



Atrocity Case No.5 of 2021(Main)					Atrocity Case No.6 of 2021			Atrocity Case No.27 of 2021			Atrocity Case No.36 of 2021			Atrocity Case No.40 of 2021			Sessions Case No.2 of 2023				
		D	M	Y	D	M	Y	D	M	Y	D	M	Y	D	M	Y	D	M	Y		
Received on	:	23.07.2015			04.11.2015			:	05.08.2017			:	25.01.2018			21.05.2018			31.01.2023		
Registered on	:	23.07.2015			04.11.2015			:	05.08.2017			:	25.01.2018			21.05.2018			31.01.2023		
Decided on	:	30.03.2026			30.03.2026			:	30.03.2026			:	30.03.2026			30.03.2026			30.03.2026		
Duration	:	07	08	10	26	04	10		25	07	08		05	02	08	09	10	07	30	01	03

Exh._____

FORM-A

**IN THE COURT OF
The Hon'ble Additional District & Session Judge Ahmedabad (Rural),
at Dholka, Ahmedabad.**

Present : N. G. Dave.

Date of Judgment:30/03/2026

Atrocity Case No.5 of 2021(Main)

(Old Atrocity Case No.48/2015)

with

Atrocity Case No.6 of 2021

(Old Atrocity Case No.58/2015)

with

Atrocity Case No.27 of 2021

(Old Atrocity Case No.35/2017)

with

Atrocity Case No.36 of 2021

(Old Atrocity Case No.5/2018)

with

Atrocity Case No.40 of 2021

(Old Atrocity Case No.24/2018)

with

Sessions Case No.02 of 2023

(Old Atrocity Case No.73/2021, Old Atrocity Case No.11/20) <u>Details of F.I.R /Crime and Police Station.</u>		
C. R. No.I-6/2015 registered with Bagodara Police Station for the offences punishable U/s 302, 364, 396, 506(2), 201 & 120B of the Indian Penal Code as well as Section 3(1)(10) & 3(2)(5) of the Prevention of Atrocities Act, 1989.		
Complainant	:	The State of Gujarat.
REPRESENTED BY	:	Ld. P.P. Mr. J.C. Patel.
ACCUSED (In Atrocity Case No.5/2021)	1:	Kuldeep @ Lalo Danubhai @ Mafabhai Parmar (Bharwad) Age:24 years.
	2:	Bhimabhai Haribhai Parmar(Bharwad) Age:40 years.
		Both Nos.1 & 2 R/o Loliya village, Bharwad Vas, Taluka-Dholka, District-Ahmedabad.
REPRESENTED BY	:	Ld. Advocate:Mr. R.N. Pujara.
ACCUSED (In Atrocity Case No.6/2021)	1:	Raghubhai Haribhai Parmar(Bharwad). (declared abated) Age:43 years, R/o Loliya Village, Bharwad Vas, Taluka-Dholka, District-Ahmedabad.
	2:	Vijay Devabhai Parmar-Mer. Age:23 years, R/o Raghuvirpura, Manavadar, Taluka-Junagadh.
REPRESENTED BY	:	Ld. Advocate:Mr. S.J. Saiyad.
ACCUSED (In Atrocity Case No.27/2021)	1:	Hiren Raghubhai Parmar(Bharwad) Age:22 years, R/o Loliya, Taluka-Dholka, District-Ahmedabad.
REPRESENTED BY	:	Ld. Advocate:Mr. R.N. Pujara.
ACCUSED (In Atrocity Case No.36/2021)	1:	Chetanbhai Mafabhai Bharwad. R/o Loliya Gam, Taluka-Dholka, District-Ahmedabad.
	2:	Tapubhai Chhelabhai Chhotiya Bharwad. Age:40 years. R/o 27, Bapa Sitaram Nagar, Kishwadi, Vadodara.

		Permanent Address: Village-Jansali, Taluka-Limbdi, District-Surendranagar.
	3:	Anil Danubhai @ Mafabhai Parmar(Bharwad). R/o Loliya.
	4:	Alpeshbhai Kalubhai Parmar(Bharwad). Age:21 years. R/o Loliya Gam, Bharwad Vas, Taluka-Dholka, District-Ahmedabad.
REPRESENTED BY :		Ld. Advocates:Mr. R.N. Pujara. Mr. P.N. Pujara.
ACCUSED (In Atrocity Case No.40/2021)	1:	Kandhal @ Kandho Hajabhai Kadchha(Mer). Age:26 years. Permanent address/Native: Village-Kadachh, Taluka-Kutiyana, District-Porbandar. Present R/o Manavadar, Mafatiyapara, Taluka-Manavadar, District-Junagadh.
REPRESENTED BY :		Ld. Advocate:Mr. M.I. Bolwala.
ACCUSED (In Sessions Case No.2/2023)	1:	Vipul Bhojabhai Garchar, Age:33 years. R/o Priyanka Park, Plot No.3/A, Madhuram, Taluka & District-Junagadh.
REPRESENTED BY :		Ld. Advocate:Mr. A.A. Ansari.

FORM -B

Date of Offence	27.02.2015	
Date of F.I.R.	28.02.2015	
Date of Charge Sheet	On different dates.	
Date of Framing of Charges	In Atrocity Case No.27/2021.	10.10.2017
	In Atrocity Case No.36/2021.	12.04.2018
	In Atrocity Case No.40/2021.	12.11.2021
	In Atrocity Case No.5/2021.	01.02.2016
	In Atrocity Case No.6/2021.	01.02.2016
	In Sessions Case No.2/2023.	29.03.2023
Date of Commencement of Evidence	29.01.2024	
Date of which Judgment is	----	

reserved	
Date of the Judgment	30.03.2026
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.	Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad)	01.03.2015 at about 16:30 hours.(In Atrocity Case No.5/2021)	UTP	U/s 302, 364, 396, 506(2), 201 & 120B of IPC and section 3(1)(10) & 3(2) (5) of the Preventi on of Atrocitie s Act, 1989.	Acquitted	As per final order	---
2.	Bhimabhai Haribhai Parmar(Bh arwad)	29.04.2015 at about 17:00 hours.(In Atrocity Case No.6/2021)	UTP				
3.	Raghubhai Haribhai Parmar(Bh arwad)	29.04.2015 at about 17:00 hours.(In Atrocity Case No.6/2021)	Abated.				
4.	Vijay Devabhai Parmar-Mer.	17.05.2015 at about 23:30 hours.(In Atrocity Case No.6/2021)	08.04.2024				
5.	Hiren Raghubhai Parmar(Bh arwad)	09.05.2017 at about 12:15 hours.(In Atrocity Case No.27/2021)	UTP				

		)					
6.	Chetanbhai Mafabhai Bharwad	31.10.2017 at about 17:00 hours.(In Atrocity Case No.36/2021)					
7.	Tapubhai Chhelabhai Chhotiya(B harwad)	21.08.2015 at about 18:30 hours.(In Atrocity Case No.36/2021)					
8.	Anil Danubhai @ Mafabhai Parmar(Bh arwad)	30.04.2015 at about 20:30 hours.(In Atrocity Case No.36/2021)					
9.	Alpeshbhai Kalubhai Parmar(Bh arwad)						
10.	Kandhal @ Kandho Hajabhai Kadchha(M er)	26.02.2018 at about 17:00 hours.(In Atrocity Case No.40/2021)	UTP				
11	Vipul Bhojabhai Garchar	18.03.2019 at about 13:00 hours.	01.05.2019				

FORM-C**LIST OF PROSECUTION /DEFENCE/ COURT WITNESSES****A. Prosecution.**

Rank	NAME	Exh.	Nature of Evidence [Eye Witness, Police Witness, Expert Witness, Medical
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			Witness, Panch Witness, Other Witness]
PW 1	Jayrambhai Chhanabhai Orvaniya along with cross- examination.	76	Panch witness.
PW 2	Bhikhubhai Jivanbhai Mer along with cross-examination.	92	Panch witness.
PW 3	Amaratbhai Nathabhai Parmar along with cross-examination.	98	Panch witness.
PW 4	Dharmeshkumar Bodhubhai Gohil along with cross- examination.	100	Panch witness.
PW 5	Bharatiben Prabhatbhai Makwana along with cross- examination.	106	Panch witness.
PW 6	Nareshbhai Manubhai Makwana along with cross-examination.	109	Panch witness.
PW 7	Vikrambhai Gambhubhai Makwana along with cross- examination.	111	Panch witness.
PW 8	Mayurkumar Jesangbhai Makwana along with cross- examination.	112	Panch witness.
PW 9	Rajeshkumar Narsinhbhai Makwana along with cross- examination.	114	Panch witness.
PW 10	Rameshbhai Jesangbhai Makwana along with cross- examination.	118	Panch witness.
PW 11	Rameshbhai Ranchhodbhai Gohil along with cross- examination.	120	Panch witness.
PW 12	Shantibhai Manajibhai Valand along with cross-examination.	122	Panch witness.
PW 13	Shahmahamad Habibbhai Shekh along with cross-examination.	130	Panch witness.
PW 14	Sultanbhai Kadarbhai Dantani along with cross-examination.	132	Panch witness.

