

SESSIONS CASE NO.14/2020	
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DURATION	YRS MTS DAY

**IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE
TAPI, AT VYARA**

SESSIONS CASE NO.14/2020

EXH.

COMPLAINANT:-

STATE OF GUJARAT

VERSUS

ACCUSED :-

Muljibhai Chemtiyabhai Gamit
Aged - 40 years,
Residing at : Ghodchitgaam, Nishal Faliya,
Taluka - Songadh, Dist. Tapi.

**SUBJECT:- OFFENCE PUNISHABLE UNDER
SECTION- 307, 333 and 435 OF INDIAN PENAL
CODE**

MR. R.B.Chauhan: LEARNED P. P. FOR THE STATE

MR. V.N. Chauhan: LEARNED ADVOCATE FOR THE ACCUSED

JUDGMENT :-

- 1 Succinct facts of the case of the prosecution are as under:
- 2 Complainant Arm H.C. Jaganbhai Virsinghbhai B. No. 121 of Dy. S.P. office Vyara Division District Tapi has stated in his complainat that, to control the activity of prohibition and gambling, there was instruction from Dy. S.P. office to search for the cases of such activities, so, on

22.02.2020 himself and head constable Prafulbhai Pratapsinh B.No. 67 alongwith armed head constable Prabhasinh Laxmansinh B. NO. 130, along with two panchawitnesses namely, (1)Viralbhai Isharwarbhai Gamit residence of Bedchit and (2) Mahendra Bhudiyabhai Chaudhary residence of Umarva where proceeded for raid in private maruti Wagonar NO. GJ-05-CG-9219 as H.C. Prabhatsingh Laxmansingh got the secret information that, one Muljibhai Chemtiyabhai Gamit of Ghodchit selling liquors at his home, so they have decided to carried out the raid, so they reached there at 7 'O' clock with the panch witnesses, at the time of raid accused Muljibhai present at his home, they have persuaded that they are the police men and other are panchwitnesses, then they started the raid in his house at that time the accused was excited and told why you came for raid in his house? Then he run to the shop which was situated at the front side of the house, and carried out a carbo full of some liquid and threatened to raid party that today he would kill them by fire, and pour the liquid on constable prabhatsinh laxmansinh, the liquid having smell of petrol, then accused Muljibhai went in the house and immediately, bring live fired wood, and set fire to the Prabhatsinh so, Prabhatsinh got burn injury in both of the hand and chest and back side of head the hair was also burnt, at the time of pouring the petrol to Prabhatsinh at that time, there was effect of fire to some part of his shop, when Prabhatsinh was burning, at that time accused Muljibhai excited and told why the police came for raid, and proceed with the carba, near the Wagonar car and also poured petrol on car and set a fire to the Wagonar with live fire wood, at that time the petrol also fall on the both of the hand of the accused and his back side of the stomach, so there he also got burn injuries, then complainant and the other person along with them run to Prabhatsinh

and tried to stop the fire, and also pour the water on Prabhatsinh, shop as well as on accused, and stop the fire.

- 3 As Prabhatsinh sustained burn injury so, panch witness Viralbhai Ishwarbhai Gamit and Mahendrabhai Ishwarbhai Chaudhay has shifted him to referral hospital Songadh in private vehicle, where he was treated, while the private maruti No. GJ-05-CG-9219 is concerned was burnt fully. As accused was also injured complainant has informed by telephone to Songadh Police and called 108 ambulance so, accused was also shifted to referral hospital Songadh by his family members. As the injuries of Prabhatsinh was serious so, he was referred to higher station.
- 4 On the basis of F.I.R., the Investigating Officer started investigation of this offence. He prepared the panchnama of scene of offence, He recorded statements of witnesses acquainted with the facts of incident. Collected the cloth of injured witness by way of panchnama, collected the CCTV footage of petrol pump by way of panchnama. Also got the FSL report of the spot and medical certificate of injured as well as injured. Then he arrested the accused by carried out arrest Panchnama of accused. He found sufficient evidence against the accused and submitted before the Judicial Magistrate First Class, Songadh for the offence punishable under Section 307, 333 and 335 of I.P.C., which was registered under Criminal Case No.125/2020.
- 5 After completion of formalities under Section-207 of the Code of Criminal Procedure, as the offence punishable under Section 307 of I.P.C. is sessions triable, the Judicial Magistrate First Class, Songadh has committed this case to the Principal Sessions Court, Tapi at Vyara under Section-209 of the Code of Criminal Procedure,

hence, this sessions case is registered as Sessions Case No.14/2020 and tried before this Court.

- 6 This Court has framed the charge against the accused at Exh.5, which was read over and explained to the accused in the open Court and the statement of the accused was recorded at Exh.6 , in which, he has denied the charges, leveled against him and claimed for trial. Then-after, the prosecution has adduced its oral as well as documentary evidence and on completion of it, further statement of the accused under Section-313 of the Code of Criminal Procedure has been recorded, wherein incriminating evidence against the accused was read over for the explanation of the accused and during it, the accused replied that, all the evidence is false and due to enmity, false complaint is given against him. He has not preferred to examine defence witness.
- 7 Then-after, I have heard the argument of all the parties.
- 8 During the course of trial, as many as 14 prosecution witnesses have been examined by the prosecution and the prosecution also led 12 documentary evidences.
- 9 During the Course of Trial, the prosecution has adduced the following oral as well as documentary evidence :

ORAL EVIDENCE

PW No.	Name of the witness	Evidence	Ex.
1	Maheshbhai Simabhai Gamit	Witness	8
2	Rajubhai Dhanjibhai Chaudhary	Panch witness	14
3	Mukeshbhai Dineshbhai Gamit	Panch witness	16
4	Rajubhai Gambhir Patel	Panch witness	17
5	Dilipbhai Pilubhai Konkani	Panch witness	21
6	Jaganbhai Virsingbhai Gamit	complainant	22

7	Prabhatsing Laxmansing Bariya	injured witness	25
8	Dr. Bhavin Upendrabhai	Medical officer	26
9	Dr. Dilipkumar Shivajibhai Gamit	Medical officer	31
10	Dr. Niteshbhai Chemtabhai Gamit	Medical officer	33
11	Naginbhai Dalabhai Chaudhary	P.S.O.	35
12	Viralbhai Ishwarbhai Gamit	Witness	39
13	Ishwarbhai Gopalbhai Vasava	Investigating officer	40
14	Chandubhai Khalpabhai Chaudhary	Investigating Officer	43

DOCUMENTARY EVIDENCE

No	Description	Exh.
1	Panchnama of place of incident	15
2	Panchnama of apparel of injured witness	18
3	Panchnama of CD of CCTV Footage of petrol pump	19
4	Arrest panchnama of accused	20
5	Complaint of Jaganbhai Virsinghbhai	23
6	Discharge certificate of injured Prabhatsing Laxmansing	27
7	Discharge certificate of injured Prabhatsing Laxmansing	28
8	injured certificate of Prabhatsing Laxmansing	29
9	Medical legal report of Prabhatsing Laxmansing	30
10	Treatment certificate of injured Prabhatsing Laxmansing	32
11	Report of scene of offence	41
12	Treatment certificate of Muljibhai Chemtiyabhai Gamit	34

- 10 Then prosecution has passed the closing pursis at exhibit-46.
- 11 From the above evidences and submissions of the learned PP Mr. R.B.Chauhan and the learned Advocate Mr. V.K.Chauhan for the accused, the following points are arisen for consideration in this case:

POINTS

- 1 Whether, the prosecution proves beyond reasonable doubt that on the day of incident the injured was public servant, and during the discharge of his official duty, the accused has prevented him and cause the grievous hurt by the burn injury?
 - 2 Whether, the prosecution proves, beyond reasonable doubt that on 22.02.2020 at 19:00, complainant and injured proceeded for prohibition raid at the house of accused at Ghodchit village, and found liquor bottle from his shop, so, the accused was excited and told why, you have raid in his home, at that time, injured was pursuing him, at that time accused had lifted the petrol carba and pouring the petrol on himself at that time the injured was pursuing him but accused told that today he will burn to police and pour the petrol on Prabhatsinh Laxmansinh and set a fire by match box, and accused has also poured petrol on weganar car No. GJ-05-CG-9219 and also set a fire to the car by live fire wood, and also damage to his own shop by that way accused has committed offence under Section 307, 333, 435 of IPC ?
 - 3 What order ?
- 12 My findings to the above issues are as under :
- 1 Affirmative.
 - 2 Affirmative extent to Section 333 and 435.
 - 4 As per final order.

-: REASONS:-**POINTS NO.1**

- 13 It is cardinal principle of criminal jurisprudence that, the prosecution has to prove its case beyond reasonable doubt. To prove its case, the prosecution has to adduce impeachable, cogent and truthful evidence to establish its case beyond reasonable doubt.
- 14 Prior to the discussion of the injured witness and other witness this

court think necessary to discussion of evidence of medical officer.

