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**IN THE COURT OF 7TH ADDL. DISTRICT & SESSIONS
JUDGE, AHMEDBAD [RURAL] AT MIRZAPUR**

Sessions Case No. 158 of 2019

Exh. : 122

The State of Gujarat

... Prosecution

Versus

1. Ankitbhai Ramanbhai Patel

Aged 24 years, Occupation Nil,
Residing at Village Vamaj,
Taluka Kadi, District Mehsana.
At present residing at Mamani Roadways,
Sarkhej, Ahmedabad.

2. Munniben wd/o. Mukeshbhai Rameshbhai Devipujak

and d/o. Gurucharansingh Sardar
Aged 37 years, Occupation Nil,
Residing at Muktidham, Village Sanand,
Taluka Sanand, District Ahmedabad.

...Accused.

Appearance:-

- Learned Public Prosecutor Mr. B.C. Rathod the State
- Learned Advocate Mr. A.A. Yadav for the accused no.1
- Learned Advocate Mr. R.P. Chauhan for the accused no.2

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

1. The accused herein are facing the charges under **Section 302** r/w. **Section 114** of Indian Penal Code coupled with **Section 135** of GP Act, which is registered with **Sanand** Police Station bearing First Crime Registration **No.I-48/"2019**. On charge-sheet being laid before the Learned Magistrate, the said case is committed to Sessions Court for its trial. The said case was registered as Sessions Case No.158 of 2019 and necessary entry in this regard was made in the appropriate register.
2. In nutshell the case of the prosecution is that on 03-06-2019 one Guptrajsinh Anuridhsinh Jadeja (hereinafter referred to as '**Complainant**') stated before the police that on previous night at about 11.45 PM, he received mobile call from Vijaysinh Manharsinh Zala, who told him that he received a call from Omdevsinh Pradhyumansinh Zala who disclosed him that he is at Ahmedabad and some people living near the road at Sanand Muktidham were beating to one Dharmendrasinh Sanmukhsinh Zala (who happened to be complainant's maternal uncle and hereinafter referred to as '**Deceased**') and told him that he should inquire the matter. Upon receiving such telephonic information, the complainant went to Muktidham where he came to know that the deceased was taken into an Auto-rickshaw for his treatment at Navjivan Hospital. Thereafter, the complainant went to the Navjivan Hospital and

found his maternal uncle in unconscious condition and he also found injuries on the backside of the head as well as on his face. In view of serious condition of the deceased the doctors advised him to take the deceased to some nearest higher hospital/institute. Hence, the complainant along with his friend Jayendrasinh Chandubha Vaghela took the deceased in private ambulance from Navjeevan Hospital to Bopal Trauma Centre and got him admitted there, wherein the medical officer declared him dead. The complainant inquired about the incident and he learnt that deceased often used to visit Munniben Mukeshbhai Rameshbhai Devipujak living at Sanand Muktidham and he had some dispute with her due to some reason and due to this one Ankit Patel (paramour of Munniben) and above said Munniben (hereinafter referred to as '**Accused no. 1 & 2**' respectively) gave injuries to the deceased between 12.00 to 12.15 AM on the head and face with some hard blunt object (bothad) weapon. Even Prakashba Dharmedrasinh Zala (wife of deceased and maternal aunt of complainant) told the complainant that on previous night at about 10.30pm deceased received phone call from one Ankit Patel and he spoke to him about 10 minutes and thereafter, deceased told her that both the accused have called him at Sanand Muktidham due to which he went from the home and thereafter around 12.00 O'clock night, he called her on phone and told that at Sanand Muktidham, both the accused were beating him and call was disconnected

abruptly. In this entire scenario Jayrajsinh Zala i.e. son of deceased inquired at Muktidham where one Munnabhai Gurucharansinh Sardar resident of that locality told him that at night both the accused were fighting with Dharmendrasinh Zala and accused no. 1 hit the deceased with a wooden-log. Even Jayrajsinh Zala also told the complainant about all these things, but since the complainant was busy on account of treatment of deceased and upon his death the complainant went along with his other maternal uncle Ajitsinh Sanmukhsinh Zala for lodging the present complaint under section 154 of the Code of Criminal Procedure (hereinafter referred to as '**Code**').

Upon complaint being filed, the said crime came to be registered as First Crime Registration **No. I-48/2019** with **Sanand** police station under Sections **302** r/w. **Section 114** of Indian Penal Code (hereinafter referred to as "**IPC**") coupled with **Section 135** of GP Act, whereupon a Report under Section 157 of the Code was submitted to the higher authorities.

3. After registration of the case the investigation in the present case commenced. Place of occurrence was inspected, statements of witnesses were recorded, weapon was recovered, requisite samples were collected and sent to FSL, accused were arrested. Thereupon, finding a case against both the accused '**Final Report**' under Section 173 of the Code bearing

number 57 of 2019 dated 22/23-07-2019 was forwarded to the Court of learned Senior Civil Judge-cum-Judicial Magistrate First Class Sanand. Upon which the Learned Additional Chief Judicial Magistrate, supplied the copies of final report to both the accused as envisaged under section 207 of the Code followed by order dated 29-07-2019 by which the present case was committed for its trial and disposal, which later on came to be registered as Sessions case no. 158 of 2019.

4. Finding a *prima facie* case against the accused charges were framed against them under sections 302 r/w. Section 114 of Indian Penal Code and Section 135 GP Act, vide order dated 07-11-2020 at Exhibit: 7 to which the accused did not plead guilty and claimed to be tried vide their respective statements.
5. The prosecution in order to substantiate its case, produced following oral as well as documentary evidence.

1. Prosecution oral evidence:-

Sr. No.	Name of the Witness	Nature of Witness	Exh. No.
1.	Chetansinh Balvantsinh Zala	Panch witness	11
2.	Omdevsinh Pradyumansinh Zala	Witness	14
3.	Prakashba Dharmendrasinh Zala	Wife of deceased	16

4.	Vanrajsinh Mahipatsinh Vaghela	Panch witness	24
5.	Vijaysinh Ajitsinh Vaghela	Panch witness	35
6.	Hardiksinh Juvansinh Vaghela	Panch witness	42
7.	Satyajitsinh Dharmendrasinh Vaghela	Panch witness	45
8.	Jayendrasinh Chandubha Vaghela	Brother-in-law of the deceased	52
9.	Saurabhbhai Kanubhai	Police Constable	61
10.	Guptrajsinh Aniruddhsinh Jadeja	Complainant	62
11.	Dr. Rajendrabhai Popatlal Raval	Medical Officer	67
12.	Kanjibhai Maherabhai Taviya	Scientific Assistant	82
13.	Dr. Parvinbanu Amanulhaq Ansari	Scientific Officer	86
14.	Dr. Ketan Gafurbhai Rabari	Medical Officer	90
15.	Ramsinghbhai Maljibhai Desai	Police Official	96
16.	Pankaj Muljibhai Patel	Executive Magistrate	99
17.	Jorawarsinh Ranjeetsinh Zala	Investigating Officer.	105

2. Documentary evidence:-

Sr. no.	Description of Documents	Exh. No.
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1.	Inquest Panchnama	12
2.	Panchnama of recovery of cloth of accused no.1	25
3.	Panch Slip of article no.7	26
4.	Panch Slip of article no.8	27
5.	Panchnama of place of incident	36
6.	Panch Slip of article no. A-1	37
7.	Panch Slip of article no. A-2	38
8.	Panchnama of recovery of weapon (Dhoko)	43
9.	Panch Slip of article no.1	44
10.	Panchnama of recovery of cloth of the deceased	46
11.	Panch Slip of article no.3	47
12.	Panch Slip of article no.4	48
13.	Panch Slip of article no.5	49
14.	Panch Slip of article no.6	50
15.	Complaint	63
16.	Injury Certificate of Bopal ICU & Trauma Centre	68
17.	Prescription of medicines issued by Navjivan Doctor House	70
18.	Admission Record	71
19.	Consent sheet of Bopal Trauma Centre	72
20.	Initial Assessment Form	73

21.	Nursing Assessment Form	74
22.	Consulting Note	75
23.	Treatment Consulting Notice	76
24.	Treatment Sheet	77
25.	Pathology Report	78
26.	ECG Report	79
27.	Death Certificate	80
28.	Spot Inspection Report	83
29.	Yadi for doing spot Inspection Report	84
30.	Serological Department Report	87
31.	Biological Report	88
32.	FSL forwarding letter	89
33.	Postmortem Report	91
34.	Sheet for preparing the Report	92
35.	Death Certificate	93
36.	Index-Sheet	97
37.	Map regarding Place of Incident	100

6. After conclusion of prosecution evidence, the statement of accused persons under Section 313 of Code of Criminal Procedure were recorded wherein they claimed innocence on the ground of false

implication in this case. They both have shown complete ignorance from all the facts and evidence appearing in this case and have denied each and every incriminating evidence as false, forged and concocted. None of the accused preferred to adduce any evidence in defence or to give on-oath evidence in support of their case.

7. The matter was thereafter posted for arguments under Section 234 of Code of Criminal Procedure. Ld. Public Prosecutor Mr. B. C. Rathod submitted his oral as well as his written arguments. Ld. Counsel Mr. A.A Yadav has submitted his oral as well as written arguments (Exh-121) for accused no.1 whereas Ld. Counsel Mr. R.P Chauhan has submitted his oral for accused no.2.

Prosecution Arguments:-

8. Ld. Public Prosecutor for the State has submitted that in the present case total 17 witnesses have been examined on behalf of prosecution; that their testimonies are sufficient to prove the charges under sections 302 r/w. Section 114 of Indian Penal Code and Section 135 GP Act against both the accused beyond the shadow of reasonable doubt. It has been further submitted that the core and substratum of testimonies of any of the witnesses could not be shaken by the defense despite long and arduous cross examination of these witnesses. Learned APP has further submitted that in view

of testimonies of the wife, brother-in-law of deceased and the complainant i.e. nephew of deceased the prosecution has successfully proved its case beyond the shadow of reasonable doubt. It has been further argued that in pith and substance not only the evidence of these witnesses is corroborating the testimonies of each other but also are sufficient to bring home the guilt of both the accused. It has been further argued that though none of the witnesses mentioned hereinabove is an eyewitness of the occurrence yet their testimonies are sufficient to form an unbreakable chain of circumstantial evidence which is consistent with a single hypothesis which is guilt of both the accused. It has been further argued that keeping in view the medical evidence available on record the prosecution has successfully proved that the death of deceased was homicidal in nature. He has vehemently argued that though as per the claim of defense the death was accidental in nature yet the accused could not prove their stand, hence, by virtue of section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as "IEA" for short) the onus shifts upon the accused to prove that the death of deceased was an accidental one. But once the accused have failed to prove this factum then an adverse inference is required to be drawn against them. It has also been submitted that the statement of the wife of the deceased is

admissible in the evidence under section 60 of the IEA since the deceased had called her during the occurrence of the incident and told her that the accused were beating him. Apart from that the deceased was also found unconscious near the Sanand Muktidham by the PW 2 and other witnesses who shifted him to the hospital. He further submitted that the recovery of wooden log (dhoko) at the instance of accused no. 1 in pursuance of his disclosure statement goes a long way to prove the guilt of both the accused particularly when the wooden log (dhoko) was found to having the traces of blood on it as per the FSL report. In addition, it has been submitted that the accused were also having a motive to kill the deceased. The said motive as per learned APP behind commission of crime was that the deceased often used to visit accused no.2 at Sanand Muktidham since he had some dispute with her due to some reason on account of which accused no.2 along with accused no.1 caused fatal injuries to the deceased. He has further submitted that accused no.1 helped accused no. 2 since both were having illicit relations inter-se. Hence, on the basis of all these submissions learned APP has submitted that the case of prosecution is well proved beyond the shadow of reasonable doubt. Ld. APP has also placed on record his written arguments as per section 314 of the Code at Exh. 120. As such he has prayed for conviction of both the accused.