PW 15	Vishnubhai Jerambhai Ko. Patel along with cross-examination.	133	Panch witness.
PW 16	Rajubhai Chaturbhai Solanki along with cross-examination.	140	Panch witness.
PW 17	Laljibhai Ramsangbhai Rathod along with cross-examination.	143	Panch witness.
PW 18	Himanshubhai Mukeshbhai Patel along with cross-examination.	147	Panch witness.
PW 19	Imranbhai Inayatbhai Sama along with cross-examination.	149	Panch witness.
PW 20	Vijaybhai Gulabji Thakor along with cross-examination.	151	Panch witness.
PW 21	Pravinbhai Jivabhai Parmar along with cross-examination.	152	Panch witness.
PW 22	Alpeshbhai Ganubhai Bharwad along with cross-examination.	154	Panch witness.
PW 23	Sureshbhai Bhavarbhai Luhar along with cross-examination.	155	Panch witness.
PW 24	Sujal Chandrakantbhai Shah along with cross-examination.	163	Panch witness.
PW 25	Ranchhodji Bhadaji Thakor along with cross-examination.	164	Panch witness.
PW 26	Kishorbhai Naranbhai Daki along with cross-examination.	167	Panch witness.
PW 27	Lalabhai Rasikbhai Nai along with cross-examination.	175	Panch witness.
PW 28	Rafikbhai Ibrahimbhai Sipai along with cross-examination.	176	Panch witness.
PW 29	Shaileshkumar Ramanbhai Patel along with cross-examination.	185	Panch witness.
PW 30	Anilsinh Shivaji Gol along with cross-examination.	186	Panch witness.
PW 31	Pravinsinh Veruji Gol along with cross-examination.	189	Panch witness.
PW 32	Pravinbhai Jesingbhai Vegad along with cross-examination.	194	Panch witness.

PW 33	Rajeshbhai Kanubhai Parmar along with cross-examination.	195	Witness.
PW 34	Ashishkumar Vashrambhai Jograjiya(Ko. Patel) along with cross-examination.	196	Witness.
PW 35	Satish Shashikantbhai Kyada (Patel) along with cross-examination.	201	Panch witness.
PW 36	Bhikhabhai Haribhai Boliya (Bharwad) along with cross-examination.	208	Witness.
PW 37	Sohansing Hajarising Rajput (Rawat) along with cross-examination.	209	Witness.
PW 38	Nizamuddin Nurmahamad Tharadara along with cross-examination.	210	Witness.
PW 39	Pravinbhai Savajibhai Dabhi along with cross-examination.	215	Witness.
PW 40	Manubhai Shankarbhai Solanki along with cross-examination.	227	ASI
PW 41	Ashokkumar Fatesinh Damor along with cross-examination.	228	Police Official(Witness).
PW 42	Pinak Arunbhai Joshi along with cross-examination.	233	Witness.
PW 43	Raghubhai Haribhai Boliya (Bharwad) along with cross-examination.	240	Witness.
PW 44	Ashoksinh Ranjitsinh Jadeja along with cross-examination.	245	Witness(Police Official).
PW 45	Ramakant Ramadhar Rajput along with cross-examination.	250	Witness.
PW 46	Bharatbhai Hajabhai Kadachha along with cross-examination.	251	Witness.
PW 47	Rakeshwariben Rajaram Yadav along with cross-examination.	262	Witness(Police Official/ASI)
PW 48	Ahesanali Habibbhai Sunasara along with cross-examination.	273	Witness.

PW 49	Kasamali Mahamad Seliya along with cross-examination.	274	Witness.
PW 50	Ranabhai Ratnabhai Sabhad (Bharwad) along with cross-examination.	279	Witness.
PW 51	Chandrakantbhai Punambhai Thakor along with cross-examination.	293	Witness[nursing staff of 108 ambulance]
PW 52	Premajibhai Naranbhai Parmar along with cross-examination.	294	Witness.[driver of 108 ambulance]
PW 53	Pravinbhai Ambalal Jaysval along with cross-examination.	299	Witness.[S.T. Driver]
PW 54	Rushabhbbhai Manojbhai Sanghavi along with cross-examination.	312	Witness.
PW 55	Bipinbhai Ganpatbhai Solanki along with cross-examination.	317	Complainant.
PW 56	Vitthalbhai Jakabhai Algotar (Bharwad) along with cross-examination.	327	Witness.
PW 57	Lalchand Bhojraj Gyani along with cross-examination.	334	Witness.[J.P. Enterprise]
PW 58	Sanjaybhai Chandrakantbhai Luvana along with cross-examination.	336	Witness.[P.M. Enterprise]
PW 59	Viralbhai Hasmukhbhai Gandhi (Jain) along with cross-examination.	338	Witness.[J.P. Enterprise]
PW 60	Bharatbhai Dhirajlal Dave along with cross-examination.	339	Witness.[J.P. Enterprise]
PW 61	Keshubhai Tidabhai Kadachha (Mer) along with cross-examination.	348	Witness.
PW 62	Tarun Kishorbhai Narvani along with cross-examination.	351	Witness.[P.M. Enterprise]
PW 63	Jaydipkumar Ajaybhai Barot (Bhrahmbhatt) along with cross-examination.	352	Witness.

PW 64	Rameshbhai Harjibhai Rathod (Ko. Patel) along with cross-examination.	359	Witness.
PW 65	Dr. Nishith Kantilal Chaudhari along with cross-examination.	367	Doctor[Examiner of Postmortem of dead body]
PW 66	Harishbhai Amarabhai Chavda along with cross-examination.	376	Witness.
PW 67	Vaghabhai Balabhai Dangar (Bharwad) along with cross-examination.	379	Witness.
PW 68	Dipubhai Devabhai Parmar along with cross-examination.	380	Witness.
PW 69	Bharatbhai Bhikhubhai Kodiyatar along with cross-examination.	386	Witness.(Police Official)
PW 70	Kiranbhai Balabhai Rathod along with cross-examination.	387	Witness.(Police Official)
PW 71	Chiragbhai Haribhai Bhut along with cross-examination.	401	Witness.
PW 72	Niravbhai Lalitbhai Maradiya along with cross-examination.	408	Witness.
PW 73	Jayantibhai Harjibhai Rathod (Ko. Patel) along with cross-examination.	409	Witness.
PW 74	Kankuben Amarabhai Bhalabhai Chavda along with cross-examination.	419	Witness[mother of deceased-Pravinaben]
PW 75	Dasharathbhai Bhagwanbhai Makwana along with cross-examination.	438	Witness.(Police Official)
PW 76	Charmiben Rutvinbhai Vaja along with cross-examination.	444	Witness.
PW 77	Merubhai Parbatbhai Parmar along with cross-examination.	445	Witness.
PW 78	Jagdishbhai Mayachand Lathiya along with cross-examination.	446	Witness.
PW 79	Tushar Babubhai Solanki along with cross-examination.	447	Witness.

PW 80	Sharmishthaben Bhikhabhai CHaudhari along with cross-examination.	456	PSI[IO].
PW 81	Digvijaysinh Devisinh Sodha along with cross-examination.	466	PI[IO].
PW 82	Rohitkumar Dhuljibhai Baranda along with cross-examination.	473	Dy.S.P.[IO]
PW 83	Komalben Shaileshkumar Vyas along with cross-examination.	517	Dy.S.P.[IO]
PW 84	Rameshbhai Gordhanbhai Vasoya along with cross-examination.	532	Witness.
PW 85	Hamirbhai Ukabhai Nandaniya along with cross-examination.	537	Witness.
PW 86	Bharatsang Madhavsang Tank along with cross-examination.	541	Witness(Police Official/IO).
PW 87	Iqbalbhai Harunbhai Mogal along with cross-examination.	533	Witness.
PW 88	Niteshgiri Bhikhangiri Meghanathi along with cross-examination.	553	Witness.
PW 89	Virambhai Malajibhai Rabari along with cross-examination.	529	Witness.
PW 90	Deviben Arshibhai Bhojabhai Odedara along with cross-examination.	555	Witness.
PW 91	Jayeshbhai Manoharlal Harwani along with cross-examination.	558	Panch witness.
PW 92	Sunil Chijandas Harwani(Sindhi) along with cross-examination.	565	Panch witness.
PW 93	Pawan Mahendrabhai Suthar along with cross-examination.	583	Panch witness.
PW 94	Sandipbhai Hareshbhai Meghnathi along with cross-examination.	584	Panch witness.

B. Defence Witnesses , if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PUNCH WITNESS, OTHER 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.	77/PW1	Panchnama of place of occurrence.
2.	78/PW1	Panchnama of recovery of muddamal mobile phone of the deceased from the place of occurrence.
3.	99/PW3	Inquest panchnama.
4.	101/PW4	Panchnama of clothes of the deceased collected during the postmortem.
5.	110/PW6	Panchnama of clothes of the accused as well as physical condition of the accused.
6.	113/PW8	Demonstration panchnama of place of occurrence.
7.	121/PW11	Panchnama of muddamal vehicles used in the crime by the accused.
8.	131/PW13	Panchnama of physical condition of the accused.
9.	134/PW15	Panchnama of Mojadi(Ladies shoes) of the deceased.
10.	141/PW16	Panchnama of muddamal of Maruti Swift Car used in the crime.
11.	148/PW18	Panchnama of muddamal articles recovered from the place of occurrence as well as at the time of PM of deceased.
12.	150/PW19	Panchnama of physical condition of the accused.
13.	153/PW21	Panchnama of inspection of the residential house of the accused.
14.	156/PW23	Panchnama of physical condition of the accused.

