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**IN THE COURT OF 6th ADDITIONAL SESSIONS JUDGE, AT
RAJKOT.**

Sessions Case No. 64/2016

Exh.____

Complainant:

THE STATE OF GUJARAT

VERSUS

Opponent/Accused Person:

RAJU @ DIMPAL KRUSHNAMURARI YADAV,
Hindu, Aged 25 years,
R/o. Punching Society Flat No. 1, Adjoining 25 Sq. Yard
House, Opposite Swami Narayan Mandir, Near New
Mamlatdar Office, Vankaner, Dist.: Morbi.
(As per address pursis filed vide Exh. 110)

Appearance:

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Mr. D. M. Mehta, Ld. A.P.P. appeared for the State.

Mr. A. B. Thakkar, Ld. Advocate for the accused.

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

[1] The accused herein is charged for the offence punishable under Sections 397 of IPC vide charge framed at Ex.13 against the accused person.

[2] The brief facts of the prosecution case are as under:

[2.1] As per complaint made by Bhavin Rameshbhai Solanki, he was working as a Collection Officer in Bajaj Finance. On 26/10/2015, he went to Sokhda village of Chotila Taluka for collection of loan installment amount from one Rupabhai Khambhla and Rupabhai asked him to come in the evening to get the amount, and thereafter, he visited other persons and in the evening after collecting the loan installment amount of Rs.46,600/- from Rupabhai Khambhla, he informed his head office and was coming back to Rajkot and at around 9.30 p.m. when he was coming to Rajkot after passing through Maliyasan village on Ahmedabad – Rajkot Highway and when he reached between Mahindra Showroom and Eagle Farm, three persons on one Pulsar Motor Cycle stopped their motorcycle ahead of his motorcycle and falsely stated that

he had dashed his motorcycle with their motor cycle and thereafter started beating him and two persons amongst them caught hold of him and one person draw knife from his pocket and stabbed the complainant on left side of his abdomen and snatched away Rs. 46,600/- collected from said Rupabhai Khambhla from the pocket of his pants along with his purse containing his PAN card, licence, Aadhar Card and ATM Card and one Samsung company black coloured Mobile Phone and fled away. Thereafter, the complainant stopped two motorcyclists and told them about the incident and asked them for help and thereafter, they called 108 Ambulance and they took him to Rajkot Civil Hospital, where his treatment was done and the police was informed and an F.I.R. was lodged on the basis of his complaint. Subsequently, on secret information, house of the accused was searched from where Samsung Company mobile phone robbed from the complainant was recovered in presence of his wife. The accused was detained in PASA at that time, and thereafter, he was formerly arrested and test identification parade was conducted before the Executive Magistrate and the complainant identified the

accused as the person who robbed and stabbed him. The knife used in commission of the offence was also recovered at the instance of accused.

[2.2] After investigation, charge sheet was filed against the accused and subsequently, charge was framed by this court vide Exh.13.

[3] To bring home the guilt of the accused to the charge, the prosecution examined the following witnesses :

Sr. No.	PW No.	Exh. No.	Name of witnesses
1.	1	17	Ajaybhai Jayantibhai Udeshi,
2.	2	19	Rameshbhai Mohanbhai Parmar,
3.	3	21	Umeshbhai Ramjibhai Makwana,
4.	4	24	Amitbhai Boghabhai Gohel,
5.	5	26	Vijay Narsibhai Nagvadiya,
6.	6	28	Jayesh Veljibhai Bhadra,
7.	7	43	Ajaybhai Jayantibhai Sanghlani,
8.	8	44	Dr.Dhirajbhai Maiyarambhai Agravat,
9.	9	47	Nalinkant Narsinhbhai Vyas,
10.	10	52	Bhavin Rameshbhai Solanki,
11.	11	60	Rupabhai Laghrabhai Rabari,
12.	12	69	Jivrajbhai Mohanbhai Vaghani,
13.	13	70	Vijaybhai Chamanbhai Zala,
14.	14	73	Vijaybhai Kalubhai Fatepura,

15.	15	74	Rameshbhai Ranchhodbhai Solanki,
16.	16	75	Bhavinbhai Ghelabhai Shiyaliya,
17.	17	76	Hirenabhai Vinubhai Bhalala,
18.	18	78	Vishalbhai Rameshbhai Solanki,
19.	19	79	Jaydipbhai Narendrabhai Solanki,
20.	20	80	Jogendrasinh Bhagvatsinh Jadeja,
21.	21	82	Muljibhai Khojaliya Vasava,
22.	22	85	Ankit Jayprakashbhai Bhatt
23.	23	88	Hareshbhai Dayaljibhai Lakhtariya,
24.	24	93	Pankajkumar Babalbhai Valvai,
25.	25	96	Hirabhai Rambhai Kuvadiya,
26.	26	97	Jigneshbhai Jitendrasinh Chauhan,

[4] The prosecution has produced the following documentary evidence:

Documentary Evidence:-

Sr. No.	Name of Document	Exh.
1.	Letter to PSO Kuvadve Road Police Station for registration of offence,	84
2.	Complaint	53
3.	F.I.R.	83
4.	Special report for heavy offence,	100
5.	Panchnama of scene of offence,	18
6.	Panchnama of body status of injured,	20
7.	Recovery panchnama of mobile phone,	25
8.	Arrest panchnama,	46
9.	Panchnama of test identification parade,	27

10.	Discovery Panchnama of knife,	29
11.	Injury certificate issued by Medical Officer, PDU Hospital, Rajkot	45
12.	Letter written to FSL, Rajkot for examination of muddamal articles,	101
13.	Receipt issued by FSL, Rajkot about the receipt of muddamal,	87
14.	FSL reports	86
15.	Report of FSL mobile van	49
16.	Letter written to FSL officer for site visit of incident,	48
17.	Letter written to Executive Magistrate to allow time for test identification parade,	94
18.	Panch slip regarding discovery of knife,	98
19.	Panch slip regarding seizure of clothes,	99

[5] After the completion of trial, arguments were advanced by Mr. D. M. Mehta, learned A.P.P. for the State and Mr. A. B. Thakkar, Learned Counsel for the accused. Ld. counsel for the accused has also filed written arguments at Exh. 113.

[6] It is submitted by the Ld. APP for the State that there is ample evidence against the accused and the case against him is proved beyond reasonable doubt. It is submitted that the complainant had not only identified the accused in the Court but also identified him at the time of test

identification parade before the Executive Magistrate. He further identified his mobile phone, which was recovered from the house of the accused. The accused has not been able to explain the possession of the said mobile phone from his house. Further, steel knife used in stabbing the complainant was also recovered at the instance of accused. It is submitted that the complainant was immediately taken to Rajkot Civil Hospital after the incident and on the very next morning, F.I.R. was lodged and as such, there is no delay in lodging the F.I.R. The time gap between the commission of offence and the lodging of F.I.R. is explained from the facts and circumstances of the case. The persons who brought the complainant to the hospital also deposed regarding the complainant asking them for help and thereafter they brought the complainant to Civil Hospital, as such, the commission of offence and the place of incident has been proved. Further, the complainant has no reason to falsely implicate the accused in the present case as he was robbed and injured by the accused and correctly identified him throughout. The accused has not been able to bring

any circumstances showing his innocence against the evidence led by the prosecution. It is submitted that, even FSL report suggests the same blood group on clothes of injured and of injured complainant. The blood group of the complainant and the blood found on the knife recovered at the instance of accused was also found same and, as such, the same also corroborates the case of prosecution. It is submitted that in view of evidence against the accused, he is liable to be convicted for the offence committed under Sec.397 of I.P.C.

- [7] Learned Counsel Mr. A. B. Thakkar appearing for the accused has submitted that the prosecution has prepared a got-up case against the accused and mobile phone was planted in the house of accused, and as such, the offence was not detected by the police, but in order to solve the case, the accused who was detained under PASA at that time was falsely implicated in the present case. It is submitted that while alleged offence was committed on 26/10/2015, the mobile phone was shown as recovered from the house of accused on 27/01/2016 i. e. after

around 3 months and in normal circumstances, it is not probable that a person who rob a mobile phone would keep the said mobile phone with him for such a long duration. Further, admittedly, accused was not at home and was under PASA detention when the mobile was allegedly recovered from his house in the presence of his wife and thus admittedly, mobile phone was not recovered from the exclusive possession of the accused. It is further submitted that steel knife is also shown as recovered at the instance of accused from the highway after more than three months, which is not possible in normal circumstances and apparently it appears that, the knife has been planted on the accused to show the case as solved. Further, the complainant was also not able to identify the knife in his evidence. It is further submitted that the prosecution has not been able to explain regarding non-apprehension of two other accused persons, who allegedly robbed the complainant and further recovery of Pulsar Motor Cycle and had the accused been involved in the commission of offence, he would certainly point out or give information regarding

other accused persons and motor cycle involved in commission of offence. The cash amount has not been shown as recovered from the accused.

It is further submitted that the TIP of the muddamal mobile phone has not been conducted as per law and the mobile phone allegedly recovered from the accused was not produced in the Court and even no CDR regarding the mobile phone was produced on record so as to connect the mobile with the SIM card of the complainant. Even no bill of the said mobile phone is produced on record and the prosecution has grossly failed to establish the ownership of the allegedly recovered mobile phone of the complainant. It is further submitted that the TIP of the accused was not conducted as per the law and the dummies of same age group were not called and even the physical and other description of the dummies was not mentioned in TIP panchnama and as such the TIP cannot be relied. It is submitted that the prosecution case against accused is doubtful one and in view of the circumstances placed on record, the accused is entitled to acquittal. Ld. Counsel has further submitted

that panch witnesses of discovery panchnama of knife and further recovery panchnama of muddamal clothes and mobile phone, panchnama of place of incident, bodily status of the complainant-injured and arrest panchnama of the accused have turned hostile, and as such, the said recovery and discovery could not be proved by the prosecution. It is further submitted that the complainant has not stated about the position of light at the place of offence and the description of the assailants in his complaint and also has not specified the role of the each assailant in the offence. It is submitted that the police has shielded the real culprits and made the accused as scapegoat of the episode. Ld. Counsel has thus prayed for acquittal of the accused. Ld. counsel has also relied upon following citations:

- (i) 2017 (2) GLR 1735 (Guj. H.C.),
- (ii) 2003 (3) GLH 584(Guj. H.C.),
- (iii) 1996 (2) GLR 821 (Guj. H.C.),
- (iv) 1993 (1) GLH 33(Guj. H.C.),
- (v) 2019 (1) crimes 28 (S.C.),
- (vi) 2019 (2) crimes 274 (S.C.),

- (vii) 2016 (4) GLR 3122 (Guj. H.C.),
- (viii) 2014 (2) SCC (Cri.) 205,
- (ix) 2013 (1) GLH 40 (Guj. H.C.),
- (x) 2012 (3) GLR 2250(Guj. H.C.),
- (xi) 2012 (3) GLR 2400 (Guj. H.C.),
- (xii) 2011 (3) SCC (Cri.) 457,
- (xiii) 2011 (3) SCC (Cri.) 473,
- (xiv) 2008 (3) SCC (Cri.) 959,
- (xv) 2007 (1) SCC (Cri.) 140,
- (xvi) 2007 (2) SCC (Cri.) 162,
- (xvii) 2007 (3) GLH 402 (Guj. H.C.),
- (xviii) 2005 SCC (Cri) 597,
- (xix) 2005 SCC (Cri) 801,
- (xx) 2003 SCC (Cri) 738,
- (xxi) 2002 SCC (Cri) 1718,
- (xxii) 1998 SCC (Cri) 890,
- (xxiii) 1991 CR. LJ (S.C.) 3359,
- (xxiv) 1991 SCC (Cri) 586,
- (xxv) 1991 SCC (Cri) 634,
- (xxvi) 1981 SCC (Cri) 154,
- (xxvii) 1977 SCC (Cri) 629,

[8] On the basis of the arguments of both the parties, and the charges framed at Ex.13 and the evidence led on the same, following points arise for the determination of this matter:

1. Whether the prosecution is able to prove beyond reasonable doubt that the accused robbed and injured the complainant and thereby committed offence punishable under Section 397 of the I.P.C?
2. What order?

[9] Answers to the above points are as under:

1. In the Affirmative.
2. As per final order.

:: REASONS ::

BRIEF NARRATION OF THE EVIDENCE ON RECORD:

[10] Prosecution has examined as many as 26 witnesses to prove its case. PW No.1- Ajaybhai Jayantibhai Udashi and PW No.13 – Vijaybhai Chamanbhai Zala, who were examined at Exh.17 and Exh.70 respectively were the panch witnesses of the panchnama of scene of offence. They have identified their signatures on the panchnama Exh.18, but denied the preparation of panchnama in their presence and contents of panchnama.

Both these panchas were declared hostile.

[11] PW No.2 – Rameshbhai Mohanbhai Parmar and PW No.3- Umeshbhai Ramjibhai Makwana, who were panchas of body status of the injured complainant Bhavinbhai have been examined at Exh.19 & Exh.21 respectively. They have identified their signatures on the panchnama Exh.20, but denied the preparation of panchnama in their presence and contents of panchnama.

Both these panchas were declared hostile.

[12] PW No.4 – Amitbhai Boghabhai Gohel, who was panch witness of seizure of mobile from the house of the accused has deposed at Exh.24. He also though identified his signature on pahnama Exh. 25, but denied the preparation of panchnama in his presence and contents of panchnama.

He was declared hostile.

[13] PW No.5 – Vijaybhai Narsibhai Nagvadiya and P.W. No.14 – Vijaybhai Kalubhai Fatepura, who were panchas of test identification parade have deposed at Exh.26 and Exh.73 respectively. They also though admitted their

signatures in the panchnama Exh.27, but did not support the prosecution case and denied any test identification parade panchnama was conducted in their presence and denied the contents of the panchnama.

Both these panchas were declared hostile.

- [14]** PW No.6 – Jayesh Veljibhai Bhadra and PW No.7 Ajaybhai Jayantibhai Sanghlani, who are panchas of discovery panchnama of knife have deposed at Exh.28 and Exh.43 respectively. They have identified their signatures on the panchnama Exh.29, but denied the preparation of panchnama in their presence and contents of panchnama.

Both these panchas were declared hostile.

- [15]** PW No.8 – Dr. Dhirajbhai Maiyarambnhai Agravat, who was Medical Officer in Emergency Ward has deposed at Exh.44. He has stated that, on 26/10/2015, he was working as a Medical Officer in Emergency Ward of Civil Hospital, Rajkot. He stated that, injured complainant Bhavinbhai Rameshbhai Solanki was brought to the hospital for treatment of injury. He was conscious state of

mind and his pulse, heartbeat and blood pressure was normal and on being asked, he revealed that unknown person stabbed him at around 9.30 p.m. near Kuvadva. Thereafter, he was admitted in Emergency Ward and his treatment was done. He proved the injury on the left side of abdomen of the complainant, which was 5 x 1 cm and there was bleeding. He opined that, the said injury could be done by a sharp or heavy object. He further proved the medical certificate produced at Exh.45 which contains his handwriting and signature.