Defence Arguments:

9. Per contra both the learned Counsel for the accused have unanimously submitted that the prosecution has miserably failed to prove its case on any count. It has been argued that the motive suggested is not only very stale and weak but also kept changing from time to time during the trial. It has been further submitted that there is no direct evidence available on the file in order to connect any of the accused with the alleged crime, and since the present case entirely rests upon circumstantial evidence as such the prosecution was not only required to prove every link in the chain of circumstantial evidence, but also chain of circumstantial evidence should be so firm and clinching that it should point towards only one hypothesis which is consistent with guilt of both the accused and such hypothesis of guilt should and must exclude every other possible hypothesis. It has been further argued that the entire prosecution case rests on the hearsay evidence of the witnesses and there is no direct evidence available on the file since every material witness has admitted that he has no personal knowledge of the alleged occurrence. In addition to it has been submitted that as per the testimony of PW-2 one Munnabhai Guracharan Singh Sardar had telephonically informed PW2 about the alleged occurrence; Jairaj Singh son of the deceased also learnt

during his inquiry on the spot that Munnabhai Gurcharansinh Sardar was a person who had last seen the deceased with the accused. But surprisingly neither Jairaj Singh i.e. son of deceased nor Munnabhai Gurcharansinh has been examined by the prosecution. These two witnesses were the important links in the chain of circumstantial evidence but since both these important links are missing then it cannot be said that the prosecution has proved its case beyond the shadow of reasonable doubt. Both the Ld. Counsel for the accused have further argued that though the prosecution has produced the alleged weapon of offence i.e. wooden log (dhoko) as B3/1 and B3/2 out of which B3/1 was the posterior broken piece and B3/2 was anterior broken piece of the same. Though it has been alleged that the blood was present on B3/1, yet this weapon of offence cannot be said to be a substantive piece of evidence, because, first of all it was allegedly recovered from a place which was open and accessible to all, secondly the blood group on the same could not be decided by the FSL. In addition to it not even a single blood stain was found on the cloths of accused no. 1 which were received as samples at B-1 and B-2. It has been further argued that in such like circumstances it is wellnigh impossible that neither any blood stains were present on the cloths of the accused nor the same were torn in such a scuffle

wherein an offence of murder was committed. It has been further argued that so far the act and conduct of the witnesses of the present case is concerned that is also shrouded in mystery and as such the witnesses cannot be said to be reliable witnesses not only in view of their act and conduct but also on account of considerable delay in lodging of the FIR of the present case which clearly points towards the due deliberations and consultations on the part of prosecution witnesses. Apart from that it has been submitted that non examination of Jairaj Singh i.e. the son of deceased is also fatal to the case of prosecution, particularly when he is the only person who had come across Munnabhai i.e. the person who had last seen the deceased in the company of accused. Further arguing on the point of site plan at Exh-100 it has been vehemently argued that as per the site plan the occurrence had taken place in front of main gate of Sanand Muktidham, whereas the case of prosecution is that the deceased had allegedly gone to house of accused no. 2. The said house of accused no. 2 has neither been shown in the site plan at Exh. 100, which was of utmost importance nor any distance of the alleged house of accused no. 2 from place of occurrence or vice versa has been depicted in the site plan. Adding salt to injury even there is no evidence on the file to the effect that the accused no. 2 was having any house at or near the place of occurrence, since

neither any document of ownership, allotment, or even rent has been produced nor any oral evidence of some local resident has been adduced on the file. In these circumstances the core of the prosecution case has been shattered, since it could not prove the very basic fact of the present case that the deceased had visited the house of accused no. 2 or not on that fateful night. Apart from that Ld. Counsel for accused no.1 has also submitted written arguments vide Exh.121.

10. I have heard learned APP for the state and both the Ld. Counsel for the accused. I have also perused the case file and evidence available on the record carefully. The points of determination in this case are as follows;-

1. Whether the prosecution has established that the deceased Dharmendrasinh Zala has died an homicidal death ?
2. Whether the prosecution proves beyond reasonable doubt that on intervening night of 02/3.06.2019 between 12 to 12:15 midnight, the accused persons caused fatal injuries to the deceased on account of which the deceased succumbed to the injuries and thereby committed the said offence of murder which is punishable under Section 302 r/w. Section 114 of Indian Penal Code, as alleged?

3. Whether the prosecution has proved beyond reasonable doubt that the accused no.1 has committed any offence punishable under section 135 of Gujarat Police Act?
 4. What order?
11. My findings to abovementioned points for determination are as follows;
1. In the affirmative.
 2. In the negative.
 3. In the negative. No offence.
 4. As per the final order.
12. In order to prove the charges, the prosecution has examined as many as seventeen (17) witnesses. However, in the absence of any eye witness, the prosecution rested its case upon circumstantial evidence.

Brief narration as regard testimony collections:-

13. In order to prove its case, the prosecution has examined as **Chetansinh Balvantsinh Zala PW-1 vide Exh.11**. This witness has deposed in his examination-in-chief that on 03.07-2019, Police Inspector Mr. J.R. Zala of Sanand Police Station called him and they went to Community Health Centre where one dead-body was lying in the postmortem room which was covered with a cloth and upon removal of cloth the dead-body revealed was of a male. There was an injury on the forehead of the dead-body and the blood was oozing out of it. This witness did not know

anything about the identity of the dead body. However, he has further deposed that he believes that the deceased died due to severe injuries on his forehead. He further deposed that the police did not take anything in possession from postmortem room in his presence, though the police carried out the inquest panchnama proceedings in his presence. He identified his signatures upon it as Panch No.1, which was tendered on record at Exh- 12. In his **cross-examination** this witness has admitted that he did not know whose dead-body was in the postmortem room/mortuary and he just knew that it was of some Zala. In a usual manner (as most panch witnesses do more often than not) this witness though identified his signatures on panchnama but feigned his ignorance qua its contents or even that he signed on an already written document/panchnama.

14. Thereafter the prosecution has examined **Omdevsinh Pradyumansinh Zala as PW-2 vide Exh.14**. He deposed that he was working as real estate agent and dealing in properties. He further deposed that on 02-06-2019 around 6.30 pm to 07.00 pm, he went to Ahmedabad for meeting some party. He received a call on his mobile phone from priest of Sanand Muktidham Devi Mata Temples who told him that deceased and accused no.1 were fighting so you make the deceased understand. Upon this PW2 asked the priest to close the gate and so that he may get compromise

effected upon his arrival. Thereafter, PW2 called his cousin Vijaysinh and proceeded to return for Sanand at about 12.15 hours and reached at Sanand Muktidham and found that the deceased had fallen down and blood was oozing out from forehead of deceased. Thereafter he called his cousin Vijaysing at Muktidham by phone. Thereafter, he and his cousin Vijaysing took deceased to Navjeevan Hospital in a rickshaw and he was admitted in emergency ward for his treatment. Thereafter, he called deceased's nephew who happens to be complainant of the present case. Deceased told his nephew that Ankit had given him stick blow on his head. From there, he was taken for Bopal Trauma Hospital, there, he was admitted and on the second day, in afternoon, deceased had expired. The cause of this occurrence was illicit relations between Munniben and deceased. In his **cross examination** this witness has admitted that complainant is his nephew and Chetansinh Balvantsinh Vaghela is the brother-in-law of deceased and he know Chentansinh Balvantsinh Vaghela. This witness has further admitted that he did not have any personal information about this incident and he had not personally seen it. As per this witness Gurucharansinh Sardar had called him on phone. He has further admitted that he was having mobile with two sim facility. Upon being confronted with his previous statement this witness has admitted that he didn't get it recorded in his police statement that from which mobile number Gurucharansinh Sardar had called him and on

which of his mobile number. He further admitted that Gurucharansinh made a phone call to him and informed him that deceased was quarreling with Munniben so he asked him to come and make the deceased understand and take him at home. It was further admitted that Gurucharnasinh did not tell him on phone that Munniben and Ankit have given any blow to deceased, but they were only quarrelling, and Muktidham is surrounded by Residential Area, where lots of people remain present. He further admitted that neither he had seen Munniben nor he had any acquaintance with her. He also admitted that when Gurucharansinh called him, he informed him about a quarrel between deceased and accused no. 2, but he did not whisper anything about accused no. 1. He also admitted that upon finishing his work he reached at Sanand around 12:30, and found the deceased lying alone and nobody else was present there, whereupon, he called his brother Vijaysinh who reached there, and further that before arrival of Vijaysinh he informed the police. He also admitted that persuading his phone call Vijaysinh came there before the arrival of Police who came 15 to 20 minutes later after arrival of Vijaysinh, thereafter this witness and Vijaysinh lifted the deceased in the presence of police and took him to Navjeevan hospital in a rickshaw and even at that time blood was oozing out of his head injuries, due to which his, Vijaysinh's cloths and even rickshaw were stained with blood. He also admitted that he knew the rickshaw driver and

vice-versa. He also admitted that he did not mention in his statement qua arrival of the police on the spot. He also admitted that deceased was not in a condition to talk or speak anything. He also admitted that upon reaching the hospital he informed his relatives and deceased was kept in ICCU in Navjivan Hospital for two to two and half hours. He also admitted that complainant was present in the ICCU and he is not aware about any conversation between deceased and complainant since he was outside, and he did not accompany the complainant and victim to Bopal Trasma Hospital. He also admitted that on account of his business of property dealing he used to visit Sanand Police Station and knew the Investigating Officer Mr. Zala but he did not know him personally. He also admitted that deceased was a habitual drinker and was running a hotel. He also admitted about difference between and within family members of deceased. He feigned his ignorance qua any litigation against deceased on which count he used to go to the court. He further admitted that he did not hand over his blood stained cloths to the police as the police had not asked for it. He admitted that the place of incident is situated on main highway and where street lights were on. He also admitted that for him the fact of illicit relationship between both the accused as well as deceased is only hear say.

15. Thereafter the prosecution has examined **Prakashba Dharmendrasinh**

Zala as PW-3 vide Exh.16, who is wife of the deceased. The relevant extracts of testimony of this witness are that she is a housewife having one daughter and one son out of whom Vaishali is aged about 21 years, whereas Jairajsinh is aged about 20 years respectively. On 02.06.2019, she and deceased and were at home, then around 10 O'clock, deceased made a phone call and after having conversation for about 10 minutes he informed her that both the accused had called him at Sanand Muktidham and left the home. Around 11.15, he called her and informed that both the accused are beating him and the call disconnected abruptly and same could not be connected again. Hence, she made a phone call to the complainant and informed him about this fact. Later, she came to know that deceased had altercation with both of accused who had beaten him with wooden log and also about hospitalization of her husband and his death during the course of treatment at Bopal Trauma Centre. In her **cross examination**, she has admitted that neither she was present on the spot nor was she an eye witness to the incident, hence, she had no personal knowledge of the incident. The complainant is her nephew, and Chetansinh B. Vaghela is also related to her from her maternal side. Vijaysinh Ajitsinh Vaghela, Harpalsinh Harshadsinh Vaghela, Kunalsinh Ajitsinh Vaghela, Satyajitsinh Dharmendrasinh Vaghela, Shaktisinh Natwarsinh Vaghela, Hardikhsinh Juvansinh Vaghela, Jayendrasinh Chandubha Vaghela, Vijaysinh Manharsinh Zala all were admitted to be

her relatives from her in-laws. Deceased used to run a hotel before that he was involved in valimataka (a kind of gambling). She admitted that deceased used to go Sanand Court as well as Ahmedabad Court due to some litigations though qualified by a voluntary statement that her husband had won the case. She admitted that deceased called someone, but she is unaware about the number which he had used for calling. She denied the suggestion to the effect that police only asked her name and address, and she did not narrate the entire details of the incident. She admitted that Omdevsinh Pradyumansinh gave her phone call and after that she made a phone call to the complainant whereas on the night of incident, she remained at her home and did not go to the hospital. She admitted that on next day police recorded her statement and she was accompanied by four-five people at that time and thereafter she did not visit the police station again. She admitted that deceased was using mobile having one sim facility and she did not supply the details of the number from which deceased called her during the incident of alleged beating. She feigned her ignorance about as to who used to call on mobile of deceased. She admitted that there can be many persons in the village with the same name. She admitted that deceased used to consume liquor sometimes. She admitted that she didn't see deceased consuming liquor. She admitted that she had not mentioned in her statement u/s 161 of the code that at what time deceased gave her phone call and from which

number he called. She has denied a suggestion that deceased suffered injuries on account of slipping of a bike which he was riding. In her **further cross examination** by LA for accused no. 2 she admitted that accused no. 2 was kept as a maid in the hotel by deceased for making chapati and washing kitchen utensils and she is unaware about her salary. She also admitted that accused no. 2 was demanding Rs.4,000/- from the deceased. She had no knowledge about accused no. 2 demanding money from deceased due to which he fought with her. She admitted that accused no. 2 had earlier lodged the complaints against deceased twice or thrice on account of harassment and the Sanand Police Station had registered the offence against him wherein he was bailed out. She admitted that Meldi Mata's Temple is situated in the area of Muktidham and village people come to offer their prayers on Sunday and Tuesday, and on one side of Muktidham, Sanand- Viramgam there is a highway and on the other side, lots of people of various community live in the slum area. She also admitted that deceased had a bike and used to do various type of miscellaneous work. She has again denied a suggestion that deceased suffered injuries on account of slipping of a bike which he was riding.