15.	165/PW25	Panchnama of mobile phone of the owner of the Zen Vehicle No.GJ-5-CA-1758.
16.	166/PW25	Panchnama of physical condition of the accused.
17.	168/PW26	Panchnama of seizer of Zen Vehicle No.GJ-5-CA-1758.
18.	177/PW28	Panchnama of place of occurrence as per the say of accused.
19.	178/PW28	Panchnama of physical condition of the accused.
20.	179/PW28	Panchnama of seizer of Mojadi(ladies shoes) of the deceased to send the FSL.
21.	187/PW30	Panchnama of seizer of muddamal mobile phone of the accused.
22.	188/PW30	Panchnama of reconstruction scene of the venue of crime.
23.	318/PW55	Complaint.
24.	319/PW55	Statement U/s 164 of Cr.P.C. alongwith forwarding letter.
25.	335/PW57	Receipt of J.P. courier service.
26.	337/PW58	Receipt of P.M. Enterprise courier service.
27.	349 & 350/PW61	Agreement to sell the vehicle.
28.	368, 369 & 370/PW65	Police yadi alongwith post death form and muddamal samples collected during the postmortem alongwith forwarding letter.
29.	439/PW75	FTP letter.
30.	488 & 489/PW83	Inspection reports of the place of occurrence by FSL.
31.	490 & 491/PW83	Inspection reports of the place of occurrence by FSL alongwith three photos.
32.	492/PW83	Call form of Finger Print Bureau, Ahmedabad.
33.	493/PW83	Map of place of occurrence.
34.	494/PW83	Report regarding CCTV footage from the Hon'ble High Court of Gujarat.
35.	495/PW83	Distributor summary sheet of Balaji Enterprise regarding purchase of SIM card.
36.	496 & 497/PW83	Extract of Account details register of courier service(Angadiya Pedhi) and its receipt.
37.	498/PW83	Extract of register from Chirag Telecom.
38.	499 to 511/PW83	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.
39.	512/PW83	Letter for recording the statement U/s 164 of Cr.P.C. of accused-Kandhal @ Kandho Hajabhai Kadchha.

40.	542 to 545/PW86	Certificates U/s 65b of the Indian Evidence Act from the different telecom companies.
41.	546/PW86	Panchnama of place of staying of accused.
42.	547 & 548/PW86	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.

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	<u>Muddamal Receipt No.10 dated 18.05.2015</u> 1. One double SIM card holder white colour Samsung company mobile phone bearing Model No.SM8310E, IMEI No.355001/06221300/3 and 355002/06221300/1, SIM Card No.8469459049. 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.	MO2	<u>Muddamal Receipt No.11 dated 23.05.2015</u> 1.One white colour Samsung company mobile phone bearing IMEI No.3568910644310. 2.Four SIM cards; 8469458986, 7622894698, 9737308271, 9737308559
3.	MO 3	<u>Muddamal Receipt No.12 dated 29.05.2015</u> 1.One peacock colour Maruti Zen Car No.GJ-5-CA-1758, bearing Chassis No.MA3EYE1500636999, LPG Kit No.42706.
4.	MO 4	<u>Muddamal Receipt No.13 dated 11.06.2015</u> 1.One intex company Nova model black colour mobile phone with SIM No.9512213553, IMEI No.911380753098767, 911380753098775.

:JUDGMENT:

1. In the present case, the Bipinkumar Ganpatbhai Solanki is the complainant. Incident occurred on dated 27.02.2015 and the complaint was filed on dated 28.02.2015.
2. It is pertinent to mention here that during the course of trial, the accused No.1-**Raghubhai Haribhai Parmar(Bharwad)** of **Atrocity Case No.6/2021** has passed away on dated 21.03.2023, hence, my Ld. predecessor Judge has declared him as abated vide order 14.08.2023.
3. The brief facts of the prosecution case are as under:

On dated 27.02.2015, at 10:30am to 11:00am deceased-Pravinaben(complainant of Vijaybhai Amrabhai Chavda murder's case) departed from her house at Loliya village to attend the adjournment date at the Hon'ble Gujarat High Court in the murder case of complainant's maternal uncle Vijaybhai Amrabhai Chawda. All the accused of Vijay's murder case who belong to Bharwad community were pressurizing deceased-Pravinaben(maternal aunt of present complainant) but Pravinaben refused to enter into the amicable settlement and compromise and sought the relief to conduct CBI investigation with regards to Vijaybhai's murder case. The Bharwad community accused and other persons intimidated Pravinaben frequently to kill her. As a reason, complainant's maternal aunt Pravinaben had lodged one police complaint before Home Department as well as in the Court when she was alive. As Pravinaben felt endanger to her life so, she sought revolver license, therefore, the accused and their affiliated persons after

meeting of mind conspired, in pursuant to that, the accused persons abducted/kidnapped Pravinaben when she was returning back from the Hon'ble Gujarat High Court, Ahmedabad to Lolia village on the way by forcible act and accused committed homicidal death of Pravinaben which amounts to murder and eventually threw the dead body far from the place of incident and role at the scene of crime. At noon 3:30pm, Pravinaben contacted on the complainant's house cell phone No.9428023191 and informed that in the case pending before the Hon'ble Gujarat High Court was adjourned and she would return back at home. The accused Raghu Hari Bharwad who was enlarged on temporary bail and Bhima Hari Bharwad along with accused of Vijay murder case were coming before the Hon'ble Gujarat High Court to attend date, along with all those persons, other persons were also coming before Hon'ble Gujarat High Court namely (1) Hari Vashram Bharwad, 2. Samant Vashram Bharwad, 3. Chetan Mafa Bharwad, 4. Alpesh Kalu Bharwad, 5. Anil Mafa Bharwad, 6. Hiren Raghu Bharwad and 7. Sanjay Bhimabharwad and all those persons told that "આ ઢેઢડીને આજે ઉઠાવી જવાની છે અને જાનથી મારી નાખવાની છે". Thereafter, complainant's maternal aunt-Pravinaben departed from Ahmedabad to reach at her home, eventually, all the accused succeeded and taken Pravinaben from Sarkhej highway to place of offence by an illegal act of abduction/kidnapping in forcible manner. Thereafter, accused killed Pravinaben and all the accused succeeded in their conspiracy and thrown the dead body of Pravinaben and also attempted by all the accused to

disappear the evidence as to connection of crime. Thereafter, from 108 number ambulance service, one concerned person called from cellphone of Pravinaben to complainant's maternal uncle-Harishbhai and during the course of the conversation on cellphone, concerned person of 108 number ambulance asked Harishbhai "what is the relation between cellphone holder and him and also informed that Pravinaben is lying as dead". Thereafter, maternal uncle Harishbhai informed complainant and all family members reached at the venue of crime, it came to knowledge of complainant that dead body of Pravinaben was brought at PHC, Bagodara by police officials. The maternal uncle Harishbhai informed 108 number ambulance and concerned employee that he would come at the venue of crime and after reaching them, to provide information to police officials to lifting dead body of Pravinaben. Thus, all the accused were keeping old animosity with Pravinaben and Pravinaben had declined to accept the offer of amicable settlement as to murder case of Vijaybhai and accused committed the act of homicidal death which amounts to murder of Pravinaben, thrown the dead body, the purse containing Rs.50,000/-, necklace worn by Pravinaben, ATM card and documentary evidence with regards to the murder case of Vijaybhai along with important documents were looted by the accused, and thereby the complainant has lodged the complaint against above mentioned accused for the offences punishable U/s **302, 364, 396, 506(2), 201 & 120B** of the Indian Penal Code as well as Section 3(1)(10) & 3(2)(5) of the Prevention of the Atrocities Act, 1989.

4. That after lodging the complaint, the offence has been registered and the accused has been charge-sheeted in connection with C.R. No.I-6/2015 for the offences Punishable U/s 302, 364, 396, 506(2), 201 & 120B of the Indian Penal Code (**hereinafter referred to as 'IPC' for the sake of brevity**) 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. The accused in the different cases were charge-sheeted along with supplementary chargesheet. So, different cases were registered as **Atrocity Case No.5/2021, Atrocity Case No.6/2021, Atrocity Case No.27/2021, Atrocity Case No.36/2021, Atrocity Case No.40/2021 and Sessions Case No.2/2023** and my Ld. predecessor Judge has passed order to club all these six cases as to same transaction, and all these cases were accordingly were clubbed by my predecessor judge on dated 05.08.2019 and common evidence of all those cases were recorded as to same transaction case.
5. 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.
6. The Charges have been framed by my Ld. predecessor Judge in case **Atrocity Case No.5/2021** against the accused No.1- **Kuldeep @ Lalo Danubhai @ Mafabhai Parmar (Bharwad)** and accused No.2-**Bhimabhai Haribhai Parmar(Bharwad)** for the offences punishable U/s 302, 364, 396, 506(2), 201 & 120B of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act

vide Exh.5 and the plea of the accused person has been recorded vide Exh.6 & Exh.7 respectively.