- [16]** PW No.9 – Nailnkant Narsinhbhai Vyas was the Scientific Officer, who visited the site after the incident for forensic, has deposed at Exh.47. He stated that, he conducted the inspection of site. He stated that, description of place of incident which is in front of Eagle farm. He further stated that, one Hero Honda Motor Cycle No.GJ-03BK-4526 was found on the spot having rub marks on its right side and left side indicator was found broken and pieces of the same were found on the road and electricity pole was also found on the road. He proved site visit report at Exh.49.

[17] PW No.10 - Bhavinbhai Rameshbhai Solanki, who was complainant and sustained injuries in incident, has deposed at Exh. 52. He has reiterated the averments made in his complaint and has stated that he was working as a collection officer at the time of incident and when he was coming back to Rajkot after collection, three persons stopped him and started beating him and he also tried to reach them but they were three persons he could not reach them. It is submitted that out of 3 persons, 2 persons caught hold of him and third person has stabbed him on left side. He further deposed that they also snatched away around Rs.56,600/- from him beside his original Aadhar Card, PAN card, licence and Samsung Mobile Phone and also took key of his bike and they fled away and thereafter he called on 100 number with the help of 2 persons who were stopped by him for his help and thereafter police came and called Ambulance and he was admitted to Civil Hospital, Rajkot and his family members were informed. He proved the complaint at Exh.53 containing his signature. Though the accused was not present in the court and exemption was sought

for the personal appearance of accused on that day, he identified the accused from the photograph of the accused placed in the court file and stated that, he stabbed him, but he did not identify the knife Article-“B” shown to him. He also deposed that the accused present in the Court robbed him of his mobile phone and the same was released to him vide Court order Exh. 119.

In his cross-examination nothing substantial could be brought by the defence side. He stated that he had no receipt book at the time when he received the collection amount, and as such, he did not provide receipt of the amount to Rupabhai. In reply to the question as to whether he met accused after the incident, He replied that he went to Mamlatdar Office for test identification parade where he identified the accused.

[18] PW No.11 – Rupabhai Laghrabhai Rabari from whom the complainant-injured has collected the loan installment amount, has deposed at Exh.60. He stated that he took a loan from Finance Company in Rajkot for purchasing JCB Machine and one official of company used to come to him

for collecting loan installment. He was not aware of the exact installment amount paid to the said official whose name was revealed by him as Bhavinbhai Solanki. He stated that, it was around Rs.46,000/- - Rs.47,000/-. He was not aware of the exact date of payment but he stated that the same was paid around two years back in the evening and after some time he came to know that the said Bhavinbhai was robbed by some persons.

[19] PW No.12 – Jivrajbhai Mohanbhai Vaghani has deposed at Exh.69. He denied having any knowledge of the incident.

He was declared hostile as he did not support the case of prosecution.

[20] PW No.15 – Rameshbhai Ranchhodbhai Solanki, who was father of the injured, has deposed at Exh.74. He stated that his son Bhavin is serving in Finance Office and was working there at the time of accident and he called him over phone and told him that he was stabbed and robbed. Thereafter, he went to spot and took his son to

the hospital, which happened near Maliyasan on Chotila Road.

[21] PW No.16 – Bhavinbhai Ghelabhai Shiyaliya has deposed at Exh.75. He stated that Hirenbhai is his friend and he and his friend were coming from Limbdi to Rajkot, at that time one person was found sitting near Maliyasan village in an injured condition and they stopped their motorcycle and inquired from him and he revealed them regarding the incident of robbery and thereafter admitted him in the hospital.

[22] PW No.17 – Hirenbhai Vinubhai Bhalala has deposed at Exh.76 on the same line as deposed by PW No.16.

[23] PW No.18 - Vishalbhai Rameshbhai Solanki, who is younger brother of injured, has deposed at Exh.78. He stated that, his father received a phone call from injured that, he has been stabbed and robbed and thereafter they went to Civil Hospital. His brother was stabbed in abdomen.

- [24]** PW No.19 – Jaydipbhai Narendrabhai Solanki has deposited at Exh.79 on the same line as deposited by PW No.18.
- [25]** PW No.20 – Jogendrasinh Bhagvatsinh Jadeja, who was serving in finance company, has deposited at Exh.80. He deposited that Bhavinbhai was collection officer in Bajaj Finance Company and he was informed by his superior officer that Bhavinbhai was robbed and injured and thereafter he went to hospital.
- [26]** PW No.21 – Muljibhai Khojaliyabhai Vyas who was I/c. P.S.O. in Kuvadva Road Police Station, has deposited at Exh.82. He stated that, from 20.000 hours of 26/10/2016 20.00 hours to 8.00 p.m. of 27/10/16 he was in-charge PSO in Kuvadva Road Police Station at that time PSI Kuvadiya has recorded the complaint of the complainant and has handed over to him for its registration. He proved the F.I.R. at Exh.83, which is in his handwriting and containing his signature.