- 15 The prosecution has examined PW-8 (exhibit-26) Dr. Bhavin Upendrabhai Patel according to him, he is plastic sugen at R.B.Shah super specialty Hospital Surat, on 22.02.2020 injured Prabhatbhai Bariya aged 40 years brought to his hospital for treatment, he had 50% to 60% burnt injury, he was admitted and treated as indoor patient, on 13.04.2020 he was discharged, he advised to take rest for two months, he has issued the certificate which is produced at exhibit-27 on letter pad of the hospital, then on 04.05.2020 one another certificate by advising take rest was given on the letter pad of hospital (exhibit-28).
- 16 Himself has also issued the medical injury certificate dated 13.04.2020 on letter pad of hospital exhibit-29, he also produced medico legal report of the injured according to it, on 22.02.2020 injured was was admitted, this report was prepared by in-charge Dr. Jai Vithalani. This document remain in treatment file of patient, he has treated the patient so he acquainted with this report according to him on 22.02.2020 at 22:53 he was examined at casualty department and inform to police on 23.02.2020 at 1:55 am, this patient brought by brother Hasmukhbhai he identified the handwriting of Dr. Jai Vithalani in medico legal report produced at exhibit-30.
- 17 According to this witness during the treatment patient was informed him that when he was on duty at that time one Gullu has poured the kerosin on him and set a fire. The occurrence happened at Bandharpada Taluka Songadh. Prior to admit patient in hospital he has got treatment from Referral hospital Songadh and he referred for further treatment in his hospital.
- 18 As patient burnt 50% on the upper limb of body, both hand, front part

of chest, rear part of the chest, face and neck so he has started the treatment after examination. He was treated as indoor patient, it was third degree burnt injury so, it can be said serious and grave injuries there was possibility of death of due to this injury and it is also possible of such type of injury if anybody set a fire by pouring the petrol on any person.

- 19 During the course of cross-examination he admitted that there was not his fixed duty. When he was informed that the patient in hospital his service is needed so, herein this case he has attended the patient on 22.02.2020 at 11:20 at night. He denied that patient was unconscious, he cannot say how many people other than brother of injured was came to hospital, He denied that the patient has not given any history to me, he also agreed with the suggestion made by the advocate of the accused such injury possible if one is tried to save other burning person. He denied that only in the case of 70% burnt injury there is possibility of death, he admitted that in certificate exhibit-30 there is mentioned that there was 40% to 50% burnt injury was there, he agreed that as he mentioned 60% burn injury in exhibit-28, this certificate is regarding rest.
- 20 The exhibit-27 is medical certificate which indicate that injured has taken treatment as indoor patient on 22.02.2020 to 13.04.2020 for 50% flams burns exhibit-28 is certificate dated 04.05.2020 which is for advise to rest for two months in which 60% burn injury is mentioned.
- 21 Then Dr. Dilipkumar Sivajibhai Gamit PW-9 examined at exhibit-31 according to him, on 22.02.2020 he was incharge of referral hospital Songadh, on that day at 7:55 pm Prabhatsing Laxmansing Bariya come for treatment for his burn injury without police yadi, during the

treatment he has informed PSO Negibhai of Songadh police station, during treatment patient has given history and informed that during the police raid Muljibha has poured petrol and set a fire on him at that time in raid H.C. Jaganathbhai H.C. Prafulbhai and other two persons Mahendrabhai and Viralbhai was present at the place of occurrence at village Ghodchit Between 6 to 7 pm.

- 22 During the primary examination, his both hand, chest, stomach, face, neck and back side of the body including hair burnt, during his examination, temperature was common 90 pm, BP 100/70 was there and heart etc. was normal, he was fully conscious, he was well oriented regarding place, time and person. As his body and cloth burnt, so there was smelling of petrol was there from his burnt injury on neck, chest , stomach, face, and on both hand, there was 45% to 50% burnt injuries, so, he was advised to shift to Civil Hospital for that, he has issued the medical certificate exhibit-32 there was third degree burnt injury , it can be said grave injury, and there was possibility of death of injured due to this injury, he opined that such injury is possible poured the petrol by other person and set a fire to him.
- 23 During the course of cross-examination of this witness, he admitted that prior to brought the patient to hospital police has informed regarding incident, he has also admitted that due to this incident such injuries are possible. He cannot opined if any person try to save other person who set on fire then get such type of injury. He admitted that if there is not deep burns below 60% degree then it can be said second degree burns.
- 24 While prosecution has examined Dr. Niteshbhai Chemtabhai Gamit as PW-10 exhibit-33, according to him on 22.02.2020 he was incharge of

hospital in general hospital Vyara, at 7:30 pm, patient Muljibhai Chemtiya was brought through 108 by his wife Anaben so, he was treated by OPD No. HC49 and MLC NO. 357. In history according to patient on 22.02.2020 during 6 to 7 'o' police man, came for raid and during the course of raid the carbo full of petrol situated near live stove, and police was checking petrol carba at that time all of the sudden get a fire in carba so, he was trying to remove the carba outside the home he got burn injury.

25 During the examination he found external injuries;

(1) superficial to deep burns over fore arm to tip of little finger with blocking and scalilng and vesicution of skin with burns smell.

(2) Superficial to deep burns over whole left hand blackeving scalilng of skin burns smell.

(3) Superficial to deep burns over left ilal, loin region extending from left half abdomen of left side of lower back. Bluck bing and skaling of skin with burn smell and superficial claim burns over right side of abdomen

(4) Superficial with burning sensession, blackeving of leg (left) abstending from back of thigh to foot.

(5) Superficial flame burns with burning sessions and blackering of sting over claf reason and buttck right leg.

(6 superficial flame into back to front blackeing.

(7) super ficial fmal scalp eyebrow (both) eyeleshes (both eye)with bringing smell.

26 On general examination the patient was conscious co operative, his

temperature was normal pulse 90 pm, BP 110 to 70 and oxygen level 98, he was fully oriented, during primary treatment he was referred to Surat hospital he has issued MLC certificate of exhibit-34.

- 27 In course of cross-examination he agreed, as per history of patient if all of the sudden the carba having petrol get fire and if any person tried to remove carba from home and if the petrol fall on him then possibility of burn injuries to that person in such circumstances it cannot be said that there was any criminal intention of anybody. He also agreed that such injury can be self inflicted.
- 28 So, herein this case from the above medical evidence it is proved that on day of incident on 22.02.2020 the injured Prabhat and deceased both have got burn injury to their body, and as per opinion of doctor there was smell of petrol from both of the injured.
- 29 From the evidence of the doctor both of the injured have given history to doctors that they have got injuries due to fire.
- 30 So far the injuries of Prabhat is concerned both the doctor have opined that the injuries were grave, serious and there is possibility of death due to this injury.
- 31 But herein this case the allegation leveled against the present accused is of section 307 of IPC, so to constitute the offence of 307 whether such opinion of doctors attract the element of Section 307 or not for that the certain decision of higher court is required to be taken into consideration.
- 32 To prove the offence under Section 307 the prosecution has to prove the indigence of Section 307 beyond reasonable doubt as mentioned in the judgment of **Hon'ble Punjab and Hariyana High Court in**

Criminal Appeal 674/SB/2001 decided on 23.05.2013 in the case of Desraj @ Dasha and Ors. Vs. State of Hariyana.

The only point for determination of this Court is as to whether injury No.1 on the person of PW Mihan Singh falls within the purview of Section 307 or 326 of the Indian Penal Code.

Section 307 of the Indian Penal Code reads as under:- "307. Attempt to murder - Whoever does any act with such intention of knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as it hereinbefore mentioned."

Section 320 of the Indian Penal Code reads as under:- "Grievous hurt:- The following kinds of hurt only are designated as grievous:

xxxxxxx "Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

To bring an offence under Section 307 of the Indian Penal Code, the prosecution is required to prove that the accused had an intention to commit murder of the injured. This intention could be gathered either from the act of the accused-appellants or from the impact of the injuries.

From the perusal of the case file, it reveals that the doctor declared injury No.1 on the person of Mihan Singh "dangerous to life". But, was not stated by PW1 Dr. DC Thukral that this injury would be sufficient to cause death in the ordinary course of nature. He simply stated that he declared injury No.1 as "dangerous to life". He stated in

cross-examination that he did not probe injury No.1, on the person of Mihan Singhm as it was on vital part. The depth of the injury is not mentioned anywhere in evidence. Thus, there is no record on the file to show as to on what basis, the doctor formed his opinion regarding nature of injuries and opined the same to be "dangerous to life". It was a sudden quarrel over turn of water. Nowhere in his statement PW3, Mihan Singh has stated that the appellants had caused injuries to him with an intention to kill him.

The State of Punjab, 1982(2) C.L.R., 496 to say that a term "dangerous to life" is synonymous with "endangering life" within the meaning to Clause 8 of Section 320 of the Indian Penal Code. It was accordingly viewed that the Courts are not absolved of responsibility while deciding the criminal case to form its own conclusion regarding the nature of injury, Expert's opinion notwithstanding. It was further held that the Court has to see the nature and dimension of injury, its location and the damage that it has caused. The opinion of doctor in itself is not enough to return a finding of conviction of a person for an offence. Reference can also be made to the case of Pashora Singh and another Versus State of Punjab, 1993(1) RCR (Criminal) 188 : AIR 1993 Supreme Court 1256. This was also a case where accused was alleged to have given a Gandasa blow on knee, hand and head etc. Still, it was held by the Apex Court that the High Court was not right in holding that the accused had intention to cause death of the victim or the knowledge of possible death. In this case (supra), injury on the head was described as dangerous to life. The Hon'ble Supreme Court had also observed that accused persons had no intention of causing death of any person and nor any injuries were found so, which could be stated to be sufficient in the ordinary course of nature to cause death. There is no

opinion forthcoming in this case also if the injuries caused by the appellant were sufficient to cause death in the ordinary course of nature. It can, thus, be said that in order to arrive at a proper conclusion, the Court has to see the nature and dimension of the injury, its location and damage that it has caused. The Court has to apply its own mind and form its own opinion in this regard, even though the Expert may have opined that the injury is dangerous to life.

