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Exh. \_\_\_\_\_

**FORM-A**

<p><b>IN THE COURT OF</b>  <b>The Hon'ble Additional District &amp; Session Judge Ahmedabad (Rural),</b>  <b>at Dholka, Ahmedabad.</b></p> <p><b>Present : N. G. Dave.</b></p> <p><b>Date of Judgment:17/03/2026</b></p> <p><b>Atrocity Case No.2 of 2021</b>          (Old Atrocity Case No.56/2014)</p> <p><b><u>Details of F.I.R /Crime and Police Station.</u></b></p> <p><b>C. R. No.I-44/2013</b> registered with <b>Koth</b> Police Station for the offences punishable U/s <b>302, 307, 143, 147, 148, 149 &amp; 34</b> of the Indian Penal Code r/w Section <b>135</b> of the G.P. Act as well as Section <b>3(1)(10) &amp; 3(2) (5)</b> of the Prevention of Atrocities Act, 1989.</p>	
Complainant	: The State of Gujarat.
REPRESENTED BY	: Ld. P.P. Mr. J.C. Patel.
ACCUSED	1: <b>Raghubhai Haribhai Parmar(Bharwad)</b> (abated)
	2: <b>Bhimabhai Haribhai Parmar(Bharwad)</b> Age:37 years.
	3: <b>Kalubhai Ranchhodbhai Parmar(Bharwad)</b> Age:42 years.
	4: <b>Mafabhai @ Danubhai Ranchhodbhai Parmar</b> (Bharwad) Age:46 years.
	5: <b>Kuldeep @ Lalo Mafabhai @ Danubhai</b>

	<b>Parmar (Bharwad)</b> Age:23 years.
	<b>6: Jigneshbhai Raghubhai Parmar (Bharwad)</b> Age:20 years.
	All Nos.1 to 6 R/o Loliya village, Taluka-Dholka, District-Ahmedabad.
REPRESENTED BY :	Ld. Adv. Mr. B.J. Joshi and Mr. B.P. Khanderia.

**FORM -B**

Date of Offence	01.07.2013
Date of F.I.R.	01.07.2013
Date of Charge Sheet	07.09.2013
Date of Framing of Charges	13.02.2015
Date of Commencement of Evidence	06.02.2018
Date of which Judgment is reserved	----
Date of the Judgment	17.03.2026
Date of the Sentencing Order, if any	----

**Accused Details.**

Rank of the accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Under gone during Trial for purpose of section 428 Cr.P.C.
1.	<b>Raghubhai Haribhai Parmar(Bharwad)</b>	03.07.2013 at about 21:00 hours.	(abated)	U/s 302, 307, 143, 147, 148,	(abated)	As per final order	---
2.	<b>Bhimabhai Haribhai Parmar(Bharwad)</b>		UTP	149 & 34 of IPC r/w 135 of G.P. Act	Convicted		

3.	Kalubhai Ranchhodhai Parmar(Bharwad)		02.05.2024	and section 3(1)(10) & 3(2)(5) of			
4.	Mafabhai @ Danubhai Ranchhodhai Parmar (Bharwad)		18.05.2024	the Preventi on of Atrocitie s Act, 1989.			
5.	Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad)	16.08.2013 at about 15:30 hours.	UTP				
6.	Jigneshbhai Raghubhai Parmar (Bharwad)		29.05.2024				

**FORM-C**

**LIST OF PROSECUTION /DEFENCE/ COURT WITNESSES**

**A. Prosecution.**

Rank	NAME	Nature of Evidence [Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness]
PW1	Dr. Jayantilal Virjibhai Satapara along with cross-examination at Exh.59.	Doctor[examiner of the dead body of deceased].
PW2	Bipinbhai Ganpatbhai Solanki along with cross-examination at Exh.76.	Eye Witness.
PW3	Dinesh Natwarlal Thakkar along with cross-examination at Exh.97.	Doctor(Ortho).
PW4	Ghanshyambhai Harjivbhai Rathod along with cross-examination at Exh.104.	Witness.
PW5	Jyantibhai Harjibhai Rathod along with cross-examination at	Witness.

	Exh.106.	
PW6	Madhuben Harjibhai along with cross-examination at Exh.107.	Witness.
PW7	Basirbhai Yakubbhai Vhora along with cross-examination at Exh.143.	Panch Witness.
PW8	Manubhai Gatorbhai Ko. Patel along with cross-examination at Exh.145.	Panch witness.
PW9	Kanabhai Savabhai Parmar along with cross-examination at Exh.150.	Panch witness.
PW10	Ishwarbhai Mavubhai Ko. Patel along with cross-examination at Exh.156.	Panch witness.
PW11	Maulikbhai Dahyabhai Solanki along with cross-examination at Exh.158.	Panch witness.
PW12	Vastabhai Kuberbhai Sonara along with cross-examination at Exh.160.	Panch witness.
PW13	Imranbhai Mustakmohammad Baloch along with cross-examination at Exh.162.	Panch witness.
PW14	Hazruddin Gulambhai Vhora along with cross-examination at Exh.163.	Panch witness.
PW15	Kishore Arvindkumar Sharma along with cross-examination at Exh.172.	Scientific Officer(FSL).
PW16	Ramanbhai Surmabhai Damor along with cross-examination at Exh.174.	ASI
PW17	Chetansinh Ganpatsinh Rathod along with cross-examination at Exh.178.	PI.
PW18	Pradipsinh Pravinsinh Vaghela along with cross-examination at Exh.183.	PI.
PW19	Nirlipt Anil Rai along with cross-	Dy. S.P.[IO]

	examination at Exh.187.	
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**B. Defence Witnesses , if any:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PUNCH WITNESS, OTHER WITNESS
DW1	Minaxiben Hiteshbhai Makwana along with cross-examination at Exh.206.	Witness.

**C. Court Witnesses If any.**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PUNCH WITNESS, OTHER WITNESS
	Nil	

**LIST OF PROSECUTION /DEFENCE / COURT EXHIBITS.****A. Prosecution.**

Sr. No.	Exh. No.	Name of the documents
1.	60, 61 & 62/PW1	Police yadi for the postmortem of the deceased-Vijaybhai Amrabhai Chavda alongwith Inquest Panchnama and Posthumous form.
2.	64 & 65/PW1	Postmortem report alongwith certificate with regards to cause of death.
3.	98 to 102/PW3	MLC-OPD Case papers alongwith Medical certificates of the injured patients/witnesses.
4.	144/PW7	Panchnama of clothes of the deceased.
5.	151/PW9	Panchnama of place of occurrence.
6.	152 to 155/PW9	Panch slips of muddamal articles.
7.	157/PW10	Panchnama of venue of crime.
8.	161/PW12	Panchnama of clothes of the accused.
9.	164/PW14	Panchnama of physical conditions of the accused as well as recovery of muddamal weapons.
10.	173/PW15	Inspection report of the place of occurrence.
11.	175 &	Index-sheet and FIR.

	176/PW16	
12.	184/PW18	Complaint.
13.	188/PW19	Panchnama of clothes of the injured patient-Ghanshyambhai.
14.	189/PW19	Panchnama of physical conditions of the accused as well as recovery of muddamal weapons.
15.	190/PW19	Caste certificate of the deceased-Vijaybhai.
16.	191 & 192/PW19	Public notification of the Addl. District Magistrate.
17.	193/PW19	Letter of Superintendent of Police, Ahmedabad(Rural).
18.	194 to 196/PW19	Letter for sending the muddamal to the FSL department alongwith its receipt issued from the FSL department, Report/opinion of the medical samples/serology report and report of muddamal.
19.	208	Closing pursis.

### B. Defence.

Sr. No.	Exh.	Description
1.		

### C. Court Exhibits.

Sr. No.	Exhibit Number	Description
	Nil	

### D. Material Objects.

Sr. No.	Material Number	Description
1.	MO 1	<b><u>Muddamal Receipt No.42/13 dated 01.07.2013</u></b> 1. One Maroon colour half sleeve shirt with black & white lining design with blood stain. 2. Blood stained one white, brown & black colour cross lining half pant(Chaddo) with string. 3. One pink colour flower designer stall(Odhani) with blood stain.
2.	MO 2	<b><u>Muddamal Receipt No.43/13 dated 02.07.2013</u></b> 1. In a plastic container, blooded soil. 2. In a plastic container, soil for control. 3. In a cloth bag, blue colour one pair sleeper. 4. In a cloth bag, one tin box used for natural call.
3.	MO 3	<b><u>Muddamal Receipt No.44/13 dated 02.07.2013</u></b>

		<p>1.In a cloth bag, one vertical &amp; horizontal checkered full sleeve torn shirt with blood stains on the right sleeve at right side.</p> <p>2.In a cloth bag, one white colour vest(Banyan) with blood stains.</p> <p>3.In a cloth bag, one light gray(Chhikani) colour with golden colour vertical lining.</p>
4.	MO 4	<p><b><u>Muddamal Receipt No.45/13 dated 03.07.2013</u></b></p> <p>1.One bamboo stick approx 6 Ganth &amp; 7 katari, both side covered with iron cap.</p> <p>2.One bamboo stick approx 4 Ganth &amp; 5 katari, both side covered with iron cap.</p> <p>3.One bamboo stick approx 12 Ganth &amp; 13 katari, one side covered with iron cap.</p> <p>4.One bamboo stick approx 6 Ganth &amp; 7 katari, one side covered with iron cap.</p>
5.	MO 5	<p><b><u>Muddamal Receipt No.46/13 dated 05.07.2013</u></b></p> <p>1.In a cloth bag, one light brown colour full sleeve shirt with vertical lining.</p> <p>2.In a cloth bag, one vertical lining Coffee colour pant.</p> <p>3.In a cloth bag, one cream colour with golden designer shirt.</p> <p>4.In a cloth bag, one brown colour pant.</p> <p>5.In a cloth bag, one light sky blue colour full sleeve shirt.</p> <p>6.In a cloth bag, one cream colour pant.</p> <p>7.In a cloth bag, one white colour full sleeve shirt with vertical lining design.</p> <p>8.In a cloth bag, one white colour Dhoti with red &amp; green border lining.</p>
6.	MO 6	<p><b><u>Muddamal Receipt No. /13 dated 16.08.2013</u></b></p> <p>1.One bamboo stick approx 4ft. 11Inch, one side thin and one side thick and thick side covered with iron cap.</p> <p>2.One stick approx 4ft. 11Inch, 9 ganth &amp; 9 katari, one side thin and one side thick and thick side covered with iron cap.</p>

**:JUDGEMENT:**

1. In the present case, the complainant-Pravinaben D/o Amrabhai Bhalabhai Chavada was the social worker. Incident occurred on dated 01.07.2013 and the complaint lodged on same date.
2. The name of the accused persons are as accused No.1-**Raghubhai Haribhai Parmar(Bharwad)**, accused No.2-**Bhimabhai Haribhai Parmar(Bharwad)**, accused No.3-**Kalubhai Ranchhodbhai Parmar(Bharwad)**, accused No.4-**Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad)**, accused No.5-**Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad)** and accused No.6-**Jigneshbhai Raghubhai Parmar (Bharwad)**. But during the course of trial, the accused No.1-**Raghubhai Haribhai Parmar(Bharwad)** has passed away on dated 21.03.2023, hence, my Ld. predecessor Judge has declared him as abated vide order dated 05.05.2023.
3. All the aforesaid accused have committed the act of assault two times on two different places in the same transaction offence wherein, all the accused, first assaulted to Vijaybhai at the agricultural field and by inflicting lethal(deadly) weapon blows homicidal death of Vijay which amounts to murder was committed by the accused. Secondly, all the those accused inflicted lathi stick blows to the friend of deceased-Vijay namely 1. Ghanshyambhai Harjibhai Rathod, 2. Jayantibhai Harjibhai Rathod and 3. Harjibhai Motibhai Rathod. Therefore, in one transaction offence, two different venue of crime incident occurred and on two different scene of crime, sequence of two different assault made by all the accused and all the accused told to the friend of deceased-Vijay about the offence of

homicidal death which amounts to murder committed by them and thereafter, on the second venue of crime, incident took place so, deceased-Vijay and his friends namely 1. Ghanshyambhai Harjibhai Rathod, 2. Jayantibhai Harjibhai Rathod and 3. Harjibhai Motibhai Rathod also became the victim of assault of all the accused on the date of occurrence.

4. The brief facts of the prosecution case are as under:

On dated 01.07.2013, in the morning, when complainant was at her home, meanwhile, approximate 07:00am, her brother namely Vijay was going to natural call(defecate), thereafter, approximate 07:15am, complainant alongwith her nephew(Bhanja) namely Bipinbhai Ganpatbhai Solanki departed her home to go at Ahmedabad for college affairs but when they reached some distance from her house, they heard shouts as “भारो, डापो, ढेढाने पुरो करी नाजो” so, both were going to the direction of shouts and when they reached at the farm of their neighbour namely Valabhai Govindbhai Parmar, brother of complainant was lying full of blood stains and all the accused belongs to Loliya Village, Taluka-Dholka namely 1.Raghubhai Haribhai Bharwad, 2. Bhimabhai Haribhai Bharwad, 3. Mafabhai Ranchhodbhai Bharwad, 4. Kalubhai Ranchhodbhai Bharwad, 5. Kuldip @ Lalo Mafabhai Bharwad and 6. Jigneshbhai Raghubhai Bharwad, all those persons armed with Bharwadi Lathi sticks in their hand and they all were inflicting back to back and haphazard lathi sticks blows to Vijay and at that time, Viajy raised shouts “अयावो अयावो” to save him but all those accused had seen complainant and her nephew Bipin, eventually, all the accused ran away from the place with lathi

sticks and complainant and her nephew had seen Vijay in full of blood stains lying unconscious so, nephew of complainant namely Bipin called 108 number ambulance. After sometime, ambulance came, all employees in 108 ambulance had brought brother of complainant Vijay at Bavla CHC Center and on the way, employees were working in the ambulance as well as expert doctor at CHC hospital have declared Vijay as dead. Thereafter, all the accused mentioned hereinabove, after committing the offence of homicidal death which amounts to murder of deceased-Vijay, on the way, friends of deceased-Vijay namely 1. Ghanshyambhai Harjibhai Rathod, 2. Jayantibhai Harjibhai Rathod and 3. Harjibhai Motibhai Rathod have sustained injuries from lathi sticks blows inflicted by all the accused and all those injured were brought in Hospital at Bavla by 108 number ambulance. The main cause to file the complaint as to incident took place, as the brother of complainant was the Sarpanch of village, at that time, there was dispute between all the accused and deceased Vijay, therefore, all the accused were keeping enmity with Vijay and therefore assaulted and did the conspiracy also. All the accused had inflicted lathi sticks blows to her brother Vijay and also inflicted Bharwadi lathi sticks blows to three friends of Vijay mentioned hereinabove, eventually, the complainant has filed the complaint against the above mentioned accused persons for offences punishable U/s 302, 307, 143, 147, 148, 149 & 34 of Indian Penal Code r/w Section 135 of the G.P. Act as well as Section 3(1)(10) & 3(2)(5) of the Prevention of the Atrocities Act, 1989.

5. That after lodging the complaint, the offence has been registered and the accused has been charge-sheeted in connection with C.R. No.I-44/2013 for the offences Punishable U/s 302, 307, 143, 147, 148, 149 & 34 of the Indian Penal Code (**hereinafter referred to as 'IPC' for the sake of brevity**) r/w Section 135 of the G.P. Act and Section **3(1)(10) & 3(2)(5)** of the Scheduled Castes and the Scheduled Tribes(Prevention of the Atrocities) Act, 1989 (**hereinafter referred to as 'Atrocity Act' for the sake of brevity**) before this court and the case has been registered as Atrocity Case No.2/2021(old sessions Case No.56/2014).
6. Thereafter, this court has also verified with regard to the receipt of the Charge-Sheet U/s 207 of the Cr.P.C. and the police papers to the accused persons.
7. The Charges have been framed by my Ld. predecessor Judge against the accused for the offences punishable U/s 302, 307, 143, 147, 148, 149 & 34 of IPC r/w Section 135 of the G.P. Act as well as Atrocity Act vide Exh.4, whereas, the plea of the accused has been recorded vide Exh.5 to Exh.10 respectively, which were read over to the accused, wherein he denied the charges levelled against them and decided to face the trial and hence, trial of the present case has been commenced and evidences have been recorded. In the present case, deceased-Vijay as well as injured are belong to scheduled castes so, charges under the Atrocity Act has been framed. When charges framed against the accused are not under the provision of 120B of IPC, therefore, appreciation of evidence in the present case are must be taken into consideration as to section mentioned

hereinabove.

8. Thus, after recording the evidences, the Ld. Public Prosecutor has filed his Closing Purshis vide Exh.208. Thereafter, further statements of the accused has been recorded under the provisions of Section 313 of the Criminal Procedure Code, wherein, the accused denied the facts of the case and further replied that they have not committed any offence as alleged and wrong complaint and charge-sheet has been filed against them.
9. The matter was thereafter posted for arguments under Section 234 of Cr.P.C. Heard the Ld. Public Prosecutor for the State and also heard the Ld. Advocate for the accused person.

**Arguments on behalf of the Prosecution Side.**

10. The Ld. Public Prosecutor for the State has vehemently argued that the present accused has been charged for the very serious offences punishable U/s 302, 307, 143, 147, 148, 149 & 34 of IPC as well as Atrocity Act. The Ld. Public Prosecutor submitted at length facts of the offence and also referred oral testimony of the prosecution witnesses from PW-1 to PW-19 more particularly, deposition of eye witness/PW2, doctor/PW1 and injured witness/PW4 and vehemently argued that considering the oral testimony all the prosecution witnesses, prima-facie it appears that the accused has caused serious injuries to the deceased-Vijay and witnesses with hard and blunt object with intention to kill them and thereby, Vijay succumbed due to the grievous injuries and the accused have committed heinous offence and therefore, question doesn't arise to falsely implicate the present accused person in the commission of

offence. The Ld. Public Prosecutor for the state vehemently argued that having gone through the charge-sheet papers as well as oral testimony of the prosecution witnesses and documentary evidence produced on record, strong prima-facie case is made out against the accused person and therefore, considering the nature and gravity of offence, the accused is required to be convicted according to the provisions of law.

**Arguments on behalf of the Defence Side.**

11. *Per-contra*, the Ld. Advocate for the accused has filed written submission vide Exh.218 and submitted at length facts of the alleged offence and also referred the charge-sheet papers as well as oral testimony of the prosecution witnesses and documentary evidences and vehemently argued that looking to the whole deposition of the witnesses, there are major contradiction found in the facts of the incident and no such incident took place but complainant has made a concocted story and by keeping the earlier grievance, complainant has falsely implicated the accused in the alleged offence. It is further submitted that looking the panch witnesses, no muddamal has been recovered in their presence and they have turned hostile, therefore, the depositions of the witnesses are not true and therefore, there is huge contradiction of the testimony of the witnesses. It is further submitted that all the witnesses have not supported the prosecution story and all the accused are in jail since the year-2013 and some of the accused have been enlarged on bail recently and therefore, looking to the punishment prescribed in the aforementioned sections, the accused have already been spent the punishment period in the

jail without any guilty, therefore, considering the facts and circumstances of the present case, the prosecution has failed to prove its case and therefore, no prima-facie case is made out against the accused persons and therefore, this is a clear case of acquittal and with the above submission, the Ld. Advocate for the accused has prayed to acquit the accused from all the charges levelled against accused. In support of his arguments the Ld. advocate for the accused has relied upon the following judgments of the Hon'ble Apex Court, the Hon'ble High Court of Gujarat as well as the other the Hon'ble High Courts which are mentioned hereinafter and further argued that looking to the catena of the judgements of the Hon'ble Apex Court and the Hon'ble High Courts, the accused are liable to be acquitted from the charges levelled against them and lastly prayed to acquit all the accused.