[27] PW No.22 – Ankit Jayprakashbhai Bhatt who is working as Scientific Officer, Surat, has deposed at Exh. 85. He stated that in the year 2016 he was serving as I/c. Scientific Officer, FSL at Rajkot. He proved that he received sealed parcels 4 in numbers containing two white coloured clothes, two glass bottles, one knife and after examining the same, he prepared the report containing his signature, which was identified by him and proved at Exh.86. He identified the muddamal, which was sent to his office for examination.

[28] PW No.23 – Hareshbhai Dayaljibhai Lakhtariya, who was serving as Assistant Manager in RMC has deposed at Exh. 88. He stated that, in the year 2016 he was Assistant Manager in RMC Aavas Division at that time police had inquired from him with regard to the offence registered vide C.R. No. I-179/15. He stated that, Block No.50, quarter No.15 which was occupied by accused was not allotted by their office to anyone and he came to know regarding accused from news in newspaper.

In his cross-examination, he stated that he has never seen the accused, and as such, he could not identify.

[29] PW No.24 – Pankajkumar Babalbhai Valvai, who was Mamlatdar and Executive Magistrate, has deposed at Exh.93. He stated that, he was working as a Mamlatdar and Executive Magistrate in the year 2016. He proved that test identification parade of the accused was conducted in his presence and before him and in presence of 2 panchas and he conducted proceedings of test identification parade in his chamber and the persons resembling height and physique of the accused were called and were mixed with accused. The accused was brought in such a manner as no one could see his face. He further deposed that accused was identified by the complainant during the said test identification parade. He proved the test identification parade at Exh.27 containing his and panchas signatures.

[30] PW No.25 – Hirabhai Rambhai Kuvadiya who was working as PSI in Kuvadva Road Police Station, has

deposed at Exh.96. He stated that, on 26/10/2015 he was on duty as PSI at that time he was handed over the investigation of the case. He proved that the complainant made the complaint before him and thereafter, the F.I.R. was registered on the basis of the said complaint. He further deposed that panchnama of place of incident was conducted in presence of panchas and the statements of witnesses and neighbours were recorded. He proved panchnama at Exh.18 of place of incident which was conducted by him as per dictation of panchas containing his signature as well as panchas. He further proved panchnama of the body status of the injured at Exh.20 prepared by him at the instance and dictation given by panchas. He further deposed that, FSL Officer was requested for site visit and proved letter regarding the same. He deposed that, on 19/01/2016 further investigation of the case was handed over to other I.O.

[31] PW No.26 – Jigneshbhai Jitendrasinh Chauhan, who was PSI in Kuvadva Road Police Station has deposed at Exh.26. He deposed that, on 19/01/2016 he was on duty

as a PSI in Kuvadva Road Police Station and he was handed over the further investigation by PSI H. R. Kuvadiya. He deposed that, on the basis of information, he conducted the search of the house of the accused in presence of two panchas and wife of accused Nasimben and the mobile phone robbed in the offence was recovered and they came to know that accused was detained in PASA and thereafter his formal arrest was made after taking custody and his test identification parade was conducted before the Executive Magistrate, Rajkot. He further deposed that discovery panchnama was prepared in presence of two panchas as the accused voluntarily wanted to indicate about concealment of knife and the knife was then recovered. He further deposed that blood sample of injured, knife recovered from the accused and the clothes worn by the injured at the time of incident were sent to FSL examination. He further deposed that, on inquiry from RMC, the accused appeared to be in illegal possession of quarter and after investigation the charge sheet was filed. He further proved discovery panchnama at Exh. 29 as conducted by

him as per dictation of panchas containing his signature as well as panchas. He further identified muddamal recovered in the panchnama. He further proved panchnama of recovery of shirt of injured conducted by him in presence of panchas containing his signature. He further deposed that he could identify the accused but as accused was not present in the court, objection regarding his identity was not taken by Ld. Counsel for the accused. He further proved that arrest panchnama of the accused was conducted in presence of two panchas containing their signatures in the said panchnama.

In his cross-examination, he denied that no muddamal was recovered from the accused. He further denied that the complainant did not make any description regarding body and physique of the persons who robbed him. He denied that, out of three individuals, he had not investigated with regard to other two persons. He has admitted that he has not shown the other two individuals as absconders in the charge sheet. He denied that he did not take any proof of service of the complainant from

finance company. He denied that signatures of panchas in the panchnama were taken on prepared panchnama.

Appreciation of Evidence

Point No. 1:

[32] As per the case of prosecution, three unknown persons waylaid the injured/complainant at around 9:00-9:30 p.m. near Maliyasan Village on Ahmedabad-Rajkot highway while he was returning to Rajkot after collection of loan amount of Bajaj Finance company and robbed him of money and other valuables after injuring him by inflicting stab wound. The accused herein was later on arrested in connection with the commission of said offence and is charged for the offence punishable under Sections 397 of IPC.

[33] Section 397 of Indian Penal Code reads as under:

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the

imprisonment with which such offender shall be punished shall not be less than seven years.