7. The Charges have been framed by my Ld. predecessor Judge in case **Atrocity Case No.6/2021** against the accused No.1- **Raghubhai Haribhai Parmar(Bharwad)(declared abated)** and accused No.2-**Vijay Devabhai Parmar-Mer** for the offences punishable U/s **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act **vide Exh.1** and the plea of the accused person has been recorded vide Exh.2 & Exh.3 respectively.
8. The Charges have been framed by my Ld. predecessor Judge in case **Atrocity Case No.27/2021** against the accused-**Hiren Raghubhai Parmar(Bharwad)** for the offences punishable U/s **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act **vide Exh.2** and the plea of the accused person has been recorded vide Exh.3.
9. The Charges have been framed by my Ld. predecessor Judge in case **Atrocity Case No.36/2021** against the accused No.1- **Chetanbhai Mafabhai Bharwad**, accused No.2- **Tapubhai Chelabhai Chhotiya Bharwad**, accused No.3- **Anil Danubhai @ Mafabhai Parmar(Bharwad)** and accused No.4- **Alpeshbhai Kalubhai Parmar(Bharwad)** for the offences punishable U/s **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act **vide Exh.2** and the plea of the accused persons has been recorded vide Exh.3 to Exh.6 respectively.
10. The Charges have been framed by my Ld. predecessor Judge in

case **Atrocity Case No.40/2021** against the accused-**Kandhal @ Kandho Hajabhai Kadchha(Mer)** for the offences punishable U/s **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act **vide Exh.47** and the plea of the accused persons has been recorded vide Exh.48.

11. The Charges have been framed by my Ld. predecessor Judge in case **Sessions Case No.2/2023** against the accused-**Vipul Bhojabhai Garchar** for the offences punishable U/s **302, 364, 396, 506(2), 201 & 120B** of IPC **vide Exh.24** and the plea of the accused persons has been recorded vide Exh.25.
12. Thereafter, the plea were read over to the accused respectively, wherein they have 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-Pravinaben D/o Amrabhai Chavda was belonging to scheduled castes so, charges under the Atrocity Act has been framed.
13. Thus, after recording the evidences, the Ld. Public Prosecutor has filed Closing Purshis. 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.
14. 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.

15. 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 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 and vehemently argued that considering the oral testimony all the prosecution witnesses, prima-facie it appears that the accused have hatched a criminal conspiracy and by keeping the earlier animosity, some of the accused have kidnapped/abducted the deceased-Pravinaben in a Car and thereafter, in between the way, other accused have joined the conspiracy and thereafter, strangled the neck of the deceased-Pravinaben in the Car by Lungi and killed her and thereafter, the accused have thrown the dead body of the deceased-Pravinaben on the road and thereafter, in continuation of that conspiracy, other accused have come by driven the truck and rolled over the truck on the dead body of the deceased to show the murder as an accident and damaged the dead body of the deceased and thereby the accused have committed heinous crime and therefore, question doesn't arise to falsely implicate the present accused persons 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 persons and therefore, considering the nature and gravity of offence, the

accused are required to be convicted according to the provisions of law.

Arguments on behalf of the Defence Side.

16. *Per-contra*, the Ld. Advocates for the accused has 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 the complainant has not supported the prosecution story and he turned hostile, hence, there is no case made out against the accused. It is further submitted that all the accused are in jail since long time and some of the accused have been enlarged on bail 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. Sharad Birdhi Chand Sarda Vs. State of Maharashtra, 1984 AIR 1622.
2. Kali Ram Vs. State of Himachal Pradesh, 1973 AIR 2773.
3. Khuman Singh Vs. The State of Madhya Pradesh, AIR 2019 SC 4030.
4. Hitesh Verma Vs. The State of Uttarakhand, AIR 2020 SC 5584.

17. 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 prosecution proves beyond reasonable doubt that the death of deceased-Pravinaben committed by the accused on dated 27.02.2015 was culpable homicide?
- (2) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, by keeping the earlier animosity, the accused persons have hatched a criminal conspiracy and in abetment of each other, the accused

have kidnapped the deceased-Pravinaben in a Car forcefully with intention to murder and thereafter, strangled the neck of the deceased in the Car and committed the act of homicidal death which amounts to murder of Pravinaben and thereby committed the offences U/s **364 & 302 of IPC r/w Section 120B** of the Indian Penal Code?

- (3) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, after committing the homicidal death of murder of the deceased-Pravinaben in the Car which amounts to murder, the accused have looted the cash amount of Rs.50000/- kept in the purse of Pravinaben, necklace worn by Pravinaben, ATM card and documentary evidence with regards to the murder case of Vijaybhai along with important documents and thrown the dead body of deceased-Pravinaben and with intention to disappear the evidence, the accused have rolled over the truck on the dead body of deceased-Pravinaben to show the death as an accident by the accused, and thereby committed the offences U/s **396, 201 of IPC r/w Section 120B** of the Indian Penal Code?
- (4) Whether the prosecution proves beyond reasonable doubt that on the date, time and place, the accused persons knew that the deceased-Pravinaben Amrabhai Chavda belongs to Schedule Castes, however, the accused persons made a criminal conspiracy and with common intention accused have used filthy language of caste and

intentionally insulted and humiliated the deceased in public place and the accused have intimidated to kill the deceased-Pravinaben thereafter, committed the act of homicidal death which amounts to murder of Pravinaben and thereby committed the offences punishable U/s **506(2)** of IPC r/w section **120B** of IPC and Section **3(1)(10) & 3(2)(5)** of the Atrocity Act?

(5) What order?

18. Findings on the points for determination:-

(1) In Negative.

(2) In Negative.

(3) In Negative.

(4) In Negative.

(5) As per final order.

-:-REASONS:-

Point Nos.1 to 4:

19. Points No.1 to 4 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 all the points discussed jointly hereinafter.

20. 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.

21. 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.
22. The deceased-Pravinaben Amrabhai Chavda of the present case is the complainant of Vijay murder case. Total 6 accused were charge-sheeted and all the accused are in the judicial custody, Sabarmati Central jail.
23. All the issues are interconnected, therefore the discussion of issues be made jointly. 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.
24. 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.
25. 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.
26. 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.

27. 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.

28. Considering the above discussions in details, it is the duty of the prosecution to prove an act of homicidal death which amounts to murder with the intention of causing death as well as accused had knowledge likely to cause death bodily injury and ordinary course of nature to cause death must be proved. It is not necessary for the accused to submit separate evidence with regards to the explanation U/s 300 of IPC but explanation U/s 300 of IPC can be determined relying upon the facts & circumstances of the case. At the time of strangulation of deceased-Pravinaben, she was unarmed female and accused were in the Car strangulated the neck of deceased-Pravinaben by lungi and three male accused assaulted on deceased-Pravinaben, therefore, no question has been arisen that Pravinaben attacked on accused, therefore, self-defence are also not come into operation, therefore, it is the duty of the Court to evaluate the entire evidence on record as to theory of culpable homicidal death which amounts to murder and prosecution has to prove its case beyond reasonable doubt.
29. The entire prosecution cases are based on circumstantial evidences. No ocular/ eyewitness who had seen the occurrence. Each and every case based on circumstantial evidence can be evaluated with due care and caution. It is the duty of the court, at the time of appreciation of evidence, to avoid any assumption, presumption, surmise and conjecture, there must be clinching and cogent evidence with regard to the evidence of circumstances, any missing link or gap or broken chain as to evidence of circumstances would be fatal to the prosecution

case based on circumstantial evidence. However, of course, last seen together theory and motive behind for the commission of offence are also taken into consideration. The expert doctor's opinion, scientific examination and oral testimony of police official cannot be discarded in mechanical manner. Whatever part of the oral testimony of witnesses or Panchas which are consistent to the prosecution case must be taken into consideration as a best piece of evidence. There is no straight jacket or iron jacket formula for the appreciation of evidence in criminal case according to criminal jurisprudence and every deposition of each witness must be read as a whole and minutely. Pick and choose formula at the time of appreciation of evidence may be avoided. Examination-in-chief of each witness read with cross-examination, thereafter evaluate the oral testimony of witness.

30. The ring of truth is very important for the appreciation of evidence in criminal case. It is the duty of the court to find out truth from falsehood like to separate the chaff from the grains. Minor contradiction or minor omission cannot be taken into consideration for the best defense of accused. The exaggerated version can be discarded but when witness belongs to rural area especially they are rustic or weaker sections of the society so court cannot be expected from them to submit each and every facts of the case as photographic memory. Human mind is not DVD player, Video cassette player or tap recorder. The observations made by each witness are obviously distinct and different. Some witnesses in the present case belongs to weaker

sections of the society and also coming from Schedule Caste and when this case with regard to caste and community based therefore, the court has to see understanding and knowledge of witness. The crux of the matter are sufficient to submit while witness is stepping into the witness box. In the present case, approximate 94 witnesses have been examined by prosecution and some accused are under trial prisoners since long back. During the course of cross examination, tricky questions of with connection of legal device are asked by Ld. advocate for the accused but when rustic people give the answers at the time of recording of evidence can be considered as a crux of matter. Sometime detailed and lengthy cross-examination conducted by Ld. defence counsel to the illiterate, rustic or weaker sections of the society witnesses, so due care and caution are essential while appreciation of evidence in the case like Atrocity Act.