1. **Rabindra Kmar Dey Vs. State of Orissa, AIR 1997 SC 170.**
2. **Vajsi Deva Mehar Vs. State OF Gujarat, 1964(6) GLR 834.**
3. **Superintendent of Police, CBI and others Vs. Tapan Kumar Singh, (2003) 6 SCC 175.**
4. **Patai alias Krishna Kumar Vs. State of Uttar Pradesh, (2010) 2 SCC (Cri) 854.**
5. **Ram Lakhan Singh and others Vs. The State of U.P., AIR 1977 SC 1936.**
6. **Ram Ashrit and others Vs. State of Bihar, 1981 CrLJ 484 SC.**
7. **The State of Maharashtra Vs. Arjun Shenfadu Badgujar.**
8. **Mangilal & Ors. Vs. State of Madhya Pradesh, 1990 CrLR(SC) 311.**
9. **Marimuthu Vs. State, 1992(1) Crimes 506.**
10. **L/NK Meharaj Singh Vs. State of Uttar Pradesh, 1994 CrLR(SC) 455.**
11. **Kantilal Kalidasbhai & Anr. Vs. State of Gujarat, 1998 CrLR(Guj.) 586.**
12. **Saju Vs. State of Kerala, 2011 SCC (Cri) 160.**

13. Ramreddy Rajeshkhanna Reddy & Anr. Vs. State of Andhra Pradesh, 2006 Cr.L.R. (SC) 333.
  14. State of Gujarat Vs. Ranjitsinh Harisinh Chauhan & Ors., 2007 CriLR 28.
  15. Budh Singh and others Vs. State of U.P., 2006(2) Crimes 256.
  16. Chandrappa and others Vs. State of Karnataka, 2007(2) Crimes 103.
  17. State of Haryana Vs. Shibu @ Shiv Narain and Ors., 2008(3) Crimes 186(SC).
  18. Dahyabhai Revabhai Chamar & Others Vs. State of Gujarat, 2009(1) GLR 790.
  19. Babu Ram & Ors. Vs. State of Punjab, 2008(1) Crimes 405.
  20. State of Bihar Vs. Bangali Sahni S/o Late Raso Sahni & Ors. 2013 CriLJ 1434.
  21. State of Gujarat Vs. Natubhai Parsottambhai Patel & 3, 2016(4)GLR 3233.
  22. The State of Gujarat Vs. Yadvendrasing Sardar Surjitsing Jat(Shikh) & Ors., 2016(4) GLR 3159.
  23. Smt. Gargi Vs. State of Haryana.
  24. Roopwanti Vs. State of Haryana.
  25. Jagjit Singh alias Jagga Vs. State of Punjab, 2005 SCC (Cri) 893.
  26. Dharam Singh and Ors. Vs. State of Punjab, Crimes 1993(3).
  27. State of M.P. Vs. Kriparam, 2005 SCC (Cri) 830.
  28. Badam Singh Vs. State of M.P., 2005 SCC(Cri) 861.
  29. Kanhaiyalal Vs. State of Rajasthan, (2014) 4 SCC 715.
  30. State of U.P. Vs. Sunder Singh and others, 2005 SCC(Cri) 905.
  31. State of Punjab Vs. Sucha Singh & Ors., 2003(2) Crimes 208(SC).
  32. Ramsewak and Ors. Vs. State of M.P., 2005(2) Acquittal.
  33. Tanviben Pankajkumar Divetia Vs. State of Gujarat.
  34. Kanakarajan @ Kankan Vs. State of Kerala, 2017(2) Crimes 362(SC).
  35. Arun Vs. The State of Maharashtra, 2005(2) Acquittal 603.
  36. Bachhu Narain Singh Vs. Naresh Yadav and others, 2005 SCC(Cri) 805.
  37. Anand Ramchandra Chougule Vs. Sidari Laxman Chougala and others.
12. Having gone through the entire evidence on record as well as having gone through arguments advanced by both the sides,

following points are raised for deciding the present case.

**: POINTS :**

- (1) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, the accused persons knew that the deceased-Vijay and witnesses belong to Schedule Castes, however, the accused persons made an unlawful assembly and with common intention to kill the deceased and witnesses, accused have used filthy language of caste and intentionally insulted and humiliated the deceased and witnesses in public place and thereby committed the offences punishable U/s 3(1)(10) & 3(2)(5) of the Atrocity Act?
- (2) Whether prosecution proves beyond reasonable doubt that the death of deceased-Vijay on dated 01.07.2013 at Village-Loliya, Taluka-Dholka was culpable homicide?
- (3) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, by keeping the earlier grievance, the accused persons in furtherance of common intention have come armed with Bharwadi lathi stick etc. and inflicted haphazard lathi blows to the deceased-Vijay and witnesses and the accused knew that said act was likely to cause death or the injury inflicted by the accused was sufficient in the ordinary cause of nature to cause death and the deceased-Vijay succumbed due to the injury inflicted by the accused persons by the act of culpable homicide which amounts to murder and thereby committed the offences punishable U/s 302 r/w section 34 of IPC?

- (4) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, by keeping the earlier grievance, the accused persons in furtherance of common intention have come armed with Bharwadi lathi stick etc. and inflicted lathi blows to the deceased and witnesses and said act was done with intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely to cause death or that such bodily injury was in ordinary course of nature to cause death, or accused attempted to cause such death by doing act known to him to be so imminently dangerous that it must in all probability cause death or injury as is likely to cause death and thereby committed the offences punishable U/s 307 r/w section 34 of IPC?
- (5) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, by keeping the earlier grievance, the accused persons made an unlawful assembly and with common intention, accused have come armed with lethal/deadly weapons like stick etc. and inflicted lathi blow to the deceased and witnesses and thereby accused have voluntarily caused grievous hurt injuries by dangerous weapon to the deceased and witnesses with intention to kill the deceased and witness and uttered abusive filthy language and thereby committed the offence under Section 147, 148, 149 r/w section 34 of IPC?
- (6) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, the accused persons

made an unlawful assembly and with common intention to kill the deceased and witness, accused came armed with lethal weapons like Bharwadi stick etc. in public place and the accused have breached the public notification of the Ld. District Magistrate and thereby committed the offences punishable U/s 135 of the G.P. Act?

(7) What order?

13. Findings on the points for determination:-

(1) In Partly Affirmative.

(2) In Affirmative.

(3) In Affirmative.

(4) In Affirmative.

(5) In Affirmative.

(6) In Affirmative.

(7) As per final order.

**-:-REASONS:-**

**Point Nos.1 to 6:**

14. Points No.1 to 6 in the present case are connected to each other and the sections mentioned in the charge leveled against accused are part of same transaction so for the sake of brevity both the points discussed jointly hereinafter.

15. Having regards to the arguments advanced by Ld. advocates for the rival parties, this Court has carefully gone through the record of the case and I have also carefully considered the

evidence adduced by the Ld. advocates in support of its case.

16. Section 102 of the Indian Evidence Act connotes the basis for ascertaining on which side the burden of proof lies. The section makes it clear that the initial onus is on the prosecution if it discharge that once and makes out a case which entitle him to relief, the onus shifts on the accused to prove those circumstances, if any, which would disentitle the prosecution for the same. There is a distinction between burden of proof and onus of proof, burden of proof lies upon the person who has to prove a fact and it never shifts but, onus of proof shifts. Such a shifting of onus is continuous process in appreciation of evidence. The charges has been framed against the accused for the offences punishable under Section 302, 307, 143, 147, 148, 149 & 34 of IPC r/w Section 135 of the G.P. Act as well as section 3(1)(10) & 3(2)(5) of the Atrocity Act. To substantiate and bring home the charges against the present accused, the prosecution has examined as many as 19 witnesses in the present proceedings.
17. As to appreciate the evidence on record, ingredients of aforestated sections are required to be referred in verbatim, which are as under;

**Section 147. Punishment for rioting.**—*Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

**Section 148. Rioting, armed with deadly weapon.**—*Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**Section 149. Every member of unlawful assembly guilty of offence**

**committed in prosecution of common object.**—*If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.*

**Section 302. Punishment for murder.**—*Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.*

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

**Section 3(1)(10) of Atrocity Act-** *intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*

**Section 3(2)(v)-***commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;*

18. There is no straight jacket or iron jacket formula for the appreciation of evidence in Criminal Case. But, according to the criminal jurisprudence, each and every facts of the present case must be proved by the prosecution beyond reasonable doubt. Mere assumption, presumption, surmises and conjuncture cannot be taken as a place of strict proof or conclusive proof. For the evaluation of beyond reasonable doubt, Court has to see each and every evidences adduced by the prosecution with due care and caution. It is the duty of the Court, not to use any mathematical or scientific formula for appreciation of evidence in criminal trial and appreciation of evidences in criminal trial

depends upon the facts and circumstances of each case.

19. Case on hand, original complainant-Pravinaben Amrabhai Chavada has passed away during the course of trial and cause of death of complainant/Pravinaben was homicidal death which amounts to murder. In pursuant to that different cases were registered as to same transaction under the provision of Atrocity case and accused in the present case namely accused No.1-Raghubhai Haribhai Parmar(Bharwad), accused No.2-Bhimabhai Haribhai Parmar(Bharwad) and accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) are also cited accused in the subsequent offence took place as to homicidal death of complainant-Pravinaben so, above three accused out of six accused of the present case alongwith other accused have committed the offence of homicidal death which amounts to murder of the complainant-Pravinaben of the present case.
20. Section 300 of IPC, the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the Courts for more than a century. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections allow themselves to be drawn into minute abstraction. The safest way of approach to the interpretation and application of these provisions to be, keep in focus the key words used in the various clauses of Section 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done....	Subject to certain exceptions culpable homicide is murder if the act by which the death caused is done....

### INTENTION

(a) with the intention of causing death: or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

### KNOWLEDGE

(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.
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21. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally 'culpable homicide means 'special characteristics of murder' is culpable homicide not amounting to murder'.
22. Hon'ble Apex Court laid down the ratio in the case of **Raj Pal & Ors. Vs. The State of Haryana 2006 (3) R.C.R. (Criminal) 38** it

is held - *Indian Penal Code, Sec. 299 and 300 - Distinction between "murder" and "culpable homicide not amounting to murder"-*

- (i) *All "murder" is "culpable homicide" but not vice versa.*
- (ii) *"culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder".*
- (iii) *The distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature of cause death - The distinction is fine but real.*
- (iv) *The word "likely" in Sec. 299 (b) conveys the sense of probability as distinguished from mere possibility - The word bodily injury sufficient in the ordinary course of nature to cause death in Sec. 300 (3) mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.*
- (v) *For cases falling within clause (3) of Sec. 300 Indian Penal Code, it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. AIR 1966 Supreme Court 1874 relied.*
- (vi) *Even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. AIR 1958 Supreme Court 465 relied.*

23. Ld. AGP Mr. J.C. Patel has vehemently argued that present case is not only a sole offence but there is proximity between present case and subsequent cases were chargesheeted before this Hon'ble Court and for disappearing and destroying the material evidence of star material witness, the three accused of the present case mentioned hereinabove alongwith other accused have committed the act of murder of complainant-Pravinaben of the present case.

24. In so far as the present case is concerned, according to the prosecution story, when Pravinaben/complainant and her nephew Bipinbhai departed her home to go at Ahmedabad for college affairs, at that time, both had heard shouts and

complainant-Pravinaben alongwith her nephew witness Bipinbhai went to the farm where deceased-Vijay raised shouts.

25. Before evaluating the evidence and recording the reasons, first of all Court has to look into whether deceased-Vijaybhai Amrabhai Chavada was belonged to scheduled castes or not? In pursuant to that, prosecution has adduced the certificate issued by Social Welfare Officer, Jilla Panchayat, Ahmedabad alongwith seal and signature of concerned authority and on perusal the certificate issued on dated 01.07.1999 vide Exh.190, deceased-Vijaybhai was belonging to scheduled castes and it is unchallenged by the Ld. advocate for the defence, therefore, no question has been arisen as to present case has come within the purview of provision of Atrocity Act, IPC as well as G.P. Act as sections mentioned hereinabove.
26. Complainant-Pravinaben D/o Amrabhai Bhalabhai Chavada has passed away during the course of trial and in the deposition of IO as well as PSO, complaint lodged by complainant-Pravinaben on dated 01.07.2013 vide Exh.184 are submitted while they were stepping into the witness box. Complainant-Pravinaben is the cited witness in the charge-sheet but unfortunately, she died and her deposition could not be recorded during the course of trial. When complainant has died during the course of trial and entire facts of the incident took place has been narrated in the complaint not only but complainant had also heard shouts and she was going towards venue of crime alongwith her nephew Bipinbhai so, complainant is the material witness but when the death of complainant has occurred during the course of trial, prosecution can be proved its case beyond

reasonable doubt with the aid of other witnesses also. However, ofcourse, all those witnesses must be come within the category of star material witness also. PW2 who accompanied alongwith complainant-Pravinaben when he was departed to go at college affairs and on the way, PW2 has also heard the shouts from the agricultural land of Valabhai Govindbhai who lives in the street of PW2-Bipinbhai.

27. Case on hand, PW2-Bipinbhai Ganpatbhai Solanki has deposed vide Exh.76 that he is living alongwith her maternal uncle's village alongwith maternal grand-father/grand-mother, maternal aunt and maternal uncle at Loliya village. He is having four maternal aunt(Masi), oldest maternal aunt is Lilaben, Pravinaben, Dhaniben and Hansaben. His maternal aunt-Pravinaben was unmarried. He is having maternal uncle wherein older is Hareshbhai Amrabhai Chavada, Devjibhai Amrabhai Chavada (who is deaf and dumb) and most younger maternal uncle is Vijaybhai Amrabhai Chavda. The name of his mother is Savitaben and due to her death, PW2 is living at her mother's native. His maternal uncle Vijaybhai was elected as Sarpanch in the Loliya village in the year-2006 and his maternal uncle Vijaybhai got married to Minaxiben Becharbhai Zala by love marriage and Minaxiben belongs to Badarkha village. PW2 has categorically stated in his deposition that complainant of the present case namely Pravinaben D/o Amrabhai Bhalabhai Chavda has passed away during the course of trial, in pursuant to that criminal complaint has been lodged before Bagodara police station. His one maternal uncle Vijaybhai died due to homicidal death which amounts to murder.

28. PW2 has further deposed that on dated 01.07.2013, as he intended to go at college so, he wake up early. Meanwhile, approximate 07:00am, his maternal uncle Vijaybhai Amrabhai Chavda departed from his house for natural call(defecate) and after sometime, approximate 07:15am, he alongwith maternal aunt-Pravinaben departed from home to reach Gujarat College at Ahmedabad. On the way, slight ahead, he heard shouts “*મીરો, કાપો, ઢેઢાને પુરો કરી નાખો*” eventually, PW2 alongwith maternal aunt-Pravinaben went to the place where shouts raised. PW2 and complainant-Pravinaben reached at agricultural land of Valabhai Govindbhai(who is their neighbour) where his maternal uncle-Vijaybhai Amrabhai Chavda was lying full of blood stains and PW2 had seen Bhimabhai Haribhai Bharwad, Mafabhai Ranchhodbhai Bharwad, Raghubhai Haribhai Bharwad, Kalubhai Ranchhodbhai Bharwad and Jignesh Raghubhai Bharwad, all six accused had inflicted Bharwadi lathi sticks haphazard(back to back) blows at his maternal uncle-Vijaybhai so, maternal uncle-Vijaybhai shouted to save him and after seeing, PW2 and his maternal aunt-Pravinaben, all those accused persons had run away from the place armed with Bharwadi lathi sticks. Thereafter, as his maternal uncle-Vijaybhai was lying in the farm, blood oozing, so, PW2 had called 108 number ambulance and employee of 108 ambulance alongwith him, brought Vijaybhai at Bavla Government Hospital by ambulance and on the way, employee of 108 ambulance conveyed that Vijaybhai died. Thereafter, expert doctor at Bavla CHC Center has also medically examined Vijaybhai and declared him as dead. Thereafter, dead body of

Vijaybhai was kept at PM room of hospital, at that time, its came to the knowledge of PW2 that after inflicting Bharwadi lathi stick blows to Vijaybhai, all the accused caused grievous injuries to the friend of his maternal uncle-Vijaybhai, namely Ghanshyambhai Harjibhai Rathod Ko. Patel, Jayantibhai Harjibhai Rathod Ko. Patel and their father namely Harjibhai Motibhai Rathod Ko. Patel and all those were injured persons by inflicting lathi stick blow on all accused and they were brought at Long Life Hospital at Bavla by 108 number ambulance and his maternal aunt-Pravinaben has filed the complaint as to homicidal death which amounts to murder of Vijaybhai and incident happened with aforestated three persons Ghanshaymbhai, Jayantibhai and Harajibhai are also mentioned in the complaint before the Koth Police Station.

29. PW2/Bipinbhai has further deposed that main cause of incident took place was that “his maternal uncle-Vijaybhai Amrabhai Chavda was discharging his service as a Sarpanch at Loliya village in the year-2006 and at that time, Raghubhai Bharwad was the Deputy Sarpanch and since the said period, the then Deputy Sarpanch Raghubhai had kept enmity with Vijaybhai (maternal uncle) so, when maternal uncle Vijaybhai was going to natural call, meanwhile, made a plan and with intention to kill his maternal uncle-Vijaybhai, inflicted haphazard lathi stick blows and before getting medical treatment, maternal uncle of PW2 namely Vijaybhai has passed away. Thereafter, cremation rituals of his maternal uncle-Vijaybhai was performed on dated 02.07.2013 at Loliya village.
30. During the course of recording of evidence, PW2 has

categorically stated that his maternal aunt-Pravinaben Amrabhai Chavda is the complainant of present case, therefore, accused of the present case had committed the offence of murder of Pravinaben and said complaint has been lodged before the Bagodara police station.

31. PW2-Bipinbhai has further deposed that he has identified the dead body of his maternal uncle Vijabyai in the PM room and whichever clothes worn by his maternal uncle at the time of occurrence has been identified by PW2 during the course of his deposition and Muddamal articles were being shown to PW2 as to clothes worn by deceased-Vijaybhai Amrabhai Chavda. Muddamal article No.1 is the Maroon colour half sleeve white-black colour with vertical lining shirt, on it, scattered blood stain found. Likewise, muddamal article No.2 is the half pant white-blue-brown colour, checks design full of blood stains. Both the aforesaid articles No.1 & 2 are the clothes worn by deceased at the time of incident took place. Similarly, muddamal article No.3 is the Odhani(Chundani) which is light pink colour and on it, scattered blood stain found and said Odhani was wrapped by deceased at the time of incident took place.
32. Most important fact has been narrated by PW2 that he had seen incident as an eye witness and venue of crime has been shown by him to police officials and investigating officer has collected blood stains soils and control soils from the venue of crime, at that time, panch witness Kanabhai Savabhai Parmar and Balwantbhai Revabhai Solanki were present. When PW2 has identified the dead body of his maternal uncle i.e. deceased -

Vijaybhai in the PM room, at that time, panch witnesses Jagdishbhai Tulsibhai Vaghela and Maulikbhai Dahyabhai Solanki were present and in their presence, identification of the dead body has been performed. PW2 has further stated that on the dead body of his maternal uncle Vijaybhai, from the neck to feet, so many injuries found and incident had seen by him as an ocular witness so, all the accused were identified by PW2 during the course of recording of evidence.

33. The detailed cross examination of the PW2 has been conducted by the Ld. advocate for the defence. The examination-in-chief of the PW2 has been completed by my predecessor Judge on dated 28.06.2018 and thereafter, cross-examination of PW2-Bipinbhai was conducted on dated 09.08.2019. Ld. advocate for the accused No.1 and 6 so many questions were asked during the course of cross-examination and PW2 has categorically stated that he was departing from Loliya village and after half an hour, he got the information on the telephone and after getting message, he returned back at his village after half an hour to 45 minutes and when he returned back at village, thereafter, went to Govindvala farm(Khetar) and when he reached in Govindvala farm(Khetar), his maternal uncle-Vijaybhai's head was on the lap of his maternal aunt(Mami) and he has attempted to ask to his maternal aunt and other persons as to happened with maternal uncle and his maternal aunt(Mami) informed that maternal uncle passed away and instructed to call the ambulance and his maternal aunt(Masi) informed 108 ambulance and in half an hour, ambulance came and PW2 alongwith other people lying down the Vijaybhai and

his maternal aunt-Pravinaben alongwith him came in the ambulance but his maternal aunt(Mami) Minaxiben was not come in the ambulance.