In *Jai Narain Mishra & Others Versus State of Bihar*, 1972 Criminal Appeal Reporter 19(S.C.) held, a penetrating wound 1-1/2" x 1/2" x chest wall deep on the right side of the chest caused with a bhala and described as 'dangerous to life' as grievous injury and in the later part of paragraph 11 called this injury as one endangering life.

The expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life', and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause 8 of Section 320, Indian Penal Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life', described it that the injury was 'dangerous to life', meaning both the time the same thing."

In this case, even the injury being dangerous to life has not been sufficiently established. It is not proved on record that the injury was sufficient in the ordinary course of nature to cause death.

33 In 1989 (1) 257 Rajasthan High Court Khatun Vs. State of Rajasthan .

IMPORTANT POINT

If an injury inflicted on the victim is not sufficient in to ordinary course of nature to cause death, a case under section 307, I.P.C., cannot be established.

- 34 Then the judgment of Hon'ble Gujarat High Court in criminal **Application No. 6079/2018 Naginbhai Chandubhai Solanki Vs. State of Gujarat (corum: Hon'ble justice J.B. Pardiwala)** it is required to consider herein this case as it is observed at length to how the offense under Section 307 IPC can be made out.

21. Section 307 of the Indian Penal Code reads thus:

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to a [imprisonment for life], or to such punishment as is here inbefore mentioned.

Attempts by life convicts. When any person offending under this section is under sentence of a [imprisonment for life], he may, if hurt is caused, be punished with death.

22. An offence under section 307 has the following essential ingredients;

(i) That the accused did an act;

(ii) That the act was done with intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely to cause death or that such bodily injury was in the ordinary course of nature to cause death, or that the accused attempted to cause

such death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death; and

(iii) That the accused had no excuse for incurring the risk of causing such death or injury.

23. For liability under section 307, the prosecution has to prove the following facts:

(1) That the accused did an act, and (2) that the act was done with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder. If hurt is caused by such act, the offender becomes liable to imprisonment for life, otherwise the maximum term of imprisonment prescribed is 10 years. Thus the section itself does not take into consideration the effect of the act of the accused except as a measure of sentence to be imposed upon him.

24. Thus, from the above, the most important ingredient to constitute the offence of an attempt to commit murder punishable under section 307 of the Indian Penal Code is the intention and knowledge. To attract the provisions of this section, it is necessary for the prosecution to establish that the intention of the accused was one of the three kinds mentioned in section 300 of the Indian Penal Code. A person commits an offence under section 307, IPC when he has the intention to commit murder, and in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. Section 307 requires that the act must be done with such intention or knowledge or in such circumstances that if death be caused by that act, the offence of murder will emerge.

25. At least one thing is very clear that causing such injury as would endanger life is not an essential condition for the applicability of section 307 of the Indian Penal Code. Even if the injuries inflicted are simple in nature, that by itself cannot be a ground for acquittal, if the offence otherwise falls under section 307 of the Indian Penal Code.

26. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man.

27. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by *res gestae*, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person can't be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:

1. The nature of the weapon used.
2. The place where the injuries were inflicted.
3. The nature of the injuries caused.
4. The opportunity available which the accused gets.

28. I may quote with profit a Division Bench decision of the Kerala High Court in the case of **Sanku Sreedharan Kottukallil Veettil Konathadi Kara vs. State of Kerala, AIR 1970 KERALA 98 (V. 57 C 20)**.

15. Intention and knowledge are a man's state of mind; direct evidence thereof except through his own confession cannot be had; and apart

from a confession they can be proved only by circumstantial evidence. In other words, they are matters for inference from all the circumstances of the case such as the motive, the preparations made, the declarations of the offender, and, in the case of homicide, the weapon used, the persistence of the assault, and the nature of the injuries actually inflicted as also their location. In the case of what are generally described as unpremeditated offences or as offences committed on the spur of the moment, intention may be contemporaneous with the physical act, at best of just an instant before, and is generally to be gathered from the nature and consequences of the act and the attendant circumstances. It is here that the much criticized maxim that every man is presumed to intend the natural and probable consequences of his act comes into play.

16. Like most words, the word "intention" is capable of different shades of meaning. In the Indian Penal Code it is used in relation to the consequences of an act, the effect caused thereby, not in relation to the act itself the voluntariness required to constitute an act is implied by that very word. Thus, in the case of murder. The intention required is (omitting clause secondly of Section 300 which rarely comes into play) the intention of causing death or the intention of causing bodily injury sufficient in the ordinary course of nature to cause death, more or less the malice aforethought of the English law, the former being generally described as specific intent or malice and the latter as implied malice or some times as constructive malice, though the use of the latter term seems open to criticism. It seems to us clear from the illustrations to Sections 88, 89 and 92, that the Code uses the word "intention", in the sense that something is intentionally done if it is done deliberately or purposely, in other words, is a willed though not

necessarily a desired result or a result which is the purpose of the deed. The surgeon of the illustrations certainly does not desire the harm that may be caused; nor is that his purpose. Nevertheless, the provisions of the sections show that he could have intended the harm, and is saved from being a criminal only by those provisions. Likewise a man who shoots another in the heart and kills him in self defence might not desire, on the contrary might very much dislike, causing the latter's death. His purpose is not to cause death but to save himself. Yet his case falls squarely within the first clause of Section 300 he has undoubtedly caused death by doing an act with the intention of causing death and is saved from being a murderer only by Section 100.

Lang v. Lang 1955 AC 402 rather than Rex v. Steane 1947 KB 997 at p. 1004 or Hosegood v. Hosegood, (1950) 66 TLR 735 illustrates the sense in which the word, intention is used in Section 300 of the Indian Penal Code of course none of these cases was construing that statute. And, once you dispense with desire or purpose, it follows that foresight of the consequences of an act gains the upper hand in determining whether the consequences were intended or not. And the foresight of a particular person is prima facie to be gauged by the foresight of an ordinary, reasonable man. in other words, by what is sometimes disparagingly referred to as the objective test or external standas if that were enough to condemn itof the reasonable and probable consequences of the act.

17. Illustration (a) to Section 106 of the Evidence Act shows that the intention with which a person does an act is generally to be gathered from the character and circumstances of the act It says that:

"When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him".

An inference drawn from the character and circumstances of the act is sufficient proof of intention. Thus, if a man uses a knife on another so as to pierce the latter's heart and kill him, the character and circumstances of his act would suggest that he intended to kill him, for, death is the natural and probable, nay, the wellnigh certain, result of such an act. But a surgeon doing this could readily rebut this inference by showing that he did this not with the intention of causing death but with the intention of curing the man of a dangerous disease. Nevertheless the surgeon would still have intentionally caused 'hurt, and can even be said to have intentionally caused bodily injury sufficient in the ordinary course of nature to cause death, and as we have already said, is saved from penal consequences only by reason of the exception in Section 88 of the Code.

18. The maxim to which we have referred, namely, that every person is presumed to intend the natural and probable consequences of his act, is sometimes expressed as if it embodied something more than a permissible inference, something more than the "may presume" of Sections 4 and 114 of the Evidence Act, or at the worst the "shall presume" of Section 4, and created an irrebuttable presumption, the "conclusive proof of Section 4. A form in which it is thus expressed is that every person must be presumed to intend the natural, reasonable, and probable consequences of his acts whether in fact he intended them or not. In this form it is certainly objectionable and it is the belief, some would have it in the mistaken belief, that it was countenanced in this form by the House of Lords in Director of Public

Prosecutions v. Smith, 1961 AC 290 as if the mens rea for murder were not the intention in the mind of the alleged offender, but were the foresight of a reasonable man of the likelihood of death, that that decision has come in for so much adverse criticism from quarters both academic and professional. And it is to the maxim in this objectionable, form, "must be taken to intend" that Wallis C. J. took exception when, basing himself on paragraph 100 of the first report on the Penal Code by the Indian Law Commissioners; he observed in *Vullappa v. Bheema Row*, ILR 41 Mad 156 at p. 162 : (AIR 1918 Mad 136 (2) at p. 139) (FB) that Macaulay and the other Indian Law Commissioners regarded the maxim as a fiction which should not be recognized in the Penal Code.

But surely that the Code draws a clear distinction between "intent" and "knowledge of likelihood" is no impediment to the latter leading to an inference regarding the former, or to same circumstance leading to an inference regarding both.

19. But properly viewed, namely as a mere objective test enabling a rebuttable inference to be drawn regarding the mental element attending an R/CR.MA/6079/2018 ORDER act, we think that the maxim is not merely unexceptionable but indispensable. The whole difficulty it seems to us arises from, to borrow the words of Bowen L. J. in *Angus v. Clifford*, 18212 Ch D 441, confusing the evidence from which an inference may be drawn with the inference itself which has to be drawn after you have weighed all the evidence. In this connection the following classic statement by Sir William Holdsworth in the *History of the English Law*, Vol. III, page 374 is worth quoting: "The general rule of the common law is that crime cannot be imputed

to a man without mens rea. It is, of course, quite another question how the existence of that mens rea is to be established. The thought of man is not triable by direct evidence; but if the law grounds liability upon intent, it must endeavour to establish it by circumstantial evidence. Much of that circumstantial evidence will be directed to showing that a man of ordinary ability, situated as the accused was situated, and having his means of knowledge, would not have acted as he acted without having that mens rea which it is sought to impute to him. In other words, we must adopt an external standard in adjudicating upon the weight of evidence adduced to prove or disprove mens rea. That of course, does not mean that the law bases criminal liability upon an external standard. So to argue is to confuse the evidence for a proposition with the proposition proved by that evidence".