16. Thereafter the prosecution has examined **PW-4 Vanrajsinh Mahipatsinh Vaghela vide Exh.24**. This witness has deposed that on 03.06.2019 Sanand Police called him and he went to Sanand Police Station where one

Advocate and accused no.1 were present. In his presence, the police asked the accused no.1 to remove his cloths which were a blue color jeans pant and blue color half-sleeve shirt. The Police also asked accused no. 1 to show signs on his body, but no signs were present on his body. Then both the cloths were packed in different parcels of cloth and duly signed pancha slips were also packed along with cloths. Along with him one Jaydeepsinh Sukhdevsinh Vaghela also signed the panch slips, thereafter both the parcels were stitched and sealed, and as such entire proceedings were carried out in his presence. This witness identified his signatures as Panch No.1 on panchnama at Exh.25 and panch slips at Exh.26 & 27. Upon opening of the duly sealed parcels this witness also identified the cloths of accused no. 1. He also expressed his ability to identify the accused who was not present in the court on the day of his deposition and as there was no objection qua identification of accused as such the deposition of this witness was recorded. In his **cross examination** this witness has admitted that Jaydeepsinh Sukhdevsinh Zala is his uncle's son, and complainant is from his village. Officials of Sanand Police Station called me by phone, but none of the police official knew me. People from my society might have given my number to the police. He admitted that police called him around 07.00 and 08.00 and at that time he was at his village Godhavi. Apart from that he has denied the suggestion to the effect that his signatures were obtained on already

written panchnama. Except apart from above nothing relevant and fruitful could be elicited from this witness even despite of a lengthy and arduous cross examination.

17. Next witness **Vijaysinh Ajitsinh Vaghela** has been examined by the prosecution as **PW-5 vide Exh.35**, who happens to be another panch witness regarding place of incident. He deposed that on 03.06.2019 Sanand Police called him and he was called at Muktidham for the purpose of a panchnama to collect the blood samples from the spot and he went there. There Complainant was present who shown him place of occurrence, on the northern side which Muktidham cremation ground and on the southern side a four-lane highway was situated. At the place of occurrence one gate was installed and dried blood stains were picked up 18 inches away from the wall on the west side of the gate. The complainant told him that the dried blood stains were of deceased. From there, dried blood sample as well as bloodstained earth were packed in two different plastic bags which were converted in two parcels and those were kept into different boxes which included panch slips duly signed by this witness and another panch witness namely Harpalsinh. After necessary formalities duly sealed parcels were kept for further investigation. This witness identified his signatures on the panchnama at Exh.36 and he also identified bloodstained earth and his signatures on

panch slips at Exh.37 & 38 in the capacity of panch no. 1, wherein Harpalsinh Vaghela had signed as Panch no.2. In his **cross examination** this witness has admitted that the police prepared the panchnama in his presence and thereafter took his signature. He also admitted that Prakashba i.e. wife of deceased belongs to his village and society, whereas complainant belongs to his society. He had no idea as to how police came across his mobile number. He also admitted that police asked him to come at Sanand Muktidham along with one more person and that's why he took panch no. 2 with him and on his way to Sanand from Godhavi he did not stop anywhere and directly reached at Muktidham around 03.05 O'clock. When he reached there, complainant and police were present there. However, nothing fruitful could be elicited by the defense even after a long and arduous cross examination of this witness.

18. Thereafter the prosecution has examined **PW-6 Hardiksinh Juvansinh Vaghela vide Exh.42** wherein he has deposed that on 04.06.2019 upon being called by the Sanand Police he reached at Sanand Police Station as panch where the police officials and Shaktisinh Vaghela were present. In his presence, during investigation accused no.1 disclosed his name as Ankit Patel resident of Vamaj Taluka Kadi District Mehsana. This witness, Shaktisinh, accused no. 1 and police officials went to Viramgam Highway behind Sanand toll Plaza and reached at a canal i.e. the place

where the wooden log (dhoko) was thrown by the accused no.1. upon disclosure of accused no. 1 said wooden log (dhoko) was found 50 meters ahead from the said spot and same was bloodstained. Upon this the said wooden log was converted in to a parcel which was duly sealed and included the panch slip(s). A panchnama was prepared which bears the signatures of this witness as panch no. 1 and Shaktisinh Vaghela as panch no. 2. This witness identified his signatures at Exh.43 & 44, and also identified the wooden log (dhoko) in the court which was broken from the front portion. He deposed that it is same wooden log which was discovered and recovered by the police in his presence at the instance of accused no.1. In his **cross examination** this witness has admitted that the complainant resides in his society and the deceased also resided there. He also admitted his acquaintance with deceased's family members. He has also admitted that apart from this case, he used to visit police station for his personal work. He has further admitted that a case under Section 185 was lodged against him in Sanand Police station. He admitted that on the muddamal no dried bloodstains or marks can be seen and such type of wooden logs (dhoka) are sold in sanand at various places. He also admitted that the muddamal shown to me is a new dhoka and is not a used one. Apart from this nothing fruitful could be elicited from this witness during the cross examination.

19. The prosecution has further examined **Satyajeet singh Dharmendrasinh Vaghela as PW-7 vide Exh.45** wherein he deposed that on 03.06.2019 at around 4.00 to 4.30 he received the phone call from Sanand Police Station and he was asked to come to the police station for the purpose of panchnama and accordingly he went to police station where 2nd panch Krunalsinh Anirudhsinh along with other police personnel were present. In his presence Police Constable Mr. Saurabhkumar Krunalbhai submitted the bloodstained cloths of deceased which the doctor had handed over to the police upon completion of postmortem of deceased. Those were white color full arms dotted shirt which was torn and cut at different places, white vest which was torn and cut at different places, maroon colored pant along with one coffee colored underwear. These cloths were converted into sealed parcels qua which a panchnama at Exh.46 and panch slip at Exh. 47 were prepared wherein this witness identified his signature as panch no. 2 along with panch no.1 Krunalsinh. It is worthwhile to mention here that the panch slip was torn at the time of its production in the court and only one signature of panch no.2 i.e. this witness was present on it. This witness also identified the muddamal i.e. cloths of deceased. In his **cross examination** this witness has admitted that his native is village Godhavi and at present he lives in Sanand and he occasionally visits his native place. He feigned his ignorance about as to how the police came across his mobile number. In his further cross

examination this witness has admitted that at the time of incident he was doing diploma in civil engineering at Kadi Kalol and was regularly attending his classes. As a clarification this witness voluntarily stated that he was not attending his classes and was only taking his exam. Apart from this the witness was cross examined at length but nothing fruitful or relevant to facts in issue could be elicited from this witness.

20. Thereafter the prosecution has examined Jayendrasinh Chandubha Vaghela as **PW-8** vide Exh.52 wherein he deposed that on 02.06.2019 when he was present at his house Godhavi at that time around 12.15am, he received phone call from his sister Prakashba and she informed him that a quarrel has taken place with deceased at Sanand Muktidham where upon he assured her to go there and inquire about it. He went to Sanand from Godhavi and inquired about what had happened then he learnt that deceased has been taken to Navjivan Hospital, Sanand, hence, he also went there and found that complainant, Omdevsinh Pradhyuman-sinh Zala, Vijaysinh Manharsinh Zala and doctor were present there and doctor advised them to take the patient to some higher institute/hospital for further treatment and therefore, they shifted the deceased in Bopal Trauma Center. The doctor treated him till late night but the deceased could not resuscitate and the doctor declared him dead. As per this witness the reason for this incident is that the deceased was running a

hotel and there were some money transactions between him and accused no. 2 therefore, deceased went to her home. since both the accused were having illicit relations therefore, accused no. 1 caused grievous injuries upon the head of the deceased by a wooden log (dhoka) and thereby committed his murder. The incident occurred between 12.00 to 12.15am, on the intervening night of 02.06.2019 and 03.06.2019. On 03.06.2019, his statement was recorded by the police. In his **cross examination** this witness has admitted that he has no personal knowledge of this incident and he came to know about it upon phone call of his sister. He also admitted that deceased was his brother-in-law and complainant is also his relative. He also admitted that when his sister called him, she did not inform him as to with whom the quarrel had taken place at Muktidham. He denied that deceased was having disputes with his family members. He admitted that in past deceased had quarreled with other people. He also admitted that in his statement he did not disclose the source of his inquiry at Sanand. He also admitted that he had not stated in statement before police that the deceased was running a hotel and he had money transaction with accused no. 2 therefore, he went to her home. He also admitted that he had no personal knowledge about illicit relations between both the accused. He also admitted that he had not stated before the police that accused no. 1 gave grievous injuries by wooden log (dhoko). He denied a suggestion that the deceased fell down from his

motorcycle and he died in an accident. In his further **cross examination** by LA for accused no. 2 this witness has admitted that he lives at Godhavi and he is not aware of geographical location of Sanand. He has further admitted that he has not met either accused before the incident. He also admitted that reason for the incident as mentioned in his examination-in-chief has not been mentioned by him before the police in his statement. He also admitted that the source of information as he disclosed in his statement before the police is based upon hearsay and the name of both the accused was disclosed by him as such.

21. Thereafter the prosecution has examined **Saurabbhai Kanubhai as PW-9 vide Exh.61** wherein he deposed that on 03. 06. 2009, he was working as Police Constable in the Sanand Police Station and at that time Police Inspector ordered him to get the cloths of the deceased from Primary Health Centre, Sanand and he collected the same from concerned doctor of CHC Primary Health Centre, Sanand and in his turn he handed over the same to the Police Inspector. Since this witness was a formal witness as such adverting to his cross examination is unnecessary.
22. Thereafter the prosecution has examined **PW-10 Guptrajsinh Jadejvide Exh.62**, who is complainant of the present case. The witness deposed that on the intervening night of 02.06.2019 & 03.06.2019 around 11.45 pm Vijaysingh Manharsing called-up on his mobile and told that

Omdevsinh Zala had called him up on his phone and he told him that in front of Muktidham someone gave beatings to deceased. At that time, he was at Ahmedabad and rushed to Navjivan Hospital Sanand, where upon his arrival he saw that the blood was oozing from the head and face of deceased and the doctor advised him to take the deceased to some higher institution/hospital for better treatment and then he along with his friend Jayendrasinh Chandubha Vaghela took him to Bopal Trauma Centre and got the deceased admitted there. The doctor declared him dead after some treatment. Thereafter he inquired and learnt that deceased often visit to Sanand Muktidham where accused no. 2 lives and due to some reason, he had some dispute with her. On the night of incident deceased also visited the house of accused no. 2 and called his wife Prakashba and told her that while both the accused were beating him call got disconnected abruptly. He further deposed that he asked the wife of deceased whether the deceased had received any other call from anyone else upon which she replied that around 10 to 10-30pm, deceased was talking either to accused no. 1 or someone else. He further deposed that wife of deceased told him that she kept on calling the deceased but he was not receiving the call. Thereafter, deceased's son Jayrajsinh went to Muktidham for inquiry and he learnt that one Munnabhai had seen both the accused causing injuries to deceased with wooden log (dhoko) as such he got registered a complaint at Exh.63 with the police which bears his signature. During

cross-examination, this witness deposed that he has no personal information regarding the incident and he is not an eye witness to the same. He admitted that Vijaysinh Manharsinh Zala, Omdevsingh Pradyuman Zala, Ajitsinh Sanmukhsinh Zala are his maternal uncle and he also know Hardiksinh Juvansinh and Jayendra Chandhubha Vaghela. Jayrajsinh Zala is son of his maternal uncle. He further deposed he has no acquaintance with Krunalsinh Ajitsinh, Satyajitsinh Dharmendrasinh Zala, Shaktisinh Natwarsinh Vaghela, Harpalsinh Harshadsinh Vaghela. He further deposed that the above named persons are all from Darbar community and at the time of incident he had one mobile with two sim facility, out of which one sim was only used for WhatsApp and other number was his regular number for calls. He further deposed that the police did not take his mobile and sim card into possession. He admitted that he and deceased lived in the same society and in his society people from other community also lived apart from Darbar community. He deposed that he is living in Sanand since 2003 and he is aware of most of the area of Sanand. He denied a suggestion to the effect that there were separate cremation grounds for different castes. He further deposed that there is no residential area around Muktidham and residential area falls in-skirts at a distance from the same. He admitted that when Vijaysinh called him he immediately went to Navjivan Hospital. He also admitted that many years prior to the incident, deceased used to live at Ankleshwar

he was doing a private job. He deposed that deceased was a habitual drinker but since long he had quit consuming liquor. He feigned his ignorance qua whether any case was pending against deceased. He deposed that for giving complaint he alone went inside the police station whereas one person was standing outside. He further deposed that as he narrated the facts to the police his statement was typed on the computer but he was on the back of display and what was being typed in the complaint was not visible to him. It is true that after the typing work was over the policeman asked him to sign the complaint qualified by a voluntary statement that he read the complaint and thereafter he signed. He has admitted that he mentioned all those facts in his complaint whatever were narrated by Vijaysinh Manharsinh and Prakashba Dharmendrasinh. He admitted that deceased was having a bike. He also admitted that it is true if any person rides his bike in full speed and the bike slipped then injuries can be caused on hands, legs and forehead and a person may die. He has admitted that he did not mention in his complaint that a blow on the forehead of deceased was given with wooden-log (dhoko). He denied that the deceased slipped from bike as a result of which he sustained injuries and died and further no other incident had happened. In his further cross examination by LA for accused no. 2 he has admitted that It is true that there are two cremation grounds at Sanand in proximity. There is no cremation ground on the way to Bavla from

Sanand Chokdi. He has also admitted that it is not mentioned in his complaint when he reached hospital the blood was oozing from the forehead and face of deceased. He has also admitted that it is not mentioned in his complaint that Munnabhai saw both the accused beating deceased. He deposed that he never visited Sanand Police Station in any other matter except this one. He has admitted that the doctor gives information to the police of the accidental case as well as assault cases. He further deposed that he did not give any information to the doctor regarding injuries of deceased. He has deposed that since deceased was injured and critical hence, he went to Sanand Police Station around 10 am for lodging the complaint. He denied that on the advice of others, he lodged the complaint. He also denied that since accused no. 2 had earlier lodged the complaint against deceased, hence, her name has been falsely implicated in the present case.