34. After concluding the cross-examination by the Ld. advocate for the accused, re-examination-in-chief of PW2 was conducted by the Ld. APP and in the re-examination-in-chief, PW2 has deposed that he has filed the complaint on dated 27.02.2015 vide C.R. No.6/2015 with regard to murder of his maternal aunt-Pravinaben Amrabhai Chavda at Bagodara police station. PW2 has lodged the said complaint. After filing complaint, police officials have recorded his police statement and my predecessor Judge has made one Court note during the course of re-examination-in-chief that *“the alleged FIR pertains to the murder of the complainant of the instant special Atrocity Case, wherein the alleged murder of the complainant was committed after the institution of this case. In this background, the present questions appears to be relevant hence, the objection is over ruled”*. PW2 has categorically explained that in C.R. No.I-6/2015, accused are 1.Raghubhai Haribhai Bharwad, 2. Bhimabhai Haribhai Bharwad, 3. Kuldip @ Lalo Mafabhai Danubhai Bharwad, 4. Haribhai Vashrambhai Bharwad, 5. Samantabhai Vashrambhai Bharwad, 6. Ketanbhai Mafabhai Bharwad, 7. Anilbhai Mafabhai Bharwad, 8. Alpeshbhai Kalubhai Bharwad, 9. Hiren Raghubhai Bharwad, 10. Sanjaybhai Bhimabhai Bharwad and in the re-examination-in-chief, PW2 has categorically stated that cause of the death of his maternal aunt-Pravinaben was homicidal death which amounts to murder because his maternal aunt has not accepted the

proposal of compromise in case of murder of his maternal uncle-Vijaybhai. The murder of his maternal uncle-Vijaybhai Amrabhai Chavda took place, wherein his maternal aunt(Mausi) was the complainant and accused mentioned hereinabove were pressurizing to enter into the compromise and Pravinaben Amrabhai Chavda has refused to do compromise. His maternal aunt-Pravinaben went to attend the High Court proceedings and when she was returning back from the Hon'ble High Court on the way, all the aforestated accused had committed the homicidal death which amounts to murder of his maternal aunt-Pravinaben and murder of Pravinaben took place. PW2 has identified the Lathi sticks used by Bharwad community and muddamal article No.11,12, 13, 14, 23 & 24, all lathi sticks were identified.

35. Looking to the deposition of PW2, it transpires that PW2-Bipinbhai was alongwith Pravinaben when incident of murder of Vijaybhai Amrabhai Chavada took place. PW2 has stated consistent version as to the facts of the case during the course of examination-in-chief but in the cross-examination some questions asked by the Ld. advocate for the accused and answers given by the PW2 in some contradictory version but when PW2 was the star material witness as to incident took place and some contradictory version averred by PW2 is not fatal to the case of the prosecution. After completion of the examination-in-chief on dated 28.06.2018, approximate after 14 months, cross-examination of the PW2 was conducted by the Ld. advocate for the accused. It is obvious that after 14 months when cross-examination has been conducted by the Ld.

advocate for the accused, therefore, some contradict version submitted by the PW2 during the course of cross-examination and by & large at present, trend has been developed by Ld. counsel to conduct the cross-examination after so many months and when PW2 is the rustic person belongs to scheduled castes and he is the weaker section of the society, therefore, Court cannot be expected from PW2 to submit the photographic memory version and in the Indian Society after passage of time, other witnesses fed up or enter into the amicable settlement and during the course of cross-examination, sometime, averred contradictory version because 14 months period are not a little period and sequence of events cannot be mentioned by the witness after 14 months during the course of cross-examination and sometime, the amicable settlement and compromise also become a factor for contradictory version so, it is the duty of the Ld. APP to conduct the cross-examination of the witness after some hostile version in the circumstances of amicable settlement between rival parties.

36. However, ofcourse, in the present case, re-examination-in-chief was conducted by the Ld. DGP and submitted the connection between present case and case registered vide First C.R. No.6/2015. Any lacuna or error committed by the Ld. DGP during the course of recording of evidence would not be fatal to the case of prosecution. It is not necessary to submit the version of witness as video cassette player or tape recorder but crux of the deposition are very material. The statement recorded by the police official during the course of police investigation are used for the contradiction and omission purpose and such type of

police statement are not conclusive proof so, PW2 has supported the facts of his presence at the time of occurrence and he had seen all the accused armed with Bharwadi lathi sticks in their hand and deceased-Vijaybhai was full of blood stains lying on the agricultural farm and after seeing PW2 and his maternal aunt(Masi), all the accused fled away from the place. After that all the accused reached at village and friend of deceased-Vijaybhai namely 1. Ghanshaym, 2. Jayantibhai and 3. Harjibhai met to accused and according to prosecution story, all the accused armed with lethal weapon like Maldhari lathi sticks assaulted to all the witnesses and told that one is murdered and your turn come and all the accused inflicted haphazard blows to all the witnesses and witnesses sustained grievous injuries and accused abetted one another and attempted to murder all those three witnesses also.

37. All the issues are interconnected, therefore the discussion of issues be made jointly hereinafter;
38. Case under 302 of IPC, first of all, for prosecution, in order to bring home, the charges leveled against accused, has to establish beyond reasonable doubt.
  - 1) The death of some human-being has taken place
  - 2) That such death was neither suicidal nor accidentally but it was homicidal
  - 3) That it was accused whose act or the consequences of his act, caused such death
  - 4) That the accused had no legal excuse or defence for causing such death or for causing such injury
  - 5) That the accused did such an act
    - a) with the intention of causing death or
    - b) with the intention of causing such bodily injury

- i. as the accused knew it likely to cause death or
  - ii. (a) that such an injury was sufficient in the ordinary course of nature to cause death or  
(b) that the accused caused death by doing an act which he knew, in all probabilities, to cause death or
  - iii. the accused caused such bodily injury to such person as was likely to cause death.
39. Thereafter Court has to see the evidences adduced by prosecution on record whether act done by accused come within the purview of five exceptions mentioned under Sec. 300? Except it, if accused taken the defence of any exception, such defence taken into consideration.
40. If the act done by accused is not come within the purview of the five exceptions under Sec. 300 in the circumstances said act of homicidal death come within the category of murder and Court can impose the punishment under Sec. 302 of IPC. If the act of accused was embodied the five exceptions of Sec. 300 then act of accused is only a culpable homicide not amounts to murder and in such type of offence Court can impose the punishment to the accused under the provision of Sec. 304 of IPC.
41. It is pertinent to note that if the act done by accused come within the purview of the exception under Sec. 300, burden lies on accused to prove the five exceptional circumstances mentioned under Sec. 300 of IPC. It is obvious that prosecution has to prove the case under Sec. 300 against accused beyond reasonable doubt and burden lies on prosecution and such burden of proof never be shifting or become lighter. If accused takes the defence of five exception under Sec. 300 in the circumstances burden of proof come within the purview of

under Sec. 105 of Indian Evidence Act. If the case against accused are not under five exceptional circumstances under Sec. 300 of IPC prosecution need not prove the said facts in negative form but if prosecution succeeded to prove the case against accused beyond reasonable doubt that culpable homicide amounts to murder then Court has to presume that no five exceptional circumstances creates and defence has to rebut the presumption. It is the duty of the defence not to defend that prosecution case is false but defence has to prove whether the case of prosecution is true or false. Whatever burden lies on accused are under the principle of probabilities. There is not rule for the defence to adduce written or oral evidence about five exceptional circumstances under Sec. 300 of IPC the undisputed facts which are comprising in the evidences adduced by the prosecution and said oral and documentary evidences also become the matter of five exceptional circumstances so it is the duty and obligation on the part of the Court to compare the credibility of the evidence adduced by prosecution and probabilities of defence of accused.

42. It is not necessary for the accused to adduce the five exceptional circumstances mentioned under Sec. 300 of IPC by giving oral or documentary evidences but it would be proved by facts of the cases surrounding circumstances and evidences adduced by prosecution. There is no general rule or any formula for the accused to prove the five exceptional circumstances under Sec. 300.
43. Considering the aforesated provisions of Law, on perusal the evidences adduced by the prosecution, it is pertinent to note that

on dated 01.07.2013 in the morning at 07:15am, deceased-Vijaybhai who is the brother of complainant/Pravinaben went to natural call(defecate) in the agricultural farm, at that time, incident took place and all the six accused armed with lethal weapons inflicted Bharwadi lathi sticks blows and deceased-Vijaybhai sustained multiple injuries due to haphazard stick blows and succumbed due to multiple injuries, therefore, it is obvious that when deceased-Vijaybhai was going to natural call(defecate), therefore, he was weaponless and all of sudden, all the six accused rushed towards deceased-Vijaybhai and homicidal death of deceased was happened. Exception U/s 300 of IPC must be taken into consideration while appreciation of evidence in homicidal death which amounts to murder U/s 302 of IPC. But when accused raised defence of the five exceptions U/s 300 of IPC, therefore, burden lies on accused to prove that their case come within the purview of five exceptional circumstances U/s 300 of IPC and prosecution need not to prove the said facts in negative form. When deceased was armed without any weapons at the time of occurrence and at the venue of crime, deceased-Vijaybhai raised shouts and complainant/Pravinaben and PW2-Bipinbhai reached there, there can be no rule for the defence to adduce documentary evidence or oral evidence about the five exceptional circumstances U/s 300 of IPC and considering the facts & circumstances of the case alongwith the evidences adduced by the rival parties, Court will come to conclusion about five exceptions U/s 300 of IPC. It is the duty of the Court to compare the credibility of the evidences adduced by the

prosecution as well as probabilities of the defence of accused and there is no straight jacket formula or general rule for the accused to prove the five exceptional circumstances U/s 300 of IPC but if Court finds that the case against the accused are come within the category of five exceptions U/s 300 of IPC, in that circumstances, with due care and caution, Court has to consider the defence of five exceptional circumstances U/s 300 of IPC. In the present case when deceased-Vijaybhai was going to agricultural farm for natural call(defecate), therefore, being a single person, there was no scuffle took place between deceased-Vijaybhai and accused and according to the Postmortem report, multiple injuries sustained by the deceased-Vijaybhai and during the course of police investigation, defence has failed to raise the defence about the counter assault by the deceased and at the time of occurrence, accused has no weapon and it is ostensibly crystal clear that single person cannot be done the confrontation with six accused at the time of sustained multiple injuries, therefore, case on hand defence of accused are not come within the category of the five exceptional circumstances U/s 300 of IPC but prosecution has succeeded to prove the homicidal death which amounts to murder of the deceased-Vijaybhai.

44. PW4-Ghanshyambhai Harjivbhai Rathod has deposed vide Exh.104 that incident took place on dated 02.07.2013. On the day of occurrence, he wake up 07:00am and he reached Bus Stand to go at Bhavnagar and while PW4 was standing at Bus stand, at that time, accused-Raghubhai Haribhai, accused-Bhimabhai Haribhai, Mafa Ranchhod, Kalu Ranchhod, Jignesh

Raghu and Lalo @ Kuldip Mafabhai, all those persons went at the home of PW4 and quarrel took place at his home and at that time, PW4 was standing at bus stand. Thereafter, PW4 returned back at his brother's(Sukhabhai) Floor mill and accused beaten him and before beating, all the accused told that "Vijaybhai is your friend, they killed Vijaybhai and he is lying down dead and right now they will kill PW4 and further told that why are you giving support to Vijaybhai" and thereafter, PW4 was inflicted by Maldhari lathi sticks blows by all the accused and PW4 has categorically stated that all the accused have armed with lathi sticks and thereafter, left the place. During the course of incident, his father and Jayantibhai also sustained injuries. The mother of PW4 has supported to stand him his father, Jayantibhai and Rameshbhai were present there. His father sustained waist and leg injuries. PW4 has sustained four fractures. Accused assaulted Rameshbhai and Rameshbhai fled away from the place. Thereafter, PW4 was brought at Long Life Hospital, Bavla by 108 ambulance and thereafter, immediately, he was brought at Long Life Hospital, Paladi, Ahmedabad in the 108 ambulance. PW4-Jayantibhai and his father reached Long Life Hospital, Ahmedabad and his wife alongwith him in the 108 ambulance. Jayantibhai and father of PW4 were admitted at Long Life Hospital, Bavla. PW4's city scan report has been performed and PW4 was admitted at Long Life Hospital, Paladi for 5 days and thereafter, he came back at Long Life Hospital, Bavla for 17 days. The Investigating Officer has recorded his statement at Long Life Hospital, Paladi, Ahmedabad on dated 02.07.2013. All the accused were identified by the PW4 during

the course of deposition. But accused No.6-Jigneshbhai Raghubhai Bharwad was not present in the Court. Muddamal article lathi sticks were also identified by PW4 and for better clarification, PW4 has categorically stated that in the Panchayat election held in the year-2012, PW4 and Vijaybhai were candidate and Vijaybhai has contested for Sarpacnh election and in the said election, PW4 and Vijaybhai were elected. For better explanation, PW4 has stated that his friend Vijaybhai has contested election and 5 years he was elected and after period of 5 years in the election, Vijaybhai's sister Pravinaben was candidate but she was defeated in the election. Pravinaben is not alive at present. PW4 has deposed that while Pravinaben was going to her home from the Hon'ble High Court, at that time, near Ujala circle, lift has been given and strangulated Pravinaben and thrown her body near Rohitiya Petrol Pump.

45. The detailed cross-examination of the PW4 has been conducted by the Ld. advocate for the accused. During the course of cross-examination, no major contradiction or omission found and no exaggerated version stated by witness. Detailed cross-examination has been conducted by the different Ld. advocates for the accused but when PW4 who is the ocular/injured witness so, his oral testimony cannot be discarded in some trifle contradiction or some exaggerated version or minor contradiction which are not fatal to the root of the case and such type number of replies given by the PW4 during the course of cross-examination are not taken into consideration for a best defence.

46. Likewise, PW5-Jayantibhai Harjibhai Rathod has deposed vide

Exh.106 that at the time of occurrence, his father Harjibhai was alive and his father passed away by natural death. PW5 has further deposed that incident took place on dated 01.07.2013, at the time of occurrence, he was at his Pan-Bidi Parlor and incident took place between 07:00am to 07:15am. His brother was having flour mill and crowd shouted, peoples were pelted stones and bricks, at that time, his brother Ghanshyambhai was going to his home from bus stand. The incident took place in front of Sukhabhai's flour mill. After hearing shouts, he went at the said place, crowd gathered, they were quarreling and in the crowd, so many people were present, females were covered their face due to customs so, he cannot expressed that which persons were present during the course of incident. His brother Ghanshyam PW5 and his father sustained injures due to push and shove, he fell down and sustained injuries. PW5 is the handicapped, he lost his balance and fell down on the ground and his brother-Ghanshyam and father Haraji sustained lathi stick injuries but by whom inflicted lathi stick blow, he is not knowing. He, his brother-Ghanshyam and father Harajibhai were admitted in the Long Life hospital, Bavla. His brother-Ghanshyambhai sustained injuries on hand and legs, his father sustained injuries on waist and due to serious injuries sustained by his brother-Ghanshyambhai, his brother has referred to Long Life Hospital, Ahmedabad. PW5 has further deposed that the cause of occurrence was election.

47. PW5 has not supported the facts of his statement recorded by the police officials during the course of police investigation and eventually PW5 turned hostile but despite PW5 was present at

the time of incident took place did not support the prosecution story. Witness-Harajibhai who is the father of PW4/Ghanshyambhai and PW5/Jayantibhai passed away during the course of trial, therefore, prosecution became unable to conduct the deposition of said witness and he has been dropped.

48. Similarly, PW6-Madhuben Harajibhai who is the mother of PW4 & PW5 has deposed vide Exh.107 that she was giving feeder to the buffalo in the courtyard(Vada) of Darbar and thereafter while she was going, six persons were beating Vijay and by abusing her said that where is your Ravan? and two blows of fist has been given by them. The six persons were 1. Raghu Hari, 2. Bhima Hari, Mafa Ranchhod, 4. Kalu Ranchhod, 5. Mafa Lalo and 6. Raghu Jagdish, at that time, she told them that Ghanshyam has gone at Bhavnagar for taking vehicle and they returned back by uttering abusive language. At that time, railway crossing was closed but after hearing the shouts and quarrel, Ghanshyam returned back, at that time, all above six persons have beaten Ghanshyambhai. The husband of PW6 Harajibhai had gone Bapa Sitaram temple but after hearing the shouts, he came near the place of occurrence and at that time, Raghu Hari has inflicted lathi stick blow on the waist and leg of her husband and Jignesh has inflicted lathi stick blows to her younger sons Ramesh but Ramesh escaped and Lala has inflicted upon the leg of her son-Jayanti and Jayanti fell down. Thereafter, all her injured sons admitted in the Hospital at Bavla. The husband of PW6 and son-Jayantibhai were admitted three days in the Hospital at Bavla but her younger son-Ghanshyam has sustained serious injuries, therefore, he was

admitted 5 days in the Hospital at Ahmedabad. PW6 has further deposed that the cause of the incident was the election. PW6 has identified the lathi sticks used in the incident during the course of trial.

49. Considering the examination-in-chief of the PW6, PW6 has supported the prosecution story. The detailed cross-examination of the PW6 has been conducted by the Ld. advocate for the accused. During the course of cross-examination, no major contradiction or omission found and no exaggerated version stated by witness. Detailed cross-examination has been conducted by the different Ld. advocates for the accused but when PW6 who is a rustic and illiterate lady so, her oral testimony cannot be discarded in some trifle contradiction or minor omissions version or minor contradiction which are not fatal to the root of the case and such type of replies given by the PW6 during the course of cross-examination are not taken into consideration for a best defence.
50. PW4-Ghanshyambhai sustained grievous injuries by the inflicted blow of lathi stick given by all the accused. All the six accused came at bus station of village and not only inflicted lathi stick blows and beaten witnesses but when accused told witnesses that they would kill and further stated that your friend Vijaybhai has been killed by them and right now your turn to kill why are you giving support to the Vijaybhai and when PW4 has categorically stated aforestated version, therefore, Court cannot be discarded the injured/ocular witness version. However, ofcourse, one witness who was present at the time of incident took place turned hostile and unfortunately one witness

passed away during the course of trial but when accused intimidated PW4 to kill him and when all the accused were coming at bus stand after killing Vijaybhai at the agricultural farm and Vijaybhai succumbed to the lathi sticks blows inflicted by all the six accused and it is stated before the PW4 and the said talk was not mere oral version but after that all the accused assaulted, beaten and inflicted lathi stick blows on PW4 and PW4 has become seriously injured, admitted at hospital so, the intention of all the accused to kill PW4 also and by lathi sticks, all the six accused inflicted blows to deceased-Vijaybhai and eventually, Vijaybhai died due to grievous injuries sustained by lathi stick blows, therefore, all the six accused were well within the knowledge and well conversant with the facts that there may be consequence to occur death of PW4 so, act of all the six accused, intention was very clear to kill PW4 and other witnesses and when intention and knowledge have all the six accused. Therefore, injuries sustained by PW4 are not material, however, when the medical certificate of PW4 vide Exh.98 & 99 read with the oral testimony of expert doctor, PW4 has sustained grievous hurt and injuries.

51. The oral testimony of PW4-Ghanshyambhai is the direct evidence because after committing the act of homicidal death which amounts to murder of Vijaybhai U/s 302 of IPC, all the accused reached at village and inflicted the lathi sticks blows to Ghanshyambhai and other witnesses as mentioned hereinabove and the ratio laid down by the Hon'ble High Court of Gujarat in case of **Kabhaibhai @ Kaliyo Punambhai Parmar vs State Of Gujarat**, are required to be considered and the Hon'ble High

Court has held in para 14 that

*“14. When the evidence of an injured eye-witness is to be R/CR.A/1647/2008 CAV JUDGEMNT appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind :-*

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

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

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

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

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

*(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of R/CR.A/1647/2008 CAV JUDGEMNT time should be discarded.*

52. Considering the above ratio, the presence of PW4-Ghanshyam was an injured/eye witness at the time and place of occurrence and Court cannot be doubted the presence of PW4 because no material contradiction found in his deposition and when intention and knowledge, both the elements are present to commit the offence by the accused and PW4 sustained injuries also and oral testimony of PW4 are absolutely consistent to the police statement, therefore, there is no question arisen to implicate the accused falsely and evidence of injured witness has greater evidentiary value and when injured became the

victim of heinous and serious crime, therefore, the deposition of injured cannot be discarded. The deposition of PW4 are fully of natural conduct and being a rustic person of rural area Dholka Taluka, his deposition is absolutely clinching and cogent evidence and evidence of both the witness PW2 and PW4 read as whole as a ring of truth.

53. In view of Section 134 of Indian Evidence Act - **Number of witnesses**- No particular number of witnesses shall in any case be required for the proof of any fact. Section 134 acknowledged the well-recognized maxim, 'Evidence has to be weighed and not counted' - **AIR 1957 SC 614: 1957 Cr LJ 1000; see also Binay v State (1997)1 SCC 283.**

One credible witness outweighs the testimony of a number of witnesses- AIR 1957 SC 614: 1957 Cr. LJ 1000; AIR 1962 SC 424:

(1962)1 Cr LJ 473; (1964)1 Cr LJ 564; 1969 Cr LJ 94; AIR 1965

SC 202: 1965 Cr LJ 226.

Solitary witness. Evidence must be cogent, convincing, clear and unimpeachable to base conviction- 1982 Cr LJ 500. Evidence must be such that court can place implicit confidence - 1982 Cr LJ 241.