31. In the present case, homicidal death of the deceased was happened when she was going to attend a date before the Hon'ble Gujarat High Court and the District Court, Mirzapur and when she was returning back from the Hon'ble Gujarat High Court to her home on the way, unfortunate incident happened and homicidal death of deceased which amounts to murder was occurred and when Rs.50,000/- in the purse, ATM card, necklace, case papers of Vijay Amrabhai Chavda's murder case and other documents were looted from the deceased. According to prosecution story, by forcible act, the accused of Vijay murder case along with accused of present case abducted/kidnapped, did the act of homicidal death which

amounts to murder, disappeared the evidence and also destroyed the evidences connected to crime and thrown the dead body of deceased. So, according to prosecution story, act done by accused are serious and heinous crime and Pravinaben became the victim of brutal murder and said deceased was the witness of Vijay Amrabhai Chavda's murder case and all the accused of Vijay murder case adopted pressure tactics and accused compelled Pravinaben to enter into the amicable settlement as compromise but Pravinaben was not ready and willing to enter into the compromise, so the accused committed aforesaid crime.

32. 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.

33. Considering the above ratio, whatever contention during the course of cross-examination are unchallenged and not properly cross-examined by the defence adverse inference may be drawn but entire deposition of witness must be read as a whole not in piecemeal manner and no pick and chose formula would be adopted and for strict proof or ring of truth, Court has to find out truth from the falsehood.
34. In the present case, incident occurred on dated 27.02.2015 and incident of death of Pravinaben was happened and accused abducted/kidnapped and strangled the neck of deceased-Pravinaben, committed the serious and heinous crime of homicidal death which amounts to murder and dead body was thrown near patiya of Rohika village, infront of road divider to show falsely that death established was not murder but accident.
35. Tata 1612 truck registration No.GJ-7-X-8999 has been driven by one accused-Kandhal @ Kandho Hajabhai Kadchha(Mer). On perusal the contract of sell as to aforestated registration number truck deed executed on dated 22.11.2014 by way of notarized document subsequently, the truck has been purchased by Kandhalbhai Hajabhai Kadchha(accused) from Keshubhai Tidabhai Kadchha on dated 29.01.2015. When incident of homicidal death of deceased Pravinaben took place on dated 27.02.2015, accused-Kandhalbhai Hajabhai Kadchha has purchased the truck before 29 days so, accused Kandhalbhai Hajbhai Kadchha has purchased truck from Keshubbhai

Tedabhai Kadchha. When Keshubhai turned hostile during the course of recording of evidence but his signature in the deed vide Exh.349 & 350 are identified.

36. Section 91 & 92 of the Indian Evidence Act are very clear that any documents submitted during the course of deposition and when PW61-Keshubhai Tidabhai Kadchha has refused that the truck is not his ownership vehicle but documents itself denoted that the owner of the truck in the beginning PW61-Keshubhai Tidabhai Kadchha and after that Kandhalbhai Hajbhai Kadchha became the owner of the truck. The cross-examination of the PW61 has been conducted by the Ld. advocate for the accused but Ld. advocate for the defence unchallenged the facts of the ownership of Keshubhai Tidabhai Kadchha and later on ownership of truck got by accused-Kandhalbhai Hajabhai Kadchha by way of deed so, mere hostileness during the course of oral testimony, when PW61 was stepping into the witness box are not taken into consideration as weak evidence and both the deed vide Exh.349 and Exh.350 are supported to the facts of the ownership of truck by accused-Kandhalbhai Hajabhai Kadchha.
37. Exh.335 is the receipt of J.P. Angadiya, Junagadh and Rs.2,99,400/- were received by Bharatbhai and sender was Rushabhbhai. However, ofcourse, Bharatbhai has not supported that Rs.2,99,400/- was not sent and they turned hostile but documents vide Exh.335 are very clear and the facts of the Angadiya receipt(courier receipt) documents have been proved by prosecution beyond reasonable doubt.

38. Exh.337 is the original receipt sum of Rs.49,950/-, it is received by Keshubhai and Rs.49,950/- had sent by Kandhalbhai Kadchha(accused) and mobile number in the said receipt has been mentioned as 9904154360 and the sending money of Rs.49,950/- also proved by prosecution with documents and during the course of cross-examination of Keshubhai facts are unchallenged as to Rs.49,950/- was received by accused-Kandhalbhai Hajabhai Kadchha.
39. Exh.496 r/w Exh.497, the extract of Angadiya firm alongwith receipt and the documents itself proved that Bharatbhai belongs to Junagadh Rs.2,99,400/- has mentioned hereinabove facts are proved with clinching and cogent documentary evidence.
40. Exh.494 is the letter sent by Secretary Mr. A.P. Joseph, the Hon'ble High Court of Gujarat to the Deputy Superintendent of Police dated 19th March, 2015 and alongwith visitor Management System has been adduced by prosecution till date 11.12.2014 and deceased Pravinaben was visiting the Hon'ble High Court of Gujarat and in some adjournment dates i.e. approximate 11 adjournment dates, witness of Vijaybhai murder's case Ghanshyambhai Rathod was alongwith the Pravinaben so, it is obvious that Pravinaben was the regular visitor to attend the adjournment date at the Hon'ble High Court of Gujarat. However, ofcourse, the CCTV were not installed in the premise of the Hon'ble High Court and CCTV installation was under process and actual CCTV installation process will take sometime and become functional after one year so, CCTV footage was not obtained by the Investigating Officer but

Visitor Management System documents have been obtained by the Investigating Officer and it is submitted before this Court so, deceased-Pravinaben was frequently used to visit the Hon'ble High Court of Gujarat for her concern.

41. Exh.495 is the Idea company summary sheet before purchasing the cellphone SIM card and customer name is Dinesh Khimo Solanki and cellphone registration No.9723396760 and 9723394656 and Balaji Enterprise, idea distributor has submitted the said documents.
42. DNA examination report opined as to result of analysis that few blackish hair stated as sample found from Zen Car GJ-5-CA-1758 which was forwarded for examination to Junagadh FSL and Scientific Officer DNA Division has obtained DNA profile from Exh.1 to 3 (source of zen car) is preserved in laboratory for future DNA comparison result(s) related only to the exhibit(s) tested to one – to the as decided) and the said car having peacock feather zen Maruti car and biology scientific examination report and human hair and toothpick found in the car and it is denoted by Assistant Director and Assistant Chemical Analyzer, Junagadh that in Car near the seat of driver and rear seat of the car, black colour long hairs found on the floor of the car and one toothpick was found.
43. 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.

44. Considering the above ratio, by & large, most of the witnesses turned hostile and not supported the prosecution story and after declared hostile, Ld. AGP has conducted the cross-examination but any reliable evidences were not submitted by all the hostile witnesses and therefore, it is very difficult for prosecution to prove the chain of events of circumstances and when witnesses have not supported the chain of circumstantial evidence, therefore, Court cannot be relied upon those documents as a

clinging and cogent evidence.

45. According to the demonstration Panchnama under section 27 of the Indian Evidence Act vide Exh.113, it is evident that two accused when they were in the police custody had confessed that deceased-Pravinaben was sitting in his car and in which place the homicidal death which amounts to murder of Pravinaben was committed, and what they had done are the main theme of the demonstration Panchnama. In the presence of Panchas, investigating officer Dy. S.P., R. D. Baranda has asked the name of the accused (1) Kuldip @ Lalo Danubhai @ Mafabhai Parmar, and according to say of accused Kuldip Bharwad, during the course of demonstration Panchnama on dated 27.02.2015 in the evening approximate 8:00pm, accused Bhimabhai Haribhai Bharwad returned back from Mirzapur court to attend adjournment date by swift car and deceased Pravinaben got down from auto rickshaw, accused Kuldip was driving swift car and on the rear seat of car Bhimabhai Haribhai was sitting. Pravinaben raised hand, accused stopped swift car and due to swine flu pandemic accused Kuldip wrapped handkerchief on his mouth and deceased Pravinaben told to reach at Bagodara and Pravinaben was sitting near the driver seat, at that time, Bhima Haribhai strangulated Pravinaben by Lungi and Pravinaben asked "what are you doing?". In the reply, accused told that, you are filing false cases against them and today they will kill her. In the reply, Pravinaben told that hereinafter she would not do the same. The accused intimidated her to sit in the car and deceased Pravinaben sat in the car.

Bhimabhai strangled neck of deceased Pravinaben and pulled Lungi and both the accused strangled deceased Pravinaben by Lungi. Thereafter, dead body of Pravinaben was thrown near the divider of the three roads, Rohika village as to show the homicidal death of deceased Pravinaben as an accidental death as pretending.

46. Demonstration Panchnama is not a conclusive proof or strict proof and during the course of Demonstration Panchnama whichever facts have been confessed by both the accused are not taken into consideration as a cogent evidence for prosecution case, and when both the accused were in the judicial custody and confessed about the occurrence can not be taken into consideration as to chain of the events of the circumstances and both the accused from judicial custody to transfer the police custody for police investigation/interrogation, so every confession in the police custody under section 25 of the Indian Evidence Act are not relevant but as far as the venue of crime are concerned, it is looked into the corroborative piece of evidence, and any police official cannot be compelled accused while he/she was in police custody to confess with regards to the occurrence. The Demonstration Panchnama read with the Panchnama as to scene of crime can be helpful for the real picture of scene of crime as corroborative evidence.
47. It is undisputed and unchallenged by the Ld. Advocate for the accused that on 27.02.2015, adjournment date was fixed at Mirzapur Court, Ahmedabad (rural). It is also undisputed fact that six Bharwad accused and accused Vijay Deva Parmar (Mer)

were released on temporary bail and eventually all the six accused of Vijay Deva Parmar (Mer) murder case surrendered after temporary bail period over and Vijay Deva Parmar (Mer) was enlarged on regular bail.

