accused caused such bodily injury to such person as was likely to cause death.
- (11) Sessions case No.01/2018 and sessions case No.09/2018 were took place at same place, at same time and on same date and both the offences committed by rival parties under the guise of same transaction, so both the offences come within the purview of cross criminal cases category. However, in both the cases neither prosecution nor defence have adduced any certified copies of any documentary as well as oral evidences before the court, so court cannot be evaluated the evidence on record in individually and there is no straight jacket or iron jacket formula to appreciation of evidence in criminal trial but it is expedient for the court to appreciate the evidence in each case separately. Criminal court has its own limitation and not referred any documentary as well as oral evidence adduced in both the cases vice versa.

- (12) PW-8 Galabbhai @ Dalpatbhai Bhupatbhai Thakor deposed at Exh.47 that when incident took place he was at his farm, his father was going to care bullocks at farm and his father fallen on the ground and sustained injuries thereafter his father brought at hospital. At first, his father was admitted at Balasionr, Hospital and subsequently for further treatment he was taken to Nadiad, Hospital and eventually, his father referred at Ahmedabad, Hospital for better treatment.
- (13) Aforestated oral version of complainant are highly inconsistent and contradictory to the description of complaint at Exh.40 and whatever facts mentioned by complainant in his complaint are not submitted while PW-8 was stepping into the witness box. PW-8 is the ocular witness and from the beginning to end he was present at the venue of crime despite he submitted adverse oral version during the course of his entire deposition and eventually he turned hostile.
- (14) PW-10 Ranjitbhai Ravjibhai Thakor deposed at Exh.51 that cause of occurrence was as to land dispute. The quarrel was continuing between Arvindbhai Shamalbhai and Bhupatbhai Radhabhai to solve the dispute with regards to land in question. Arvindbhai Shamalbhai had called the rural panch as community panch members, so Danabhai Jibhabhai, Arvindbhai Shamalbhai, Manubhai Danabhai, Jayantibhai Shamalbhai etc. had assaulted to Bhupatbhai Radhabhai and all those persons started the act of stone pelting and due to stone pelting Bhupatbhai Radhabhai fallen on the ground despite all the accused continued to do the act of stone pelting. The complainant had attempted to convince accused not to do the act of stone pelting but they were doing the act of stone pelting.
- (15) According to the oral testimony of PW-10 some facts mentioned as to incident took place. PW-10 has identified all the accused those were participants to assault at accused. The deposition of PW-10 are not squarely supported the facts of police statement recorded by police officials during the course of investigation so whatever facts are supported to the police statement of PW-10 are taken into consideration for the cogent evidence. The entire oral testimony of PW-10 cannot be dispelled so the facts support the prosecution story may be contemplated a clinching evidence and those part of evidence are counted weighful evidence. However, the remaining parts of the police



statement under Sec.161 of CrPC recorded by Investigating Officer are not supported by PW-10, so the rest of the other portion of the deposition having no strict proof or best piece of evidence. When PW-10 averred adverse oral version before the court so for the limited portion AGP sought to declare PW-10 as a hostile witness and ultimately PW-10 turned hostile but entire deposition of PW-10 cannot be discarded.

- (16) PW-11 Reshamben Bhupatbhai Thakor who is the wife of deceased deposed at Exh.52. At the time of occurrence she was going to at her father's home and after the death of her husband she came to know the information with regards to the death of her husband. She had not seen the incident how and why incident occurred? She does not know by whom gave blow to her husband and eventually, she also turned hostile.
- (17) PW-12 Parakramsinh Ravjibhai Thakor who is the nephew of deceased deposed at Exh.53 that at the time of occurrence he went to attend the marriage ceremony and after the death of deceased he came to know the message of occurrence and he has no personal information as to incident took place and he also turned hostile.
- (18) PW-13 Shanabhai Kodarbhai who is also the nephew of deceased deposed at Exh.54 that he has know knowledge as to incident only police officials came at his village and Investigating Officer had asked his name and address his eye vision is very weak and he could not see properly and he also turned hostile.
- (19) PW-14 Vikrambhai Dashrathbhai Thakor who is the nephew of deceased deposed at Exh.55 and at the time of incident he was discharging his duty as an employee in private company and he does not know about the facts of incident. Moreover, PW-14 stated that police has not recorded his statement and he also turned hostile.
- (20) PW-15 Shanabhai Shankarbhai Thakor who is the cousion of deceased Bhupatbhai deposed at Exh.56 and he also turned hostile because he has no knowledge about the cause of occurrence as well as the facts of occurrence.
- (21) PW-16 Natubhai Bhatibhai Thakor who is the independent witness living at Vadna Muvada village deposed at Exh.57 but PW-16 categorically stated that he does not know about the incident.