23. **Rajendrabhai Popatlal Raval Medical Officer of Bopal Trauma Hospital** is the next witness who appeared on behalf of prosecution as **PW-11, vide Exh.67**. He deposed that on 03.06.2019 he was called by the doctor on duty who asked him to come to the hospital, but he instructed his junior doctor Dr. Divyang Dalvadi to provide the treatment which he provided as per his instructions. Dr. Divyang also called a neurosurgeon and plastic surgeon to do necessary surgical treatment. The condition of

the deceased was very critical and he was kept on ventilator. Deceased was unconscious with a hemorrhage in his head and blood was oozing out from his mouth and in the morning, the witness himself examined the deceased and apprised his relatives about his serious condition. But in the morning, he succumbed to injuries. Regarding this a certificate dated 22.07.2019 as available at Exh. 67 was prepared on the letter pad of his hospital. This witness also brought the original medical papers of deceased with him. This witness further deposed that the injuries upon the body of deceased were fatal/dangerous in nature. He deposed that possibility of this injury being caused by beating as well accident and/or by falling down on some stone hard object from a height cannot be ruled out. He further deposed that when the deceased was brought for the treatment his history was disclosed his brother Jayendrabhai. As per history, some unknown person had caused injuries to the deceased with some unknown object around 12.30 on the intervening night of 02.06.2019 and 03.06.2019. In his **cross-examination** this witness admitted that when deceased was brought to the hospital, he was not present there and as per the case papers deceased was unconscious and unable to speak. He admitted that he does not have any personal knowledge as to by whom and how deceased was brought to the hospital. He also admitted that possibility of such injuries being caused in a vehicular accident while the rider slips from his bike cannot be ruled out.

He admitted that on 03.06.2019 his assistant Dr. Divyang told him on phone that he had given initial treatment as per his telephonic advice and in the next morning he himself went to the hospital and gave further treatment to deceased. He further admitted that when deceased was brought to Bopal Trauma Centre, at that time his relatives were having no referral slip from the first hospital. He also admitted that certificate at Exh.68 does not bear his signature and it was not prepared by him. He denied that when the deceased was brought to his hospital for treatment then no information was supplied to the police. Dr. as the same was sent on 03.06.2019 at 03.43am as per admission record at Exh.71 and one police constable Pradyumansinh was informed about this. Then after the patient died at 11.35 am another information was sent to Police constable Ramsangbhai. Except apart from above nothing fruitful or relevant could be elicited from this witness.

24. The prosecution has further examined **PW-12 Mr. Kanjibhai Maherabhai Taviya Scientific Asst., Mobile Investigation Van, FSL Ahmedabad** vide Exh.82 wherein he stated that on 05.06.2019 he was present on his duty at his FSL office, Ahmedabad and at around 04.20 pm he received message from Ahmedabad Control Rural that he has to go for spot inspection at Sanand regarding the offence registered vide First CR No. I-48 of 2019 u/s. 302, 114 IPC and Section 135 GP Act, thereafter, he

spoke to the Investigating Officer of this case. On the next day, the witness left from his house at 08.00am and reached at 09.30am at Sanand Police Station and on behalf of I.O. Constable Mr. Gopalsinh met him and the Constable went along with him to show the place of incident. He started the observation of the place of incident around 10.00am and he was told that the place of incident is Mouje Muktidham, Sanand Viramgam Highway. He further deposed that after the primary inspection blood was found on the spot and except this no other notable signs or marks were found. From the place of incident, brown stains mud as well as controlled soil were taken into possession and for the purpose of finding out the blood and for grouping, the directions were given to send the sample/specimen to the office of the FSL for investigation. The clothes worn by accused and the deceased, blood samples of the deceased along with weapon used in the incident were found and taken into possession and all of the articles were blood stained. Further for the purpose of investigation and blood group tracing etc. the suggestions were given to forward all the articles to the FSL, Ahmedabad. He further deposed that he had prepared a report about the entire proceedings conducted by him including a spot inspection memo which was signed by him and this witness also identified his signature on Exh.83. He further tendered on record the Yadi which was sent to him by Sanand Police Station for doing spot inspection at Exh.84. In his **cross-examination**, he

stated that as a Forensic Officer, he has been given special training. At the time of incident, he was having the responsibility of In-charge Scientific Officer, Mobile Investigation Van, Ahmedabad (Rural). He admitted that there is no such note in the Yadi at Exh.84 to the effect that he received the Yadi on 06.06.2019 and signed any acknowledgement regarding same. He has also admitted that he had written Spot Inspection Report as per the asking of Police since the place of incident was shown to him by Police constable. He further admitted that it is reflected in his report that a concrete path connects Viramgam Sanand Highway and Muktidham Sanand Gate, and on this way, if the bike slips and any person falls then also the blood-stains as reflected in the report would be present on the spot. He also admitted that no signs of any clash were found on the place inspected by him. He also admitted that when he conducted spot inspection, he suggested to collect the bloodstained earth as well as controlled soil from the place of incident, but no soil was taken into possession in his presence. He also admitted that Spot Inspection Report vide Exh.83 is original wherein there is no signature and name of accepting authority is written. He also admitted that on 05th when he received telephonic vardhi for the spot inspection he did not make any endorsement in the register of his office. In his **further cross examination by LA for accused no. 2** he further admits that the place of incident was not shown to him by the Investigating Officer. He also

admitted that at the place of incident, there is frequent moment of people and vehicles in that area. He also admitted that police provided him information on telephone regarding the incident after delay of one day. He also admitted that he went for spot inspection on the next day of getting the information qualified by a voluntary statement to the effect that he had received information on 05.06.2019 at 04.20 pm from police control room and thereafter he spoke to the Investigating Officer of this case and he did not go on 05.06.2019 because in case the police vehicle would have come to pick him then it would have been dark by the time he could have reached the spot and spot inspection would have been rendered impossible, hence, spot inspection was done on next day i.e. 06.06.2019. He also admitted that when going-out for the spot inspection an upon arrival of police vehicle an entry has to be made in the register followed by signature. He denied that such type of register is not maintained in my office. He also admitted that since there was a concrete path, if any person goes on full speed bike and the bikes slip and rider falls down then he will sustain bleeding abrasions.

25. The next witness examined by the prosecution is **PW-13 Dr. Parvinbanu, Scientific Officer, FSL Ahmedabad** vide Exh.86 wherein she deposed, that ten sealed parcels were received in her office on 18.06.2019 from Sanand Police Station in connection with offence under

Sec. 302, 114 of IPC and Sec.135(1) of GP Act vide First CR No.48 of 2019. All the ten parcels were having seal of Police Inspector Sanand, out of which two boxes marked vide Serial A1 and A2 contained, seven cloth-bag parcels which further contained mark vide Serial A3, A4, A5, A6, B1, B2, B3 and another sealed cardboard box mark vide Serial C1 of CHC, contained PM Samples, Sanand. Upon examination of the sample it was revealed as per Serological Analysis Report that on mark A1 sample soil and/or four cloths of the deceased mark A3 shirt, mark A4 vest, mark A5 pant, mark A6 underwear, blood Group "B" was found. The Blood group on Mark B3/1 i.e. on the baseball bat broken piece could not be decided. Sample mark C1 blood of deceased was found to be disintegrated and its blood grouping could not be done. This report was prepared by Serological Department officer Mr. A.V. Padhiyar and it bears his signature and designation on it and since this witness worked with Mr. A.V. Padhiyar, hence, she identified his signature on the report at Exh.87. Thereafter, the witness did analysis of the samples and prepared Analysis report at Exh.88. The FSL forwarding letter at Exh.89 was also shown to the witness which was prepared by Deputy Director Shri S.G. Khandarwal whose signature were identified by this witness. In her **cross examination** she has admitted that she has done Ph.D. on Microbiology and it is true that for laboratory testing, she is giving training. She also admitted that as per report prepared by her no blood could be detected in

sample mark B1 and B2. As per her sample report B3/1 which was the broken part of back of the baseball bat was the handle for grip and B3/2 was the front portion of the baseball bat. As per the Serological Report on sample A1, A3, A4, A5, A6 blood of group "B" was detected and on sample mark A2 i.e. controlled soil no blood was detected. She also admitted that on B3/1 i.e. broken part of baseball bat human blood was detected, blood group could not be decided. There could be several reasons for deterioration of sample C1 which was a deteriorated sample. She also admitted that matching of blood group in C1 i.e. disintegrated blood sample with samples A1, A3, A4, A6 could not be decided as per the Serological Report. The blood sample which was received was contained in EDTL vial and the amount of blood sample that we had in EDTL vial is not written in my report or medical dispatch note. She also admitted that since she examined the baseball stick B1/3 was not a piece of broken shovel.

26. The prosecution further examined **PW-14, Dr. Ketan G. Rabari, Medical Officer** of Shreya Children Hospital vide **Exh.90** wherein he deposed that on 03.06.2019, he was doing his duty at Sanand Urban Health Centre as Medical Officer and at that time in afternoon at 2-25 Dr. Sharad Raval called him from Sanand Health Centre and told him on phone that postmortem of one dead body has be conducted and you are a

member of penal therefore on 03.06.2019, he went to conduct postmortem at CHC Sanand and there at 2.30 pm the postmortem examination was started and by 3.30 pm it was over. PI Mr. J.R. Zala Sanand Police Station came to take the dead body of deceased and the said dead body was identified by Ajitsinh Sanmukhsinh Zala. This witness prepared the PM Report as per which in column no.5, injuries on the head are mentioned and the external examination is mentioned in column no.7. The deceased was aged about 44 years was having maroon pant and brown underwear on it and as per column no.8 the cloths were bloodstained. The description of injuries on the deceased is mentioned in para no. 35 of the judgment to avoid repetition.

He deposed that PM Report dated 06-03-2019 at Exh.91 was prepared by this witness and Dr. Sharad Raval and further was signed by this witness and his colleague Dr. A.S. Raval. The Information Report and Death Certificate were exhibited as Exh.92 & Exh.93 respectively. As per opinion the injuries to the deceased could be caused on the head by baseball stick, wooden beater or with any type of hard blunt object. In his **cross-examination**, he stated that he did the postmortem with Raval Saheb. He admitted that Postmortem report is not prepared by him. He also admitted that the dead-body was brought from Sanand Muktidham to CHC Sanand. It is true that in column no.5 neither the date nor the time of

the death has been mentioned since no such details were furnished by the police. He also admitted that in the postmortem report the word fracture is not written, but as explained by this witness in column no.17 regarding injury no.5 in place of word fracture the sign of fracture # is shown in it. He also admitted that in column no.23 the cause of death has been given as due to brain injuries, severe hemorrhage but the weapon of offence by which these injuries were caused has not been mentioned. He also admitted that the injuries mentioned in column 17 can also be caused if any person falls on concrete road from bike due to its slipping on a high speed on. He also admitted that after death rigor mortis comes in two phases within 24 hours and in Column no.11 out of two phases, the phase in which it was has not been clearly mentioned in it. He also admitted that no opinion is given qua injuries being ante-mortem in nature in column no.18(k). He also admitted that till today, the police has neither sought any opinion from me regarding the weapon by which the injuries could have been caused and nor I have given any opinion. He also admitted that it cannot be precisely told that for what duration blood sample can be kept in EDTA vial. Except above nothing fruitful or relevant could be elicited from this witness.