[34] Thus, in order to bring the offence within the ambit of Section 397 of IPC, prosecution has to establish that;

(i) the accused has committed robbery or dacoity,

(ii) while committing the said offence, accused:-

(a) Used any deadly weapon, or

(b) caused grievous hurt to the complainant, or

(c) Attempted to cause death or grievous hurt to the complainant.

[35] It is contended by the Ld. counsel for the accused that the doctor has not opined if the injury inflicted on the complainant was serious or simple and further did not opine that the injury was inflicted by the knife recovered as muddamal in the case.

[36] It is further contended by the Ld. counsel that the blood spots were not found at the place of incident and the panchas of the panchnama of place of incident also turned hostile and as such the fact of robbery and injury to

the complainant at the place mentioned of incident is doubtful and is not proved. I am not impressed with the contention of the Ld. counsel as the fact of robbery and injury to the complainant has been proved by the prosecution from the testimonies of the witnesses and other material produced on record. Further, PW9, Nalinkant Narsinhbhai Vyas, FSL officer, who visited the site opposite Eagle Farm at Maliyasan Village and found motorcycle no. GJ-03-BK-4526 lying at the road with the parts of indicator on the road. The complainant and two persons who helped him also deposed regarding the occurrence of the incident in Maliyasan Village. Thus, merely because the blood was not collected from the spot and Panch witnesses turned hostile is not a ground to disbelieve the testimonies of complainant and other witnesses regarding robbery and injuries to the complainant.

- [37]** Similarly because panchas of panchnama of bodily status of the injured and the recovery of clothes of injured turned hostile and the clothes were not shown to the injured

would not in itself negates the stab injury on the complainant, which is otherwise proved by the evidence of the injured, treating doctor and the other evidence and material produced on record.

[38] As per deposition of Dr. Dhirajbhai Mairambhai Agrawat, who was examined at Exh. 44, injured complainant suffered stab (incised) wound over abdomen with sharp margin and fresh blood was oozing out of the said wound. No fracture was found in the x-ray report. He opined that the injury could be caused by sharp and heavy object. The complainant also deposed that out of the three persons who robbed him, one stabbed him on his left side and forcibly took out Rs. 56,600/- from his pocket and also took away his aadhar card, PAN card, licence and mobile of Samsung Grand Co. make and key of his bike and fled away. Thereafter, two persons helped him and called 108 ambulance and he was admitted to Civil Hospital, Rajkot. Said two persons namely Bhavinbhai Ghelabhai and Hirenabhai, who helped the complainant, also deposed that while they were coming to Rajkot from

Limdi, one person was sitting near Maliyasan Village in injured condition and told his name as Bhavinbhai and further told that he was robbed and stabbed. He was admitted to hospital.

- [39]** Father of the complainant also in his evidence deposed regarding the phone call by his son after the incident stating that he was robbed and injured. Other relatives of the complainant also deposed that they went to see the complainant in Civil Hospital, Rajkot where he was found stabbed in abdomen and was taken for treatment. Jogendrasinh Bhagwatsinh Jadeja, who was working with the complainant in Bajaj Finance, also testified regarding the receipt of information of robbery and injury to complainant and subsequently his visit to hospital. Rupabhai Laghrabhai Rabari, in his evidence, deposed that he obtained loan for JCB from finance company at Rajkot and Bhavinbhai used to come to him to collect the loan installment. He paid somewhat around 46,000-47,000/- to him. After some time, he came to know that Bhavinbhai was robbed.

[40] From the cumulative analysis of the above evidence on record, it is clear that complainant Bhavinbhai was robbed by three unknown persons while on his way to Rajkot and near Maliyasan Village and in that process was also stabbed by one of those persons over his abdomen with the help of knife. Thus, ingredients of 397 of IPC qua the person who stabbed the complainant while committing robbery are made out.

[41] Now, the next question is as to whether the accused injured and robbed the complainant.

[42] As per case of prosecution, mobile phone of the complainant robbed from the complainant was recovered from the house of the accused. However, panch witnesses of the said recovery panchnama turned hostile. I.O. Jigneshbhai Jitendrasinh Chauhan in his evidence at Exh. 26 deposed regarding the recovery of mobile phone in the presence of two panchas and the wife of the accused from the house of the accused.

[43] In the case of Mansing @ Galabhai Fulabhai Vs. State of Gujarat, decided on 21.02.2007, the Hon'ble Gujarat High Court has observed in para – 16 as under:

“16. It is well settled by catena of decisions of the Supreme Court that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown overboard as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision to the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right to veto to the panch as so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officers, if otherwise found to be true and dependable, cannot be discarded by the court on the ground that they are police officers.”

[44] The complainant in his testimony has also deposed that the accused robbed him of the Samsung Grand new mobile phone. He deposed that he got the Samsung mobile phone released from Court. The said mobile was the same which was robbed from him. He proved the muddamal release order of the Court at Exh.119 and deposed that after the release of mobile phone from Court, its display got out of order and his family members sold the said mobile in scrap without his knowledge. It is argued by the Ld. counsel that the bill of the mobile phone or CDR of the SIM of the complainant were not recovered and produced by the IO to connect the mobile phone with the complainant and to show the robbery of the same.