54. Considering the ratio laid down by Hon'ble Apex Court in the above mentioned case read with provision under Sec. 134 of the Indian Evidence Act, it manifest that quality of witness version while he is stepping into the witness-box are material to evaluate the evidence on record and one credible witness oral testimony against the number of witnesses deposition are more score over and prevail over them so the quantity is not

material but the quality of the oral testimony are material, however, the deposition of solitary witness must be cogent, convincing, clear and unimpeachable. The testimony of one single witness, if wholly reliable, sufficient to establish the enmity, root cause of incident, intention, weapon used by accused as well as status as ocular witness.

55. Considering the aforestated dictums, the Hon'ble Apex Court read with the provision U/s 134 of the Indian Evidence Act, it evidents that complainant/Pravinaben and PW2-Bipinbhai reached at the scene of crime after hearing the shouts of the deceased, therefore, complainant/Pravinaben and PW2-Bipinbhai were the persons who had seen the inflicted blow by accused to deceased-Vijaybhai but unfortunately complainant/Pravinaben has passed away and cause of death of complainant/Pravinaben was the homicidal death which amounts to murder by the accused of present case alongwith other contract killers and said case are pending before this Court and conduct, demeanor and motive of the accused was to fatal to the present prosecution case. However, ofcourse, final outcome of the case as to homicidal death which amounts to murder U/s 302 of IPC of complainant/Pravinaben are not the factual aspects of the present case but when complainant/Pravinaben died and prosecution unable to adduce the oral evidence of complainant/Pravinaben and the death of complainant/Pravinaben was the compulsion made by the accused of present case to enter complainant/Pravinaben in the amicable settlement or compromise but when complainant/Pravinaben refused to accept the offer of

compromise by the accused and second criminal case of murder took place but prosecution has proved the facts of the complaint by the oral evidence of PSO, IO as well as oral testimony of PW2 who was accompanied to complainant/Pravinaben at the time of occurrence, therefore, contents of the complaint/FIR are proved by the prosecution, therefore, Court cannot be discarded the facts of the complaint and in criminal case, complainant died or complainant not available at the time of recording of evidence doesn't mean that its fatal to the prosecution case or prosecution case becomes weak. PW2-Bipinbhai has submitted some contradictory version during the course of cross-examination but PW2 has narrated absolutely consistent version during the course of examination-in-chief and after completion of examination-in-chief, passage of long time and after so many adjournments, cross-examination of PW2 has been conducted by the Ld. advocates for the defence. Therefore, the ratio laid down by the Hon'ble Supreme Court of India in case of **Vinod Kumar Vs. State of Punjab, Criminal Appeal No.554/2012** are required to be considered and it is observed in para 4, 5, 6 as under;

*"4. In the aforesaid context, we may recapitulate a passage from **Gurnaib Singh V. State of Punjab**."..... We are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of the witnesses was deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in **Talab Haji Hussain v. Madhukar Purshottam Mondkar** wherein it has been stated that an accused person by his conduct cannot*

*put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction."*

5. Be it noted, in the said case, the following passage from **Swaran Singh V. State of Punjab**, was reproduced.

*"It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the [pic]other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."*

6. In this regard, it is also fruitful to refer to the authority in **State of U.P. V. Shambu Nath Singh**, wherein this Court deprecating the practice of a Sessions Court adjourning a case in spite of the presence of the witnesses willing to be examined fully, opined thus:

*"9. We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."*

56. Considering the above observations, in the present case, the examination-in-chief was completed on dated 28.06.2018 and thereafter, cross-examination of PW2-Bipinbhai was conducted on dated 09.08.2019 therefore, time gap between examination-in-chief and cross-examination are approx 14 months and during the time gap between examination-in-chief and cross-examination, the threatening of witness, maimed witness temptation, pressure of compromise may be happened and the Hon'ble Apex Court in case of **Vinod Kumar(supra)** has observed about the tactics adopted by the defence and in para 29

it is observed that

*“29. The next aspect which requires to be adverted to is whether testimony of a hostile evidence that has come on record should be relied upon or not. Mr. Jain, learned senior counsel for the appellant would contend that as PW-7 has totally resiled in his cross-examination, his evidence is to be discarded in toto. On a perusal of the testimony of the said witness, it is evincible that in examination-in-chief, he has supported the prosecution story in entirety and in the cross-examination he has taken the path of prevarication. In Bhagwan Singh V. State of Haryana, it has been laid down that even if a witness is characterised as a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence. In Khuji @ Surendra Tiwari V. State of Madhya Pradesh, the Court after referring to the authorities in Bhagwan Singh (supra), Rabindra Kumar Dey V. State of Orissa[26] and Syad Akbar V. State of Karnataka, opined that the evidence of such a witness cannot be effaced or washed off the record altogether, but the same can be accepted to the extent it is found to be dependable on a careful scrutiny thereof.”*

57. There is an erroneous impression that re-examination-in-chief should be confined to clarification of ambiguities which have been brought down in the cross-examination and when after passage of time, PW2 has stated some minor contradictory version during the course of cross-examination, therefore, duty of the Ld. AGP to call explanation at the time of re-examination-in-chief, however, ofcourse, each and every facts of the examination-in-chief are not challenged by the Ld. advocate for the accused and under the guise of time gap between examination-in-chief and cross-examination attempted to create contradictory version but when no major contradictory version found, therefore, particularly in criminal Law, it is settled principle that minor discrepancies, inconsistency or probable doubts in testimony do not constitute a fatal blow to the prosecution case and when PW4-Ghanshyambhai are the direct eye witness/credible witness the law requires proof

beyond reasonable doubt not beyond a shadow of doubt, therefore, minor doubts are not reasonable should not lead to acquittal and beyond a reasonable doubt is highest standard of proof in the criminal law but beyond a shadow of doubt means being absolutely certain, when no uncertainty or room for questions. It signifies 100% confidence often in uses legal contexts to mean proven case. In the Indian Courts, the case against the accused, witnesses of case against the accused are rustic person, rural area people or illiterate person. In the present case, PW2 is the witness who is the person belongs to weaker section of the society and deceased-Vijaybhai was also belongs to scheduled castes and witness PW4-Ghanshyambhai was also belong to rural area, therefore, the deposition of witnesses must be taken into consideration as to apply the principle of beyond reasonable doubt but not the beyond shadow of doubt and in the Indian Court of Law, Court cannot be expected from the witnesses to submit 100% certain facts about as ocular witness and in case of **Vinod Kumar(supra)**, the Honb'le Apex Court has established that the witnesses were cross-examined months after their examination-in-chief, therefore, long adjournments and deferred cross-examinations stating encourage key takes away from case and it is absolutely trial management and delays to conduct the cross-examination to encourage the confidence of accused.

58. PW3-Dr. Dinesh Natwarlal Thakkar who is the Orthopedic Surgeon deposed vide Exh.97 that he was discharging his duty at Long Life Orthopedic and Accident Hospital, Bavla and other doctor Sunil M. Patel was present alongwith him. The said

hospital was carrying by him till dated 31.03.2019 and at present the hospital is carrying by the Dr. Vishal Chandaran. PW3 is having MS Orthopedic degree.

59. PW3 has further deposed that on dated 01.07.2013 at 10:00am, PW3 has medically and clinically examined PW4-Ghanshyam and other two witnesses Harajibhai Motibhai Rathod and Jayantibhai Harjibhai Rathod were also brought before him for medical examination and medical treatment. The patient Ghanshyambhai Harjibha Rathod was serious therefore, the said patient was referred at Long Life Hospital, Paladi, Ahmedabad and all three patients were examined by expert doctor. Firstly, PW3/expert doctor has examined witness PW4-Ghanshyambhai Harjibhai, PW4 was not in fully conscious but their relatives narrated the history that “beaten by lathi at around 07:30 morning” and following injuries found;

- Swelling, crepitus & abnormal movement at left ankle, left patella, left wrists & right forearm, wound of about 2cm over left knee, swelling over skull.
- **X-ray:** X-ray shows comminuted fracture of lower end of left radius, fracture of midshaft of right ulna,
- Fracture of medial malleolus & comminuted fracture of left lower end of fibular comminuted fracture of left patella.
- CT Scan of skull & brain shows focal subarachnoid hemorrhage in left parietal sulci, linear fracture of left temporo-parietal bone, contusion in temporal region.
- **Age of Injury:** Patient was admitted on 1/7/2013 was operated on 2/7/2013.

- **Cause of injury:** Beaten by opposite party.
60. Medical certificate of PW4-Ghanshyambhai has been issued on dated 12.07.2013 and 30.08.2013. At the time of issuing the first certificate on dated 12.07.2013, the medical treatment of the patient continuing. The police has asked certificate and after discharging PW4/Ghanshyam, second certificate has been issued on dated 30.08.2013.
61. Likewise Harajibhai Motibhai Rathod has also been examined by PW3 and in the history “beaten by opposite party” and it is mentioned and following injuries found;
- swelling, crepitus & abnormal movement at left upper leg.
  - swelling over skull & low back.
  - **X-ray:** X-ray left leg shows undisplaced fracture of upper end of tibia.
  - **Age of Injury:** Patient was admitted on 1/7/2013 & was operated on 5/7/2013.
  - **Cause of injury:** Beaten by opposite party.
62. Likewise, Jayantibhai Harajibhai Rathod was examined by the PW3 and in the history “beaten by opposite party” and it is mentioned and following injuries found;
- swelling & tenderness over left knee.
  - **X-ray:** Minimally displaced fracture of lateral condyle of femur.
  - **Age of Injury:** Patient was admitted on 1/7/2013 & was operated on 5/7/2013.
  - **Cause of injury:** Beaten by opposite party.

63. PW3 has submitted original case papers, x-ray reports during the course of recording of evidence and joint Exh.102 has been given. PW4-Ghanshyambhai was admitted and kept at Ahmedabad Hospital for the treatment of fracture and Bone and it is confessed by the expert doctor that more than one person if gives lathi sticks blows may be happened multiple injuries and except Ghanshyambhai, other witnesses injuries are not come within the purview of multiple injuries. PW3 has very firmed that injuries sustained by PW4-Ghanshyam are very serious so, opinion of expert doctor/PW3 read with oral testimony of PW4-Ghanshyambhai, it evidents that all the accused inflicted lathi stick blows and intention of the accused to kill PW4-Ghanshyambhai and all the accused were well conversant to the knowledge and consequences as to causing murder. All the accused abetted one another.
64. The general rule is that when medical certificate is issued by doctor, it cannot be relied upon unless the doctor is examined.
65. However, it cannot be said that a medical certificate, which is not testified in the Court is not admissibly at all. In **Navneetlal Khakar Vs. Hasmukhlal B. Solanki AIR 1988 Gujarat page 34** observed that the contents of the medical certificate would be required to be proved only if the other side challenge its veracity. When a party challenges the veracity of medical certificate, the party producing the certificate has to prove the correctness of the statements made therein. In the absence of any challenge by other side, the medical certificate should be accepted as correct unless the Court feels that its contents are on the face of it falls or at least it is doubtful. Dr. Bhattacharya P.

K. (1988), Medico Legal Companion, Second Edition Allahabad Law House page 276.

66. The ratio laid down in the case of **Ramakishan Vs. State of U.P 2002 Cri. LJ page 1548** wherein it was held that when there was no vital or material inconsistency between ocular testimony and medical evidence, the testimony of eye-witnesses could not be discarded merely on account of slight variation if any in medical evidence. Hon'ble M.P. High Court laid down the ratio **1981 Cri. LJ page 1375** in case of **Jheena Vs. State of M.P** wherein it was held that "some times the eye-witness and medical evidence may not be exactly of similar opinion, but ultimately both the witnesses may lead to the same story. In such case both the evidences will not lead to any contradiction.
67. Likewise, PW1-Dr. Jayantilal Virjibhai Satapara has deposed vide Exh.59 that one dead body of deceased-Vijaybhai Amrabhai Chavda was brought before him for postmortem alongwith police yadi which was issued by Assistant Police Commissioner, Sarkhej alongwith posthumous form vide Exh.61, police yadi vide Exh.60, inquest panchnama vide Exh.62. During the course of the deposition of PW1-expert doctor was advised to perform postmortem with panel doctors, therefore, Dr. Ashish Chauhan, Dr. Tejas Patel, Dr. Ketual Amin and PW1 accompanied and conducted the postmortem procedure. The postmortem of the dead body was started at 04:30pm on dated 01.07.2013 and same was completed at 07:00pm. Looking to the postmortem report, it is transpired that *“cause of death is due to shock & hemorrhage due to sustained multiple injuries over the body”* multiple injuries can be

possible by the inflicted lathi sticks blow by more than one person because more than one person can be given multiple blows and sustained multiple injuries by deceased and when six persons attacked, assaulted on deceased so, the cause of death happened due to the shock and hemorrhage and all the injuries sustained to the deceased are sufficient to cause the death and act of all the accused are come within the purview of homicidal death which amounts to murder and victim-Vijaybhai succumbed to multiple injuries which are as under;

**Right upper limb**

- 1) 4×3cm transverse contusion on anterior mid arm
- 2) 7×3cm transverse contusion on anteromedial aspect of upper forearm 3cm below cubital fossa with diffuse swelling of elbow joint and dislocation and # of olecranon
- 3) 6×4cm oblique contusion on anteromedial of forearm 7cm above wrist
- 4) 4×2cm vertical contusion on anterior of wrist
- 5) 2×2cm contusion on hypothenar area of hand palmer aspect
- 6) 3×2cm transverse contusion on palm below ring an little finger palmer aspect
- 7) 0.3×0.3cm abrasion at base of thumb dorsum aspect
- 8) 1×1 cm abrasion near nail of index finger
- 9) 1×1×0.5cm vertical clw on lateral of tinter-phalangeal of middle finger
- 10) 0.5×0.5×0.5cm clw on medial of tip of ring finger with tear of nail and under area laceration
- 11) 0.5×0.5cm abrasion on medial of 1" inter-phalangeal of little finger

- 12) 0.5×0.5×0.5cm clw on lateral of 1 inter-phalangeal of little finger
- 13) 0.5×0.5cm abrasion on palmer aspect of ring finger near base
- 14) 0.3×0.3 cm abrasion on dorsum of little finger near base
- 15) 0.3×0.3 cm abrasion on dorsum mid medial part of hand
- 16) 1.5×1cm vertical clw with bony projection on back of forearm 1cm below elbow with seperated #fragment of radius bone
- 17) 1×1cm abrasion on posterolateral of upper forearm 4 cm below elbow
- 18) 3×1.5cm oblique contusion on back of forearm lateral to injury no.16 downwards medially with palpable # of radius bone

**left upper limb**

- 1) 4×4 cm round contusion with centrally abrasion of 1×1cm on anteromedial lower arm 3 cm above cubital fossa
- 2) 5×1cm transverse contusion at lower part of cubital fossa
- 3) 9×5cm transverse contusion on anteromedial of upper forearm 3cm below cubital fossa overlapping
- 4) 4×4 cm round area of intermittent contusion abrasion on anterior aspect 5 cm above wrist
- 5) diffuse swelling of lower arm, elbow upper forearm and wrist hand
- 6) 2×0.5 cm vertical abrasion on posteromedial of lower forearm 3cm above wrist
- 7) 3×11 cm vertical contusion on back of mid forearm
- 8) 0.5×5cm abrasion on lateral of base of index finger
- 9) 3×1×3cm bone visible laceration of between little and ring finger at base area involving palm with contusion of adjoining finger surface

- 10) 1.5×1cm clw with crush injury on tip of little finger with missing nail and # of phalnx bone
- 11) 4×1cm transverse contusion on mid palmer area
- 12) intermittent contusion area on palmer surface of all fingers

**right lower limb**

- 1) 6×1cm transverse contusion abrasion on medial of lower thigh 6cm above knee
- 2) 4×2cm transverse contusion 1 cm below injury no.1
- 3) 4.5×2cm transverse contusion abrasion 2 cm below injury no.2
- 4) 4×1cm oblique contusion abrasion on anteromedial and upper part of knee directed downwards medially
- 5) 7.5×3cm contusion on lateral thigh 10 cm above knee
- 6) 5×3cm contusion on lateral thigh 3 cm below and pallel to injury no. 5
- 7) diffuse swelling of lower thigh
- 8) 5×2cm transverse contusion on anterior aspect lower thigh 4 cm above knee
- 9) 2.5×2cm abrasion on anterolateral just below knee
- 10) 5×3cm oblique downwords backward contusion on lateral of knee
- 11) 5×3 cm oblique contusion downwords forword on anterolateral of knee
- 12) 2×2 cm contusion abrasion on anteromedial on upper leg 5cm below knee
- 13) 0.5×0.5 cm abrasion 4 cm below injury no.12
- 14) 7×4 cm intermittent area of contusion abrasion on medial of calf 11 cm below politeal fossa
- 15) 1×1 cm muscle deep clw on medial of mid leg, 17 cm above ankle

- 16) 2.5×1.5 cm vertical claw mark with projection of soft tissues on medial of lower leg 5 cm above ankle
- 17) 2×1 cm and 1×1 cm contusion abrasion on anteromedial of leg medial and between area of injury no.15 and 16
- 18) 2×1cm and 4×1cm vertical contusion abrasion on anterolateral of mid leg 14cm above ankle
- 19) 1cm, 1cm and 0.5 cm abrasion on anterolateral of mid leg 14 cm above ankle
- 20) 1×1 cm abrasion just above lateral ankle
- 21) diffuse swelling of whole leg with if of tibia fibula with angulation and palpable multinter-phalangeal #fragment
- 22) 5×2cm transverse tendon deep claw on foot just below great, 1<sup>st</sup> and 2<sup>nd</sup> toes
- 23) 1×1cm and cm contusion abrasion on lateral of rt. foot 8 cm from ankle
- 24) 8×3 cm horizontal contusion just below medial ankle
- 25) 2.5×2 cm contusion near great toe at sole
- 26) 9×3cm transverse contusion on back of rt thigh 5 cm below gluteal fold
- 27) 10×8 cm contusion area on rt popliteal fossa having overlapping crisscrossing 3 cm breadth
- 28) 8×3 cm oblique downwards forward contusion on posterolateral of calf 13 cm below popliteal fossa
- 29) 7×3cm oblique contusion 1 cm below and parallel to injury no. 28

**left lower limb**

- 1) 4×0.5cm vertical abrasion on anterolateral mid thigh 10 cm above knee
- 2) 6×2 cm transverse contusion anterior thigh 7 cm above knee
- 3) 5×2 cm transverse contusion on anterolateral thigh 5 cm above knee

- 4) 8×4cm oblique contusion abrasion downwards backward on lower thigh superolateral to knee
- 5) 4×4 cm contusion on upper part of knee
- 6) 1.5×0.5 cm vertical abrasion on medial of lower thigh
- 7) 1×1cm, 1×1cm and 0.5×0.5cm abrasion inferomedial to knee
- 8) 13×3 cm oblique contusion abrasion directed downwards backward on anterolateral of leg starting from 3 cm below knee
- 9) 1.5×1cm vertical clw bone deep anterior 10 cm below knee
- 10) 7×4 cm transverse contusion lateral of leg 16 cm above ankle
- 11) 5×5 contusion on posterolateral leg 6 cm above ankle
- 12) 3×0.5 cm vertical abrasion on medial of leg 4 cm above ankle
- 13) 3.5×0.5 abrasion on medial malleolus (ankle) and 0.5 \* 0.5 cm on medial of heel 6 cm below ankle
- 14) 6×4 cm contusion on anterolateral leg near ankle
- 15) diffuse swelling of lower thigh, knee, leg, and ankle with # of upper part of tibia fibula with angulation and palpable multiple # fragment
- 16) 8×3cm oblique contusion on back lower thigh 3cm above left popliteal fossa
- 17) 8×5 cm contusion on lower and medial part of it popliteal fossa
- 18) 1×1 cm abrasion on back of upper leg 2 cm below popliteal fossa
- 19) 12×9 cm transverse contusion on back of lower calf multiple overlapping and crisscrossing of 3 cm breadth
- 20) diffuse contusion on heel around tendocalcaneum

**front part**

- 1) 8×1cm transverse contusion on rt lateral abdomen 8 cm from umbilical
- 2) 5×2cm transverse contusion on rt abdomen 1 cm below and parellel to injury no.1
- 3) 0.2×0.2 cm abrasion on root of nose it side

**back of trunk**

- 1) 2.5×0.5 cm transverse abrasion on back rt lumber region,2 cm rt to midline and 12 cm above gluteal groove
- 2) 2×0.5 cm transverse abrasion on back rt lumbosacral,1 cm rt to midline and 6 cm above gluteal groove
- 3) 3×3 cm contusion on between area of injury no. 1 and 2
- 4) 1×0.5 cm abrasion on it back lumber 10 cm it to midline
- 5) 12×3 cm transverse contusion on lateral part it gluteal
- 6) multiple contusion area on both gluteal area

all the contusions abrasions are red in colour, blood and clotts are present on and around wounded site, both legs are poured with blood and stick muds.