27. The next witness **PW-15 Ramsinghbhai Maljibhai Desai** has been examined vide **Exh.96**. This witness deposed that on 03.06.2019, he was

having the charge as First Grade Constable with Sanand Police Station. At that time, the complaint and list (Suchi Patra) which were recorded in front of P.I. Mr. J.R. Zala was brought to him for registration of First Registration No.48/2019 under Section 302, 114 of IPC and the same was registered and after the registration of the offence, it was endorsed in the list (Suchi Patra) that the crime as mentioned above has been registered and the papers have been sent further action. On it, it was signed by the witness and his rank was also written and had sent the complaint and list for further action to P.I. Mr. J.R. Zala. This witness also exhibited the list as Exh.97. In the **cross-examination** he admitted that the reason for late filing of the complaint is not stated in the FIR. Except that nothing fruitful could be elicited from this witness.

28. **PW-16 Mr. Pankaj Patel, Circle Officer-II and Executive Magistrate** has been examined vide **Exh.99** wherein he deposed that on 03.06.2019, he was present on his duty at Sanand Mamlatdar office at that time he was told by the Sanand Police Station to make map of the place of occurrence. Accordingly, he went at the place of occurrence at Muktidham to make the site plan after spot inspection and he also prepared a site plan in accordance with spot inspection. The site plan was brought by him in the court which was bearing his signature and exhibited as Exh.100. During his **cross-examination**, he stated that near the muktidham on the northern

side, there is residential area. He admitted that there remains lots of traffic on Ahmedabad Viramgam highway. He also admitted that muktidham pick-up stand is adjacent to muktidham crematorium. He also admitted that lots of movement of people generally remains there on muktidham pick-up stand. He also admitted that when the spot inspection has to be done, police officers inform Executive Magistrates in writing to make a site plan. It is true that no such yadi has been submitted in this case.

29. The prosecution has further examined **PW17, Joravrsinh Ranjeetsinh Zala**, vide Exhibit:105, who happens to be Investigating Officer of the present case. This witness had deposed on the lines of investigation conducted by him from the date of registration of FIR on 03.06.2019, to the date of submission of charge-sheet in the present case. In his deposition this witness has deposed about entire investigation conducted by him including registration of FIR, preparation of various panchnamas, arrest memos, sending the various articles/samples to the FSL and all other necessary investigations required for submission of charge-sheet in the present case. At this juncture this Court is not dealing with the cross-examination of this witness as dealing with the same at this juncture will amount to unnecessary repetition of testimony of this witness and same will be dealt with in the later part of this judgment.

30. Further none of the accused preferred to adduce any evidence in defense in support of their case.

31. Point of Determination No. 1

I have carefully heard the rival submissions of Ld. Counsel for the accused persons as well as Ld. Public Prosecutor for the State, I have also given my prolonged consideration to the matter in light of evidence adduced and the case law relied upon by Ld. Counsel for the parties. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence.

32. Needless to state that in a case of murder, exclusive burden lies on the prosecution to establish that death of a human being is caused. Prosecution has to overrule the possibility of natural, accidental or suicidal death by adducing reliable and convincing evidence clearly indicating the mode of death as homicidal. In the present case to prove homicidal death, prosecution has placed strong reliance on oral as well documentary evidence.

33. It is a case of prosecution that accused no.1 inflicted wooden log blow on the deceased in order to commit his murder. We have postmortem on record which is duly proved as Exh-91 and the deposition of Doctor as PW-14 who has done postmortem along with Dr. Sharad Raval. So far as factum of homicidal death is concerned, evidence of Dr. Ketan G. Rabari (PW-14) is important. Dr. Ketan G. Rabari on 03/06/2019 along with Dr. Sharad Raval at about 2:30 p.m. started post-mortem examination on the dead body of Dharmender and the same was completed at 3:30 pm. As per the report found the following injuries(brief description) were found on his person:- dead-body:-

- i) *Abrasion over Rt. dorsal forearm size 6CM X 1.5CM;*
- (ii) *Abrasion over Rt. dorsal forearm to middle of the arm size 10CM X 1.5CM;* (iii) *CLW of size 3 CM X 1CM at Right upper lips;*(iv) *Cut lacerated wound at left lateral occipital region just above left ear size 3CM X 0.5CM,* (v) *Fracture of left occipital, parietal and temporal bone;*

Displaced fractures of left parietal and Temporal bone. CLW at left lateral occipital region size 3CM X 0.5 CM just above left ear was found along with fracture of left occipital, parietal and temporal bone with evidence of acute subdural hemorrhage and acute extradural hemorrhage. There is extension of hair line fracture into Left frontal, Left occipital bone and across mild line to right parietal bone as well. Acute subdural hemorrhage

and extra dural hemorrhage present in Brain. Multiple abrasion. The cause of death is due to brain injury and severe hemorrhagic shock.

It is not disputed that somebody did inflict grievous injury on the person of the deceased Dharmender on the intervening night of 02/03-06-2019 and thereby he succumbed to death while under treatment. It is pertinent to note that the entire evidence of Dr. Ketan G. Rabari is most natural and believable, as accused did not dispute the genuineness of post-mortem report and further from cross-examination of Dr. Ketan G. Rabari, the defence could not bring on record anything adverse affecting the reliability of medical evidence. From the evidence of Dr. Ketan G. Rabar , it stands proved that the death of Dharmender was homicidal.

34. Hence, looking to the postmortem report and the deposition of the Doctor there is no doubt that it is a case of homicidal death where the deceased was given injury with the help of a blunt object (like an 'dhokha' wooden stick) which resulted in to his death in the morning of 03/06/2019.

35. **Point for Determination no. 2 and 3.**

In the wake of facts and circumstances of the present case it is worthwhile to mention here that the present case is entirely based upon circumstantial evidence. Hence, it was incumbent upon the part of prosecution to prove

all the links in the chain of circumstances in such a manner that to the exclusion of all hypothesis the only hypothesis is the guilt of the accused. While adjudicating a case which entirely rests upon circumstantial evidence it is very important that one must not forget the five golden principles in the landmark judgment of Hon'ble Supreme Court in case **Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 SC 1622**, wherein Hon'ble Supreme Court has held as under:-

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be’ or should be proved as was held by this court in Shivaji Sahebaro Bobade vs. State of Maharashtra, 1973 Cri. L.J. 1783 where the following observations were made:

Certainly, it is primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

- (2) *the facts so established should be consistent only with the hypothesis of the guilt of the accuses, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) *the circumstances should be of a conclusive nature and tendency.*
- (4) *they should exclude every possible hypothesis except the one to be proved.*
- (5) *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

153. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”*

36. In *Joseph vs. State of Kerala*, (2000) 5 SCC 197, Hon’ble Supreme Court has explained under what circumstances conviction can be based purely on circumstantial evidence. It observed:-

“16. It is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to the appreciation of evidence in a case and being always an

exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavour in the case should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the accused.”

37. The similar principles were reiterated in State of Rajasthan vs. Kashi Ram, (2006) 12 SCC 254, Ganesh Lal vs. State of Rajasthan, (2002) 1 SCC 731, State of Maharashtra vs. Suresh, (2000) 1 SCC 471, State of Tamil Nadu vs. Rajendran, (1999) 8 SCC 679, Padala Veera Reddy vs. State of Andhra Pradesh, AIR 1990 SC 79, Vijay Shankar vs. State of Haryana, (2015) 12 SCC 644, Raja @ Rajinder vs. State of Haryana, (2015) 11 SCC 43 and State of Himachal Pradesh vs. Raj Kumar, (2018) 2 SCC 69.
38. Now in the light of abovementioned well settled law on the point of circumstantial evidence let's see where the case of prosecution stands.
39. Now, the next question has arisen for consideration is, who is responsible for the death of Dharmendrasing Sanmukhsing Zala, either accused no.1 and 2 jointly or individually or somebody else or is it a blind murder in which the accused has been falsely implicated by the prosecuting agency?

40. Considering the evidence of the witnesses, this Court finds that there was no eye-witness of the incident and the prosecution case rests mainly on circumstantial evidence. It is well-settled law that in order to prove a prosecution case based on circumstances, there must be all the tell-tale circumstances established by the prosecution had made the chain of circumstances so complete that there was no escape from the conclusion that within all human probability, the deceased was murdered by none other but the accused. It is well settled that more severe the offence, more stricter the proof.

41. **In the absence of any direct evidence, the significant circumstances on which the prosecution relies to prove the case against the accused are as follows:**

- (a) Dharmendra (Deceased) received phone call from accused no.1 Ankit on 02.06.2019 at about 10.30pm and thereafter he told his wife Prakashba PW-3 that accused person have called him at Sanand Muktidham;
 - (b) Accused persons quarreled with Dharmendra (deceased) and accused no.1 gave wooden-stick blow on his head;
 - (c) Recovery of blood-stains baseball bat (dhoka) at the instance of accused no.1 under Section 27 of Indian Evidence Act;
 - (d) Motive under Section 8 of Indian Evidence Act;
- (a) Dharmendra (Deceased) received phone called from accused no.1 on 02.06.2019 at about 10.30pm and thereafter he told his wife Prakashba PW-3 that accused person have called him at Sanand Muktidham:-**

The circumstance on which prosecution relies is upon the testimony of the PW-10 complainant Guptrajsinh who deposed that his mami Prakashba PW-3 told him that till 10.30 pm his mama was at home and at that time either Accused no.1 or someone else phone call came and he spoke to him. In his complaint, also he has stated that PW-3, Prakashba told him that on 02.06.2019 about 10.30 pm Dharmendra received phone call from Accused no.1 and he spoke about 10 minutes and thereafter he told her that Muniben and Ankit Patel has called him at Sanand Muktidham. In his cross-examination he admitted that he has no personal information regarding the incident and has not seen the same and whatever was told to him by Vijaysinh Manharsinh and Prakashba he has stated in his complaint. Whereas PW-3 Prakashba deposed that on 02.06.2019 at about 10.30 pm the Dharmendra made a phone call and spoke for 10 minutes and informed her that Munniben and Ankit Patel had called him at Sanand Muktidham and after saying that he left from the home. But in her cross-examination, she stated that her husband called someone but she does not know on which number and from which number her husband called someone and she has not mentioned regarding that. Similarly, the prosecution also examined PW-8 Jayendrasinh Chandubha Vaghela wherein he deposed that on 02.06.2019 at about 12.15am he received phone call from his sister

Prakashba (PW-3) and she told him that quarrel of Dharmendra (deceased) has taken place at Sanand Muktidham and he told her that he will go to Sanand and enquire about it. During the cross-examination, he deposed that he has no personal knowledge about the incident and he also admitted when his sister Prakashba gave him phone call she had not informed him with whom the quarrel of Dharmendra has occurred at Muktidham. From his testimony, it is evident that his sister had not told him that Dharmendra had gone to meet the Accused persons. The case of the prosecution is that Accused no.1 called Dharmendra on phone and asked him to visit muktidham, but looking at the entire evidence on record, it shows that though investigating officer vide Exh- 110 and 111 has written to the nodal officer to provide the CDR of mobile, but the Investigating Officer has not produced on record the CDR of the said mobile numbers and had not made any efforts to collect call record details of the accused persons and the deceased Dharmendra so as to establish the fact that it was the accused no.1 only who called the deceased at Sanand Muktidham, as none of the prosecution witness has deposed that they saw accused persons and the deceased together at Muktidham. It is only on the basis of the call received by the deceased this theory has been put forward but the accused persons has denied making any such call to the deceased, therefore the

burden was on the prosecution to establish its theory of accused persons called-up the deceased. From the entire facts and circumstances and deposition on record and by looking at the circumstance relied upon by the prosecution it cannot be said that the deceased went to meet accused persons at muktidham in absence of any call detail record, deposition of mobile company nodal officer and any eye-witness, therefore, the Investigating Officer should have made efforts to get the call details record of the accused persons and the deceased to connect the accused persons with its theory, but simply on the assertions of PW-3 Prakashba that the deceased had gone to meet the accused persons is not enough, when there is no cogent evidence to establish that. The prosecution has not been able to prove beyond reasonable doubt that the accused persons spoke with deceased on phone around 10 pm on 2.06.2019 and asked him to come at Sanand Muktidham and deceased met them there as none has seen them together, because as per the case of prosecution, the deceased was well in touch with the accused persons since evening on 02.06.2019 through telephonic call and the accused persons were in touch with each other. It is submitted on behalf of the State that the testimony of PW-3 makes it clear that the deceased was in the company of the accused persons at the time of occurrence of the incident and it proves the guilt of the accused persons. On the other

end, Ld. Counsel for the accused persons has argued that no CDR has been produced by the prosecution and mere allegations cannot be made basis for making the accused liable for the crime in absence of any substantial evidence against them. From the perusal of the record of the case, it can be seen that the prosecution has neither produced the CDR nor examined the Nodal officer or employees of the different telecom company to prove the details of the ownership and the call details of different mobile phones. Had the Nodal Officer would have been examined then he would have brought CAF (Customer Application Form) of mobile number which would have demonstrated to whom such mobile number was allotted, exact location of the particular mobile phone and exact range of tower could have ascertained to connect the accused persons with the place of incident. So this Court is of the view that the non production of CDR and in absence of non examination of Nodal office from Telecom company to prove the CDR of the mobile numbers of the accused persons, the deceased and other witnesses, mere allegations that accused persons and deceased spoke with each other around 10 pm cannot be taken into consideration. The investigating officer has also admitted in his cross examination that he has not seized and taken into possession the mobile phone of accused persons, deceased, PW-3 Prakashba and other witnesses and he has further

stated that no documentary evidences has been submitted that 1 to 5 mobile numbers mentioned in the application are of them. He further admitted that it is true that he has not submitted any documentary proof regarding the Call Details of one to five numbers shown in Exh-110 and Exh-111. The prosecution has failed to establish its theory that the accused persons called up deceased and he went to meet them in absence of any cogent evidence on record.