48. Accused-Kandhal @ Kandho had purchased the truck and as discussed hereinabove, Kandhal @ Kandho was the subsequent purchaser of the truck bearing registration No. GJ-7X-8199 and documents as to truck purchase loan was sanctioned by Maruti Zen car bearing No.GJ-5-CA-1758, the accused Kuldip @ Lalo and accused Vijay Deva Parmar (Mer) brought deceased-Pravinaben in the Zen Car at Sarkhej and eventually dropped her at Ujala Circle, Sarkhej and all the accused told deceased Pravinaben to return back at Loliya by Maruti Zen car.
49. PW41-Ashokkumar Fatesinh Damor has deposed vide Exh.228 that on dated 27.02.2015 at 9:00am at Shahibaug Headquarter, company No.4 his duty has been deployed by constable Rakeshsingh and conveyed that “you have to discharge your duty as UTP presence before the Court”. Thereafter, Yadi of the UTP was received and instructed to attend 6th ADJ Court, Mirzapur along with UTP. PW-41 along with (1) B. B. Kodyatar, Vejalpur Police Station (2) APC Kiranbhai Balabhai (3) Indrajitsinh Vijaysinh (4) ALR Kamaljitsing Mahendrasing (5) Kiransing Ramtusing (6) ASI Manubhai, all those persons along with PW-41 had checked namewise by PSI and by Mini Government Bus departed from Sabarmati Central Jail at 10:30 and near the door of Ranip police line and all the UTP were kept there. Government Mini Bus stopped and approximate

11:15am, accused (1) Rameshbhai Motibhai (2) Kalubhai Ranchhodbhai (3) Jigneshbhai Raghubhai and (4) Mafabhai Danubhai were handed over as a custody of UTP and all those accused were taken at 6th ADJ Court, Mizapur, after adjournment of date, custody of all the accused were handed over to Sabarmati Central Jail. PW-41 has refused to identify all those persons appeared before the court during the course of trial.

50. The deposition of above PW-41 has stated that four accused were present at the 6th ADJ Court, Mirzapur on dated 27.02.2015 but mere presence of all those accused are not sufficient and PW41 has not stated any words about the attendance of Pravinaben in the open court.
51. Likewise, PW40-Manubhai Shankarbhai Solanki who is the member of the team along with PW41 has deposed vide Exh.227 and PW40 has categorically stated that no officer has shown the photographs of any persons of female and no statement were read by him on different dates recording of statements. PW40 had not seen any person along with accused talked with Pravinaben, so he has not supported the prosecution story.
52. PW44-Ashoksinh Ranjitsinh Jadeja has deposed vide Exh.245 that on dated 09.03.2015, he had performed his duty as a driver of the Swift Car bearing registration No.GJ-18-BC-4291 at the time of reconstruction of the scene of crime in presence of Panch witness, FSL officials and he has driven the vehicle from Police Bhavan to Mirzapur Court, Lucky Hotel, Nehru Bridge,

Juhapura, Sarkhej, Ujala Hotel, Bavla, Bagodra to house of accused till 17:30 hours and with this regard, his statement was recorded. The detailed cross-examination of the PW44 has been conducted by the Ld. advocates for the defence but nothing fruitful information revealed.

53. Similarly, PW47-Rakeshwariben Rajaram Yadav, ASI, has deposed vide Exh.262 that in the year-2015, she was discharging her duty as WHC in CID Crime Ahmedabad Rural Unit and presently she is discharging her duty as same. She has further deposed that since long passage of time, she doesn't remember the exact date but in the year-2015, as per the direction of higher officer, she was present in the Mirzapur Court compound and other Higher Police Officers, Dy.S.P. and Officers of CID Cell were present. She has departed towards Sarkhej from the Mirzapur Court alongwith her Officers in their vehicle. Thereafter, the vehicle was stopped at Bavla-Sanand crossing and as per instruction of her Officers, she get down from the vehicle and given direction to stop the vehicles, thereafter, she sit in the front seat of the vehicle and videography was conducted, thereafter, she departed towards Bagodara road with her officers in the vehicle. Thereafter, as per the incident happened with the victim, the scene of crime was reconstructed and videography of each and every moment was conducted. So, reconstruction panchnama was drawn and her statement was recorded. PW47 has declined to identify the accused and she further deposed that the persons present in the Court and shown through zoom application on video

conferencing, they were not present at the time of reconstruction of scene of crime.

54. PW65-Dr. Nishith Kantilal Chaudhari who is the expert doctor has deposed vide Exh.367 that on dated 28/02/2015, he was discharging his duty at Asarwa Civil Hospital, Ahmedabad in forensic medical department. Meanwhile, one dead body was brought before him with police yadi for performing postmortem and the said dead body was of deceased Pravinaben Amrabhai Chavda. Thereafter, PW65 along with panel doctors accompanied with him have performed the postmortem. Police Yadi vide Exh. 368, Inquest Panchnama vide Exh.99, Post death form vide Exh.369 were referred and the dead body was received by expert doctor by 9:30am and postmortem was started to perform at 9:40 and completed at 1:00pm on dated 28/02/2015. The clothes worn by deceased Pravinaben were described in the PM Note. PW65 has stated the external examination and it's injuries and mainly injuries ligature mark description. Ligature marks 37cm extended around the neck and two sides of the neck ligature mark found permanent, rear side it is found blur and mainly the injuries denoted by PW65 in its postmortem report under column 17 and injuries Nos.1 to 5 and injury No.1 denoted in column number 20 are anti-mortem injuries and injuries Nos.6 to 9 in column number 17 and injury No.2 in column No.20 are post death injuries. Column Nos.22 and 23 are the post death injuries and injuries mentioned in column No.23 are anti-mortem injuries. During the course of performing postmortem, collected the viscera of dead body, it

stored, sealed and labelled and sent for chemical analysis. PI Sodha, Ahmedabad Rural along with forwarding letter vide Exh.370 and after performing postmortem the cause of death is asphyxia due to ligature strangulation and PW65 has categorical stated that cause of death was antemortem injuries and according to column No.17, Sub-column No.4 injuries mentioned in the PM Note are sufficient to cause the death, and in column No.17, Sub-column No. 6 to 9 whatever injuries mentioned are post death injuries and said injuries may be happened by the friction of hard and blunt substance and also happened by crush.

55. Basic rules for preservation of medico legal evidence – for evidence to be legally accepted by courts;
1. It must be obtained in a legal manner.
 2. It must be relevant to the issue.
 3. The chain of custody of the item must be intact
 4. It must be evaluated by qualified experts, experts may give opinions on the following :-
 1. question of science, skill or trade or other subjects
 2. when subject matter of inquiry is of such nature that unexperienced persons are not likely to form a correct judgment over it without assistance.
56. When the subject matter of investigation so far as it partakes the nature of science as to mean courts of previous habit or status in the attainment of knowledge of it.
57. The general rule is that when medical certificate is issued by doctor, it cannot be relied upon unless the doctor is examined.

58. 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.
59. 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.
60. Mere postmortem evidence are not sufficient to prove the chain of events of circumstances. The cause of death is ligature strangulation but events of circumstances, mere evidence of

expert who conducted the postmortem are only not sufficient. However, strangulation happened but by whom strangulated deceased Pravinaben is the matter of events of circumstances and chain of circumstantial evidence. This court cannot be solely relied upon postmortem report to decide the role played by accused for the commission of homicidal death which amounts to murder and it is the duty of the prosecution to prove that which person/persons strangulated Pravinaben as to prove beyond reasonable doubt and it is only proved by the chain of circumstantial evidence without missing gap and missing link.

61. PW69-Bharatbhai Bhikhubhai Kodyatar has deposed vide Exh.386 that on dated 26/02/2015 when he was at Vejalpur police station, at the time for deploying duty to police constable, account writer head informed him that on dated 27/02/2015 at 9:00am, Shahibaug headquarter for UTP, to submit report before PSI, headquarter, Ahmedabad City. In pursuant to said Vardhi, PW69 reached at Shahibaug headquarter between 8:30 to 8:45am, office situated outside the canteen of headquarter and given instruction to attend at 6th ADJ Court, Mirzapur, UTP and list of police official who accompanied with him, had handed over and as mentioned here in above PW69 along with six persons' list had given and PW69 has stated that, custody of four accused was handed over and in the Government vehicle, all the UTP police officials parties reached at Mirzapur Sessions Court and after adjournment date fixed by court, custody of the accused were handed over and thereafter by Government vehicle, all those accused were sent

to Sabarmati Central Jail. PW69 has no knowledge that complainant Pravinaben of Vijay murder case was whether coming out from court or not? and PW69 has no knowledge about meeting of Pravinaben. The photographs of Pravinaben were shown by Ld. AGP to PW69 when he was stepping into the witness box but he could not identify Pravinaben.

62. 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.