68. Looking to the deposition of PW1-expert doctor Jayantilal V. Satapara vide Exh.59, postmortem procedure has been performed by the penal doctors Dr. Ashish Chauhan, Dr. Tejas Patel, Dr. Ketual Amin and Dr. J.V. Satapara(PW1) and PW1 is one of the penal doctors list of postmortem performer. Name of deceased is Vijaybhai Amrabhai Chavda belongs to Loliya village and clothes worn by deceased were full of blood stains and approximate aforesated 18 injuries found on the right hand of deceased. On perusal the injuries on right upper limb fractures, abrasion, vertical contusion, oblique contusion, swelling, dislocation, transverse contusion etc. are found. Likewise, on left upper limb, round contusion, transverse contusion at lower part of cubital fossa, intermittent contusion,

wrist injuries, vertical abrasions, vertical, bone visible laceration, crush injuries on tip of little finger are appeared. Similarly, on right lower limb of the deceased, transverse contusion injuries, oblique contusion injuries/downwards/backwards contusion, intermittent area of contusion, vertical contusion and on left lower limb, above knee the contusion mentioned hereinabove abrasions, ankle injuries, heel injuries, on front part of the body of deceased, transverse contusion abrasion on root of nose left side and back of trunk, transverse abrasion on back right little region, brutal area having multiple contusions, both gluten area and approximate 88 multiple injuries found on the dead body of deceased and cause of death is due to shock and hemorrhage due to sustain multiple injuries over the body and PW1 has categorically stated all the injuries in his oral testimony and looking to the injuries, it may be brutally happened by the Lathi sticks and it is judicial notice taken into consideration that multiple injuries denoted in the Column No.17 of the postmortem report, therefore, more than one person gave the blows on victim and such type of multiple injuries are possible and all those injuries are sufficient to cause the death.

69. The detailed cross-examination of the PW-1/expert doctor has been conducted by the Ld. advocate for the accused persons but nothing fruitful/favourable information revealed during the course of cross-examination.
70. There is no veracity found in the medical certificate issued as to clinical and medical examination of PW4-Ghanshyambhai and when injuries sustained by the deceased are denoted in by the

panelist expert doctor who performed postmortem and each and every multiple injuries described in the PM note and some questions asked by the Ld. advocate for the accused with regards to the time, place and procedure but whatever procedure performed by the expert doctor at the time of postmortem are just and proper and no lacuna, error are found in the postmortem report. No lapse, inaction or negligent found in the postmortem of the deceased-Vijaybhai and eventually, the cause of death has been mentioned by the expert doctor panelist in the postmortem report, therefore, expert doctor evidences are absolutely consistent to the facts of the case.

71. So, intention of all the six accused was very clear to commit the offence of serious and heinous crime and mens-rea and actus-reus both the elements were present and when intention and knowledge both are proved by the prosecution beyond reasonable doubt and multiple injuries sustained by the deceased and other witness/PW4-Ghanshyambhai has also sustained grievous injuries including two other witnesses and blows given on the body part of the deceased as well as on the witnesses are attracted to the ingredients under Section 302 & 307 of the IPC. However, ofcourse to constitute the offence under Section 307 of the IPC, kind of injuries are not material but when inflicted blow on the vital part of the body are absolutely come within the purview of the criminal intention to commit the crime of attempt to murder and the consequence by the assault and inflicting blow by accused are well within the knowledge of accused and injured/ocular witness's oral testimony cannot be discarded by this Court and prosecution

succeeded to adduce the clinching and cogent evidences of injured witness PW4/Ghanshyambhai.

72. However, of course, the cross-examination under Sec. 138 on behalf of accused is valuable right but when defence keeps some facts denoted in examination-in-chief unchallenged, in the circumstances the unchallenged part during the course of cross-examination may be accepted. Hon'ble Orissa High Court laid down the ratio in case of **State of Orissa V. Kaushlaya Dei, AIR 1965, Orissa page 38** wherein it is held that when the doctor gave evidence that death was due to poisoning and accused did not cross-examine him or the Investigating officer as to the safe and proper custody of the poison which was said to have been administered to the deceased, so the evidence of the doctor must be accepted. In Halsbury 4th Ed. Vol. 17, Para 278, page 194 it is observed: "failure of cross-examine a witness on some material part of his evidence, or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence." In view of above discussion, some material part of witness's evidence was not cross-examined by defence and adverse inference may be drawn and also may be treated as an acceptance of the truth of that part or whole of his evidence.
73. Case on hand, as discussed hereinabove, some material facts are unchallenged by the Ld. advocate for the accused during the course of the cross-examination of ocular witness, therefore, it is absolutely supportive evidence of prosecution.
74. PW7-Basirbhai Yakubhai Vhora and PW8-Manubhai Gatorbhai Ko. Patel who are the panch witnesses No.1 & 2 of panchanama of place of clothes of the deceased worn at the

time of occurrence has deposed vide Exh.143 and Exh.145 respectively. During their deposition, they have identified their signature made on the panchnama of the clothes of the deceased worn at the time of incident vide Exh.144, except this, they have not supported the prosecution case and eventually they turned hostile.

75. There is no fixed or straight jacket formula for appreciation of the ocular evidence. The judicially involved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:-

- (a) 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 scrutinize 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.
- (b) 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.

- (c) When eye-witness is examined at length, it is quite possible from him to make some discrepancies. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence.
- (d) 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.
- (e) Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.
- (f) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- (g) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise.

The mental faculties therefore cannot be expected to be attuned to absorb the details.

- (h) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.
- (i) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.
- (j) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.
- (k) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.
- (l) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or

fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

- (m) A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat** 1983 Cri. Lj 1096 : (AIR 1983 SC 753) **Leela Ram v. State of Haryana** AIR 1995 SC 3717 and **Tahsildar Singh v. State of UP** (AIR 1959 SC 1012)].

76. Considering the above ratio laid down by the Hon'ble Apex Court in case of **Bharwada Bhoginbhai Hirjibhai**(supra), the ring of truth and evidences adduced by the prosecution read as a whole and when some deficiency drawbacks and infirmities found in some witnesses but to find out the grains from the chaff according to the ratio laid down by the Hon'ble Apex Court in case of the **State of U.P. Vs. Shanker**, AIR 1981 SC 897 and when cross-examination of eye witness was conducted by the Ld. advocate for the accused at length therefore, minor discrepancies can be avoided and to consider the deposition of witnesses, Ld. advocate for the accused has asked some hyper technical questions and some technical error cannot be get the

much weightage and principle of contradiction and omission can be applied to the same witness and two different witnesses submit different version while they were stepping into the witness box are not called contradiction, omission or exaggeration and truth of facts with regards to the crux of the deposition are sufficient for prosecution to prove its case beyond reasonable doubt and in the Indian society Court cannot be expected from the witness to recall the accurately the sequence of events because PW2-Bipinbhai and PW4-Ghanshyambhai became the ocular witnesses of the serious and heinous crime and PW4-Ghanshyambhai is the injured witness of serious crime like attempted to murder U/s 307 of IPC, therefore, Court cannot be expected from them to submit the stereotype version before the Court.

77. Prosecution has examined PW9-Kanabhai Savabhai Parmar who is the panch witnesses No.1 of panchanama of place of occurrence vide Exh.150. PW9 has deposed that on dated 02.07.2013, he had gone at Loliya village to see and at the place of occurrence, police officials have asked him to appear in the panchnama and he has given his consent. Thereafter, he was taken at place of occurrence and the said place was told by Bipinbhai Ganpatbhai. The Superintendent of Police, FSL officials, C.J. Chavada and other people were present there. The police officials have collected the articles from the place of occurrence in his presence. PW9 has identified his signature made on the panchnama vide Exh.151. PW9 has identified the muddamal articles during the course of deposition which were seized by the police officials. The detailed cross-examination of

PW9 has been conducted by the Ld. advocate for the accused but nothing favourable information revealed during the cross-examination.

78. Likewise, PW11-Maulikbhai Dahyabhai Solanki has deposed vide Exh.158 who is the panch witness No.2 of the inquest panchnama of the dead body of deceased-Vijaybhai. PW11 has deposed that he had seen the dead body of Vijaybhai Amrabhai Chavda lying in the PM room and in his presence, police officials has drawn the panchnama vide Exh.62 and the dead body was of the deceased. PW11 has deposed that he had seen the dead body and the dead body was seen beaten, fingers of the deceased were fractured and broken, on the legs fractures injury found, blood oozing. The detailed cross-examination of PW9 has been conducted by the Ld. advocate for the accused but nothing favourable information revealed during the cross-examination.
79. Considering the whole depositions of PW9 & PW11 who are the panch witnesses have squarely supported the prosecution case.
80. Likewise, PW10-Ishwarbhai Mavubhai Ko. Patel who is the panch witness No.2 of the panchnama of place of occurrence has deposed vide Exh.156 that on dated 02.07.2013, while he was going to natural call, at that time, police officials have obtained his signature and he has identified his signature made on the panchnama vide Exh.157. The detailed cross-examination of PW10 has been conducted by the Ld. advocates for the accused and PW10 has confessed during the cross-examination that police officials have obtained his signature on

a prepared paper.

81. Likewise, PW12-Vastabhai Kuberbhai Sonara and PW13-Imranbhai Mustakmohammad Baloch who are the panch witnesses No.1 & 2 of panchanama of clothes worn by the accused at the time of incident have deposed vide Exh.160 and Exh.162. During their deposition, they have identified their signature made on the panchnama vide Exh.161, except this, they have not supported the prosecution case and eventually they turned hostile.
82. Likewise, PW14-Hazruddin Gulambhai Vhora who is the panch witness of panchanama of physical condition of the accused as well as recovery of muddamal articles from the accused has deposed vide Exh.163. During his deposition, he has identified his signature only made on the panchnama vide Exh.164, except this, he has not supported the prosecution case and eventually he turned hostile.
83. The ratio laid down by the Hon'ble High Court of Gujarat in the case of **Bhupatbhai Devjibhai Havliya Raval Vs. State of Gujarat** in Criminal Appeal No. 1653/2016 on 15/06/2018, it is observed as under:-

*“At this stage, it is to be noted that all the panch witnesses chose not to support the case of the prosecution. They, though, identified their signatures, rest of the contents of the panchnama, they have not supported. It is quite unfortunate and very often, it is noticed that in the Sessions Case, the person, who are duly won – over are the panch witnesses. There are various reasons for them to turn hostile and some of them as could be noticed are the ones, whom, many a times, police chooses to comment to act as panchas, who have some work with the police or those who hail from the labour class or work for their livelihood as hawkers in the vicinity. They often out of the fear of police agree to be the panch witness. However, such witnesses, eventually rescinds from the case and thus, they are declared hostile. The first opportunity these*

*witnesses get to defy the authority of the police is, at the time of recording their deposition before a Court. Reverting back to the factual matrix of the case on hand, non-support of the panch witnesses to the case of the prosecution would not render the case of the prosecution either false or concocted. The details having been proved and the panchnamas having been drawn in the presence of the IO, who has no animosity with the appellant-accused, this Court sees no reason, as to why those documents, as corroborative evidence, cannot be relied upon.”*

84. Prosecution has examined PW19-Nirlipt Anil Rai, DIG, SMC, Ahmedabad vide Exh.187. PW19 has deposed that in the year-2013, he was discharging his duty in Assistant of Superintendent of Police, Sarkhej, meanwhile, on dated 01.07.2013, complainant has disclosed the facts as to occurrence before PSI P.P. Vaghela. In pursuant to the complaint, offence was registered and PW19 has conducted the police investigation. PSO has informed to PW19 to conduct the police investigation. On dated 01.07.2013 by the permission of the Executive Magistrate, inquest panchnama drawn in the presence of Panchas vide Exh.62, clothes worn by the deceased were recovered by PW19 and drawn the panchnama vide Exh.144. On dated 02.07.2013 panchnama of the scene of crime vide Exh.151 has been drawn in presence of two panchas, FSL Officer has visited as to venue of crime has been conducted and prepared the report vide Exh.173, panchnama of place of offence vide Exh.157 on dated 02.07.2013 has been drawn in presence of panchas. On dated 02.07.2013, injured Ghanshyam Harjibhai's clothes were recovered in the presence of panchas and drawn the panchnama vide Exh.188, panchnama as to physical condition and recovery of weapons vide Exh.189 has been referred by the IO during his examination-in-chief.

Similarly, panchnama vide Exh.161 as to recovery of clothes of accused has adduced on dated 18.06.2013, accused were produced before PW19 and weapons recovered, physical condition of the accused and its affiliated panchnama was drawn vide Exh.164, injury certificate, PM note were adduced by PW19. Primary medical treatment of the deceased has been conducted by CHC, Bavla and its certificate has been adduced vide Exh.65. The deceased-Vijaybhai Amrabhai Chavda belongs to Hindu, Chamar, castes/community and he comes within the category of scheduled castes. The certificate vide Exh.190 as to show caste based certificate and it is proved by prosecution beyond reasonable doubt and no dispute raised by the Ld. advocate for the defence as to scheduled castes and community of the deceased and on perusal to certificate vide Exh.190 it is proved that deceased is scheduled castes category, therefore, provision of Atrocity Act has been added by PW19. At the time of occurrence, it was the notification issued by District Magistrate and it was implemented so, notification of Section 135 of the G.P. Act vide Exh.191 and Exh.192 are adduced and for conducting the police investigation, DSP, Ahmedabad(Rural) had sent one letter to PW19 vide Exh.193. The statement of witnesses were recorded by PW19. To make the necessary arrangement of the muddamal, samples, etc. FSL for the analysis. Thereafter, to make the necessary arrangement to send the Muddamal articles in FSL and FSL officials have sent receipt as well as report/opinion vide Exh.194 to Exh.196. Thereafter, collecting the necessary documents, recorded the statement of witnesses and as the sufficient evidence found, the

chargesheet has been filed against the accused after completion of police investigation before the Court. Ld. AGP has taken contradiction and omission about the hostile witnesses while they were stepping into the witness box and in the deposition of investigating officer, the contradiction and omission of the hostile witnesses are denoted so, PW19/Investigating Officer has taken due care and caution before submitting the chargesheet before the Court and deposition of Investigating officer are supported the facts of the prosecution case beyond reasonable doubt.

85. The Investigating Officer has drawn the panchnama of the physical condition of the accused as well as recovery of muddamal vide Exh.189. According to the panchnama drawn by PW19-Nirlipat Anil Ray deposed vide Exh.187 and in the panchnama, it is categorically denoted that one accused namely Raghubhai Haribhai Bharwad had handed over one Lathi stick of Bamboo having 6 cuts and 7 Katri and both the side of lathi stick wrapped with iron cap. Likewise, accused-Bhimabhai Haribhai Bharwad had handed over one Bamboo lathi stick alongwith 4 cuts and 5 Katri and both the side of lathi stick covered with iron cap. Similarly, accused-Mafabhai Ranchhodbhai Bharwad has handed over one Bamboo lathi stick alongwith 12 cuts and 13 katri, one side of the lathi stick was very thick and iron cap covered. The other side of said lathi stick having plastic cap and second part of the lathi stick is thin. Likewise, accused-Kalubhai Ranchhodbhai Bharwad had handed over lathi stick wherein 6 cuts and 7 katri one side iron cap and all those aforesaid accused have produced the

clothes worn by them before the investigating officer. The panchnama vide Exh.189 has been drawn in the presence of panchas as well as investigating officer so, the facts of said panchnama cannot be discarded and if panchas have not supported the facts of panchnama would not fatal to the procedure of panchnama drawn by investigating officer and panchnama is not the substantive piece of evidence or conclusive proof but facts of panchnama can be used for the corroboration and panchnama drawn by Investigating Officer vide Exh.189 corroborated to the deposition of eye witnesses/ocular witnesses and injured witnesses.

86. The trial Court while making assessment and appraisal of the evidence of the prosecution has attached undue weight and attention to insignificant and inconsequential contradictions and circumstances and aspects which has culminated into granting of benefit of doubt. The trial Court, thus, fell in serious infirmity and fallacy in rejecting the prosecution case and the evidence which has, in the opinion of this Court, as such established the complicity of the accused persons beyond reasonable doubt. Needless to mention that doubt must be of a degree which would permit reaching to a particular conclusion. Principles in this regard are, time and again, highlighted, expounded and explored by various judicial pronouncements of this Court as well as the Hon'ble Apex Court. The following principles may be stated in view of the settled legal proposition:
- i. The doubt must be reasonable and real, not fanciful.
  - ii. The doubt must be of reasonable man, neither a weak, meek and timid man afraid of legal consequences.

- iii. Reasonable doubt is simply that degree of doubt which would permit reasonable and just person to reach conclusion.
- iv. Reasonableness of doubt must be commensurate with nature of evidence to be investigated upon. Ultimately, there is element and the degree of suspicion varies from accused to accused.
- v. Exaggerated deviation to the rule of benefit of doubt must not nurturer fanciful doubts and thereby destroying social defence.
- vi. It be remembered that justice cannot be made sterile upon doubt which is not of prudent and reasonable man.
- vii. Doubt would be called reasonable when it is uninfluenced by zest and enthusiasm for abstract speculation.
- viii. Doubt should not be mere vague appreciation.
- ix. Reasonable doubt must generate and flow from evidence on record.
- x. Reasonable doubt is not an imaginary, trivial, but a doubt based upon reasons and common sense.
- xi. Forensic probabilities must rest on sound common sense and finally upon a trained infusions of the Judge.
- xii. While the protection affordable to the accused of doctrine of benefit of doubt from the record of the case cannot be allowed to be eroded at the same time, uninformed legitimisation of trivialities obviously would culminate into a mockery of dispensation of justice in criminal trial.

- xiii. Reasonable doubt must have fair basis and logic and not speculation of luck.
- xiv. It is the doubt of a reasonable astute and alert mind arrived at after due application of mind of all facts. It is not a doubt which occurs to a wavering mind.
- xv. It is the doubt which occurs to a reasonable man and which has legal recognition in the realm of criminal cases.
- xvi. The doubt which can take cognizance of not that of a weak or oscillating and vacillating, capricious, indolent or confused mind.

The trial Court has rejected the evidence of eye-witness merely because one portion of evidence of eye-witness is disbelieved. This approach is not correct. The contention raised on behalf of the defence that because the eye-witness account of the manner and mode in which the incident occurred and the sequence in which the incident took place is not proved, and therefore, their evidence is suspect is wrongly accepted, in the facts of the present case. Merely because some portion of the evidence of eye-witness is disbelieved, does not necessarily mean that the Courts are bound to reject all of it. Merely because of one portion or some portion of evidence of eye-witness is not believed, it cannot be contended that the Court is obliged to reject the entire evidence. With due respect, the trial Court has failed to properly perceive the doctrine of "Falsus in uno, Falsus in omnibus", which means false

in one thing, false in everything. It is now very well established principle that "falsus in uno, falsus in omnibus" does not apply to criminal trials and it is imperative for the Court to disengage the truth from falsehood, to sift the grain from the chaff instead of taking an easy course of rejecting the evidence on its entirety merely on the basis of a few infirmities. This doctrine is not sound rule to apply in conditions of our country, and therefore, it is the duty of the Court in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinies the rest of his evidence with care and caution. If the remaining of the evidence is found trustworthy and the substratum of the prosecution case remains intact then the Court should uphold the prosecution case to the extent it is considered safe and trustworthy. **State of Gujarat v. Raghu @ Raghavbhai Vasrambhai 2003 (1) GLR 205.**

87. The trial Court has, also, insisted upon unnecessary corroboration of the evidence of eye-witnesses. Corroboration means support. It is well-know that the need for corroboration for accepting the evidence of any witness arises only and only when the Court is not wholly satisfied regarding the credibility of that particular witness. Once, the judicial mind and conscience is clear and satisfied enough as regard the truthfulness and genuineness of any particular witness, it is indeed not necessary to look for any corroboration. Needless to reiterate that corroboration is simply "rule of prudence" and not one of "rule of law". It is absolutely falling within the domain of

judicial discretion. Evidentiary value of a deposition which is otherwise admissible and acceptable is not just wiped out in the absence of corroboration.