(b) Accused persons quarreled with Dharmendra (deceased) and accused no.1 gave wooden-stick blow on his head:-

The prosecution has further chosen to prove its case by another circumstance by the testimony of PW-2 Omdevsinh Pradhyumansinh Zala who testified that on 02.06.2019 around 06.30 to 07.00 pm, when he was at Ahmedabad and at that time Devi Mata Priest of Sanand Muktidham namely, Munnabhai Gurucharansinh Sardar called him and informed him that the Dharmendra (deceased) and Accused no.1 were fighting so you make Dharmendrasinh understand, on this the witness testified that he told Munnabhai Gurucharansinh Sardar that he should close the gate and he will come and get the compromise effected and thereafter, he called his cousin brother Vijaybhai on phone and this witness reached Sanand Muktidham at around 12.30 am but in his cross-examination, he stated that Munnabhai Gurucharansinh Sardar called him and told

him that his uncle Dharmendra (deceased) is quarreling with accused no.2 so you come and make him understand and take him at home. He further admitted that Munnabhai Gurucharansinh Sardar did not tell him on phone that both accused persons had any exchange of blows but they only quarreled. He deposed that when Munnabhai Gurucharansinh Sardar gave him phone call he informed him that his uncle Dharmendra is quarreling with accused no.2 but he had not said anything regarding accused no.1. He further deposed that when he reached at the place of incident, he found Dharmendrasinh lying there alone and nobody-else was there and had further admitted that the place of incident is a main highway and there was no darkness and the street lights were switched on. Thereafter, on reaching there he called his brother Vijaysinh on phone and Vijaysinh came there and he along with Vijaysinh took Dharmendrasinh to the hospital and at that time, his uncle Dharmendrasinh was not in condition to talk or speak.

From the entire testimonies of this prosecution witness two version are coming on record, one he deposed in his examination-in-chief that when he was at Ahmedabad at that time, Munnabhai Gurucharansinh Sardar called him and told him that Accused no.1 is quarreling with his uncle and other is he in his cross-examination deposed that Munnabhai Gurucharansinh Sardar informed him on

phone that his uncle is quarreling with accused no.2 but he had not said anything regarding Ankit, therefore which of his version is true this cannot be said. Another thing to be noted is that as per his deposition he received call around 06.30 to 07.00 pm regarding quarrel between his uncle Dharmendra and accused person, but he choose to reach at Muktidham at around 12.30 pm. The facts narrated by this prosecution witness is not probable in the course of natural human conduct and which takes place in the ordinary course of events. The conduct of this PW-2 is not normal in given facts and circumstances as the deceased as stated by this prosecution witness was his uncle, therefore, he should have reached at the place of incident earliest once he received the information about the quarrel but he choose to reach there after the gap of five hours which is not of normal human conduct especially when person receives information that someone is quarreling with his dear one, the first reaction of the person would be to reach and extend whatever help to his dear one. He also deposed that he informed his cousin brother Vijaysinh about this incident on phone but even this Vijaysinh didn't reach at the place of incident at the relevant time and he too reached there later after this Omdevsinh Pradhyuman Zala reached. The prosecution witness said he received call from Munnabhai Gurucharansinh Sardar but this Munnabhai Gurucharansinh Sardar

has not been examined by the prosecution side to corroborate the prosecution version. Even otherwise also it is not coming on record that why this Munnabhai Gurucharansinh Sardar chooses to call PW-2 on phone as this Munnabhai Gurucharansinh Sardar is neither stated to be related to this prosecution witness nor to the deceased. The prosecution has further relied upon the deposition of PW-3 Prakashba whereby she has deposed that at around 11.15 pm her husband called her and informed her that accused persons are beating him and thereafter the call got disconnected. If we analysis the deposition of PW-2 and PW-3, the PW-2 deposed that he was informed about the quarrel between his uncle Dharmender and accused no.1 around 06.30 to 07.00 pm and PW-3 deposed that on 2.06.2019, she and her husband were at home and at about 10 clock her husband made phone call and had conversation for 10 minutes and told her that accused persons have called him at muktidham and thereafter he left the home and she further stated that she received call from her husband (the deceased) around 11.15 pm, who told her that both the accused are beating him, it can be assumed that it is not possible that the quarrel and beating which begun between 06.30 to 07.00 pm and lasted till 11.15 pm that too on public road and was not seen by anyone because if two persons would have inflicted injuries after quarreling then there would have been loud hue and cry

and the public would have gathered there, as the place of incident is a busy road of the locality and in front of the place of incident, there is a residential area. But none independent witness has stated anything regarding the quarrel. *There is contradiction in statement of both PW-2 and PW-3 regarding the time of alleged assault as PW-2 says Dharmendrasing was assaulted around 6:30-7:00 pm and PW-3 states it was around 11:15 pm, and PW-3 stated that her husband was at home and around 10 pm after making phone call he left from home whereas as per PW-2 he was assaulted around 6:30 to 7 pm, itself falsifies the theory of prosecution that Munnabhai Gurcharansing Sardar called up PW-2 Omdevsing around 6:30 to 7 pm about quarrel and assault by accused persons and later on complainant was informed by Vijaysing who was informed by PW-2. As according to PW-3 Dharmendersingh left from home after 10 pm therefore when he was with his wife(PW-3) at home till 10 pm then how can accused persons assault him as per the version of Pw-2 around 6:30 to 7 pm. The depositions of PW-2 and PW-3 does not inspire the confidence of the Court. Moreover, the Investigating Officer in order to corroborate the version of PW-2 Omdevsinh should have collected the call details of Munnabhai Gurucharansinh Sardar to ascertain whether actually such call was made regarding such quarrel. Therefore, the fact of the quarrel between accused*

person and deceased could not be ascertained in light of the aforesaid discussions. The PW-2 deposed in his examination-in-chief that after he and Vijaysinh took his uncle to hospital thereafter he called-up Dharmendrsinh's nephew Guptrajsinh and his uncle Dharmendrasinh told his nephew Guprajsinh that Accused no.1 had given him stick blow on his head whereas in his cross-examination he had admitted that when he took his uncle to hospital at that time, he was not in the condition to talk or speak. Dr. Rajendrabhai Popatlal Raval PW-11 deposed that Dharmendrasinh (deceased) was in unconscious condition when he was brought to the hospital and was not in a condition to speak, therefore, the testimony of PW-2 in view of the testimony of Dr. Rajendrabhai P. Raval PW-11 cannot be believed that his uncle Dharmendrasinh told the complainant Guptrajsinh that Accused no.1 gave him wooden-log blow on his head. The prosecution is trying to make-out the case without the reasonable link in the circumstance as when the person is unconscious then how can he say as to who gave him injuries. Thus, from the material available on record, it is apparent that PW-2 Omdevsinh had been introduced by the prosecution to demonstrate that he received phone call from Munnabhai Gurucharansinh Sardar regarding the quarrel between the Dharmendrasinh and accused person. If he had actually received this call he would have timely

informed PW-3, his Aunt Prakashba and son of Dharmendrasinh about it rather than calling his brother Vijaysinh as it is but natural that if anybody receives such information, he intimates the family members, but in this case PW-2 preferred firstly to inform his cousin brother Vijaysinh then informing his aunt Prakashba and son of Dharmendrasinh. One common thread in the testimonies of the PW-10 Guptrajsinh Anuridhsinh Jadeja and PW-2 Omdevsinh Pradyumansinh Zala, who were not at the place of incident, is the factum of having acquired knowledge of the crime only through mobile phone. The substance of the complaint as per Ex.-63 is that on 03.06.2019 complainant PW-10 namely, Guptrajsinh Anuridhsinh Jadeja got a call from Vijaysinh Manharsinh Zala, who told him that he got a call from PW-2 Omdevsinh Pradhyumansinh Zala who informed him that some people living near the road at Sanand Muktidham gave beating to the complainant maternal uncle Dharmendrasinh Sanmukhsinh Zala. However, he has not mentioned his mobile number as well as mobile number of the caller. Admittedly, the Investigating Officer has not seized the mobile phones of Pw-10 Guptrajsinh Anuridhsinh Jadeja, Vijaysinh Manharsing and PW -2 Omdevsinh Pradyumansinh Zala, and the informer i.e. Munnabhai Gurucharansinh Sardar , nor produced any call details to know whether the said informer i.e. Munnabhai

Gurucharansinh Sardar called PW-2 in the manner alleged by him. There is lapse on the part of the investigating authorities, who ought to have conducted investigation strictly in accordance with law. PW-10, in his testimony deposed that he derived the knowledge about the involvement of accused persons from one Vijaysinh Manharsing, who was informed by PW-2, and PW-2 deposed that he got call from one Munnabhai Gurucharansinh Sardar but he has not been examined as the prosecution witness. Needless to say that any person can give evidence about what he heard under section 60 of the 'IEA' because a person can give evidence about what he heard. But any statement of a witness that he heard from Munnabhai Gurucharansinh Sardar that accused persons are quarrelling with Dharmendersingh (deceased) would be hearsay if the same is sought to prove the truth of what Munnabhai Gurucharansinh Sardar had stated to this witness. The truth of the statement could be proved only by examining Munnabhai Gurucharansinh Sardar, what the witness deposed about having heard from Munnabhai Gurucharansinh Sardar. The identification by Munnabhai Gurucharansinh Sardar of any particular person or persons as assailants of the deceased would be really a statement that those persons assaulted the deceased, which would, to be tested for its truth by cross-examining Munnabhai Gurucharansinh Sardar.

Admittedly, neither PW-10 nor PW-2, saw anybody causing injuries to deceased. PW-2 Omdevsinh Pradyumansinh Zala's, evidence did not amount to anything more than Munnabhai Gurucharansinh Sardar having told him about the incident. This Court has made utmost endeavor to find out whether there is any legal evidence which would reasonably corroborate the evidence of PW-10 and PW-2, concerning the involvement of accused persons as assailants. There seems to be no such evidence. This Court is altogether puzzled about the non-examination of Munnabhai Gurucharansinh Sardar, no explanation has been offered even to us why he was not been examined as prosecution witness. Significantly, Munnabhai Gurucharansinh Sardar has not been examined as witness, and the reason is unexplainable. This has a direct bearing on the case. The genesis of the prosecution case stands shattered. Perhaps he could have revealed the truth of the events which took place on the spot. In the absence of the testimony of Munnabhai Gurucharansinh Sardar , the Court cannot go by hearsay testimony, certainly not on the deposition of PW-10 Guptrajsinh Anuridhsinh Jadeja and PW-2 Omdevsinh Pradyumansinh Zala, who are not a primary witness, as in the present case. The acts of assault allegedly narrated by the deceased to his wife PW-3 Prakashba Dharmedrasinh Zala on the phone are also not corroborated by any evidence, be it oral or

documentary. Even it is borne out from the record that the deceased Dharmendrasinh Zala was not in a conscious condition to say anything to PW-10, in view of the evidence of the PW-11 Dr Rajenderbahi P. Rawal ,who has stated that, the deceased sustained severe head injury and was unconscious. No clarification is sought from the Doctor as to whether the deceased was able to give any statement in that condition. The prosecution has miserably failed to prove that in all human probability the act must had been done by the accused persons. It seems from the testimony Investigating officer PW- 17, that when complainant PW-10 Guptrajsinh Anuridhsinh Jadeja, raised suspicion upon the accused persons, thereafter, they were arrested by the police, accused no. 1 was arrested on 3.6.2019 at 10:30 pm from his employer's place and accused no.2 was arrested on 4.06.2019 at 8:30 from her house. A perusal of testimony of PW11 Dr. Rajendrabhai Popatlal Raval (relevant extracts) reveal that it was deposed by him in his examination in chief that, *"when the deceased was brought for the treatment his history was disclosed his brother Jayendrabhai. As per history, some unknown person had caused injuries to the deceased with some unknown object around 12.30 on the intervening night of 02.06.2019 and 03.06.2019."* It is important to peruse the above statement in the light of deposition of PW 2 (relevant extracts) who