20. Perhaps, in Indian Law, the objective test of the maxim would cover every degree of mens rea from negligence to intention, depending on the degree of probability of the consequences. If the effect caused by an act is the natural and probable consequence of that act it would, we think, be right to infer that the actor caused that effect voluntarily as that word is defined in Section 39 of the Code. If the degree of probability is so low so that the effect cannot be described as a natural and probable consequence, the inference to be drawn might only be of negligence or rashness; little higher it might be that the actor had reason to believe that he was likely to cause the effect; still higher it would be reasonable to infer that he knew that he was likely to cause it; and if the degree of probability is so high that the effect may be described not merely as a probable but as a natural, natural in the sense ordinary result of the act it would be reasonable to infer that he intended to cause it. It might be noted that it is on the high degree

of probability of the effect of death that the intention or knowledge (to be inferred from, among other things, the natural and probable consequences of the act) of clauses secondly, thirdly and fourthly of Section 300 are equated with intention to cause death of the first clause.

21. So far as the English Law is concerned, Section 8 of the Criminal Justice Act of 1967 applies the necessary corrective to the grossness of the rule supposed to have been laid down in 1961 AC 290. This section provides that "A Court or jury in determining whether a person has committed an offence.

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequences of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appear, proper in the circumstances".

That is a statement of the law which we would adopt. The natural and probable consequences of a man's act is only one of the factors from which his intention as to the result may be gathered. It is no doubt a very important factor and might sometimes be the only available factor from which the inference of intention is to be drawn. Still, there is no "must" about it, only "may" and the Court is not bound in law to infer that a man intended the result of his actions by reason only of its being a natural and probable consequence of those actions. The intention is to be gathered from all the circumstances appearing in the evidence.

22. Much the same thing was said by Denning L. J. in 195066 TLR

735 with reference to the animus deserendi, in other words, the intent to bring the married life to an end, necessary to constitute desertion for the purpose of divorce.

"When people say that a man must be taken to intend the natural consequences of his acts, they fall into error; there is no 'must' about it; it is only 'may'. The presumption of intention is not a proposition of law but a proposition of ordinary good sense. It means this: that as a man is usually able to foresee what are the natural consequences of his acts, so it is, as a rule, reasonable to infer that he did foresee and intend them. But, while that is an inference which may be drawn, it is not one which must be drawn. If on all the facts of the case it is not the correct inference then it should not be drawn".

In their book on Criminal Law, Geanville Williams, one of the foremost critics of 1961 AC 290 and Smith and Mogan themselves no admirers of that decision, regard this as a clear exposition of the true place and value of the presumption in the proof of intention. Denning L. J. then thought (as he later, in the light of 1955 AC 402, confessed, mistakenly) that intent in the context of desertion meant that the party must have the desire or purpose to bring the married life to an end. But, as we have seen, neither the desire nor the purpose to bring about the consequences is necessary to constitute intention within the meaning of Section 300 of the Indian Penal Code. With regard to what we might call this lesser intention the presumption to be drawn from the natural and probable consequences of the act is stronger.

23. In English law, in order to constitute the offence of attempt to murder, the specific intent to cause death is necessary though for the completed offence of murder the lesser mens rea of intent to cause

grievous bodily harm suffices. What might be called the implied or constructive intent to cause death of clauses secondly, thirdly and fourthly of Section 300 of our Code is not enough. But, in Indian law, Section 307 of the Code makes it quite clear that the mental element described in any of the four clauses of Section 300 is sufficient and that it is not necessary that the act should have been done with the specific intention of causing death. This difference should not be overlooked. We should not have thought it necessary to voice this caution but that we find that in some Indian decisions and in some commentaries on the Code, English cases are cited to make out that the specific intent to kill is necessary without noticing that Section 307 of the Indian Penal Code lays down the law differently. The above is the correct statement of law.

29. I may also quote with profit the decision of the Supreme Court in the case of State of Maharashtra vs. Balram Bama Patil, AIR 1983 SC 305. The observations made in paragraphs 9 and 10 are as under:

9. Shri Rana appearing for the State strenuously contended that the High Court has committed a grave error in holding that the offence under Section 307, I. P. C. was not made out merely because the injuries inflicted on the witnesses were in the nature of a simple hurt and in these circumstances it is not possible to hold any of the accused persons guilty in respect of that offence. We find considerable force in this contention. A bare perusal of Section 307, I. P. C. would show that the reasons given by the High Court for acquitting the accused of the offence under Section 307 were not tenable. Section 307, I. P. C. reads :

"Whoever does any act with such intention or knowledge and under

such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. The High Court, in our opinion, was not correct in acquitting the accused of the charge under Section 307, I. P. C. merely because the injuries inflicted on the victims were in the nature of a simple hurt. Therefore, that part of the judgment of the High Court acquitting the

accused Nos. 1, 2 and 11 of the offence under Section 307, I. P. C. cannot be sustained and must be set aside. They have, however, already served out sentence of imprisonment for two years for the offence under Sections 147 and 148, I. P. C. in pursuance of the order of the High Court. When the State filed an appeal against them they were arrested again and had to remain in jail for three months before they could be released on bail. Thus, they have already served a sentence of two years, three months. In the circumstances the ends of justice should be met if the sentence is limited to the period already undergone.

- 35 Looking to the above observation of the Hon'ble High Court herein this case the injured was examined by two medical officer (1) Dr. Dilipkumar Sivajibhai at exhibit-39, he has deposed that the burnt injuries to the Laxmansinh was of 45 to 50% and according to him it is grave and serious injury and there is a possibility of death due to such burn injuries.
- 36 But, Dr. has not specifically opined and deposed before this Court that this injury was sufficient to cause the death in ordinary course of nature, according to this witness after incident of 6 to 7 O clock he examined the injured at 7:55 he was conscious, temperature was normal, pulse 90 pm, BP 100 to 70, respiratory and heart was common. So, according to the opinion of Dr. the injury was endangers to the life but there is no specific opinion that the injury was sufficient to cause the death in ordinary course of nature.
- 37 While Dr. Bhavin Bhupendrabhai Patel PW-8 exhibit-26 who has given treatment to victim from 22.02.2020 to 13.04.2020 according to him the there was 50% burn injury, the injury can be said to a third

degree and it can be grave and serious and due to this injury there is possibility to death, but according to this witness the injured brought to hospital at 22:52, he was conscious. The Dr. has not specifically opined the injury on the body of the injured was sufficient to cause the death in ordinary course of nature.

- 38 In exhibit-30 medico legal report as per Dr. Vithalani has mentioned the injuries are dangerous, but herein this case no specific evidence regarding medical opinion that the injury were sufficient to cause the death in ordinary course of nature.
- 39 It is found from the medical paper that the injury were en dangerous to life as mentioned in the clause 8 of Section 320 of IPC so , it can be said that Prabhatsinh sustained the grievous hurt. It is also revealed from the medial papers accused remain indoor patient for two months, so, there was suffering from more than 20 days then also the injuries can be grievous.
- 40 Now taking into mind the above medical evidence and the observation of Hon'ble Supreme court and High Court for the actual occurrence evidence of injured witness, first informant, eye witness are required to considered.

Evidence of Injured witnesses

- 41 Herein this case prosecution has examined Injured witness Prabhatsingatsing laxmansing Bariya at exhibit -25 PW-7, this witness, deposed before this Court that he is H.C. in headquarter Vyara, on 22.02.2020 he was working in office of Dy. S.P. Vyara Division at that time Mr.R.L.Mavani was Dy. S.P. who has instructed to them to find out the case of prohibition and gambling from division area, so, he has informed the complainant Jaganbhai and Prafulbhai Pratapbhai and

also instructed to come at Birsamunda circle, panwadi, he has also called panchwitness Viralbhai Ishwarbhai resident of Bedchit, and he agreed to come to remain as a panch so, he also called at Birsamunda circle, the injured went at Birsamunda Circle on motorcycle, at that time, other staff members of his office and panch Viralbhai Ishwarbhai also come there, Viralbhai brought his Wagonar car, and they loaded to car by informing the other office staff present there, that he has received the secret information that in Nishal Faliya of village Ghodchit, one Muljibhai Chemtiyabhai Gamit selling english liquor at his home, so, he has informed to another panch Mahendrabhai to come at Nishal Faliya, then in Weganor car, they started to go for raid, where on the way at village Gangodi, Mahendra Bhudiya come with his Maruti Alto, the complainant has perused him to remain as a panch and as he agreed, they went in both the car at village Ghodchit at 7 "o" clock where panch Mahendrabhai has park his car on Mailipatiya, southern side of house of the accused, then the Wagonar car parked at the front of house of Muljibhai, then all went into the house, so where Muljibhai was present and asking his name, they have given introduction as police men and panchas, at that time panch Mahendra entered into shop. While H.C. Praful Pratapbhai and panch Viralbhai entered into the southern door of the house, at that time, search in shop, they found one english liquor bottle from the drawer of table in shop, at that time Muljibhai Chemtiyabhai Gamit told why are you come for raid in his house? And there was altercation, at that time his wife was also present, she has also told why you came to her house for raid, and she was trying to put off her cloths, so, they have perused to not to do such thing, but then Muljibhai excited and brought the carba full of petrol and trying to poured the petrol on himself, so, they have perused

to not to do, but he was remain excited and told, today they would fire the police by pouring the petrol. And then he has poured the petrol on the injured, so, he come out from shop, at that time Muljibhai Chemtiya has ablazed the match and throw the match stick on the witness so his cloths were attached a fire, at that time his accompanied people come there and remove his shirt and Baniyan.