[45] Admittedly, accused has not claimed ownership over the said Samsung mobile and the Court granted the interim release of the mobile in favour of the complainant. In normal circumstances, Court orders the release of muddamal in favour of a person only if it is satisfied primarily regarding the ownership of that person over the muddamal. In the present case, no other person has

claimed the ownership of the mobile phone. Even though, same was not produced at the time of evidence and no bill of its ownership was produced, same was released to complainant most probably after satisfying about its ownership with the complainant and thus, it is relevant as corroborating evidence to connect the accused with the offence and cannot be discarded in toto.

[46] Now, coming to the recovery of knife, same was shown at the instance of accused vide discovery panchnama Exh. 68. Both the panch witnesses of the said panchnam turned hostile. In the event of panch turning hostile, it was for the I.O. to prove the contents of the said panchnama but he also did not prove the same in the manner as required to be proved. Further, it was stated that the knife used in the commission of offence was thrown by the accused on the left side of the road. Discovery panchnama was conducted after more than three months of the incident. Further, the place where the knife was stated to be thrown was an open place and, as such, knife was not kept at any concealed place. Complainant also

failed to identify the knife as the knife with which he was assaulted. Thus, in view of the material placed on record, the discovery of knife not only appears doubtful but also the prosecution failed to connect the same with the commission of offence.

[47] It is contended by the Ld. counsel for the accused that the prosecution has not been able to connect the weapon with the offence and to prove that the injury inflicted upon the injured was by the very weapon and as such it is unsafe to convict the accused in the absence of recovery of weapon used for the commission of the offence.

[48] I am not able to accept the contention of the Ld. counsel for the accused. Merely because of non-recovery of weapon, testimony of injured and other eye-witnesses cannot be discarded if it inspires confidence. In ***Bhupinder Singh Vs. State of Punjab, 2008 Cr. LJ. (NOC) 884 (P&H)***, Hon'ble Punjab & Haryana High Court held that once it has been stated that accused had given stab injury, recovery or non-recovery of weapon of offence will not demolish case of prosecution.

[49] It is contended by the Ld. counsel for the accused that in the present case, TIP has not been conducted in accordance with law and is thus of no value. It is submitted that while as per complaint, assailants were of around 20-25 years of age, dummies of same age group were not called and even the physical and other description of the dummies was not mentioned in TIP panchnama and as such the TIP cannot be relied to establish the identity of the accused. perusal of record shows that the dummies of age group ranging from 27-31 years of age were called during the TIP. There is no much difference between the age group of 20-25 and 27-31 years and as such it cannot be said that it would make a difference on the appearance of the persons. Further, as per the aadhar card of the accused produced on record with Exh. 108, he himself was more than 25 years of age when his TIP was conducted and as such it cannot be said that keeping the dummies of 27-31 years of age would prejudice the accused at the time of TIP.

[50] Law is well settled that identification of an accused by a witness in court is substantive piece of evidence, whereas evidence of identification in Test Identification Parade is though primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by a witness in the case.

[51] It may be pointed out that identification test is not substantive evidence. Such tests are meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines.

[52] In ***Mulla & Anr. Vs. State of Uttar Pradesh (2010) 3 SCC 508***, Hon'ble Supreme Court placed reliance on *Matru@Girish Chandra Vs. The State of Uttar Pradesh AIR 1971 SC 1050*; and *Santokh Singh Vs. Izhar Hussain & Anr. AIR 1973 SC 2190*, and observed as under :-

"The evidence of test identification is admissible under Section 9 of the Indian Evidence Act. The Identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not

identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in Court. There is no provision in the Cr. P.C. entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court."

[53] In **Amitsingh Bhikam Singh Thakur vs. State of Maharashtra- (2007) 2 SCC 310**, Hon'ble Supreme Court held on a consideration of various cases on the subject that the identification proceedings are in the nature of tests and there is no procedure either in Cr. P.C., 1973 or in the Indian Evidence Act for holding such tests. The main object of holding such tests during investigation is to check the memory of witnesses based upon first impression and to enable the prosecution to

decide whether these witnesses could be cited as eye witnesses of the crime.

[54] In **Rabinder Kumar Pal v. Republic of India (2011) 2 SCC 490**, the Hon'ble Supreme Court of India held that photo identification of accused and test identification parade are only aides to the investigation conducted by the investigating officer and these do not form substantive evidences. Substantive evidence is the evidence in the court of law on oath.

[55] In **Malkhan Singh Vs. State of M.P. AIR 2003 SC 2669**, Hon'ble Supreme Court has observed as under:

"It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine."