in his examination in chief deposed to the effect that, *“that on 02-06-2019 around 6.30 pm to 07.00 pm. This witness went to Ahmedabad for meeting some party. He received a call on his mobile phone from priest of Sanand Muktidham Devi Mata Temples who told him that deceased and accused no.1 were fighting so you make the deceased understand. Upon this PW2 asked the priest to close the gate and so that he may get compromise effected upon his arrival. Thereafter, PW2 called his cousin Vijaysing and proceeded to return for Sanand at about 12.15 hours and reached at Sanand Muktidham and found that the deceased had fallen down and blood was oozing out from forehead of deceased and thereafter, he called his cousin Vijaysing at Muktidham by phone.”* Upon comparison of both these statements it is revealed that the prosecution witnesses at least PW2 was aware of the alleged scuffle between deceased and accused no. 1 even before the deceased was shifted to Navjivan Hospital from place of occurrence. From Navjivan Hospital the deceased was referred to hospital of PW-11. Hence, in these circumstances it is hard to believe that when the entire prosecution case rests upon hearsay evidence and all the witnesses were in contact of each other through mobile phones or otherwise on that fateful night then at the time of admission of the deceased in Bopal Trauma Center the name of accused was not disclosed rather injuries

caused by some unknown person is mentioned in the history of offence. Though this court is not oblivious of the fact that the history of offence in medical papers cannot be equated with previous statement of any witness under section 154, 161, 164 of the code but still for the limited purpose of corroboration and contradiction it can be looked into. In the present case this history at least assumes significance when it contradicts the source of information of PW2 qua the alleged occurrence, particularly when his evidence rests upon hearsay evidence and the source of information has been alleged to be Munnabhai Gurcharansinh Sardar who is not examined by the prosecution. This fact clearly reveals that Munnabhai Gurcharansinh Sardar neither informed PW2 about any occurrence nor disclosed anything either to Jairajsinh and police at any point of time. In the obtaining facts and circumstances of the case, the testimony of PW-10, PW-2 and PW-3 are of no avail to the prosecution. In the opinion of this Court, convicting the accused persons on the strength of testimony of PW-10, PW-2 and PW-3 would result in miscarriage of justice. There is no evidence that that the deceased was seen by anybody in the company of accused persons after he left the house and no cogent evidence has been adduced on record by the prosecution connecting the accused persons with the crime. There is absolutely no other incriminating

evidence against the accused persons to connect them with crime. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof. The circumstantial evidence, in the form of oral version of Pw-10 Guptrajsinh Anuridhsinh Jadeja, PW-2 Omdevsinh Pradyumansinh Zala and PW-3 Prakashba Dharmendrasinh Zala, on the basis of which the complicity of the accused person was pointed out by the prosecution was not found to be absolutely clinching.

(c) Recovery of blood-stains baseball bat (dhoka) at the instance of accused no.1 under Section 27 of Indian Evidence Act:-

The prosecution has further chosen to prove its case by another circumstance that is recovery of blood-stains baseball bat at the instance of Accused no.1. It is the case of the prosecution that he himself led the police party to the canal and somewhere behind the bushes the baseball bat which is stated to be the weapon used in the crime was recovered at his instance. Whereas the defense has argued that the alleged recovery from the place which is open and accessible to general public and the accused no.1 has no connection with the said recovered weapon. It is the case of the prosecution that this baseball bat was used by accused no.1 to cause grievous injuries to the deceased Dharmendrasinh. Now whether the said baseball bat was used in the commission of the offence or not is, however, a

matter to be examined and scrutinized. PW-13 Dr. Pravinabanu A. Ansari, Scientific Officer, FSL Ahmedabad has proved Serological Analysis Report as Exh.87 and Biological Report as Exh.88. As per the report the blood group "B" was found on mud and four cloths of the deceased that is on shirt, vest, pant and underwear. Whereas the blood group on mark B3/1 that is on the baseball bat broken piece could not be decided. As per the sample report B3/1 is the broken part of the baseball bat that is the grip part and B3/2 is the front part of the baseball bat and on the B3/1 that is the broken part of baseball bat human blood was found but whose blood it was that could not be decided. As per the FSL Report, no blood was found on the sample mark B1 and B2 that is on the Ankit's cloth. The FSL Report to which the Court's attention was drawn reveals that the blood group on B3/1 that is on the baseball bat broken piece could not be decided.

Therefore, it could not be conclusively proved that the blood found on baseball bat, the same was the blood of the deceased. Furthermore, the prosecution has not submitted the FSL Report regarding the fingerprint of the person on the weapon of the offence to connect him with the crime. Therefore, in the opinion of the Court from the evidence of PW-13 it is not possible to come to the

conclusion that the baseball bat in question was really used in the assault of the deceased. However, as per FSL report Ex- 87 no finding was recorded, whether the blood on baseball bat matches with that of the blood group of the deceased. It is fairly a well settled legal proposition that in a case based on circumstantial evidence, recovery of crime weapon constitutes only one of the links in the chain of circumstances and the accused cannot be convicted merely based on the solitary instance of recovery. (See **VIJAY THAKUR v. STATE OF HIMACHAL PRADESH** 2014 (4) Cr.L.R. (SC) 1066 , **STATE OF HARYANA v. RAM SINGH** 2002 (1) SCR 208. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. In this case, without there being any other circumstance, the alleged recovery of wooden log by itself would not be sufficient to convict the accused persons for the offence of murder. It did not lead to the conclusion that the accused were the perpetrator of the crime. There is no evidence on record to connect the recovered the muddamal baseball bat with the offence in question.

(d) Motive under Section 8 of Indian Evidence Act:-

Now coming to the motive of accused behind commission of the alleged offences which has been projected by the prosecution as

firstly there were illicit relations between both the accused and secondly there was some dispute between deceased and accused no. 2 on account of which the offences alleged in the FIR of the present case have been committed. But in the light of all the abovementioned factors discussed hereinbefore both the motives appears to be very stale and weak since even if both the accused were having illicit relationship inter-se then it was none of the business of deceased particularly when there are no such allegations that he was himself involved with accused no. 2 and secondly though some kind of dispute has been alleged between deceased and accused no. 2 but in that dispute the deceased was being prosecuted by accused no. 2 and bailed out as per PW3. Hence, in these circumstances it is also clear that the deceased would not have bothered about the illicit relationship between both the accused particularly when the relations between him and accused no. 2 were strained. No witness of the prosecution has testified before this Court that they have personal knowledge about the fact of illicit relation between the accused person, the prosecution witness has stated that they have heard about it. None of the prosecution witness have seen the accused persons at the time of incident, even prior to it and after the incident at that place of offence. It has to be borne in mind that normally there is some kind of motive behind every

criminal act, but with the complex growth of society which produces complex characters the actions and reactions of persons either on the side of prosecution or accused are difficult to ascertain and judge. Sometimes a trivial issue may trigger some heinous offence and sometimes even in the bigger scenario different persons may act differently. Hence it is always not easy for the court to weigh and judge as to how a particular person would have acted in different circumstances. Hence, in the peculiar facts and circumstances of the present case the motive also appears to be weak and stale particularly when all the witnesses are either relative or known of the deceased, and no independent evidence is coming forward in addition to which the best and material evidence has been withheld.

In, **Tarseem Kr. vs. Delhi Administration, 1995 Cr.L.J. 470**, Hon'ble Supreme court observed that,

“where the case of prosecution has been proved beyond reasonable doubt on the basis of material produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of accused assumes great importance.”

This court does not find a version of prosecution witnesses on the motive to be inspiring confidence. That apart, no independent witness from the locality has been examined to corroborate the

factum of alleged fight between the deceased and the accused person in the manner alleged by relatives of the deceased while appearing as prosecution witnesses. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of accused assumes great importance. In the present case, there is no evidence whatsoever on the question of motive of the accused behind the alleged murder. The Investigating Officer PW-17, in his testimony has not deposed anything about the motive if any, behind the murder. Needless to say that the proof of motive is very important in a case of circumstance evidence like the present one. This Court feels that the true genesis of the crime has not come on record in the instant case. It is, therefore, concluded that the motive could not be proved by the prosecution side.

42. Apart from the above mentioned discussion, Further so far the testimony of other star witness of the present case i.e. complainant as PW-10 is concerned it is worthwhile to mention here that he is also not an eye witness to the occurrence, rather as per the case of prosecution this witness had also received the telephonic information qua the alleged occurrence from two different sources out of whom first source was Vijaysing Manharsing and second source was PW-3. Thereafter when he reached on the spot, he learnt that the deceased was already shifted to the

hospital. Then as per further version of the prosecution this witness came to know from Jairaj Singh i.e. son of the complainant that as per one Munnabhai (the person who had last seen the deceased with the accused) the accused were causing injuries to the deceased. A critical analysis of all these sources i.e. PW2, PW3, and Vijaysingh Manharsing reveals that these sources were themselves not having the first hand knowledge of the occurrence and their testimonies also depended upon what they heard or learnt from other sources, which means the entire prosecution version either it be FIR of the present case or testimonies of PW-2, PW-3, PW-8 & PW-10 suffers from rule of hearsay evidence. Apart from it this court is of the opinion that at this juncture specific admissions in the cross examination (relevant extracts) of complainant are required to be discussed which are to the effect that, *“he has no personal information regarding the incident and he is not an eye witness to the same. Vijaysinh Manharsinh Zala, Omdevsingh Pradyuman Zala, Ajitsinh Sanmukhsinh Zala are his maternal uncle and he also know Hardiksinh Juvansinh and Jayendra Chandhubha Vaghela. Jayrajsinh Zala is son of his maternal uncle. He and deceased lived in the same society and in his society people from other community also lived apart from Darbar community. When Vijaysinh called him, he immediately went to Navjivan Hospital. He has also admitted that he mentioned all those facts in his complaint whatever were narrated by Vijaysinh Manharsinh and Prakashba Dharmendrasinh.*

He has admitted that he did not mention in his complaint that a blow on the forehead of deceased was given with wooden-log (dhoko). He has also admitted that it is not mentioned in his complaint when he reached hospital the blood was oozing from the forehead and face of deceased. He has also admitted that it is not mentioned in his complaint that Munnabhai saw both the accused beating the deceased. He has also admitted that the doctor gives information to the police of the accidental case as well as assault cases. He further deposed that he did not give any information to the doctor regarding injuries of deceased. He has deposed that since deceased was injured and critical, hence, he went to Sanand Police Station around 10 am for lodging the complaint.” A careful perusal of all the above mentioned relevant extracts of cross examination reveals that firstly the entire version of complainant is hearsay evidence, secondly same suffers from material improvements such as qua reaching straightway to the Navjeevan Hospital, non-mentioning of manner of receiving the injuries by the deceased in the complaint but first time introducing that version in his examination in chief, and qua oozing of blood etc.

43. As a matter of fact, PW-2 had allegedly received a telephonic call from priest of Sanand-Muktidham (name later on coming in knowledge as “Munnabhai Gurcharan Singh Sardar”) to the effect of alleged occurrence,

and further Jairaj Singh son of deceased had also learnt from his so called inquiry that said Munnabhai Gurcharan Singh Sardar had lastly seen the deceased in the company of accused, but important fact that Jairaj Singh (son of deceased and to whom this witness Munnabhai Gurcharansinh Sardar allegedly disclosed about the occurrence which took place) has not been examined and non examination of Jairaj Singh is something which cannot be digested. It is important to note that Jairajsinh was the person who had allegedly done an enquiry on the spot and allegedly learnt from Munnabhai Gurcharansinh Sardar that the accused had caused the injuries to his deceased father. All these facts cumulatively point towards some doubt in the case of the prosecution.