88. The ratio laid down by the Hon'ble High Court of Gujarat in case of **Raghu @ Raghavbhai Vasrambhai(supra)** are required to be considered.
89. From the beginning, Court cannot doubt upon the investigation conducted by the police officials inasmuch as the principle of the achievement of goal are always not applicable to the police investigation because now India is a republic/Independent country and theory of interested witness as to police investigation are not plausible defence for the Ld. advocate for the accused and when British ruling era across the India, the police officials were come from the British people, therefore, principle of interested witness for police official could be applied but now the people of our country are living in the independent country and from the beginning without considering the conduct of the police officials and without entering into the merits or demerits of the police investigation Court cannot be straightway doubt on the entire police investigation, however, ofcourse, in some cases, police investigation may be doubtful, inaction or negligent act but each and every case the theory of interested witness being a police officer cannot be applied and in the present case, it is not applicable whatsoever and when prosecution succeeded to prove its case beyond reasonable doubt and ratio laid down by the Hon'ble Apex Court in case of **Raj Pal(supra)** are required to be considered.

90. Similarly recovery panchnama of other two accused has been drawn. Accused-Kuldip @ Lalo Mafabhai Bharwad who handed over lathi stick having 4ft 11inch, 9 cuts & 9 katri, one side thin and at thick side, iron cap covered. Likewise, accused-Jigneshbhai has handed over one lathi stick having 4ft. 11Inch length, 9 cuts & 9 katri, one side thin, second side thick, one iron cap covered at thick side and clothes worn by both the accused were also recovered by Investigating Officer.
91. The ratio laid down by Hon'ble Apex Court in case of **N.C.T of Delhi V. Sunil** 2001 2001 Cri. Lj Page No. 504.

*There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. (Para 18).*

*"It is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post independent years but it time now to start placing at least initial trust on the*

*actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a propositions of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions. (Para 20)*

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

92. In the present case, PW15 Kishore Arvindkumar Sharma who is the retired Director and Scientific Officer has deposed that he was discharging his duty in the year-2013 as a Scientific Officer and on dated 01.07.2013 he has received a control message for inspection of the site/place and at 14:15 o'clock, PW15 reached Loliya village where Police Officer Mr. C.G. Rathod was present and PW15 has received the information from the police officials as to occurrence and it is denoted in the site inspection report on the scene of crime i.e. agriculture farm of Valabhai Govindbhai Parmar and in the said farm, approximate 2-3ft. radius dry blood stain found and positive result as to primary blood analysis found. PW15 has given instruction to the Investigating Officer Mr. Rathod to recover the pair of Chappal

for FSL scientific examination and also given instruction to click the photographs and as per instruction of PW15, postmortem report has been prepared. The clothes worn by the deceased were recovered, suspected weapons were also recovered and also advised Investigating Officer to collect the cellphone tower location and CDR Data and the said details report has been referred by PW15 during the course of oral testimony and signature on the said report vide Exh.173 has been identified by the PW15. The cross-examination of the PW15 has been conducted by the Ld. advocate for the accused but no fruitful information in favour of defence has been revealed during the course of cross-examination and reports and opinion given by the PW15 is the expert evidence. It is corroborative piece of evidence and it is advisory character evidence. It is not strict proof or conclusive proof but opinion of the PW15 was immediate after incident took place and Investigating Officer has conducted entire investigation properly.

93. In the present case, prosecution has examined PW16-Ramanbhai Surmabhai Damor, ASI, vide Exh.174. PW16 has deposed that in the year-2013, he was discharging his duty as Head constable in Koth Police Station, meanwhile, on dated 01.07.2013, he was incharge of PSO, meantime, complainant-Pravinaben D/o Amrabhai Bhalabhai Chavada has narrated one complaint before the PSI P.P. Vaghela and the same was sent towards him and he has registered the offence vide C.R. No.44/2013 for the offences punishable U?s 147, 148, 149, 302, 207 & 120B, Section 135 of the G.P. Act and Section 3(2)(5) &

3(1)(10) of the Atrocity ACt was lodged, necessary entry made in the Station diary and index-sheet was prepared vide Exh.175 and thereafter, the FIR was prepared vide Exh.176. Thereafter, same was sent towards to the concerned officer for the investigation.

94. Similarly, PW17-Chetansinh Ganpatsinh Rathod, P.I., has deposed vide Exh.178 that in the year-2013, he was discharging his duty as PSI at Dhandhuka Police Station, meanwhile, on dated 01.07.2013, as per the direction of Assistant of Superintendent of Police, he went to Loliya village and place of occurrence. At the place of occurrence, FSL officials have come for the inspection, thereafter, he came to know about the details of the crime, its registration and sections. Thereafter, FSL officials have performed the inspection of place of occurrence and as per their direction, necessary muddamal articles were collected and thereafter, FSL Officials have handed over the inspection report, except this, he has not performed any procedure.
95. Likewise, PW18-Pradipsinh Pravinsinh Vaghela, PI, has deposed vide Exh.183 that in the year-2013, he was discharging his duty as PSI at Koth Police Station, meanwhile, on dated 01.07.2013, complainant-Pravinaben D/o Amrabhai Bhalabhai Chavada has filed one complaint in CHC, Bavla and the version of the complainant was denoted, read over to her and obtained her signature for its correctness and PW18 has referred the complaint vide Exh.184, thereafter, the same was sent before the PSO for the registration of the complaint and PSO has registered the offence vide C.R. No.44/2013 for the offences

punishable U?s 147, 148, 149, 302, 207 & 120B, Section 135 of the G.P. Act and Section 3(2)(5) & 3(1)(10) of the Atrocity Act. Thereafter, same was sent towards to the concerned officer for the investigation, except this, he has not performed any procedure.

96. Looking to the deposition of PW19/IO, no lacuna found in the Police Investigation and also not found any lacuna in prosecution case, so deposition of star material witnesses are absolutely admissible in evidence and it is aided to the prosecution story as ring of truth.
97. The principle of beyond reasonable doubt is the standard of proof to prove by the prosecution and it is obvious that duty of the prosecution means proved the guilt of the accused beyond reasonable doubt and there is no doubt about the satisfactory/creditworthy/trustworthy evidences, documentary evidence/oral testimony adduced by the prosecution. No exaggerated statement by any witness while they were stepping into the witness box. Looking to the facts & circumstances as well as legal prepositions of the present case, the incident has been proved by the prosecution beyond reasonable doubt by adducing clinching and cogent evidence.
98. In the criminal offence, before convicting accused latin maxim "*actus reus non facit reum nisi mens sit rea*" must be keeping in mind meaning thereby an act is not necessarily a guilty act unless the accused has the necessary state of mind required for that offence. The maxim that, generally, a person cannot be guilty of a crime unless two elements are present: the *actus reus* ("*guilty act*") and the *mens rea* ("*guilty mind*"). Most criminal

offences require (1) an actus reus (conduct "external" to the defendant's thoughts and intentions" and (2) a mens rea (a specific state of mind on the part of the accused).

### Mens Rea

*Mens rea* is a Latin word that translates to "guilty mind." *Mens rea* is the essential distinguishing feature, emphasizing the importance of the accused person's state of mind at the time of the offense.

It's worth remembering that no conduct is unlawful unless a mens rea accompanies it. The common law maxim "*actus non facit reum nisi mens sit rea*," which translates to "the act is not guilty until the mind is guilty," defines mens rea the best. The accused cannot be held accountable under the criminal law unless he can be proved to have acted with intent to commit a crime.

The burden of proving the presence of mens rea falls on the plaintiff, and the purpose of the defense is to raise a reasonable doubt in the mind of the judge or jury because the principles of justice mandate that an individual cannot be convicted unless the charge against him/her can be established beyond a reasonable doubt.

### **Relation between Degree of Mens Rea and Punishment of Crime**

*Mens rea* is a culpable state of mind characterized by intention or purpose, as well as knowledge of the consequences. The degree of mens rea refers to the level of mental presence in the crime and is directly related to the level of responsibility. The greater the degree of mens rea in a crime, the harsher the punishment.

### Actus Reus

The Latin term '*actus reus*' implies "guilty act". The physical component of a crime is known as *actus reus*. In most cases, the accused must have done or failed to do something that caused injury to the plaintiff or victim. There can be no offense and no lawsuit for damages without a criminal act. According to Kenny, "*actus reus* is an outcome of human activity that the law aims to prevent."

According to section 32 of the Indian Penal Code, *actus reus* can also refer to the failure to perform any act or omission that the accused is aware he is obligated to execute by duty or law. The phrase 'act' refers to both a single act and a series of acts, while the term 'omission' refers to both a single omission and a series of omissions.

According to Section 39 of the Indian Penal Code, *actus reus* must be voluntary. This is based on "actus me invito factus non est mens actus," which, according to common law, signifies "an act done against my will is not my act at all." if the impact of a person's acts is a likely consequence of the means, he is presumed to have freely induced that effect, whether or

not he intended to do so.

### **Mens rea vs Actus reus**

There is not much difference between the *mens rea* and *actus reus* as these both are the essential factors of establishing a crime. The only difference between the two is that mens rea is a mental element and actus reus is a physical element.

In most criminal offenses, the mens rea occurs before actus reus as the person should have an intention or knowledge of what will result from his actions.

### **Conclusion:**

*Mens rea* and *Actus reus* are two fundamental elements of criminal law applied in most countries. Mens rea refers to a mental condition in which a person intentionally breaks the law. As a result, mens rea denotes the intention to commit the illegal act. An act must be conducted with a guilty conscience to be considered a crime. We can say that mens rea means “guilty mind.” On the other hand, the actus reus means “guilty act.” It is a requirement in showing that a criminal act was performed. Certain standards must be observed while dealing with any crime, and the accused person is given “the benefit of the doubt.” The prosecution has the burden of proving his or her guilt beyond a reasonable doubt.

99. Section 141 of the IPC connotes as under;

**Section 141. Unlawful assembly.**—*An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—*

*First.—To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or*

*Second.—To resist the execution of any law, or of any legal process; or*

*Third.—To commit any mischief or criminal trespass, or other offence; or*

*Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*

*Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.*

100. Considering the above provisions, the case on hand, all the six accused participated in the commission of crime and all the persons(accused) armed with deadly weapon reached at the scene of crime and all those six accused were aware of facts which rendered any assembly and “unlawful assembly” knowingly joined with assembly or continues in it is said to be a member of “unlawful assembly”. So every accused who participated to commit the offence was being a member of unlawful assembly committed serious and heinous crime. The essence of the offence is common object of the persons forming the assembly. Mere person in an assembly does not make a person a member of the unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of the unlawful assembly or unless the case is falls under Section 142, the accused persons had common object or purpose is *sine-qua-non* of an offence of rioting punishable U/s 147 of the IPC and U/s 148 of the IPC is equal to ‘rioting armed with deadly weapon’. This common purpose cannot develop all of sudden. The object of the unlawful assembly must be common to the persons compassing the assembly. They must be aware of it and must concur it.
101. Case on hand, six accused inflicted lathi stick blows on the body of Vijaybhai Amrabhai Chavda/victim at the time of occurrence so, whatever version submitted by the eye witness PW2-Bipinbhai are consistent to the facts of the present case.
102. The cross-examination conducted by the Ld. advocate for the defence is not mechanical process, it is the duty of the defence to challenge each and every facts submitted by witness while he

was stepping into the witness box whereas, once PW2-Bipinbhai has deposed vide Exh.76 as to in his examination-in-chief that he had seen entire incident and accused inflicted lathi stick blows to Vijaybhai so, on the other hand, in the cross-examination, PW2 has averred some minor contradictory version and after passage of time, i.e. examination-in-chief was completed on dated 28.06.2018 and cross-examination was completed on dated 09.08.2019 so, after 14 months, PW2-Bipinbhai has stated some minor inconsistent version but Ld. advocate for the defence has not challenged each and every facts stated by PW2 in examination-in-chief, therefore, Court cannot discard the deposition of PW2-Bipinbhai as a whole and gives the benefit to the defence.

103. In a case of six accused persons by unlawful assembly formed with a common object to cause grievous injury and by the brutal assault of six accused, Vijaybhai Amrabhai Chavada succumbed. The other witnesses have also suffered grievous injuries. So, all the accused have inflicted haphazard lathi stick blows on the Vijaybhai Amrabhai Chavada and therefore, Vijaybhai Amrabhai Chavada died along with other witnesses have sustained injuries, therefore, the accused has intentionally killed the Vijaybhai Amrabhai Chavda and intention of all the accused was very clear to kill other witnesses also.
104. The ratio laid down by the Hon'ble Apex Court in case of **Vadivelu Vs. The State of Madras Respondent (AIR 1957 SC 614)**:- The contention that in a murder case, the Court should insist upon plurality of witnesses, is much broadly stated. The Indian Legislature has not insisted on laying down that "no

particular number of witnesses shall, in any case, be required for the proof of any fact" has enshrined the well recognised maxim that "Evidence has to be weighed and not counted". It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of single witness only could be available in proof of the crime, would go unpunished. It here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstance of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Generally speaking oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or

subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. There are exceptions to this rule, for example, in case of sexual offences or of the testimony of an approver, both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the Court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

- 105.** Ld. advocate for the defence has examined DW1-Minaxiben Hiteshbhai Makwana who was the wife of deceased-Vijaybhai Amrabhai has deposed vide Exh.206 that her marriage was solemnized with deceased-Vijaybhai Amrabhai Chavda and after marriage, she was going to live at Loliya village and at Loliya village, she was living alongwith her father-in-law, deaf and dumb brother, Bipin and husband-Vijaybhai and her mother-in-law, Hansaben and Pravinaben went to live at Ahmedabad. After One month & one week of solemnization of

her marriage, incident occurred. DW1 has further deposed that 3-4 days there was no water supply in the village and on dated 01.07.2013 at 06:00am morning, she alongwith her husband were going to natural call, where crowd of Kodi Patel community and other side also the crowd of people gathered. Both rival crowd quarreling thereafter, her husband intervened and one lathi stick blow given to her husband-Vijaybhai and he fell down, blood oozing. After that DW1 had informed 108 number ambulance service and after sometime, came and taken Vijaybhai at Bavla CHC center. Police official has recorded her statement, thereafter, Pravinaben came and DW1-Minaxiben was crying and thereafter, she doesn't know what happened. Thereafter, they reached Loliya village, cremation ritual has been completed. Second marriage of DW1-Minaxiben was solemnized and she is living at her new marital home and DW1-Minaxiben has refused to identify the accused during the course of recording of evidence and DW1 has categorically stated that before solemnization of her marriage with the deceased-Vijaybhai, both were staying in live-in relationship and she came from new marital home.

- 106.** The detailed cross-examination has been conducted by the Ld. AGP and DW1-Minaxiben has categorically stated that they went to natural call in the agricultural land but who was the owner of the said agricultural land, she doesn't know and DW1-Minaxiben has categorically confessed that she has submitted in her police statement before the Investigating Officer that "she asked her husband as to by whom he was beaten? In the reply, her husband told that I was coming for natural call(defecate) in

the agricultural land, at that time, people of Bharwad community were present and told deceased-Vijaybhai that you do not come here for natural call(defecate), in the reply, deceased-Vijaybhai told that the said agricultural land owned by his family members, thereafter, exchange of bitter words took place, at that time, Raghubhai Bharwad and his family members i.e. cousin brothers came near to agricultural field, thereafter, all those persons aided one another armed with Bharwadi lathi stick and told that ‘today is the good opportunity’, ‘today they would kill deceased-Vijaybhai’ after uttering said words, accused inflicted lathi stick blows back-to-back and haphazard to the body on the Vijaybhai, Vijaybhai was alone and due to grievous hurt and injuries, he fell down on the ground, he raised shouts but no person came to protect and Bharwad community persons left from the agricultural land armed with lathi sticks and at the time of leaving the venue of crime, accused told that ‘today mission is completed’ and they left the place presuming that he has died”. The aforestated statement of DW1-Minaxiben was recorded by the Investigating Officer but DW1 has categorically stated that by say of Pravinaben/complainant, all the aforestated facts has been mentioned by her during the course of the recording of the police statement.

107. The most important confession has been made by DW1-Minaxiben during the course of cross-examination that “murder of her husband-Vijaybhai has been committed by Bharwad community person Raghubhai Haribhai Bharwad, Bhimabhai Bharwad, Kalubhai Ranchhodbhai Bharwad, Mafabhai Ranchhodbhai Bharwad, Kuldeepbhai Mafabhai Bharwad and

Jignesh Raghubhai Bharwad of Loliya village thereby accused assembled armed with iron cap lathi sticks brutally inflicted and assaulted lathi stick blow on the body of her husband and committed the offence of murder” and DW1 has categorically stated that all those facts have been mentioned before police officials by say of her sister-in-law(Nand)-Pravinaben Amrabhai Chavada.

108. DW1-Minaxiben has further confessed that there was enmity between her husband and Bharwad community when her husband was Sarpanch of Loliya village since then enmity is continue, by personal enmity, accused took the advantage of loneliness and committed the act of murder” and DW1 has categorically stated that by say of her sister-in-law-Pravinaben has mentioned the above facts before the police officials.
109. Ld. APP has vehemently argued that DW1-Minaxiben who was the previous wife of deceased-Vijaybhai was entered into the amicable settlement with the accused, therefore, despite the wife of deceased-Vijaybhai, DW1 has supported the accused and terms of compromise cannot be disclosed because by some vested interests, entire compromise between the defence witness Minaxiben and accused took place and when DW1-Minaxiben is not the cited witness of the charge-sheet but for raising evasive defence, DW1 has been examined by the Ld. advocate for the defence. But whatever facts have been mentioned during the course of police statement at the time of recording of evidence must be taken into consideration for contradiction and omission purpose. Police statement has been recorded during the course of police investigation are not conclusive proof or

strict proof and it is used for the contradiction and omission purpose and when DW1 had left her former matrimonial home of Vijaybhai after the death of Vijaybhai and second time DW1 got married to other person, so, there was no relation between deceased-Vijaybhai's family members and DW1 and looking to the testimony and deposition of DW1/Minaxiben are absolutely supporting the accused as tutor witness and whole facts of her police statement are adversely denoted as a DW1 of accused, therefore, whatever parts of the deposition of DW1 as to confession of the police statement are also taken into consideration and said confession during the course of cross-examination conducted by the Ld. AGP are also required to be considered as a ring of truth and how and why DW1/Minaxiben has supported the accused are not explained by the Ld. advocate for the accused? Therefore, deposition of DW1/Minaxiben are not considered as a best defence of the accused and some parts of the confession by DW1 are also supported the prosecution case.

110. In view of aforestated discussions for the commission of crime, it is condition precedent or sine-qua-non for prosecution to prove *mens-rea* and *actus-reus* combination because both the elements are fundamental elements of criminal law. *Mens rea* refers to a mental condition in which a person unintentionally breaks the law and a mental condition is connected to motive of a crime. Motive on the other hand is reason why a person chooses to engage in criminal conduct. If intent is an element of a charged crime, that element must be proved by the prosecution beyond reasonable doubt and 1) intention 2)

preparation, 3) attempt and 4) accomplishment are the essential stages of crime. The *Mens Rea* and *Actus Reus* are proved by prosecution. The mental state and knowledge of the accused are proved.

111. Ld. advocate for the accused has placed heavily reliance on the catena of following judgments of the Hon'ble Apex Court, the Hon'ble High Court of Gujarat as well as other Hon'ble High Courts.
112. In case of **Rabindra Kumar Dey(supra)**, the ratio laid down by the Hon'ble Apex Court in the aforementioned case is not applicable to the defence of accused because the essential witnesses were examined by the prosecution and the necessary documents to prove the prosecution case beyond reasonable doubt are proved by the prosecution.
113. The ratio laid down by the Hon'ble Apex Court in case of **Vajsi Deva Mehar(supra)** is not applicable to the defence of accused because the investigating agency has performed the police investigation properly and considering the facts of star material witnesses, the accused are not falsely implicated in the present case.
114. In the case of **Superintendent of Police, CBI(supra)**, the ratio laid down by the Hon'ble Apex Court is not applicable to the defence of accused because complainant of the FIR i.e. Pravinaben Amrabhai Chavada passed away during the course of the trial and cause of death of deceased-Pravinaben was only to keep the complainant/deceased absent at the time of recording of evidence and accused were persistently attempted deceased/complainant-Pravinaben intering into the amicable

settlement but complainant/Pravinaben and witnesses were not ready and willing to execute the compromise with accused and motive of the accused was very clear and subsequently, all the present accused alongwith other contract killer co-accused, murdered the complainant/deceased-Pravinaben and second criminal case as to homicidal death which amounts to murder is pending before this Court and when accused of the present case are also involved in the case of the murder of the complainant/deceased-Pravinaben, therefore, two different heinous and serious crimes U/s 302 of IPC committed by the accused, therefore, motive of the accused were very clear to commit the offence.