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
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	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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63. 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'.
64. Further statement U/s 313 of Cr.P.C. is valuable right of the accused and accused has to explain each and every facts against them when events of circumstances are not proved by prosecution beyond reasonable doubt, therefore, section 313 of Cr.P.C. are helpful to accused to prove their defence.
65. Likewise, PW70-Kiranbhai Balabhai Rathod has deposed vide Exh.387 that on dated 27/02/2015 at 9:00 AM at shahibaug headquarter, duty deployed constable Prabhatsing informed that along with UTP police official to attend at 6th ADJ Court, Mirzapur, he is one of the police official member and as per oral testimony of PW70 whatever facts narrated by the other members of UTP party are mentioned the same facts has been stated by PW70 and to avoid the reputation, the detailed discussion of stereotype oral testimony has not been reproduced here and PW70 has categorically stated that the complainant of the first CR No.6/2015 namely Pravinaben was whether come out from the court or not? He doesn't know, only attending adjournment date on 27/02/2015 are mentioned by PW70.

66. PW75-Dashrathbhai Bhagwanbhai Makwana has deposed vide Exh.438 that in the year-2015 he was discharging his duty as Head Constable at Bagodara police station and on dated 28.02.2015, he was in-charge of PSO, meanwhile, PSI S.B. Chaudhary has provided information and in pursuant to that, PW75 has made the accidental death entry No.2/2015 and all the affiliated facts were noted in the register and instructed PSI to make necessary arrangements to call FSL officer at the scene crime and FTP form vide Exh.439 has been filled up and thereafter, accidental death complaint was sent to PSI S.B. Chaudhary for investigation.
67. Except aforestated witness examined by prosecution, the following witnesses have not supported the prosecution case and statement of the said witnesses are absolutely inconsistent and contrary to their respective police statement recorded by the investigating officer during the course of police investigation, and it is shocking that, Ld. AGP was permitted to conduct the cross-examination of said witnesses but after turning hostile of all those witnesses, they have not supported the prosecution story and their version are not only inconsistent but contradictory in nature and actual facts of the incident took place are not submitted when all those witnesses were stepping into the witness box, and eventually turned hostile. The name of hostile witnesses are as under;

Table 1:

Rank	Name	Exh.
PW 33	Rajeshbhai Kanubhai Parmar along with cross-	195

	examination.	
PW 34	Ashishkumar Vashrambhai Jograjiya(Ko. Patel) along with cross-examination.	196
PW 36	Bhikhabhai Haribhai Boliya (Bharwad) along with cross-examination.	208
PW 37	Sohansing Hajarising Rajput (Rawat) along with cross-examination.	209
PW 38	Nizamuddin Nurmahamad Tharadara along with cross-examination.	210
PW 39	Pravinbhai Savajibhai Dabhi along with cross-examination.	215
PW 42	Pinak Arunbhai Joshi along with cross-examination.	233
PW 43	Raghubhai Haribhai Boliya (Bharwad) along with cross-examination.	240
PW 45	Ramakant Ramadhar Rajput along with cross-examination.	250
PW 46	Bharatbhai Hajabhai Kadachha along with cross-examination.	251
PW 48	Ahesanali Habibbhai Sunasara along with cross-examination.	273
PW 49	Kasamali Mahamad Seliya along with cross-examination.	274
PW 50	Ranabhai Ratnabhai Sabhad (Bharwad) along with cross-examination.	279
PW 51	Chandrakantbhai Punambhai Thakor along with cross-examination.	293
PW 53	Pravinbhai Ambalal Jaysval along with cross-examination.	299
PW 54	Rushabhbbhai Manojbhai Sanghavi along with cross-examination.	312
PW 56	Vitthalbhai Jakabhai Algotar (Bharwad) along with cross-examination.	327
PW 57	Lalchand Bhojraj Gyani along with cross-examination.	334
PW 58	Sanjaybhai Chandrakantbhai Luvana along with cross-examination.	336
PW 59	Viralbhai Hasmukhbhai Gandhi(Jain) along with cross-examination.	338
PW 60	Bharatbhai Dhirajlal Dave along with cross-examination.	339
PW 61	Keshubhai Tidabhai Kadachha (Mer) along with cross-	348

	examination.	
PW 62	Tarun Kishorbhai Narvani along with cross-examination.	351
PW 63	Jaydipkumar Ajaybhai Barot (Bhrahmbhatt) along with cross-examination.	352
PW 64	Rameshbhai Harjibhai Rathod (Ko. Patel) along with cross-examination.	359
PW 67	Vaghabhai Balabhai Dangar (Bharwad) along with cross-examination.	379
PW 68	Dipubhai Devabhai Parmar along with cross-examination.	380
PW 71	Chiragbhai Haribhai Bhut along with cross-examination.	401
PW 72	Niravbhai Lalitbhai Maradiya along with cross-examination.	408
PW 73	Jayantibhai Harjibhai Rathod (Ko. Patel) along with cross-examination.	409
PW 74	Kankuben Amarabhai Bhalabhai Chavda along with cross-examination.	419
PW 76	Charmiben Rutvinbhai Vaja along with cross-examination.	444
PW 77	Merubhai Parbatbhai Parmar along with cross-examination.	445
PW 78	Jagdishbhai Mayachand Lathiya along with cross-examination.	446
PW 79	Tushar Babubhai Solanki along with cross-examination.	447
PW 84	Rameshbhai Gordhanbhai Vasoya along with cross-examination.	532
PW 85	Hamirbhai Ukabhai Nandaniya along with cross-examination.	537
PW 87	Iqbalbhai Harunbhai Mogal along with cross-examination.	533
PW 89	Virambhai Maljibhai Rabari along with cross-examination.	529
PW 90	Deviben Arshibhai Bhojabhai Odedara along with cross-examination.	555

68. All those witnesses who are mentioned in the **Table 1** have not supported the prosecution story and they turned hostile while they were stepping into the witness box. The detailed cross-

examination of those witnesses have been conducted by the Ld. AGP for the prosecution but nothing fruitful information revealed.

69. Present case is absolutely based on the circumstantial evidence as discussed here in above, therefore it is the duty and obligation on the part of the prosecution to prove its case beyond reasonable doubt with the aid of chain of circumstances. If any missing link or missing gap found in the evidences adduced by prosecution, the court cannot be imposed conviction on accused. While evaluating the evidence with regards to the circumstantial evidence or events of circumstances, court cannot be relied upon the surmises and conjectures. No assumption or presumption can be made against accused. Consideration of circumstantial evidence, emphasizing that such evidence must be meticulously examined and form a complete chain of circumstances that strongly points to the guilt of the accused. The court's approach ensures that the only reasonable inference from the evidence is the guilt of the accused and that the circumstances are firmly established.
70. It is essential for prosecution to prove the following chain as to events and circumstances beyond reasonable doubt.
- (1) Deceased Pravinaben was the complainant of C.R. No.I-44/2013 (Vijay Murder case)
 - (2) All the six accused of the above mentioned case were in the judicial custody at Sabarmati Central jail.
 - (3) Accused pressurized the deceased-Pravinaben to enter

into compromise/amicable settlement in the said case. There is no evidence has been adduced by the prosecution about the compelling of compromise/amicable settlement in the Vijay's murder case and mere facts or allegation without clinching and cogent evidence of proof, it cannot be said to be proved facts and motive of the said events is not proved and it is missing link.

- (4) Deceased-Pravinaben had lodged complaint and submitted application as to the same before Koth Police station.
- (5) When some accused enlarged on bail in the said offence, came to Loliya Village and intimidated deceased-Pravinaben and other witnesses of the aforestated criminal case(Vijay murder case).

71. The 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.*

72. In so far as components with regards to the homicidal death which amounts to murder are concerned, it is the duty of the prosecution to prove 1. Preparation, 2. Intention, 3. Motive, and 4. Commission of crime, prosecution has not succeeded to adduce the evidence as to motive behind the crime and it is obvious that deceased-Pravinaben was the complainant and star material witness of Vijay's murder case and all the accused of Vijay murder case were pressurizing Pravinaben to enter into the compromise and amicable settlement but compromise proposal had been refused by the deceased-Pravinaben, thereafter, occurrence of present case is come into play. Motive of all those accused are not proved to commit the offence of homicidal death which amounts to murder of deceased-Pravinaben by hook or crook, all the accused of Vijay murder case were attempting to fatal the prosecution case, but motive of Vijay's murder case accused are not proved by prosecution all those accused of Vijay's murder case hired contract killer and also taken the help of other accused and committed the present crime but merely motive is not sufficient, chain of events of circumstances are not proven is very material and last seen together theory are utmost important. The investigation officer has collected the numerous evidences at the time of submitting

charge-sheet but some scientific evidences are not supported the prosecution case. However, ofcourse, investigation officer has taken kin interest and made best endeavors to collect the creditworthy/trustworthy evidence but scientific evidence is not absolutely supported the prosecution case and last seen together theory are absolutely missing in the present case and in the absence of the chain of circumstantial evidence, accused are entitled to get the benfit of doubt. Unfortunately, deceased-Pravinaben succumbed to strangulation injuries and mere hair of Pravinaben found in the Zen car but only recovery of hair on the seat of Zen car and DNA report opined that the said hair was of deceased-Pravinaben but it is not sufficient cogent and clinching evidence to prove the chain of events of circumstances and solely motive is not sufficient to prove the case beyond reasonable doubt.