44. In the considered opinion of this Court Jairajsinh was an important witness who could have disclosed the manner of his so called enquiry and the circumstances in which Munnabhai Gurcharansinh Sardar narrated the occurrence to him. It is further important to take a note of the fact that he is the son of the deceased and there was nothing stopping him to enter the witness box and testify whatever he had enquired. But to utter dismay of this Court he has not been examined by the prosecution and no plausible explanation is coming forward on this aspect. At this juncture this Court is of the opinion that section 114 illustrations (g) IEA comes into play which is as follows:

S.114 Court may presume existence of certain facts:

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

XXXXX-----XXXXX

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

XXXXX-----XXXXX

45. In the considered opinion of this court Jairajsinh was an important and material witness who has been not examined by the prosecution. Hence by virtue of abovementioned presumption it is absolutely safe to presume that production of Jairajsinh as a witness would have been unfavorable to the prosecution. This fact even assumes significance when call detail record of any of the prosecution witness is not available on record which could at least have proven a telephonic call by Gurcharan Singh Sardar to PW2.
46. On this count I also draw my force from the judgment of Hon'ble Supreme Court in **Ishwar Singh Versus State of U.P. reported in 1976 AIR(SC) 2423**, it has been held by Hon'ble Supreme Court in para 6 that,

“The High Court accepted the evidence of the prosecution witnesses who claim to have seen the incident except the testimony of Jait Singh (P. W. 7.) Jait Singh and Ram Rikh (P. W. 6) both claim to have seen the assault together from Ram Rikhs house and both have said that they hurried to the place of occurrence. The High Court thought that Jait Singhs presence at the time of the incident was doubtful and excluded his testimony from consideration. If Jait Singh was not a truthful witness, we do not see how Ram Rikh (P. W. 6) and the other two eye-witnesses examined, Mahabir (P. W. 1) and Satyapal (P. W. 2), could be relied on, because they have also said that Jait Singh was present at the place of occurrence. As stated already, the F.I.R. also mentions Jait Singh as an eye-witness. The F.I.R. names 9 persons as witnesses to the occurrence; Mahabir Singh, Ram Rikh, Jait Singh, Nahar Singh, Satyapal, Darampal, Pritam, Jaipal and Ghanshyam. Of them only Mahabir, Satypal, Ram Rikh and Jait Singh have been examined as P. W. 1, P. W. 2, P. W. 6 and P. W. 7 respectively. There is no explanation why the others were not examined. Of course, non-examination of some witnesses would not matter if the witnesses examined unfolded the prosecution case fully. But it is well established that witnesses essential to the unfolding of the narrative on which the prosecution is based must be examined. Mahabirs evidence is that on the morning of the date of occurrence he had invited Satyapal, Dharampal, Jaipal, Pritam, Ghanshyam and Chauhal Singh to settle the dispute between him and Ishwar Singh and that he had also sent Ghanshyam to call Ishwar Singh and his brothers for a settlement. Ghanshyam is also one of the persons assaulted. Ghanshyam thus appears to be an important witness for the unfolding of the prosecution case, but he has not been examined. There is no explanation why he was withheld though named in the

F.I.R. Another witness named in the F.I.R. Nahar Singh, who seems to be an independent witness, not related to Mahabir, was also kept back. Non examination of these witnesses acquired a special significance in view of the material discrepancy between the F.I.R. and the version of the occurrence given by the prosecution in Court. But the High Court does not appear to have taken into account these circumstances in considering the probabilities of the case.”

47. Now once this court has disbelieved the PW-2, PW-3 and PW-10 and has also presumed that non examination of Jairajsih is fatal to the case of prosecution then it becomes of utmost importance to have a glance at other evidence available on file.
48. Further a perusal of FSL report & Serological report reveals that no blood stains were found on the cloths of accused no. 1. Even the grouping of blood stains on the material objects i.e. B3/1 could not be done and no blood was detected on B3/2. Even more surprisingly as per the prosecution version both the accused were present at the time of occurrence but cloths of accused no. 2 which she was wearing at the time of alleged occurrence were neither taken into possession nor sent to FSL for chemical/serological examination by the investigating agency for the reasons best known to it.
49. Now so far the evidence of the PW17 Joravarsinh Ranjeetsinh Zala i.e. Investigating officer is concerned, though he has deposed about the entire

investigation conducted by him. Now so far his cross examination (relevant extracts) is concerned he has admitted that PW-2 has nowhere stated in his statement under section 161 of the code that deceased disclosed anything to the complainant to the effect that accused had caused injuries to him. He has also admitted that PW-2 was previously known to him. He has also admitted that he did not record statement of the Rickshaw Driver in whose rickshaw the deceased was taken to the hospital. He has also admitted that he did not take the cloths of PW-2 and Vijaysing Manharsing (as they carried the deceased in rickshaw to the hospital) in his possession. He has also admitted that no reason of delay in registration of FIR was assigned by the complainant. In view of this testimony all these aspects like no explanation of delay in registration of FIR, withholding of material witness i.e. Munnabhai Gurcharnasinh Sardar, Jairajsinh, non availability of call detail record of any of the family member of or deceased himself, no blood stains on the cloths of accused no. 1, non-collection of cloths of accused no. 2, no depiction of house of accused in site plan, etc. are certain relevant factors which also remained unanswered in his deposition.

50. Further there is another important factor which is delay in the registration of the FIR. As per the prosecution version the alleged occurrence had taken place on intervening night of 02-06-2019 and 03-06-2019

somewhere between 06:30 hours to 12:15 hours and thereafter the deceased was admitted to the Navjivan Hospital, where number of his relatives were present. Though none of his relative was having any first hand knowledge of the occurrence, but for sure PW2 (as per his own version) had the knowledge about the alleged occurrence and to some extent assailants also, on the basis of alleged telephonic call which was received by him Munnasinh Gurcharansinh Sardar i.e. priest of Sanand-Muktidham but despite of having such knowledge no information was supplied to the police till morning of 03-06-2019 resulting into delay of approximately 10 to 12 hours. It is very important to take note of the fact that as per PW-2 the police had reached on the spot after 15 to 20 minutes when Vijaysing Manharsing reached there and even before the deceased could have been shifted to the hospital. Then even after having such knowledge qua commission of offence and to some extent assailants the FIR of the present case was not registered despite of availability of police on the spot. But instead of getting register the FIR, PW-2 opted to remain silent which is hard to believe on account of his relationship with the deceased. It is true that delay in registration of the FIR alone cannot be considered sufficient to dislodge the case of prosecution. But in a case like present one where facts are so intricately mixed, the entire prosecution version is dependent upon hearsay evidence, which also suffers from non examination of material witnesses delay assumes

significance particularly on two counts first of which is that number of relatives of the deceased were present in the hospital and further that the relations between accused no. 2 and deceased were strained. It is worthwhile to mention here PW-3 has admitted in her cross examination that, *“accused no. 2 was kept as a maid in the hotel by deceased for making chapati and washing utensils and she is unaware about her salary. She also admitted that accused no. 2 was demanding Rs.4,000/- from the deceased. She had no knowledge about accused no. 2 demanding money from deceased due to which he fought with her. She admitted that accused no. 2 had earlier lodged the complaints against deceased twice or thrice on account of harassment and the Sanand Police Station had registered the offence against him wherein he was bailed out.”* Hence, when there is enmity, hearsay evidence, withholding of best and material evidence, and all these factors are coupled with delay in registration of FIR, particularly when number of relatives of deceased were present in the hospital, then possibility of due consultations and deliberations cannot be ruled out. The delay in registration of the FIR in such like cases sounds like death knell of the prosecution case. In **Gurmukh Singh Vs. State of Haryana** reported in **Criminal Court Judgments 1990**, page 207 a **Division Bench of Hon’ble Punjab & Haryana High Court** has **observed that,**

“Unexplained and inordinate delay of more than a week in lodging the First Information Report was, however, adversely commented upon by their lordships of the Privy Council in Emperor V/s. Khwaja Nazir Ahmed, AIR 1945 Privy Council 18 and later by their lordships of the Supreme Court in Khedu Mohton and Ors. V/s. State of Bihar, AIR 1971 SC 66, Ganesh Bhavan Pate I and Anr. V/s. State of Maharashtra, AIR 1979 SC 135, and Dinanath Singh and Ors. V/s. State of Bihar, AIR 1980 SC 1199 as follows :-

- "fir is based upon the earliest version of a cognizable offence. The object of the FIR is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten and embellished. It is the duty of the prosecution to explain the delay. Failure to do so undoubtedly is a circumstance of considerable importance. The delay of 8 days in filing the complaint throws a great deal of doubt on the prosecution story. The ordinate delay in registration of the FIR and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. Solitary eye-witness was examined by the police 13 days after the occurrence. Far from giving any reasonable explanation for the delay in his examination by the police, the witness admits that although the investigating officers or other police constables were searching for him, he kept himself concealed due to fear for 12 days. The witness does not at all state in his evidence that either at the time of occurrence or sometime later any of the accused gave any

threat to the witness not to depose against them. Thus the theory of fear appears to be clearly an afterthought. In view of this infirmity the trial Court was fully justified in not placing reliance on the solitary eye-witness who concealed himself for 13 days after the occurrence. " Inordinate and unexplained delay aforesaid thus sounds the death knell of the prosecution case set out against the accused appellants".

51. Now coming to section 135 of the GP Act, which requires that prosecution should have proved that the accused were armed with weapon of offence at the relevant time of alleged occurrence, in violation of the declaration of the concerned authority. But since the prosecution could not prove the offences under section 302 r/w 114 of IPC beyond the shadow of reasonable doubt, hence, the prosecution under section 135 of the GP Act also suffers from same infirmities due to which the prosecution could not prove other charges. It is worthwhile to mention here that there is no clinching evidence available on file so far this offence is concerned.
52. It must be borne in mind that as per the criminal jurisprudence when the offences alleged are heinous and punishment is graver in nature then the proof should also be of a greater degree. There always remains a lots of distance between 'may be true' and 'must be true,' and in the considered opinion of this court the prosecution has failed to travel that distance in

the present case. Even otherwise it is also a well settled law that where two views are possible then one which favors the accused should be accepted.

53. Hon'ble Supreme Court in **ASHISH BATHAM VS. STATE OF M.P.**

[2002 (7) SCC 317], has observed as follows:-

“Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”

In the instant case, as stated above, from the appraisal of the evidence led by the prosecution, it is found that the prosecution has miserably failed to prove the

motive of crime and has failed to establish the chain of circumstances which could link both the accused person with the crime. The chain of events narrated by the prosecution lacks coherence. All the chain of events are not connected to each other. The circumstantial evidence on record does not give even a remote inkling that it was the accused who had committed the murder of Dharmendrasing Sanmukhsinh Zala on the intervening night of 2/3.6.2019.

54. Thus, the net result is that whole of the case of the prosecution hinges upon conjectures and surmises. It is the cardinal principle of Criminal Law that in criminal cases, the guilt of the accused is to be proved by indubitable evidence and the conjecture and surmise, however, strong may be, cannot take place of proof. The benefit of doubt as and when the same arises, however, marginal the same may be, is bound to tilt in favour of the accused.
55. In the light of what has been discussed above and without elaborating further, it is held that the prosecution has not been able to bring home guilt of both the accused persons at least beyond shadow of reasonable doubt. In the present case the prosecution has miserably failed to prove that on the intervening night of 2/3.06.2019 in the area of Sanand Muktidham, accused persons had committed the murder of Dhaarmendrasing Sanmukhsinh Zala. Resultantly, providing benefit of doubt, accused Ankit Patel and Munniben are acquitted of the charge framed against them. . Hence, I

answer the point no.2 and 3 in the negative.

56. Under the above facts and circumstances, the following final order is passed:-

-: ORDER :-

- * Under Section 235(1) of Code of Criminal Procedure, the accused No.1 **Ankitbhai Ramanbhai Patel** resident of Village Vamaj, Taluka Kadi, District Mehsana **and** accused no.2 **Munniben wd/o Mukeshbhai Rameshbhai Devipujak** resident of Muktidham, Village Sanand, Taluka Sanand, District stand acquitted from the charges leveled under **Section 302r/w. Section 114** of Indian Penal Code and Section 135 of GP Act by extending benefit of doubt.
- * The accused no.2 Munniben wd/o Mukeshbhai Rameshbhai Devipujak is on bail; her bail bonds stand cancelled and sureties is discharged.
- * The accused no.1 **Ankitbhai Ramanbhai Patel** in jail; he may be set at liberty forthwith, if not under detention for any other offences registered against them.
- * Both the accused person shall present their personal bond and bail to the tune of **Rs.10,000/-** (Rs. Ten Thousand only) each under Section 437(A) of Code of Criminal Procedure.

- * The Muddamaal of the case may be disposed of as per the procedure after the expiry of appeal period and in case any appeal is preferred against this judgment, the same shall be subject to the order passed in such appeal.

Pronounced & declared in the Open Court today on this 27th day of October, 2021 under my hand and seal.

Date: 27-10-2021

Place: Ahmedabad

**(Ms. Amandeep H.S. Sibia)
7th Additional Sessions Judge,
Ahmedabad(Rural) at Mirzapur.
UIC No.GJ 01591.**