115. The ratio laid down by the Hon'ble Apex Court in the case of **Patai alias Krishna Kumar(supra)** is not applicable to the defence of accused because the first informant complainant-Pravinaben has passed away but when complainant died during the course of trial would not be fatal to the prosecution case and in such type of case, it is the duty of the prosecution to prove the contents of the FIR and when PSO, IO, witness-Bipin and other injured witnesses have supported the facts of the complaint, therefore, contents of the FIR are proved by the prosecution by other trustworthy mode so, facts of FIR/complaint cannot be discarded.
116. The aforesaid principle laid down by the Hon'ble Apex Court in the case of **Ram Lakhon Singh(supra)** is not supported to the defence of accused because in the present case, clinching and cogent evidence without major contradiction or major omission or without exaggerated version prosecution has succeeded to

prove its case beyond reasonable doubt so, aforesaid principle established by the Hon'ble Apex Court are not supported to the defence of the accused.

117. In case of **Ram Ashrit(supra)**, the ratio laid down by the Hon'ble Apex Court in the aforementioned case is not applicable to the defence of accused because when witnesses are family members are not always come within the category of interested and partisan eye witnesses and case on hand, other witnesses whose who met all the accused at village area and accused inflicted blow other three witnesses, all those witnesses are not the family members of the complainant so, principle of interested witness or partisan eye witness defence are not applicable.
118. In the case of **Arjun Shenfadu Bargujar (supra)** is not supported to the defence of accused because the ingredients U/s 302 & 307 of IPC are proved by the prosecution beyond reasonable doubt as elaborately discussed by this Court.
119. The ratio laid down in case of **Mangilal(supra)** is not applicable to the defence of accused because eye witness's oral testimony are absolutely consistent to the facts of the case.
120. In case of **Marimuthu(supra)** is not applicable to the present matter because the ring of truth are proved by the prosecution with the supportive evidence of eye witness as well as injured witness.
121. The ratio laid down by the Hon'ble Apex Court in case of **L/NK Meharaj Singh(supra)** is not applicable to the present case because if there is contradict between injured/eye witness and

medical evidence in that circumstances, oral testimony of the ocular/injured witness prevailed over. However, in the present case, deposition of witnesses are consistent to the medical evidence and it is corroborated by the medical evidence.

122. The dictums in case of **Kantilal Kalidasbhai(supra)** is not application to the present case because necessary and essential documents are produced and the documents which are necessary for the prosecution to prove its case beyond reasonable doubt have absolutely supported the prosecution case and material documents are proved by the prosecution.
123. The ratio laid down by the Hon'ble Apex Court in case of **Saju(supra)** are not applicable in the present case because in the present case, serious and heinous crime U/s 303 & 307 of IPC was occurred at two different place in the same transaction and when offence consist of homicidal death which amounts to murder is equal to death of deceased-Vijaybhai and after committing the offence of murder, all the accused met the witnesses inflicted lathi stick blows and thereafter, committed the offence U/d 307 of IPC is equal to attempt to murder, therefore, both the instances as of same transaction are proved by the prosecution beyond reasonable doubt.
124. Considering the ratio laid in case of **Ramreddy Rajeshkhanna Reddy(supra)** by the Hon'ble Apex Court, the prosecution ha succeeded to prove the ingredients of the complaint.
125. Considering the ratio laid down in case of **Ranjitsingh Harisingh Chauhan(supra)**, no major contradiction, major omission or exaggerated version found in the oral testimony of the eye

witness and it is the cardinal principle of Law that evidence as to weigh not to be counted.

126. The ratio laid down in case of **Budh Singh(supra)** is not applicable in the present case because no numerous ambiguity found in the present case and all the star material witnesses are reliable, trustworthy/creditworthy evidence during the course of trial.
127. The ratio laid down by the Hon'ble High Court of Karnataka in case of **Chandrappa(supra)** are not applicable to the defence of accused because there are no two possible views come on record before this Court. The ratio laid down by the Hon'ble Apex Court in case of **Shibu @ Shivnarayan(supra)** are not supported to the accused because Investigating officer has not intentionally and deliberately suppressed any documents connected to the crime and no veracity found in the prosecution story.
128. The judgment in case of **Dahyabhai Revabhai Chamar(supra)** is not supported the defence of accused because no infirmity is found in the prosecution evidence. The dictum of **Begali Sahani(supra)** is not applicable to the present case because no inconsistency found in the prosecution case.
129. The ratio laid down by the Hon'ble High Court of Gujarat in case of **N.P. Patel(supra)** are not supported to the defence of the accused because witnesses have submitted the presence of accused at the time of incident and it is proved by prosecution. Further, the ratio laid down in case of **Yadvendrasing Sarfar Surjitsing(supra)** is also not applicable in the defence of the

accused because no tainted procedure carried out by the Investigating Officer during the course of police investigation and not only star material witnesses supported the prosecution case but corroborative piece of evidence are also supported the prosecution case and investigation conducted by the Investigating Officer was never biased.

130. In case of **Smt. Gargi(supra)** is also not applicable in the present matter, as discussed hereinabove, no loop holes found in the police investigation. Further, the ratio laid down in case of **Roopwanti(supra)** is also not applicable in the present matter because in the present case ingredients U/s 302 & 307 of IPC are proved by the prosecution beyond reasonable doubt.
131. The ratio laid down by the Hon'ble Apex Court in case of **Jagjit Singh alias Jagga(supra)** is not supported to the defence of accused because how to motive proved by the prosecution are discussed in details hereinabove and direct material witness are adduced by the prosecution. The judgment in case of **Dharam Singh(supra)** is not supported the present case because no contradictory version made by the every witness while they were stepping into the witness box and one witness has submitted some contradictory version doesn't mean that the every witness version is inconsistent and principle of *Falsus in Uno, Falsus in Ominibus*. is applicable.
132. The ratio laid down by the Hon'ble Apex Court in case of **Kriparam(supra)** is not applicable to the present case because case on hand, the motive to commit the crime are proved by the prosecution beyond reasonable doubt, therefore, no question has been arisen as to false and concocted case made against the

accused. Likewise, the ratio laid down in case of **Badam Singh(supra)** is not applicable in the present case because in the present case, no veracity found and trustworthy/creditworthy evidence adduced and evidences of the prosecution are clinching and cogent.

133. The ratio laid down by the Hon'ble Apex Court in **Kanhaiyalal(supra)** is not supported the defence of accused because case on hand, motive to commit the crime are proved by the prosecution. Likewise, the judgment of the Hon'ble Apex Court in case of **Sunder Singh(supra)** is not applicable in the present case because the present case is not absolutely based on circumstantial evidence and no need for prosecution to prove the chain of circumstances but it is essential for the prosecution to prove the ring of truth and it is proved by the prosecution.
134. The principle observed in case of **Sucha Singh(supra)** by the Hon'ble Apex Court is not supported the defence of the accused because there was no suspicion about the complaint lodged by the complainant and preparation, intention, motive of commission of crime, actu-reus, mens rea are proved by the prosecution beyond reasonable doubt.
135. In case case of **Ramsewak(supra)** is not applicable in the present case because no contadictory verson found in the oral testimony of the ocular witnesses and one or two witnesses are not supported the prosecution case doesn't mean that the deposition of other injured and ocular witnesses are under suspicion.
136. In case of **Tanviben Pankajkumar Divetia(supra)** is also not applicable in the present matter, because prosecution has

succeeded to prove its case beyond reasonable doubt, therefore, no question arisen the conjecture and surmises, presumption or assumption and when direct evidence adduced by the prosecution, therefore, no need to evaluate the facts of the chain of events of circumstances(circumstantial evidence).

137. The ratio laid down by the Hon'ble Apex Court in case of **Kanakarajan @ Kanakan(supra)** is not supported the defence of the accused because case on hand, no fraud or infirmities found in the version of the star material witnesses.
138. The judgment of **Arun(supra)** is not supported the defence of the accused because case on hand, vested interest of the complainant and witnesses were showing by the accused during the course of cross-examination and in the oral testimony of the prosecution case, no interest to lodge the complaint found.
139. The ratio laid down by the Hon'ble Apex Court in case of **Bachhu Narain Singh (supra)**, is not supported the accused because the prosecution are absolutely proved beyond reasonable doubt with the support of clinching and cogent evidence and trustworthy/creditworthy evidence of eye witness and injured witnesses are adduced by the prosecution and no doubt creates about the prosecution story.
140. The principles observed in case of **Anand Ramchandra Chougule** is also not supported the defence of accused because the criminal case is not mechanical formula but when prosecution succeeded to prove its case beyond reasonable doubt with the support of star material witness, expert evidence and other evidences.

141. So far as the Section 135 of the Gujarat Police Act is concerned, section 135 connotes as under;

***Section 135 of G.P. Act- Penalty for contravention of rules or directions under sections 37, 39 or 40.*** *Whoever disobeys an order lawfully made under section 37, 39 or 40 or abets the disobedience thereof shall, on conviction, be punished -*

*(i) if the order disobeyed or of which the disobedience was abetted was made under sub-section (1) of section 37, or under section 39, or section 40 with imprisonment for a term which may extend to one year but shall not except for reasons to be recorded in writing be less than four months and shall also be liable to fine, and;*

*(ii) if the said order was made under sub-Section (2) of Section 37, with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees, and*

*(iii) If the said order was made under sub-section (3) of section 37, with fine which may extend to one hundred rupees.*

142. The notification, alleged to have been in operation and properly promulgated in the locality in question, has been proved on record. It has been proved by the expert doctor in the PM report and scientific examination that the cause of the death of the deceased-Vijaybhai Amrabhai Chavada was due to shock & hemorrhage due to sustained multiple injuries over the body and accused has caused injuries with Bharwadi lathi sticks and prosecution has proved that the the muddamal lathi sticks(Bharwadi lathi sticks) were recovered from the possession of the accused. Therefore, proof as regards proper promulgation of an operation of the notification prohibiting carrying weapon in that particular locality strikes death- nell to the prosecution case under Section 135 of Gujarat Police Act are proved and the accused is not entitled to get the benefit of doubt under section 135 of Gujarat Police Act.

143. Looking to the framing of charge by my predecessor Judge, Section 34 of IPC is intended to meet cases in which it may be

difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of common intention of all. The reason why all are deemed guilty in such cases is that the presence of accomplices gives encouragement, support and protection to the person actually committing an act. This section is only a rule of offence does not create a substantive offence. Section 34 of IPC does not create a distinct offence. It lays down a principle of liability. When two or more persons join actively in an assault on a third person, they are directly responsible for the injuries caused to the extent to which they had a common intention to cause those injuries, and what their common intention must be gathered from the circumstances. Section 34 of IPC is not a penal provision. It does not create a substantive offence. It is merely a rule of offence. As the section does not create an offence, there can be no such thing as an acquittal under the section.

144. The ratio laid down by the Hon'ble Apex Court in case of **Pandurang Vs. State of Hyderabad, AIR 1955 SC 216:1955 CrLJ 572** and in the aforesaid case, the Hon'ble Apex Court has well established that the case under the provision of Section 34 of IPC, a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all.
145. Similarly, the ratio laid down by the Hon'ble Apex Court in the case of **Mehbub Shah Vs. Emperor, AIR 1949 PC 118(120-**

121), it is laid down that there must have been prior meeting of minds, several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, each can individually inflict a separate fatal blow and yet none whenever the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan.

146. Case on hand, charge U/s 34 of IPC has been framed against all the accused and Section 34 of IPC connotes as under;

**Section 34. Acts done by several persons in furtherance of common intention.**— *When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.*

147. Considering the above provision U/s 34 of IPC is only the rule of evidence and does not create a substantive offence. Section 34 does not create distinct offence. It lays down principle of liability. When two or more persons joint actively in an assault on third person they are directly responsible for the injuries caused to the extent to which they had common intention to cause those injuries and what their common intention was must be covered from the circumstances.

148. Considering the discussions in details mentioned hereinabove, the circumstances arisen at the time of inflicting lathi stick blows at PW4. The intention of the accused to commit the offence of murder and it was well within the knowledge of accused. Mens-rea and actus-reus both the elements are present. All the accomplicement gives encouragement, support and protection to the person actually committed an act. All the

accused were seen by witness Bipinbhai as ocular/eye witness and categorically stated that all the accused armed with Maldhari lathi sticks and all those lathi sticks were used by all the six accused at the time of inflicting blows on PW4 so, all the six accused accompanied and aided one another and when its intention to commit the crime actually committed by all the accused and each accused can be convicted by that crime only because every accused has participated in the commission of offence with the intention to commit the actual crime which was committed. To constitute common intention, it is necessary that intention of each one of them was known to the rest of them and was shared by them. The test to decide if the intention is common is to see whether the intention of one was known to other and shared by that other. When all the accused were reached at the venue of crime and all those accused were not at the seen of crime by accidental act. All the accused follows that a prior meeting of the minds and the essence of section a person must be physically present at the actual commission of crime. When accused who had taken a part in committing the criminal act of homicidal death which amounts to murder as well as attempt to murder can be made liable under this section and case on hand, each accused was present on the seen of occurrence. The allegation and meeting is cause the prior concert or pre arranged plan are proved by the prosecution beyond reasonable doubt. Therefore, considering the reasons recorded hereinabove, the criminal act is done by all the six accused in furtherance of common intention of all and thereby committed the offence of homicidal death which amounts to

murder, attempt to murder and rioting also, therefore, each of such persons is liable for that act in the same manner as if which were done by each accused alone.

### What is "Beyond reasonable doubt"?

149. It will be relevant to discuss, at this juncture, what is meant by “reasonable doubt”. It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense as observed in *Ramakant Rai v. Madan Rai, (2003) 12 SCC 395* wherein it was observed as under :

*“24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.”*

150. While applying this principle of proof beyond reasonable doubt the Court has to undertake a candid consideration of all the evidence in a fair and reasonable manner as observed by this Court in *State of Haryana v. Bhagirath (1999) 5 SCC 96* as follows:

*“8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression ‘reasonable doubt’ is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.*

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book *Wharton's Criminal Evidence* (at p. 31, Vol. 1 of the 12th Edn.) as follows:

*‘It is difficult to define the phrase “reasonable doubt”. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster case [Commonwealth v. Webster, 5 Cush 295 : 59 Mass 295 (1850)] . He says:“It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.”’*

10. In the treatise *The Law of Criminal Evidence* authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

*‘The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.’*

151. Thus, the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial or merely a possible doubt but a fair doubt based on reason and common sense. Hence, in the present case, if the allegations against the appellants are held proved beyond reasonable doubt, certainly held guilty cannot be said to be illegal.
152. As discussed above, the prosecution must prove its case beyond reasonable doubt, and any erroneous punishment is a very serious matter for both society and the accused. Therefore, while sentencing, the court must consider whether a prudent

person, after considering the matters before the court, would reach a decision that the accused is guilty beyond doubt.

153. Regarding Reasonable doubt, the learned legal expert Wharton has given the following definition:— "Reasonable doubt is that which makes you hesitate as to the correctness of the conclusion which you reach." When the court, considering the evidence before it with a clear conscience, feels there is a doubt regarding the guilt of the accused, that is a reasonable doubt.
154. Similarly, Lord Denning, in giving a definition, stated: "That degree is not well settled. It need not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave only a remote possibility in his favour that can be dismissed with the sentence: 'Of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice'." Furthermore, the Hon'ble Supreme Court, in the case of State of West Bengal vs. Orilal Jaiswal reported in 1994 (1) G.L.H. page 537, established the following principle: 1994 (1) G. L. H. 537 SUPREME COURT K.JAYA CHANDRA REDDY AND G. N.RAY, JJ. State of West Bengal ... Appellant Vs. Orilal Jaiswal and Another Respondents [[@page537](#)] Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated..." Thus, a reasonable doubt must be evident

from the record and must not be imaginary; it should not be a mere suspicion but a reasonable doubt arising from the record regarding the involvement of the accused in the crime or their criminal act.

155. The ratio laid down by the Hon'ble Apex Court in case of **SITARAM KUCHHBEDIA VS. VIMAL RANA AND OTHERS**, Criminal Appeal No(s).1837-38 of 2011 dated **February 23, 2026** are required to be considered. In para 66 & 67, the Hon'ble Apex Court has held that

*“66. Once it is established assembly existed and that an unlawful the accused-respondents intended to commit murder of deceased-Bhaggu in furtherance of the common object of such assembly, the individual attribution of the fatal injury fades into insignificance. It is trite law that Section 149 IPC embodies the principle of vicarious liability and renders every member of an unlawful assembly guilty of the offence committed in prosecution of the common object.*

*67. The object of the provision is to ensure that criminal liability cannot be evaded on the plea that specific role of the particular accused could not be discerned from the evidence. Conduct of each person forming the unlawful assembly, coupled with participation in prosecution of the common object, is sufficient to fasten vicarious liability on every member of the assembly for the offence committed by any member of that assembly. In such circumstances, it is immaterial as to which accused delivered the fatal injury, once the offence is shown to have been committed in furtherance of the common object of the unlawful assembly. For this purpose, reference may be made to the decision of this Court in **Nitya Nand v. State of U.P.**<sup>15</sup>, wherein the scope and ambit of Section 149 IPC was elaborated in the following terms:-*

**“43. This brings us to the pivotal section which is Section 149 IPC. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302IPC.**

*44. In **Krishnappa v. State of Karnataka**, (2012) 11 SCC 237 :*

(2013) 1 SCC (Cri) 621] , this Court while examining Section 149IPC held as follows: (SCC p. 243, paras 20-21)

“20. It is now well- settled law that the provisions of Section 149IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not.”

**45. Thus, this Court in Krishnappa case [Krishnappa v. State of Karnataka, (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] held that Section 149IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.**

46. As a matter of fact, this Court in Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel [Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743 : (2018) 3 SCC Cri) 340] has reiterated the position that Section 149IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. This Court has held: (SCC pp. 752-53 & 756, aras 20, 22 & 34)

*“20. In cases where a large number of accused constituting an “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an “unlawful assembly” is sufficient to render him vicariously liable under Section 149IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149IPC for the offence punishable under Section 302IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.”*

156. It is held by the Hon’ble Apex Court that Section 149 of IPC says that every member of an unlawful assembly shall be guilty of the offence committed in the prosecution of the common object.
157. The prosecution has succeeded the ingredients of rioting U/s 147 of the IPC and at the time of rioting, all the accused armed with deadly weapons(Bharwadi lathi sticks) and it is proved by the prosecution, therefore, as discussed hereinabove, every accused was a member of an unlawful assembly and main elements of rioting armed with deadly weapons and unlawful assembly are proved because more than five members had participated to commit the offence.
158. The framing of charge by my predecessor Judge are just and proper and when more than 5 persons are involved to commit the crime and all the accused being a member of unlawful assembly armed with deadly weapon so, Section 147, 148, 149 of IPC are properly charged and Section 34 of IPC are also just and proper framing of charge by my Ld. predecessor Judge. In

the present case, more than five persons done the criminal act in furtherance of the common intention of all therefore, each of such persons(every accused) is liable for the act in the same manner as if it was done by him alone and all the accused(six accused) being member of an unlawful assembly and all the six accused armed with Bharwadi lathi sticks in their hand, therefore, act of all the accused as to joining an unlawful assembly armed with any deadly weapon(Bharwadi lathi) are covered with iron cap and when said Bharwadi lathi sticks became lethal weapon by covering iron cap on it and when any blows inflicted by Bharwadi lathi sticks come within the category of deadly weapon and all the accused were joining an unlawful assembly armed with deadly weapon like Bharwadi lathi sticks and committed the act of rioting armed with a deadly weapon, therefore, any member of an unlawful assembly, every other member of such assembly are responsible for the commission of crime and prosecution has established that all the six accused namely accused No.1-Raghubhai Haribhai Parmar(Bharwad), accused No.2-Bhimabhai Haribhai Parmar(Bharwad), accused No.3-Kalubhai Ranchhodbhai Parmar(Bharwad), accused No.4-Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad), accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and accused No.6-Jigneshbhai Raghubhai Parmar (Bharwad) of an unlawful assembly committed the serious and heinous crime as discussed hereinabove, therefore, conduct of each person forming the unlawful assembly, coupled with participation in prosecution of the common object is sufficient to fasten vicarious liability on

every member of the assembly for the offence committed by any member of that assembly and when ingredients U/s 147, 148, 149 & 34 of IPC are proved by the prosecution beyond reasonable doubt.