- (22) PW-10, PW-11, PW-12, PW-13, PW-14, PW-15 and PW-16 have submitted inconsistent and contradictory oral version in comparison to their respective police statement recorded by Investigating Officer under Sec.161 of CrPC. During the course of police investigation, some witnesses were come within the category of ocular witness, some is independent and some witnesses are either full blooded family members, relatives, kith or kin of complainant as well as deceased Bhupatbhai. However, police statement under Sec.161 of CrPC are not contemplated a conclusive proof or strict proof and by and large the police statement under Sec.161 of CrPC may be used for contradiction and omission purpose. When any exaggeration and inconsistent averments made by witnesses must be fatal to the prosecution case. It is obvious that PW-10 as an eye-witness stated some facts as to incident occurred but his oral testimony are quasi supporting the prosecution story and rest of the other material parts of incident are not submitted in his oral testimony so mere without corroboration and support of any witness PW-10 cannot be said to be creditworthy witness.
- (23) In view of Sec. 134 of Indian Evidence Act – **Number of witnesses**– No particular number of witnesses shall in any case be required for the proof of any fact. Section 134 acknowledged the well-recognized maxim, 'Evidence has to be weighed and not counted' – **AIR 1957 SC 614: 1957 Cr LJ 1000; see also Binay v State (1997)1 SCC 283.**
- (24) When court squarely relies upon the solitary witness's oral testimony, the court has to keep in mind a principle of solitary witness when any single or solitary witness averred some favourable oral version in favour of prosecution in that circumstances the said evidence cannot be considered as a conclusive proof as a straight jacket or iron jacket formula. When any solitary witness mentioned partly facts before the court, at this juncture, it is the duty and obligation on the part of the trial court to examine the proper creditworthiness of said witnesses that whether the deposition of said witness are sterling or not? The big portion of the deposition of PW-10 are not supporting the prosecution story but some small part supported the prosecution but the oral testimony of said witness are not come within the purview of sterling evidence. It is pertinent to note that prosecution sought to declare PW-10 hostile witness and considering the entire deposition the major part

of his statement under Sec.161 of CrPC were not averred by PW-10 in his deposition and he declared hostile but as discussed hereinabove the entire evidence of PW-10 cannot be dispelled.

- (25) PW-1 Bharatsinh Sardarsinh deposed at Exh.20 and PW-3 Rajendrasinh Malsinh Thakor deposed at Exh.32 both the panchas as to place of offence at Exh.21 both the panchas turned hostile. PW-3 played dual role as to panchnama at Exh.33. Exh.33 is the panchnama with regards to the recovery of clothes wearing by accused Danabhai Jibhabhai and Manubhai Danabhai. PW-3 turned hostile likewise PW-4 is also the No.1 panch as to panchnama at Exh.33 and he also turned hostile. PW-2 Abdulrashid Mastubhai Shaikh deposed at Exh.27 and PW-7 Ayubkhan Ahemadkhan Pathan deposed at Exh.46 both the panchas with regards to the inquest panchnama and they turned hostile. PW-5 Babubhai Kodarbhai Chauhan deposed at Exh.38, PW-6 Mahendrabhai Somabhai Chauhan deposed at Exh.45. PW-5 and PW-6 are the panch witnesses as to recovery of wearing clothes by accused Malharbhai @ Arvindbhai Shamalbhai Thakor, Jayantibhai Shamalbhai Thakor and Shamalbhai Shanabhai Thakor and both the panchas turned hostile and not supported the prosecution story.
- (26) In pursuant to the deposition of Investigating Officer as well as other police officials witness the panchnama as to venue of crime recovery and inquest were conducted and it is not necessary to write down the panchnama as per the say of panchas because mere presence of panchas are necessary and prosecution has to show to the Court that process of panchnama conducted by Investigating Officer in the presence of panchas. It is not necessary for the police officials to follow the panchas in each and every thing for conducting panchnama process. If the panchas turn hostile nevertheless the facts of panchnama would not lost its credibility and such panchnama can be proved in the deposition of Investigating Officer also ratio laid down by Hon'ble Apex Court in case of **N.C.T of Delhi V. Sunil 2001 2001 Cri. Lj Page No. 504**