- 42 The petrol was also fall down in shop of Muljibhai, there was also fire, so Muljibhai went in his house, at that time the person with the injured had poured water on fire, at that time Muljibhai rush to his car with carba of petrol and poured the petrol on Weganor car and bring one live fire wood from house and fired the Wagonar car by its flame.
- 43 The person who was with raid have tried to stop the fire, but it could not, and car was burnt totally. Thenafter, as there was burn injury to the injured on neck, both hands, both ears, backside, and chest. So, in Alto car of Mahendrasinh injured was brought to Songadh at Dhiraj hospital for treatment but doctor was not there, so, he went to Government hospital, Songadh, where his preliminary treatment was carried out, then in ambulance of Songadh Nagarpalika, he was shifted to Vyara General Hospital, then as per reference by doctor for higher station, he shifted to Mahavir Hospital, Surat, where he entered as indoor patient.
- 44 The other H.C. of raid has informed to M.R. Mavani Dy.S.P. so, he has instructed to PSI , M.Z. Goiya of Songadh, ASI Somnath Sambhaji, H.C. Constable Abhijitsinh, District LCB and SOG, to go to place of occurrence.
- 45 Then Muljibhai Chemtiyabhai has also got burn injury. He brought Vyara General Hospital in Ambulance 108, and then he was referred to

Smimer hospital Surat, for the occurrence H.C. Jaganbhai has filed the complaint, during his treatment at Mahavir hospital, Executive Magistrate has recorded his statement, investigating officer has also recorded his statement on tendering the muddamal article wood and carbo, he identified that it is the same, which was in hand of accused at the time of occurrence.

- 46 During the course of cross-examination of this witness, deposed that, he is working as armed H.C., during his duty, he has conducted many raid of prohibition, on the day of occurrence in his office, there were three male and one female employees working, he has made call to Prafulbhai and Jaganbhai for raid, he has not mentioned at which time, when they were called, he is informed the Viralbhai when he was at his home, he came to Panwadi with his vehicle at 6 'O' clock, he was called to come to his office, they started to go for raid at 6:05, he knowing panchwitness from last five years, he also remain his panch once in raid case.
- 47 From Vyara, he reached to Ghamodi, which is situated in interior part of Unai road, he also knowing panchwitness Mahendrabhai from longtime, he admitted that he has not mentioned the registration number of car in his statement. The house of accused is on road of village Ghodchit, when he reached accused, his wife and his children were there, the house was situated at the rear side of shop, the house was kacha(raw), there was door between the house and shop, he denied that, when he entered in shop at the time of the accused and his wife was in house, when he entered into shop, first he has talk with the accused and sent the Prafulbhai and Viralbhai in house to search the prohibition Muddamal, he also denied at the time of occurrence, in house of accused, the stove was continuing, they went in civil dress,

they take one minute time at the time of introduction and persuasion of raid, he denied that on introduction, accused went into the house, he also denied that as there was fighting with accused, so, accused fall on fire stove, it is also not admitted that to stop the fire on apparel of accused, he got injury, he has also denied that, he was in position to prevent the accused from pouring of petrol.

48 He denied that he has made raid without authority, he admitted that on 25.02.2020, his treatment was going at Mahavir hospital, Surat.

49 It is the argument of Id. Advocate of accused in written argument at exhibit-58 that there is inconsistency in evidence of this witness and first informant, first informant deposed that this witness was set a fire by live fire wood while this witness is deposing that he set a fire by match stick, so, this inconsistency create doubt.

50 This witness is injured witness and generally evidence of injured witness has greater penitentiary value, the statement cannot be discarded lightly unless compelling reasons exists, the statement are not be discarded (as per the judgment dated 04.01.2023 by the Supreme Court) (corum : Justice Pardiwala and Sudhansu Dhuliya) Hon'ble Supreme Court has held in this judgment that, the under noted legal principle are required to be kept in mind when the evidence of injured eye witness is to be appreciated.

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allowed the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater penitentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness can not be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) IF there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) the broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

51 Considering the above principle / observation of Hon'ble Supreme court herein this case the witness Prabhatsinh has specifically deposed that the accused had poured the petrol on himself and as they were trying to pursue him not to do the same, the accused not agreed and was telling that today by pouring of petrol, they will fire to police, and then he has poured petrol on him so, he come out from shop at that time Muljibhai has throw the match stick and ablaze fire on him so, the apparel of witness were catch the fire.

52 The version of the complainant is corroborate by first informant PW-6 Jaganbhai, he corroborate entire evidence regarding injury as deposed by the injured, there is only discrepancy in his evidence that the injured was set at fire by live fire wood taken by the accused from live stove of his house.

53 As per the above principle observed by the Hon'ble Supreme Court,

the broad substratum of the prosecution version must be taken and discrepancy which normally creep due to loss of memory with passage of time should be discarded.

- 54 So, the argument of the Id. Advocate of the applicant cannot be accepted as there was minor discrepancies which are not touching the root of the case the factum of fire by the accused remain as it is only discrepancies regarding the fire wood or match box is not to fatal to the prosecution version but the brought substratum / prosecution version is required to taken into consideration.
- 55 The evidence of first informant regarding burn injury caused by the accused corroborated by doctor Bhavin Bhupendra patel PW-28 exhibit-26 the deceased was treated in Mahvir hospital Surat on 22.02.2020 and having burn injuries as discussed above, there is also corroboration from PW-9 Dr. Dilipbhai Shivajibhai Gamit medical officer referral hospital Songadh who has also deposed that on 22.02.2020 in history injured informed that during police investigation the petrol poured on him and set a fire by accused Muljibhai.
- 56 According to this doctor there was burn injuries to the witness on both the hand, chest, stomach, face, neck, back, hair was found.
- 57 The version of injured witnesses also corroborated by evidence by first informant Jaganbhai Virsingbhai Gamit and Viralbhai Ishawarbhai Gamit who happened to the eye witnesses and there presence at the seen of occurrence was quite natural as they were member of raid party, so, herein this case prosecution has proved by the evidence of injured witness that the accused has cause the burn injury to this injured witness when he was performing his duty during police raid at the house/ shop of accused, it is also proved from this evidence, that

the accused has committed the mischief and set a fire to Wagoner car no. GJ-05-CG-9219. The evidence of this injured witness is corroborated by the evidence of other eye witnesses, FSL evidence, medical evidence, and by the evidence of investigation of the case.

58 Nothing is found from cross-examination by Id. advocate of accused which suggest that the incident is not happened and not as narrated by the prosecution.

59 Now, Here in this case the first informant Jaganbhai Virsingbhai Gamit is examined at exhibit-22 has deposed that he is armed H.C. at police head quarter Tapi, in 2020 he was working in office of Dy. S.P. Vyara. On 22.02.2020, he was in petroling and as per instruction of Dy.S.P.Vyara to control the activity of prohibition and gambling in Vyara division, at that time one Prabhatbhai Laxmanbhai Bariya and Prafulbhai Pratapsing armed H.C. was with him, and he has selected and taken with him panch witness Viral Ishwarbhai Gamit and Mahendra Vijaybhai Chaudhary. He was traveling in private vehicle Wagonar car No. GJ-26-G-9219 and as they were in petroling at that time H.C. Prabhatsing Laxmansing got secret information that at village Ghodchit of Taluka Songadh, one Muljibhai Chemtiabha Gamit near Mayalipatiya selling english liquor, on receipt of such information, they all went to house of Muljibhai, where he was present, and in presence of panch he has asked name of accused, and carried out a raid in his house, at that time Muljibha Chemtiyabhai excited and shouting, why you are doing raid in his house then accused rushed front of his house and brought one carba full of having liquid and poured liquid on Prabhatsinh and started abusing him. As it was evening time and stove for food was live in house from it, he brought one live fire wood and set a fire to Prabhatsinh Laxmansinh and also

he has poured petrol on his car, Prabhatsinh got serious burnt injuries and car was also fired, and the accused has also got burn injuries on his hand, then Prabhatsinh shifted to Songadh Government Hospital in private vehicle, from there for further treatment he was shifted to hospital at Vyara then as per medical advice shifted to Surat in Ambulance 108, for treatment, he has lodged the complaint before Songadh Police, he identified the signature in complaint exhibit-23, there was smell of petrol from the liquid poured on Prabhatsinh, then during the course of investigating, the I.O has drawn the panchnama of scene of offence and from where the carba of petrol and the fire flame applied by the wood was collected, witnesses identified the muddamal carbo and wood.

- 60 During the cross-examination this witness has admitted that, he was working in Tapi District from 2007, at the time of receipt of secret information at 7 'O' clock evening, they were at Songadh Bandharpada, the secret information received by Prabhatsinh, the police staff and panch started from Vyara in Wagoner Car private vehicle, same was brought from Vyara, they went in private Wagonar car, the car was belonging to panchwitness Viralbhai Ishwarbhai Gamit, other panch was Mahendrabai. Viralbhai called at 6 'O' clock. From Vyara, in Wagonar car himself Prabhatsing, Viralbhai, Mahendrabhai and Prafulbhai went together. It is not happened that prior to receive the secret information they went for raid for any other place. There is house of other persons are situated in area of accused resident, accused has kept the shop in front side of his dwelling and selling vegetables, peppermint, biscuits, wafer, etc.
- 61 He admitted that prior to enter into the house of accused they have not prepared panchnama, he is not agreed that Prabhatsinh has got injuries

as he fell down on the live stove, and accused also got injury as he wanted to save the Prabhatsinh.