[56] In **State of Maharashtra vs Suresh, 1999 Supp (5) SCR 215**, Hon'ble Supreme Court observed as under:

“Ext 17 is the minutes of the test identification parade conducted by the Magistrate who himself was examined as PW-2. It contains the details of the steps adopted by him. Seven other persons were kept ready in the room and the witnesses were kept in another room from where they could not see the suspect. Thereupon the suspect was brought from the lock up with the help of two respectable persons and all precautions were taken that the witnesses could not see the suspect during such transit. Then the suspect was permitted to stand anywhere among the 7 persons. It was thereafter that the witnesses were brought with the help of the same respectable persons and the witnesses were then asked to identify the person whom they saw on the crucial day. If loopholes were to be ferreted out from the proceedings of the magistrates holding such parades possibly no test identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every test identification parade would become unusable. We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes; The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in

connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.”

[57] Further, the complainant has identified the accused not only during the TIP but also twice before the Court. Firstly, from photograph of the accused as accused was not present and exemption of his personal appearance was sought and secondly when the accused was himself present before the Court. No material or circumstance has been produced on behalf of the accused to doubt the veracity or credibility of the deposition of complainant. Further, the complainant had no reason or occasion to falsely implicate the accused leaving the actual culprit especially when no previous enmity of the complainant with the accused has been shown.

[58] In ***Mano Dutt & Anr. Versus State of U.P., decided on 29/02/2012***, Hon'ble Supreme Court summarized the legal position regarding the credibility of the injured witness as under:-

"Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more res integra, as has been consistently stated by this Court in uniform language. We may merely refer to the case of Abdul Sayeed V. State of Madhya Pradesh [(2010) 10 SCC 259], where this Court held as under:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court.

Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of

Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29) "28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. V. Kishan Chand, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time

and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law.

This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

[59] Ld. counsel has argued that there are discrepancies in the evidence of the complainant and thus his testimony is not believable. Apart from the variation in the robbery amount, which was mentioned in chief-examination of complainant

as Rs. 56,600/- instead of Rs. 46,600/-, though was affirmed in cross-examination as Rs. 46,600/- and some other minor inconsistencies, no major discrepancy has been shown in the evidence of the complainant by the defence side. Law is well settled regarding the minor discrepancies in the deposition of the witness.

[60] In *State of U.P. Vs. M.K. Anthony AIR 1985 SC 48*,

Hon'ble Supreme Court observed as under :-

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the

root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer."

[61] In *State Vs. Saravanan & Anr.* AIR 2009 SC 152,

Hon'ble Supreme Court observed as under :-

".....while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the

situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies."

[62] In Vijay @ Chinee vs State Of M.P on 27 July, 2010, Hon'ble Supreme Court observed as under:

"24. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses (vide Sohrab & Anr. Vs. The State of M.P. AIR 1972 SC 2020; Bharwada Bhogini Bhai Hirji Bhai Vs. State of Gujarat AIR 1983 SC 753; Prithu @ Prithi Chand & Anr. Vs. State of Himachal

Pradesh (2009) 11 SCC 588; and State of U.P. Vs. Santosh Kumar & Ors. (2009) 9 SCC 626).”

[63] It is further contended by the Ld. counsel for the accused that as per the case of prosecution, incident happened on highway between 09:00 to 9:30 p.m. and as such there was insufficient light on the place of incident and it is highly improbable that the complainant would have properly seen the assailants. It is further contended that the exact place of incident was also not mentioned by the complainant. I found no substance in the said contention of the Ld. counsel as the complainant has specifically mentioned the exact location of the place of incident when was questioned in the cross-examination about the same. Further, no question was asked or even no suggestion was put to the complainant in his cross-examination that there was insufficient light at the place of incident or that the complainant was not able to properly see the complainant. On the other hand, complainant, in his chief-examination, has deposed that the assailants had beaten him and one of them had stabbed him and identified the

accused as the person who stabbed him. Thus, the assailants were at a close distance from the complainant and it cannot be assumed that the complainant would not be able to see them properly. Further, as per site visit report Exh. 49, electricity pole was found at the place of incident. Thus, it cannot be said that there was insufficient light at the place of incident.

[64] The judgements relied upon by the Ld. counsel for the accused are not applicable to the facts of the present case and in view of the case law cited herein above. Thus, in view of the discussion made above, prosecution has been able to prove the charge under Section 397 against the accused Raju @ Dimpal Krushnamurari Yadav beyond reasonable doubt., therefore, the Point No. 1 is answered in Affirmative.

POINT NO. 2:

[65] Since the prosecution has proved the charge beyond reasonable doubt under Section 397 against accused **Raju @ Dimpal Krushnamurari Yadav** and hence, following order is passed:- :-

:: ORDER ::

[A] Accused Raju @ Dimpal Krushnamurari Yadav is held guilty for commission of offence punishable under Section 397 of IPC.;

[B] A Copy of the judgment be sent to District Collector Rajkot for necessary information;

[C] Custody of the Muddamal shall be dealt with in accordance with the procedure laid down in the law after the expiry of appeal period by holding inquiry by the concerned Magistrate.

[D] Further order on quantum of sentence to the convict Raju @ Dimpal Krushnamurari Yadav will be passed separately after hearing the convict on the quantum of sentence.

Pronounced in the open Court today on this 12th day of May, 2022.

Date: 12/05/2022

(PRASHANT JAIN)
6th Addl. Sessions Judge,
Rajkot
UID Code GJ01507