"There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that search is made to find out a thing or document which the

searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. (Para 18)

"It is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact panchnama that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions. (Para 20)

Hon'ble High Court of Gujarat laid down the ratio in the case of 2016 (2) reiterated aforesaid principle in the case of **State of Gujarat & Ors. v. Munna @ Rajaf Farid Shah GLR Page No. 1809.**"

- (27) To prove the charge of rioting as well as unlawful assembly leveled against accused, it is condition precedent and *sin-qua non* for prosecution to show that all the accused assembled armed with deadly weapons and for furtherance to fulfill the intention of unlawful assembly did the act of rioting and mischief by setting crops of cattle grass on fire.
- (28) Hon'ble Apex Court laid down the ratio in case of **Masalti V/s State of U.P. (AIR 1965 SC Page No. 202)** and Hon'ble Apex Court held that, Mere presence in the assembly does not make a person, present in the assembly, a member of an unlawful assembly, unless it is shown that he has done something or omitted to do something which would make him a member of unlawful assembly. The said decision further hold that once it is established that a person is a member of an unlawful assembly and do the common object thereof, no overt act in presence of the common object is required, nor it is necessary that the object should be carried into action to hold such person liable. Hon'ble Apex Court laid down the ratio in case of **Balidan V/s State of U.P. AIR 1956 SC Page No. 181, 1956 Cri.L.J. Page No. 345** the place of occurrence was surrounded on all sides

by the houses of the appellant in that context it was held that if the members of the family of the appellants and other residents of the village assembled, all such persons could not be condemned ipso facto as being members of the unlawful assembly, and it was necessary for the prosecution to lead evidence to show that all the appellants had done or had omitted to do some overt act in prosecution of the common object of the unlawful assembly and that mere presence was insufficient.

(29) PW-9 Dr. Sureshkumar Kantilal Zaveri deposed at Exh.49 that on dated 20<sup>th</sup> May, 2017 he was discharging his duty at Civil Hospital, Ahmedabad. The body of deceased Bhupatbhai was brought before him for post-mortem. The procedure of post-mortem started at 11:30 am and it was completed at 12:30 pm. After completion of post-mortem following injuries were found on the exterior part of the body :-

- i. *Red abrasion on left nostril and tip of nose traverse 3 x 2 cm.*
- ii. *Red abrasion on right forehead just below eyebrow medially traverse 2 x 1 cm.*
- iii. *Red abrasion on left side chest front aspect D/M- 1 x 0.5 cm 6 cm left to mid-line, D/L 1 x 0.5 cm 6 cm left to mid-line*
- iv. *Red abrasion on left caterl angle of eye traverse 2 x 1 cm.*

During the course of post-mortem following injuries were found in the internal part of the body :-

- i. *Skin red contusion on right region right temporalis muscle contused.*
- ii. *Vertical depressed fracture right temporalis 8x 3 com bone.*
- iii. *Dura tear on right temporal region of brain.*

(30) After concluding the post-mortem the cause of death is shock and hemorrhage due to head injury.

(31) Looking to the opinion of expert doctor as well as the cause of death, after performing the post-mortem, shock and hemorrhage due to head injury is the main cause of death. The opinion of expert is corroborative piece of evidence and it is absolutely an evidence like advisory character and the evidence of expert cannot be considered as a conclusive proof.

(32) Provision under Sec.45 of Indian Evidence Act, it is absolutely evidence of advisory character and it is used for the corroboration. If the material star witnesses are not supporting the actual aspects of the case at this juncture, mere evidence of doctor and scientific examination report are not solely be the clinching and cogent evidence. Section 45 of the Evidence Act lays that the opinion of expert doctor is relevant fact and is

admissible in evidence the Court may be taken the expert opinion into consideration but ratio laid down by Hon'ble Apex Court in case of ***Basoprasad V. State of Bihar, 2006(13) SCC 65 para 37*** are required to be considered and it is held that :- appreciation of evidence is the Court's job the Court has to consider the expert opinion as a piece of evidence and after examining the evidence, the Court has to accept one or the other opinion.