- 62 This witness is eye witness, and he was member of raid party on the day of incident so, his presence cannot be doubted, mere he stated that the accused has caused the injury to the Prabhatbhai live fire wood but Prabhatbhai stating that same by throwing by match stick but as discussed above the broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.
- 63 Another argument of the ld. Advocate of the accused that they have not prepared the panchnama prior to raid, not produced the record to authorized the complainant to conduct the raid.
- 64 But herein this case looking to the factum of incident it cannot be dined regarding incident only by non production of such document.
- 65 In above judgment of Hon'ble Supreme Court held that two consideration will be relevant while assessing the value of the evidence of the eye witnesses, whether, in the circumstances of the case it is possible to believe their presence at the seen of occurrence, or in such situation as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in the evidence.
- 66 So herein this case the evidantiory value of this witness this court has material to believe that presence of this witness at seen of occurrence and in this situation, this court has reason to believe that in such situation as make possible to witness to depose the fact.
- 67 This witness also got corroboration from evidence of injured witness as

well as other eye witnesses hence, evidence of this witnesses is proved this story of prosecution.

68 Herein this case, the prosecution has examined Viralbhai Ishwarbhai Gamit at PW-12 (exhibit-39), according to him, on 22.02.2020 Prabhat has made call to him by informing to go for prohibition raid. So, he came at Birsamunda circle at 6 'O' clock evening by Weganor car GJ-05-CG-9219 of belonging to his friend Sakib Mahmud Haveliwala. At there, other police man Jaganbhai Virsingbhai, Prafulbhai Pratapbhai were there. Then Prabhatsinh has parked his motorcycle and loaded into car, at that time Prabhatsinh has got secrete information that, one Muljibhai Chemtiyabhai residing at Ghodchit is selling liquor so, they started from Birsamunda Circle through Saraiya and at village Ghomadi, where Mahendrabhai was with his another car, he also join with them, both the panch witnesses consented to remain as a panch, so, they reached village Ghodchit and parked his car opposite the house of Muljibhai, where Muljibhai and his wife were present, himself and Prafulbhai went at the rear side of the house, while Prabhatsinh and Mahendra went in shop for search, at that time, Prabhatsinh found one liquor bottle from the drawer of table, then Prabhatsinh has introduced himself as police, at that time the accused Muljibhai told to them why you are making raid at his place, then Muljibhai was excited and trying to poured petrol on himself so, Prabhatsinh told not to do, at that time Muljibhai was excited and poured the petrol on Prabhatsinh and brought the match box from house and ablaze and through live match stick to the Prabhatsinh so, he got fired and shouted, so, his shirt and baniyan were burnt, and he got burn injuries on his body, then Muljibhai has poured the petrol on Wagonar car and brought the live fire wood from the house, and set a

fire on car, at that time, there was the petrol on body of Muljibhai so, he has also got the burn injuries, then in Alto car of Mahendrabhai, they have shifted to Prabhatsinh at Dhiraj hospital, Songadh but doctor was absent, so, shifted to Government hospital, Songadh and as Prabhatsinh seriously injured, so, as per reference of doctor, in 108 ambulance shifted to Vyara hospital where primary treatment was given to him, then he shifted to Mahavir hospital, this witness is eye witness specifically stated that, he has seen the occurrence and police has recorded statement and identified the accused in the court room.

- 69 During the course of cross-examination, he admitted that he is residing at Bedchit in Pradhan Faliya, at the time of received a call at 6 'O' clock from Prabhatsinh, he was at his home, they started from his home by Wagonar car, Wagonar car was remain with him as he has purchased, there was not executed the agreement for selling the car, in RTO same was not entered in his name, he has produced the papers of car in investigation. At Vyara, Birsamunda circle, firstly he met to Jaganbhai, Prafubhai, they come there by walking from his office, then they started at 6:30 to Ghamodi, where they not stayed, Prabhatsinh was sit with Mahendrabhai, both the car parked near the house of accused, from alto car Mahendrabhai and Prabhatsinh come out and went to house of accused, Alto was parked opposite the house of accused, there is shop in front side of house, where accused is selling peppermint and packet, he has not seen the liquor bottle in shop, wife of accused was preparing food in house, he denied that there was no partition in house of the accused, he denied that he has not seen the occurrence, he has not hear the altercation of accused amongst Prabhatsinh and Muljibhai, he also not knowing that where match box were lying, he denied that the wife of accused was preparing the food

at that time the carbo petrol was fire, and Prabhatsinh got burn injury, he denied, he was not present at that time, and he has not seen the occurrence.

- 70 This witness is eye witness, and he was member of the raid party on the day of incident, his presence cannot be doubted, mere some discrepancy in his evidence which are not touching to the root of the case even as discussed above the broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded, and particularly it is the argument of Id. Advocate of accused at exhibit-58 that during the course of cross examination this witness has agreed that he has not seen the bottle of liquor from shop of accused, so there is a contradiction, in evdience of this witness, but as discussed, the same contradiction is not touching to the root of the case mere not mentioning of found the liquor bottle the other evidence of this witness cannot be discarded.
- 71 In above judgment of Hon'ble Supreme Court held that two consideration will be relevant while assessing the value of the evidence of the eye witnesses, whether, in the circumstances of the case it is possible to believe their presence at the seen of occurrence, or in such situation as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in the evidence.
- 72 So herein this case the evidentiary value of this witnesses, this court has material to believe that presence of seen of occurrence, and in this situation as this court believe that in such situation as make possible to witness to depose the fact.

- 73 This witness also get corroboration from injured witness as well as other eye witnesses and the evidence of medical witness and FSL Report hence, evidence of this witnesses prosecution has proved the story of prosecution.
- 74 Prosecution has examined Maheshbhai Simabhai Gamit PW-1, exhibit-8, according to this witness on 22.02.2020 he went for labour work at the field of his brother in law at Jaisingpura where he stayed two days, and on returning at Ghodhchit he come to know from the People of Faliya that accused Muljibhai has got burn injury and he brought to general hospital Vyara by 108 and for further treatment he was shifted to Smimer hospital Surat, muljibhai running the shop in his house, and also selling the loose petrol, he is not knowing anything regarding incident, this witness not the supported the case of the prosecution he declared hostile, inspite of cross-examination by prosecution he has not support the case of the prosecution.
- 75 It is needless to say that the evidence of hostile witness can not discard in toto but how far the evidence of such witness is support the case of the prosecution, such evidence can be accepted by the court, herein this case it is proved by this witness that the accused has shop in his house and he was selling the loose petrol, the having petrol at the spot is corroborate by this witness.
- 76 It is one of the argument of Id. Advocate of the accused that the only member of raid party has supported the case of the prosecution they can be said related interested witness, this independent witnesses not supported the case of the prosecution and inspite of presence of other people of Faliya is not examined so, evidence of above witness cannot be believed.

77 But Hon'ble Supreme Court has held in following cases (2011) 7 SCC 295 this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon SARWAN SINGH V. STATE OF PUNJAB, (1976) 4 SCC 369, BALRAJE VS. STATE OF MAHARASHTRA,, (2010) 6 SCC 673, PRAHLAD PATEL V. STATE OF GUJARAT, (2005) 9 SCC 616, S.SUDERSHAN REDDY VS. STATE OF ANDHRA PRADESH, (2006) 10 SCC 163, STATE OF UTTAR PRADESH VS. NARESH, (2011) 4 SCC 324, JARNAIL SINGH VS. STATE OF PUNJAB, (2009) 9 SCC 719 AND VISHNU VS. STATE OF RAJASTHAN, (2009) 10 SCC 477 it was held "it is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out, if their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care"

The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and reiterated in Sarwan Singh in the following words;

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized

with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration"

So looking to the above principle the evidence of interested related witnesses cannot be wholly disbelieved only on the ground of relativity but his evidence is required to be accepted with some care and caution.

- 78 It is not material to how much witness are examined but quality of evidence are required to be considered particularly section 134 of Indian evidence Act speaks No particular number of witnesses shall in any case be required for the proof of any fact.
- 79 If prosecution is proved by the story of this case then there was no need to examine more witnesses to prove the fact of the case.

Evidence of panchwitness

- 80 One Rajubhai Dhanjibhai Chaudhary PW-2 exhibit-14 and Mukeshbhai Dineshbhai Gamit PW-3, exhibit-16 have deposed that on 23.02.2020 Songadh police has called themselves, they have made signature in readymade panchnama, they denied that in their presence the FSL officer has prepared panchnama of scene of offence and recover the muddamal in their presence they identified their signature in panchnama exhibit-15, this panchwitnesses declared hostile, and in spite of cross-examination by the P.P. he has not supported the case of the prosecution, and admit in cross-examination that police has taken his signature in four papers.
- 81 Then prosecution has examined PW-4 Rajubhai Gambhirbha Patel and at exhibit-17 and Dilipbhai Pilubhai Konkani at exhibit-21 who have

deposed that on 23.02.2020 and on 01.03.2020 and on 23.03.2020 police has called them at police station and they have made their signature in all readymade panchnama, in their presence no panchnama was prepared and they are not knowing what is written in panchnama, these witnesses are declared hostile and not supported the panchama of recovery of apparels of witness Viralbhai Ishwarbhai Gamit, and collection of CCTV footage showing that accused has purchased the petrol, and recovery of apparel of accused respective of exhibit-18, exhibit-19, exhibit-20 inspite of cross-examination by the prosecution this witnesses not supported the case of prosecution.

- 82 Now a days the turning hostile of panchwitness is not remained the new finomina if the evidence of the investigating officer is reliable then factum of pancnama can be proved by his evidence.