- 159.** Case on hand, accused, deceased and prosecution witnesses belongs to same village. The deceased-Vijaybhai belongs to scheduled castes and it was well within the knowledge of the accused and when accused uttered abusive filthy language at the time of occurrence as discussed hereinabove, prosecution succeeded to prove that the deceased-Vijaybhai Amrabhai Chavada belongs to scheduled castes and when at the time of occurrence abusive and filthy language uttered by the accused based on castes, therefore, case against the accused are come within the purview of the Atrocity Act. When the prosecution has succeeded to prove the commission of offence U/s 302, 307, 147, 148, 149 & 34 of IPC and when prosecution has also succeeded to prove the deceased is a member of scheduled castes, therefore, provision U/s 325 come into play and every accused in furtherance of common intention of all so, section 34 of IPC is only a rule of evidence and does not create a substantive offence. Section 34 of IPC does not create a distinct offence. It lays down a principle of liability. When two or more persons joined actively in assault on a victim, all those persons(accused) are directly responsible for the injuries caused to the extent to which they had a common intention to cause those injuries and what their common intention was must be gathered from the circumstances. Section 34 of IPC is not a penal provision. It does not create a substantive offence. It is

merely a rule of evidence. Section 34 of IPC does not create a specific offence. It is a principle of constructive liability and the essence of that liability is existence of common intention and for common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously liable for the criminal act of another and the act must have been done in furtherance of common intention of them all. In the present case, all six accused armed with Bharwadi lathi sticks (deadly weapons), inflicted lathi sticks blow on the vital part as well as the different part of the body of the deceased as well as witnesses. It is supported by the evidence of postmortem report and after doing the act of homicidal death which amounts to murder, all the accused reached at village and friends of deceased namely Ghanshyambhai, Jayantibhai and Harjibhai were also became the assault of accused and all those six accused armed with deadly weapon (Bharwadi lathi sticks) inflicted lathi sticks blows and told that "one is murdered and right now your turn" and the witness Ghanshyambhai has categorically stated about the haphazard and back to back inflicting lathi stick blows by the accused and act of attempt to murder has been committed by the all those six accused so, whatever evidences adduced by the witness Ghanshyambhai being an injured witness, Jayantibhai injured witness and injured witnesses are come within the purview of the direct evidence and oral testimony of all those two witnesses are not come within the category of unreliable evidence but when direct evidence has been adduced by the witness-Ghanshyambhai and moreover the accused intimidated and told Ghanshyambhai to

kill, therefore, act done by all the accused to commit the offence of attempt to murder of Ghanshyambhai are also a same transaction offence, therefore, Court cannot be separated the act done by all the accused in the agricultural farm and act done by all the accused in the village so, same transaction offence consist of two different acts are happened so, the oral testimony of witness-Ghanshyambhai is also a direct evidence. Ghanshyambhai is the ocular/injured witness and his deposition cannot be discarded and whatever oral testimony adduced by the witness-Ghanshyambhai is not only clinching/cogent evidence but also a creditworthy/trustworthy evidence and when no contradiction, omission or exaggerated version found in the deposition of ocular witness/injured witness. This Court has elaborately discussed in details hereinabove about the every accused was a member of an unlawful assembly and which weapon used by each accused are not taken into consideration when once prosecution has proved beyond reasonable doubt that every members forming unlawful assembly and when offence committed by a member of the unlawful assembly in the prosecution of the common object or for an offence which was known to be likely to be committed in prosecution of the common object, persons proved to be members cannot be escaped the consequences arisen from the committing of that act, therefore, all the six accused role played at the time of occurrence under the guise of vicarious liability and no individual role can be separated U/s 149 of the IPC and no accused can be exonerated for the commission of offence.

**160.** It is the case of prosecution that accused pressurized

complainant-Pravinaben and witnesses to enter into the amicable settlement(compromise) but complainant/Pravinaben was firm and refused to accept the offer of compromise and eventually, all six accused of the present case have hired contract killer for committing the murder of Pravinaben/complainant and ultimately, all the accused were facing other trial of the criminal case with regards to the homicidal death which amounts to murder of complainant/Pravinaben so, accused had attempted to fatal the prosecution case during the course of trial and accused has also tried to weak the case of prosecution but when any complainant died during the course of trial would not be fatal to the prosecution case. Each and every contents of the complaint/FIR are proved by the prosecution with trustworthy/creditworthy mode and not only signature of the complainant are proved but also proved the contents of the FIR/complaint. However, ofcourse, FIR merely is not a substantive piece of evidence but contents of the complaint are also proved by the prosecution, therefore, the facts described in the complaint can be taken into consideration as a cogent/clinching evidence and some witnesses have supported the facts of complaint and all those witnesses are knowing the facts of occurrence, signature of complainant and some witnesses are eye/injured witnesses so, facts of the complaint are proved by the prosecution beyond reasonable doubt.

- 161.** In so far as the postmortem report are concerned, all the injures sustained by the deceased-Vijaybhai may be happened by the muddamal article No.11 to 14 and muddamal article No.23 &

24 and expert panel doctor has categorically opined that injuries denoted in the Column No.17 of PM report vide Exh.64 may be occurred by the weapons showing to expert doctor during the course of recording of evidence and expert doctor who performed the postmortem report has also opined that injuries found on the dead body of the deceased-Vijaybhai, the same injuries are grievous and all the injuries looking jointly, it is found vital type injuries and injuries sustained by the deceased-Vijaybhai are happened by the inflicting blow of more than one person and all those multiple injuries are sufficient to occur the death of the deceased-Vijaybhai. When Bharwadi lathi sticks used by the accused at the time of occurrence and all those weapons were identified by expert doctors during the course of deposition so, injuries of deceased-Vijaybhai corroborated by the expert evidence.

- 162.** PW4-Ghanshyambhai Harjivbhai Rathod has stated the name of all the accused who inflicted lathi stick blows on his body and the deposition of PW4-Ghanshyambhai read with oral testimony of expert doctor PW3-Dinesh Natwarlal Thakkar, the expert medical evidence corroborated to the deposition of the PW4-Ghanshyambhai and PW4 being a patient who was very serious and referred and shifted to Long Life Hospital, Ahmedabad when blows given by the accused on the vital part of the body also, therefore, all the accused have knowledge of the consequences happened after incident and intention of accused was very clear i.e. attempt to murder. When three persons were injured by the act of accused, PW5-Jayantibhai Harjibhai Rathod who was also injured and said witness turned hostile but

PW5 has categorically state that incident was happened as a reason of election. Mere expert doctor evidence are not sufficient to prove the deposition of PW5.

163. Case on hand, at the outset of the crime, intention of the accused was to commit crime and state of mind was to commit the act of hurt intentionally. Before committing the guilt act in the guilty mind of accused, idea was fixed to do the act of inflicting with deadly weapon upon the deceased and witnesses. Conducts, thoughts, intention and specific state of mind on the part of the accused were present at the time of incident took place. So *mens-rea* is a culpable state of mind characterized by intentional purpose as well as knowledge of the consequences. Accused has intentionally broke the law because he had knowledge about the consequences of the act done by him and the act of accused must be conducted with guilty conscious before committing a serious and heinous crime and criminal act was performed. So the illegal act committed by accused has come within the purview of the ingredient under section 302 & 307 of the IPC and *mens-rea* and *actus- reas* were present and the prosecution has successfully proved its case beyond reasonable doubt against the accused. The degree of the crime committed by the accused was very higher. So, the accused are not entitled to get the benefit of doubt whatsoever.

164. In so far as Section 3(1)(10) & 3(2)(5) are concerned, when deceased-Vijaybhai was going to natural call(defecate) in the agricultural farm and PW2 was present and seen the incident alongwith complainant(at present deceased-Pravinaben) and PW2 is the full blooded family member of the deceased-

Vijaybhai, therefore, whatever words uttered by accused at the agricultural field are called private immovable property and to apply the provision U/s 3(1)(10) of the Atrocity Act, incident happened at the public view are come within the purview of the ingredients U/s 3(1)(10) of the Atrocity Act but public place are not always come within the purview of the ingredients of the section specially when PW2 being a relative of deceased-Vijaybhai has stated the words uttered by accused on castes based abusive language and when both the family members were present except complainant, PW2 and deceased were present and deceased-Vijaybhai succumbed to injuries and blows given by all the accused, therefore, ingredients U/s 3(1)(10) of the Atrocity Act are not attracted because supportive evidence of family members deposition would not be attracted the provision U/s 3(1)(10) of the Atrocity Act as a public view. Therefore, the prosecution has failed to prove the ingredients U/s 3(1)(10) of the Atrocity Act, hence, the accused are entitled to get the benefit of doubt for the charges levelled against them for the offences punishable U/s 3(1)(10) of the Atrocity Act.

- 165.** But in so far as the ingredients of Section 3(2)(5) of the Atrocity Act are concerned, that section applies when an offence punishable by 10 years or more under IPC is committed against a member of SC/ST community and case on hand the intent and knowledge are proved by the prosecution beyond reasonable doubt, preparator must knowingly commit the crime against a person belonging to a SC/ST member and the motive arisen from castes status and when caste certificate of deceased-Vijaybhai belongs to scheduled castes community are proved

and submitted and accused had targeted the deceased-Vijaybhai who belongs to SC/ST community and became victim. Therefore, the prosecution has successfully proved the ingredients U/s 3(2)(5) of the Atrocity Act beyond reasonable doubt.

166. It is also proved by the prosecution about the ingredients of rioting U/s 147 of IPC and imprisonment for this section, for two years or with fine or with both. The prosecution has also succeeded to prove the charges levelled against the accused with regards to rioting armed with deadly weapon and imprisonment for this offence is upto to three years, or with fine, or with both. It is also proved by the prosecution about the ingredients of culpable homicide U/s 302 of IPC and imprisonment for this section, death or imprisonment for life, and shall also be liable to fine.

167. Therefore, in view of the above facts and evidence on record, the prosecution has successfully proved beyond reasonable doubt the charges leveled against accused for the offences punishable U/s 302, 307, 143, 147, 148, 149 & 34 of the Indian Penal Code and Section 135 of the G.P. Act as well as Section 3(2)(5) of the Prevention of Atrocities Act, 1989 and the accused are not entitled to get the benefit of doubt. Hence, my replies for the points No.1 & 6 are accordingly.

**Point No.7:**

168. Having considered oral and documentary evidences adduced by prosecution, having heard the rival contentions, it is pertinent to note that considering the oral testimony of witnesses as

discussed hereinabove, the prosecution has succeeded to prove the charges levelled against the accused U/s 302, 307, 143, 147, 148, 149 & 34 of the Indian Penal Code and Section 135 of the G.P. Act as well as Section 3(2)(5) of the Prevention of Atrocities Act, 1989.

169. All the accused i.e. accused No.2-Bhimabhai Haribhai Parmar(Bharwad), accused No.3-Kalubhai Ranchhodbhai Parmar(Bharwad), accused No.4-Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad), accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and accused No.6-Jigneshbhai Raghubhai Parmar (Bharwad) are hereby held guilty for the offence punishable under Section 302, 307, 143, 147, 148, 149 & 34 of the Indian Penal Code and Section 135 of the G.P. Act as well as Section 3(2)(5) of the Atrocity Act and the order as to sentence will be passed hereinafter of hearing the accused under Section 235(2) of the Criminal Procedure Code, 1973. Matter is kept for hearing of quantum of punishment.

**Signed & Pronounced in the open Court on this 17<sup>th</sup> day of March, 2026.**

Date :17/03/2026.  
Place:Ahmedabad.  
P.D. Mishra

**[Naresh Girikant Dave]**  
Additional District & Sessions Judge,  
Ahmedabad (Rural) at Dholka.  
(UIC No.GJ00467.)

**Heard for the quantum of punishment.**

170. The Ld. AGP Mr. J.C. Patel for the State has vehemently argued that the day and day out, such type of serious and heinous crime are increasing and the public at large belongs to weaker section of the society are bearing the such type of crime and in continuation of that motive, deceased-Vijaybhai became the victim and lost his life, therefore, as to set the example in the society, maximum punishment may be imposed upon the accused. The Ld. AGP has further submitted that mother of the deceased is very old aged and deceased was the bread winner of his family and mother of deceased is living poor life in wear and tear condition.
171. The Ld. Advocate Mr. B.J. Joshi for the accused persons has appeared through video conferencing on zoom application and strenuously argued that accused are of very young age and two accused are in judicial custody since long time i.e. 8 years and all the accused belong to same family members. It is further argued that all the accused are the bread winner of their family members have and their family members are dependent upon them and accused have felt remorse after the incident took place, so minimum punishment may be imposed.
172. The ratio laid down by Hon'ble Apex Court in the case of **Bachan Singh v. State of Punjab 1980 (2) SCC 684** is required to be considered:- To impose punishment to accused aggravating and mitigating circumstances must be taken into consideration in fixing the degree of punishment or in making the choice of sentence for various offences, including one under Sec.302 of IPC. The court should not confine its consideration

"principally or merely" to the circumstances connected with the particular crime, but also due consideration to the circumstances of criminal. However, it is observed that, what is relative weight to be given to the aggravating and mitigating factors, depends on facts and circumstances of each case.

173. Balancing is what is expected when an offender is convicted. The balancing has to be done between the rights of accused and the needs of society at large. It would also be a daunting challenge to preserve the trust of citizens when using the authority of the courts to convict or executive. To evaluate it is also a daunting thing for the convicted to be guilty and therefore, executed with proper penalty without any foolproof method. The sentence handed down to the convict should be appropriate and not inconsistent to the brutality with which the crime has been committed. Aggravating and mitigating factors in sentencing :- Study of the criminal laws of our country shows that the distribution of the sentence is left entirely to the discretion of the judges for almost all offences and, as a result, the sentences sometimes handed down for almost the same offences by two different judges are grossly disproportionate. Since the offences have been defined in general terms, only maximum penalty terms have been indicated. Judges, therefore, must allocate the amount of the penalty according to the gravity or otherwise of the various offences within the limits prescribed. Judges face problems in situations where they have to abide by the basic principles. As a consequence, there has been a disparity in the sentences levied by various courts over specific kinds of offences, often without recourse to the

standards set down which are meant to mitigate differences. Such ideas are not specifically laid out in the Indian Penal Code, 1860, or any other substantive legislation which will have a contractual impact on judges. They have also followed specific standards with their own guidance; there is no scheme of daily judges' conferences, variations in method are not addressed or reconciled.

174. Having regards to the contentions raised by the rival parties, it is pertinent to note that the offence of murder committed by the accused and specially when deceased-Vijay belongs to scheduled castes community and weaker section of the society, therefore, all the accused brutally murdered deceased-Vijay so, the accused have committed the serious and heinous crime and made the victim of scheduled castes member. Therefore, considering mitigating circumstances and nature of offence, the accused are not entitled to get the benefit of mitigating circumstances and the Court cannot impose less than minimum sentence determined by legislature under the provisions of Indian Penal Code and SC/ST Act. Moreover, mother of the deceased-Vijay belongs to scheduled castes community and weaker section of the society and therefore, order of compensation are required to be considered.
175. Case on hand, the prosecution has successfully proved beyond reasonable doubt that the accused has committed the offence punishable U/s **302, 307, 143, 147, 148, 149 & 34** of the Indian Penal Code and Section **135** of the G.P. Act as well as Section **3(2)(5)** of the Prevention of Atrocities Act, 1989 and all the accused i.e. **accused No.2-Bhimabhai Haribhai**

Parmar(Bharwad), accused No.3-Kalubhai Ranchhodbhai Parmar(Bharwad), accused No.4-Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad), accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and accused No.6-Jigneshbhai Raghubhai Parmar (Bharwad) as discussed hereinabove, have committed the crime as mentioned the above offences. The punishment for the above offences are required to be referred as under;

**Section 147. Punishment for rioting.**—*Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

**Section 148. Rioting, armed with deadly weapon.**—*Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.**—*If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.*

**Section 302. Punishment for murder.**—*Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.*

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

**Section 3(2)(5)**—*commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled*

*Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;*

176. Therefore, considering foregoing reasons, I pass the following final order.

**:-FINAL ORDER:-**

- (1) All the accused i.e. **accused No.2-Bhimabhai Haribhai Parmar(Bharwad), accused No.3-Kalubhai Ranchhodbhai Parmar(Bharwad), accused No.4-Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad), accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and accused No.6-Jigneshbhai Raghubhai Parmar (Bharwad), are hereby acquitted** U/s 235[1] of the Code of Criminal Procedure for the offences punishable U/s 3(1)(10) of the Prevention of Atrocities Act, 1989 in connection with **C. R. No.I-44/2013** registered with **Koth** Police Station.
- (2) All the accused i.e. **accused accused No.2-Bhimabhai Haribhai Parmar(Bharwad), accused No.3-Kalubhai Ranchhodbhai Parmar(Bharwad), accused No.4-Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad), accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and accused No.6-Jigneshbhai Raghubhai Parmar (Bharwad), are hereby held guilty** U/s 235[2] of the Code of Criminal Procedure for the offences punishable U/s 302, 307, 143, 147, 148, 149 & 34 of the Indian Penal Code and Section 135 of the G.P. Act as well as Section 3(2)(5) of the Prevention of Atrocities Act, 1989 in connection with **C. R. No.I-44/2013** registered with **Koth** Police Station.

- (3) As the accused No.1-**Raghubhai Haribhai Parmar(Bharwad)** had expired on dated 21.03.2023, hence, he was abated vide order 05.05.2023, hence, he has declared as abated.
- (4) Each accused i.e. accused No.2-**Bhimabhai Haribhai Parmar(Bharwad)**, accused No.3-**Kalubhai Ranchhodbhai Parmar(Bharwad)**, accused No.4-**Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad)**, accused No.5-**Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad)** and accused No.6-**Jigneshbhai Raghubhai Parmar (Bharwad)**, are hereby sentenced to:
- A) **rigorous imprisonment for life U/s 302 of IPC r/w Section 149 & 34 of the IPC and fine of Rs.5000/- by each** and in default of payment of fine, shall undergo for simple imprisonment of six months.
- B) **rigorous imprisonment for 10 Years U/s 307 of IPC r/w Section 149 & 34 of the IPC and fine of Rs.3000/- by each** and in default of payment of fine, shall undergo for simple imprisonment of of six months.
- C) **rigorous imprisonment for life U/s 3(2)(5) of the Atrocity Act r/w Section 149 & 34 of the IPC and fine of Rs.5000/- by each** and in default of payment of fine, shall undergo for simple imprisonment of of six months.
- D) **imprisonment for Two Years U/s 147 of IPC r/w Section 149 & 34 of the IPC and fine of Rs.2000/- by each** and in default of payment of fine, shall

undergo for simple imprisonment of six months.

E) **imprisonment for Three Years U/s 148 of IPC r/w Section 149 & 34 of the IPC and fine of Rs.3000/- by each** and in default of payment of fine, shall undergo for simple imprisonment of three months.

F) **imprisonment for six months U/s 135 of the G.P. Act and fine of Rs.1000/- by each** and in default of payment of fine, shall undergo for simple imprisonment of One & Half months.

(5) All the accused i.e. accused No.2-Bhimabhai Haribhai Parmar(Bharwad), accused No.3-Kalubhai Ranchhodbhai Parmar(Bharwad), accused No.4-Mafabhai @ Danubhai Ranchhodbhai Parmar (Bharwad), accused No.5-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and accused No.6-Jigneshbhai Raghubhai Parmar (Bharwad), shall suffer above sentence U/s **302, 307, 143, 147, 148, 149 & 34** of the Indian Penal Code and Section **135 of the G.P. Act** as well as Section **3(2)(5) of the Prevention of Atrocities Act, 1989 concurrently**.

(6) The period of detention undergone by the accused in this case shall be set off U/s. 428 of the Code of Criminal Procedure against the term of imprisonment enforced on him.

(7) As per Provisions of Section 357A of the Criminal Procedure Code under the scheme of the Gujarat Government Compensation Scheme-2019, **the mother of the deceased is hereby awarded compensation of Rs.6,00,000/- [Six Lakhs Only]** for mental and physical agony suffered by

the family of the deceased and the District Legal Services Authority, shall carry on necessary correspondence with regard to release of grant from the Gujarat State Legal Services Authority, Ahmedabad in these cases and make the payment to the dependent/s after due verification as per the Rules. After payment of Compensation, amount be initiated against the Accused before the Competent Court in consultation with the Office of Public Prosecutor as per Clause-14 of the Gujarat Victim Compensation Scheme, 2019. The order can be intimated by a letter to the DLSA, Ahmedabad [Rural] for information and necessary action.

- (8) Muddamal Article, if any, shall be disposed off after the completion of appeal period.
- (9) The copy of this judgment be forwarded to Ld. Collector and Ld. District Magistrate under the provisions of Section 365 of the Code of Criminal Procedure.
- (10) Copy of this Judgment shall immediately be given to the accused by free of costs U/s 363[1] of the Code of Criminal Procedure.

**Signed & Pronounced in the open Court on this 17<sup>th</sup> day of March, 2026.**

Date :17/03/2026.  
Place:Ahmedabad.  
P.D. Mishra

**[Naresh Girikant Dave]**  
Additional District & Sessions Judge,  
Ahmedabad (Rural) at Dholka.  
(UIC No.GJ00467.)