- (33) Medical evidence is hardly conclusive and decisive, because it is primarily and evidence of opinion and not of fact. To rely upon the findings of the medical person who conducted the post-mortem and the chemical analyst as decisive of the matter is to render the other evidence entirely fruitless. The Court has to consider not merely medical evidence but also the other evidence and circumstances appearing on the point. ***{Arunkumar Benerjee V. State AIR 962 SC 504 and Maniram V. State of Bihar 1993 Cri.JL SC para 6}***
- (34) PW-17 Vimalkumar Rajabhai Dangar who was discharging his duty as an incharge police inspector at Balasionr, Police Station on dated 25<sup>th</sup> June, 2017. PW-17 deposed at Exh.58 that he recorded the deposition of Shanabhai Shankarbhai Thakor. PW-17 also wrote letter to Judicial Magistrate First Class, Balasinor for addition of Sec.149 of IPC.
- (35) PW-18 Tersinghbhai Demabhai Machar who was discharging his duty as police inspector at Balasionr, Police Station on dated 19<sup>th</sup> May, 2017. PW-18 deposed at Exh.59 that complainant lodged the complaint against the accused. The suchipatra at Exh.60 issued by PW-18 and thereafter he conducted the entire police investigation, drawn the inquest panchnama and also drawn the panchnama as to venue of crime respectively at Exh.28 and Exh.21. The worn clothes recovered form the dead-body of deceased and drawn the panchnama at Exh.29. PW-18 also drawn the panchnama as to physical condition of accused at Exh.33. During the course of police investigation, the Investigating Officer has collected the samples and all those samples sent to FSL, Vadodara and after scientific examination Forensic Science Laboratory sent the report at Exh.70.
- (36) Looking to the aforestated reasons recorded hereinabove, prosecution fails to prove beyond reasonable doubt that all the accused have created unlawful assembly, committed mischief by fire and the prosecution also

fails to prove beyond reasonable doubt that all the accused did the act of culpable homicide which amounts to murder and prosecution also fails to prove that all the accused caused hurt by act of endangering life or personal safety of others. Therefore my reply to the point Nos.1 to 4 is in negative.

**Point No.5 :-**

- (37) Having heard and having considered the contention raised by rival parties along with documentary as well as oral testimony, it is pertinent to note that for the reasons recorded herein above, prosecution has failed in proving the charge u/Secs.143, 147, 149, 302 and u/Sec.337 of the IPC against all the accused. Therefore the accused Nos.1 to 5 found innocent under the charges leveled against them. Hence, I pass following order for point No.5.

**-: ORDER :-**

- (1) All the accused i.e accused No.1 Danabhai Jibhabhai Thakor, Aged - 55 years, accused No.2 Manubhai Danabhai Thakor, Aged - 30 years, No.3 Shamalbhai Shanabhai Thakor, Aged - 57 years, No.4 Malharbhai @ Arvinbhai Shamalbhai Thakor, Aged - 39 years and accused No.5 Jayantibhai Shamalbhai Thakor, Aged - 25 years, all are R/o. Vadna Muvada, Tal. Balasinor, Dist. Mahisagar are acquitted under Section 235(1) of the Criminal Procedure Code from charge leveled against them for the offence punishable under Sections 143, 147, 149, 302 and under Sec.337 of the Indian Penal Code.
- (2) All the accused are directed to furnish bail bond with surety sum of Rs.10,000/- each for the period of six months u/s.437(A) of Criminal Procedure Code, before the Registrar of District Court, Mahisagar at Lunawada.
- (3) Muddamal be disposed of after appeal period is over.
- (4) Yadi of this judgment be sent to the Jail Authority.

Pronounced in open court today

**Date : 31-12-2021**  
**Lunawada.**

**(Naresh Girikant Dave)**  
2<sup>nd</sup> Additional Sessions Judge,  
Mahisagar at Lunawada.  
[GJ00467]