Evidence of investigation

- 83 Herein this case at exhibit-11 Naginbhai Dallabhai Chaudhary PW-11 is examined by the prosecution according to this witness on 22.02.2020 he was in charge PSO, as the present complainant has lodged his complaint before incharge PI I.G.Vasava, he identified the signature of complainant and PI in complaint in exhibit-23, as this complaint is forwarded to him for registration of offence so he has registered the offence has Ist C.R. NO. 11824004200089/2020 for the offence punishable under Section 307, and also noted in station diary then he handed over investigation to PI, I.G.Vasava, for that he has prepared the suchi patra exhibit-36 he identified his signature on it.
- 84 During the course examination of accused he admit that PI, I.G.Vasava has sent to him a written complaint, there was not declaration of complaint before him, he has nothing done except he has mentioned in

his chief examination, he admitted that it is not mentioned where the complaint was recorded.

85 By this witness prosecution has proved the registration of offence and handed over to investigation to Mr. I.G.Vasava.

86 While the prosecution has examined Ishwarbhai Gopalbha Vasava PW-13, according to him on 22.02.2020 he was posted at CPI Ukai, and the additional charge of Songadh police station was with him, on that day the first informant armed HC Jaganbhai Virsing bhai B. No. 121 working at Dy. S.P.office, came to police station and declared his complaint, he has recorded the same and got signature of first informant, and put signature of himself then he has sent the complaint to PSO for registration of offence, in turn PSO Naginbhai Dallabhai has registered the offence and handed over the investigation to him, during the course of investigation he has recorded the statement of witnesses acquainted with the fact, carried out the panchnama of scene of offence and also requested to FSL for spot inspection and presence of FSL officer called to panch witness and informed them regarding the incident and prepare the panchanam of scene of offence. And during the course of panchana recover the ash from burnt part of table by cotton thread, and also recover the half burnt shirt of mahroon color of the complainant, and also they have recovered the ash from the stove then as there was four wheel car parked there in burn condition, so, the ash from burn part of the car also recovered through threat cotton and also recovered the burn battery from front side of the car, then as the car was fire by live fire wood tha piece of two feet burn from one side was recovered and one carba of having two liter petrol recovered from bathroom situated at western side, they have recovered one liter petrol in one bottle for examination purpose, the carba was 35 liter, one liter

petrol they have recovered by the panchnama of scene of offence exhibit-15 is prepared in presence of panch and under dictation of the panchwitnesses and the panch witness as well as himself made signature on it, the FSL officer has sent his report of spot inspection which is produced at exhibit-41, then witness Viralbhai Ishwarbhai has produced the apparel of injured prabhathsinh which was recovered in presence of two panchwitnes, the panchanama exhibit-18 was prepared in presence of panch under the dictation of panch, and panchwitnesses have made the signature in his presence he has also made signature on it. As the injured was under treatment at Surat hospital then they have tried to record the DD by executive magistrate, they have recorded the DD of injured witness as well as accused.

- 87 He has also recorded the statement of injured and accused, he has also recorded the statement of person who are residing nearby the place of occurrence.
- 88 Then as regular PSI C.K.Chaudhary has resumed the duty. so further investigation is handed over to him as accused had also got burnt injury and his treatment was going so he is not arrested, he identified the accused in court room and also he identified the apparel of injured, wood, carbo and half burnt shirt of accused, according to him all the muddamal was recovered by him at the time of preparing the panchnama of scene of offence.
- 89 During the course of cross-examination he has admitted that on day of incident he was in Songadh police station village Ghodchit is fall in jurisdiction of Songadh police station, Dy. S.P., has informed them regarding the incident he was not informed by any of the police man from place of occurrence. On receipt of information he reached at place

of occurrence at 7:30 at that time injured and the other policeman of raid party were not present there, accused was in burnt condition at there, so, by calling 108 he was shifted to Songadh hospital for treatment, first informant came to police station to lodged the complaint, he stayed at place of occurrence up to 9 pm, on tendering of complaint exhibit-23 two witness, he agreed that in it not mentioned that what point of time, the information was declared, neither himself nor PSO has recorded in the FIR the same thing, he denied that complaint was lodged after two days, he agreed that the FIR is required to be sent to nearest magistrate immediately, on tendering to FIR it is mentioned that the FIR was sent to court on 24.02.2020 at 11:30, this FIR is exhibit-42, he denied that on 22.02.2020 the C.R. No. was keep vacant and the complaint was written as per the instruction from the higher police officer, and registered FIR only on 24.02.2020 he denied that on 24.02.2020 the FIR was noted in FIR register, and that is why the same was sent late to magistrate, he denied that complainant has not declared the FIR but it was written as per instruction of higher police officer, he agreed that as per the complaint, accused burnt first in time and injured was tried to save him, he has also agreed to that at the time of handed over the investigation, suchi patra was not given and he also agreed there is need of made note in station diary on declaration of cognizable offence, he denied that suchi patra was prepared on 24.02.2020 he denied that the investigation not handed over to him on 22.02.2020 and 23.02.2020, he denied that the panchana of scene of offence prepared on 24.02.2020 and recorded the statement of witness only on 24.02.2020, he denied that as per complaint he has recorded the statement of witnesses and prepared the panchnama. He agreed that as accused also seriously burnt so arrested only on 23.03.2020, the

accused was also under treatment as indoor patient up to 23.03.2020.

- 90 He admitted that generally the police working under Dy.S.P. office have not remained field duty, if any information received Dy. S.P.office then it is required to inform to police station, he agreed that injured is employee of armed force, he also agreed that he has to remain in office duty and police bandobas duty, he also agreed that it is the duty of unarmed force to prevent the offence he also agreed that generally prohibition gambling raid are conducted by unarmed force, he also agreed that such activity is not in jurisdiction of armed force, he has also agreed that prior to recording the statement of injured witness, he has not get any certification from doctor whether injured was in fit condition to give the statement and on tendering the statement of Prabhatsinh, as per witness there is not any endorsement of doctor who also admitted that first informant Janganbhai Gamit is also working as armed HC in police headquarter his duty was also in Dy.S.P.office, he also agreed that in filed duty unarmed police are there so they have not to perform such duty, from at the time of incident with complainant with unarmed HC Prafulbhai pratapsinh was there his duty was also there in Dy.S.P. Office, he admitted that if Dy.S.P. has got information regarding the activity of prohibition, in jurisdiction of Songadh police station then it is required to inform songadh police station and raid is required to be conducted with the officer of employee of Songadh police station. He admitted that at the time of raid, no employee of songadh police station was with complainant and injured, he also agreed that the complainant not informed to Songadh police station, that they are going for raid to village Ghodhcit, he agreed that he has not recorded the statement of Dy. S.P, he agreed that it is not reveal in his investigation that Dy.S.P. has issued any written order to

complainant Prafulbhai and injured to conduct the raid at village Ghodchit.

- 91 He also admitted that the prohibition raid was not as per law, he also agreed that as per the complaint no liquor was found from the possession of the accused, so, separate offence of prohibition was not registered, he agreed against accused, there was registered the police complaint regarding prohibition, he does not know that in any case of prohibition the accused was convicted or not.
- 92 He admitted that as per the complaint accused having the shop of selling the peppermint etc.
- 93 While at exhibit-43 Chandubhai Khalpabha Chaudhary PW-43 P.I. , Songadh Police station, has deposed that on 22.02.2020 he was at Ahmedabad, PI Vasava was in-charge he came back on 26.02.2020, he received the investigation of this case, as the accused was under treatment so on 23.03.2020 he had arrested the accused by way of, arrest panchnama exhibit-20 and then he was engaging investigation of other cases so PSI S.C.Parekh was handed over with the investigation so he has on 01.03.2020 have collected the CCTV footage from Vijay patrol pump, so he has collected the same by way of panchnama.
- 94 Then in course of investigation he has sent the muddmal to FSL which was examined by the FSL then by yadi exhibit-44, they have collected the muddamal alongwith the analysis report exhibit-45 and as there was sufficient evidence against the accused, he has filed the charge sheet against the accused, he identified the accused as well as muddamal.
- 95 During the course of cross-examination, he has admitted that on 23.03.2020 accused come at police station with his wife and other person, he admitted that this incidence was against the employee of

police department, he denied that as per the instruction of Dy .S.P.. the false complaint was recorded and false charge sheet was filed, he agreed that during the course of investigation it is not reveal that from the possession of the accused the liquor was found and same was recover.

- 96 Herein this case, one of the argument according to cross-examination of the I.O. there is an inconsistency regarding date of the complaint and there is a the FIR is also sent to magistrate not on the same day but it is held by the Hon'ble Supreme Court in cases of Muniappan and Others vs State of Tamil Nadu (2010) 9 SCC 567: (2010) 3 SCC (Cri) 1402 Chandrakant Luxman v State of Maharashtra (1974) 3 SCC 626: 1974 SCC (Cri) 116: State of Karnataka v. K. Yarappa Reddy (1999) 8 SCC 715: 2000 SCC (Cri) 61 Allarakha K. Mansuri v. State of Gujarat (2002) 3 SCC 57: 2002 SCC (Cri) 519 held that, Defect in the investigation by itself cannot be a ground for acquittal. Investigation is not the solitary area for judicial scrutiny in a criminal trial. Where there has been negligence on the part of the investigating agency or omissions, etc, which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses carefully to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the objects of finding out the truth. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the Investigating Officer and whether due to such lapse any benefit should be given to the accused. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory

investigation, the fake and confidence of the people in the criminal justice administration would be eroded. Even in the case of State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan and Others (2014) 11 SCC 709: (2014) 3 SCC (Cri) 529 that the faulty investigation never can be ground for failed the prosecution case.

- 97 Herein this case if evidence adduced by the prosecution consider as a whole, herein this case the incident happened where the injured and complainant went for raid and at that time there was a altercation, injured was persuaded to the accused, at that time the accused lifted the carba having petrol and trying to pour on himself, at that time accused has poured the petrol on Prabhatsinh and on Weganor car. Hence, the occurrence happened on spur of moment, there was not pre-planned act to kill the injured and it also not found the it was the intention of the injured to cause the death of the injured, by inflict him fire flame burn injury, the circumstances was as there was a altercation and accused want to pour the petrol on himself, which indicate that from the very beginning it was not of the intention to kill the injured, so, the act of the accused in a peculiar circumstances, on all of the sudden without predetermine pouring the petrol on the body of injured does not indicate that in case of death of injured, he might responsible for the murder.
- 98 Herein this case looking to the injuries to the injured, according to doctor, the injuries to the injured was grievous in nature and endangerous to life but there is no specific evidence of doctor that it was sufficient to cause the death of any person, doctor has deposed that the injury en-dangerous to life but not opined that same was sufficient to cause the death of the injured in ordinary course of nature.
- 99 According to doctor the injured have got 60% burn injuries it can be

said second degree burn.

- 100 According to the book medical evidence by B.L.Bansal 2000 addition page no. 352.

Dry burns are usually classify in 6 degree, so far second degree are concerned, In this case dermis as well as epidermis are destroyed and is usually surrounded by redness or blisters, Scars are normally formed. The death of the injuries dependent on the nature of tissues.

- 101 As looking to the evidence of doctor Bhavin Upendra Patel at exhibit-26, in which he has not mentioned that as per the above characteristic was found, in cross-examination he agreed that if burn is 70% then there was possibility of death he also admitting that in certificate exhibit-13 there was mentioned that injured had 48 to 50% burn injuries were there.
- 102 While doctor Dilipkumar Sivaji at exhibit-31 also deposed that there was 45 to 50% injuries were there.
- 103 No doctor has given specific that at the how much percentage burn, he opined that it was second degree burns.
- 104 so as per the judgment of Hon'ble Rajasthan High Court in case of Khatun Vs. State of Rajasthan (Supra).

If an injury inflicted on the victim is not sufficient in to ordinary course of nature to cause death, a case under section 307, I.P.C., cannot be established.

- 105 Similarly, Hon'ble Gujarat High Court has also held in case of **Naginbhai Chandubhai Solanki Vs. State of Gujarat** (supra) also taken into consideration regarding the established the commission of offence under Section 307 of IPC. The nature of injury, intention and

knowledge of the accused and situation of incident is required to take into consideration.

- 106 Looking to the above case laws and particularly, the incident happened as discussed above, so, the act of the accused cannot be said it was with intention and knowledge and particularly, he was trying to pour petrol on himself and accused was pursuing him, there was an altercation, all these thing cumulatively suggest that there was act of the accused is on spur of the moment, there is not clear cut evidence of doctor that the injury was sufficient to cause the death, as the injured got immediate medical treatment and he survived it suggest that the accused cannot be held liable to for the offence under Section 307 of IPC.
- 107 Herein this case, so far issue no.1 is concerned it is not denied by the accused that the injured and complainant were public servant, but it is the dispute of the accused that the incident is not happened during the course of discharge of duty of the complainant and injured, according to him, they are armed H.C. and as per the cross-examination of investigating officer at exhibit-40, he admitted that if D.Y. S.P got any information then it was required to inform Songadh Police station with the employee of Songadh police station, raid can be proceeded, according to him generally, armed force have not required to proceed for raid, in this incident he has not collected any document to show that Dy. S.P. has ordered for raid.
- 108 But herein this case, the complainant Jaganbhai Virsingbhai has specifically mentioned in his deposition, that in year 2020 he was working under Dy.S.P.office Vyara, and he was in petrolling on 22.02.2020 for control the activity of gambling and prohibition, and

there was Prabhatsinh Laxmansinh and Prafulsinh was there in petrolling at that time Prabhatsinh got the secret information that accused is involving in selling of liquor a prohibition activity so, they have proceeded to raid while the injured Prabhatsinh Laxmansinh also deposing that there was instruction from D.y. S.P., R.L.Mavani to find out the case of prohibition and gambling so, while independent witness Viralbhai Ishawarbhai exhibit-39 deposed that on 22.02.2020 Prabhatsinh has make a call to him and inform and go to police raid.

109 Mere, in cross-examination the general question replied by the I.O. does not disprove the above evidence, particularly, all the witness are deposing that as per the instruction of Mavani Dy.S.P., they were in search of activity of gambling and prohibition and they having got the secret information, that the accused is involved in activity of selling the liquor, and they have proceeded for raid, the ld. advocate of accused have nothing to show to this court that the police officials who visited to house of accused for other than raid purpose. So, herein this case it cannot be believed that in absence of written authority the proceeding of raid is invalid, in this circumstances, herein this case the prosecution has proved beyond reasonable doubt the injured and complainant was the public servant, and they are working as an armed H.C. in office of the Dy.S.P., and he was performing their duty to search the cases of gambling and prohibition and on receipt of secret information, he has proceeded for raid so, definitely, it can be said that the injured have got injury during the discharge of his official duty, and at the time of performing his official duty the accused has prevented him to perform his duty and voluntarily caused the grievous hurt.

110 So, herein this case prosecution has proved beyond reasonable doubt, the point no.1, hence, point no.1 replied in **affirmative**.

- 111 So, far issue no.2 is concerned as discussed above, the incident happened in such peculiar circumstances and as per the judgment of Hon'ble Gujarat High Court the fact of this case is not attracted the provision of Section 307 of IPC.
- 112 But , looking to the evidence of the medical officers, the injured have got burn injuries which is of second degree 45% to 50% burn was there, and according to doctor, it was en-dangerous to life (as per clause 8 of Section 320) the injuries were grievous one and as per the discussion above evidence, such grievous hurt is voluntarily caused by the accused to the injured during the course of his discharge of official duty, and on preventing him from discharge of his duty being a public servant. And it is also proved beyond reasonable doubt that the accused had committed mischief and caused damage by fire to wagonar no. GJ-05-CG-9219, so, by that way accused had committed the offence punishable under Section 333 and Section 435 of IPC.
- 113 As per above conclusion, this Court is of the considered opinion that, the prosecution has proved beyond reasonable doubt that, accused Muljibhai Chemtiyabhai Gamit has caused voluntarily the grievous hurt to injured Prabhatsinh Laxmansinh a armed police head constable (public servant) by preventing him to discharge of his duty and caused damage to the Waganar Car No.GJ-05-CG-9219. So, this Court is accepting the guilt of accused for the offence, punishable under Section 333 and 435 of IPC, Rest of the Judgment is kept for hearing of both the sides for the sentence.

Date : 28-06-2023
Place : Tapi at Vyara

(Narendra. B. Pithva)
Principal Sessions Judge,
Tapi at Vyara
(CodeNo.GJ00332)

- 114 Heard the learned P. P. Mr. R.B.Chauhan for the State. According to him, the accused has committed the serious offence of causing fire burnt injury to injured police man by set a fire to him and caused grievous hurt so maximum punishment should be awarded as such heavy crime committed by the accused for resistance against his illegal activity and to set an example in society, he should be punished severely
- 115 While, on the other hand, the learned Advocate Mr. V.N.Chauhan on behalf of accused has urged that, accused is young man, he is bread-winner of his family and he is very poor, and he has committed the act in heat of passion and his intention was not to kill the deceased, hence, he should be sentenced lesser, because he is not hard-core criminal so mercy may be accepted by the Court and lesser punishment may be awarded.
- 116 Considering the totality of circumstances, age of accused, cause of incident and situation of committing the crime, looking to the injury to accused and victim this Court is of considered opinion to pass the conviction and punish to the accused with rigorous imprisonment for 4 years with fine of Rs.1000/- and if fine is not paid, for 3 months simple imprisonment for the offence punishable under Section 333 of IPC.

And with rigorous imprisonment for two years with the fine of Rs.1,000/- and if fine is not paid simple imprisonment for 3 months for the offence punishable under Section 435 of IPC. Hence, following order is passed.

-: O R D E R :-

- 1 Under Section-235(2) of the Criminal Procedure Code, accused Muljibhai Chemtiyabhai Gamit of Sessions Case No.14/2020 is hereby held guilty for offence punishable under Section - 333 and 435 of the Indian Penal Code as

below.

- 2 For the offence punishable under Section-333 of the Indian Penal Code accused Sessions Case No.14/2020 Muljibhai Chemtiyabhai Gamit is hereby sentenced to the suffer rigorous imprisonment for 4 (Four) years and fine of Rs.1,000/- (Rupees One Thousand Only) and in default of payment of fine, simple imprisonment for the period of 3 (three) months.
- 3 For the offence punishable under Section-435 of the Indian Penal Code accused Sessions Case No.14/2020 Muljibhai Chemtiyabhai Gamit is hereby sentenced to suffer rigorous imprisonment for 2 (two) years and fine of Rs.1,000/- (Rupees One Thousand Only) and in default of payment of fine, simple imprisonment for the period of 3 (three) months.
- 4 The period of detention undergone by the accused for this offence be given set-off to the said accused. And it is ordered to count both the sentence concurrently.
- 5 The accused is ordered to pay Rs. 25,000/- as compensation to the injured Prabhatsinh Laxmansinh under Section 357(3) of Cr.P.C..
- 6 Looking to the condition of Muddamal be destroyed after the period of appeal is over.
- 7 The office is directed to provide certified copy of this Judgment to the accused free of costs.

Pronounced in the open Court, today, on this 28th Day of June, 2023.

Date : 28-06-2023
Place : Tapi at Vyara

(Narendra. B. Pithva)
Principal Sessions Judge,
Tapi at Vyara
(CodeNo.GJ00332)