73. There was an adjournment fixed on dated 27.02.2015 for the Vijay's murder case. Accused-Vijay Devabhai Parmar(Mer) called accused-Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) at Loliya village by contacting him on cellphone. Accused Vijay Devabhai Mer was present along with his Maruti Zen Car bearing registration No. GJ-5-CA-1758 and deceased Pravinaben came at Loliya Village bus station and deceased Pravinaben raised her hand and stopped the Zen car for lift. Accused-Vijay Mer maintained fiduciary relations with Pravinaben and told deceased-Pravinaben that "if you want to come and return back at Loliya village after attending adjournment date, accused Vijay Mer will wait". Accused was

attending for the adjournment date at Mirzapur court along with other persons. They had intimidated deceased-Pravinaben to kidnap and kill her. During the course of whole day on dated 27th February 2015, accused Vijay Mer was wandering near Ujala circle area. In the evening, Bharwad accused were sat near the Zen car of accused Vijay Mer in scattered position. Accused-Kuldeep @ Lalo told Vijay and asked him to give a miss call if Pravinaben sits in his car. Deceased-Pravinaben was coming from Sarkhej as a pedestrian between 19:40 hours to 19:50 hours. Accused-Vijay Mer had then given lift to deceased-Pravinaben in his Zen car and gave a missed call to accused-Kuldeep @ Lala and informed him that deceased Pravinaben has sat on his car. Accused-Kuldeep @ Lalo, accused-Bhimabhai Haribhai, accused-Raghubhai Haribhai and accused-Tapubhai Chhotiya(Bharwad) were in their Swift car bearing reg. No.GJ-1-KC-8182, went ahead from the Zen car and stood on the highway at some distance away from Bavla. At that time, accused-Vijay Mer stopped the Zen car and accused-Kuldeep @ Lalo, accused-Bhimabhai Haribhai and accused-Raghubhai Haribhai all had then sat in the zen car. Thereafter, deceased-Pravinaben raised shout and accused-Bhimabhai Bharwad strangulated the neck of Pravinaben by his lungi and deceased Pravinaben struggled to save her life and objected the act of accused-Bhimabhai Bharwad, accused-Bhimabhai Bharwad and accused-Raghubhai both strangulated the neck of deceased by two different sides of lungi. Meanwhile, accused Kuldeep @ Lalo had given punch blow on the chest and head of deceased-Pravinaben and caused grievous injury. Thereafter,

accused attempted to show the homicidal death of Pravinaben to convert as accidental death and for that they pulled the dead body of deceased Pravinaben from the car and thrown on the road. At that time accused-Vijay Mer had followed them by driving truck and turned out the truck near the dead body of deceased-Pravinaben. Accused-Vijay Mer parked his truck on idle position with head lights on and accused-Vijay Mer got down from the truck and reached at Tarapur highway road. Accused-Vijay Mer raised his hand, stopped a Tata Magic vehicle, talked with driver and reached at Limbdi village. Meanwhile, accused-Kandho came by driving Zen car near Limbdi village road and accused-Vijay Mer drove the car and both accused-Vijay Mer and Kandho both went to Junagarh. Accused-Vijay Mer demanded the outstanding due amount for contract killing and in pursuant to that, accused-Vijay Mer visited Central jail and met accused-Bhimabhai and accused-Kuldeep @ Lala. Meanwhile, accused-Kuldeep has provided his relative Ranabhai Ratnabhai's cellphone number and instructed to talk with him. Accused-Vijay and his friends came at village Chandreliya at the house of Ranabhai Ratnabhai where accused Raghubhai and Tapubhai were also reached and paid Rs.2,00,000/- (Rupees Two Lakhs only) to Vijay Mer. After that through courier mode, Rs.3,00,000/- (Three Lakhs only) was sent to accused Bharatbhai at the Manavadar village.

74. The motive of the accused and last seen together theory are required to be considered. If the case based on events of circumstances/circumstantial evidence, then it is the duty of the

prosecution to prove the chain of events of circumstances without missing gap and missing link. In the present case, no person had seen Pravinaben(deceased) reached at Ujala circle from Mirzapur Court after attending adjournment dates. Sarkhej Highway road is the public place and usually so many persons and vehicles can be seen passing through the area. Deceased-Pravinaben came at Ujala circle as a pedestrian but no CCTV footage has been collected by the investigating officer during the course of police investigation. However, ofcourse, each and every case of circumstantial evidences, last seen together theory are not considered as a conclusive proof or strict proof. Being a ring of truth and chain of events of circumstances, last seen together theory are very material. According to director of Forensic Science, Gandhinagar, DNA Forensic report, it evidents that autosomal DNA profiles of Exh. C-2/ under garment (Source of died victim lady) and Exh. 1 and 2 Hair (Source of Zen car) GJ-05-CA-1758 (Connected with case number DFSEE2015DNA192) indicates that both the exhibits are from the same family origin. Expert opinion of forensic science laboratory with regards to DNA scientific examination are supporting the facts of deceased's hairs collected from the Zen car. When hair of deceased found in the Zen car, expert opinion is the corroborative piece of evidence and solely expert evidence of FSL as to scientific examination are not sufficient to prove the chain as to events of circumstances. It is necessary for prosecution to adduce clinching and cogent evidence about deceased Pravinaben along with accused and other co accused were met deceased Pravinaben at Mirzapur court.

75. According to prosecution story, accused and other co-accused intimidated deceased-Pravinaben to kidnap and kill her while she was at Mirzapur court. But when deceased Pravinaben had left the court and reached at Sarkhej highway and thereafter reached at Ujala circle and sat in the Zen car of accused Vijay Mer, then Investigating officer has not collected any evidences with regards to the accused persons meeting with deceased-Pravinaben at Mirzapur Court and subsequent events. No statement of any reliable or reasonable person of Mirzapur court has been recorded by investigating officer during the course of police investigation. No CCTV footage has been recovered by investigating officer as to meeting between deceased-Pravinaben and accused at Mirzapur court. For the purpose of security so many police personnel gets deployed at Court premises. But deceased-Pravinaben had not complained to any police officials. Not only that deceased-Pravinaben has not lodged any complaint or submitted any application before Mirzapur court also where trial was conducted. When accused intimidated deceased-Pravinaben to kidnap and kill then it cannot be seen as a trivial matter but it is serious event. The deceased-Pravinaben was well conversant with the fact that accused intimidated her but as per prosecution story, deceased-Pravinaben sat in the Zen car of accused. Incident of strangulation happened ahead to Bavla highway and accused Vijay Mer stopped the Zen car and accused-Kuldeep @ Lala, accused-Bhimabhai Haribhai and accused-Raghubhai Haribhai who are the accused No.1, accused No.2 and accused No.5 of the Vijay murder case opened the door of the car and sat in the

Zen car. Deceased-Pravinaben was complainant of the Vijay's murder case. When three accused mentioned herein above opened the door of Zen car sat in the Zen car and accused-Vijay Mer was also a driver in the car then Police officials had not collected any CCTV footage of the place where Zen car stopped and further entry of accused-Raghubhai, accused-Bhimabhai and accused-Kuldeep into the Zen car and sat in the Zen car. However, deceased-Pravinaben has not raised any shouts when all those three accused had sat in the Zen car. All those three accused by their Swift car GJ-1-KC-8182 reached ahead of Bavla highway and stood there. But investigating officer has not recorded any statement of the witnesses of the surrounding area where all three accused were waiting for the Zen car to come. It is the duty casted upon the prosecution to prove the chain of events of circumstances as to all the three accused were waiting some distance to Bavla village and dead body of deceased-Pravinaben pulled by accused from the Zen car and thrown on the highway. It is the duty of the prosecution to prove beyond reasonable doubt that all the three accused had sat in the Zen car from some distance to Bavla village on the highway but no iota of evidence has been adduced by prosecution as the three accused were accompanied with accused-Vijay Mer. In the postmortem report, it is opined by the panelist doctors that death of deceased happened due to strangulation. Investigating officer has recovered mobile numbers but location of the accused were not received by the investigating officer. Prosecution has to prove the last meeting between accused and deceased-Pravinaben at Mirzapur court on dated 27.02.2015 but no

evidence has been adduced about meeting between deceased and accused at Mirzapur court and it was first missing link.

76. After attending adjournment date at Mirzapur court, she reached at Ujala circle where accused Vijay Mer was waiting and gave lift to deceased-Pravinaben in the Zen car but regarding the meeting between accused-Vijay Mer and deceased-Pravinaben in the Zen car, no evidence has been adduced by the prosecution. Also, no person had seen accused-Vijay Mer and deceased-Pravinaben as a last seen together theory. So, it is the second missing link.
77. On the Bavla highway at some distance to highway, three accused were waiting for Zen car and thereafter all those three accused got down from the Swift car and sat in the Zen car but all those three accused accompanied to accused Vijay Mer and no person has seen them traveling or standing together and no CCTV footage of the highway road has been recovered. As far as evidence of chance print are concerned, FSL fingerprint Bureau Ahmedabad has opined that as per scientific examination as to silver colour swift car rear side RTO registration number GJ-01-KC-8182, Engine No.DBA1299832 and chassis No.MA03FKEMI500478312 and in-charge Senior Finger Print Expert FSL has opened that car to examine surrounding of the car, inside all parts of the car and above the car. On central mirror, one chance print has been developed by universal powder and after conducting scientific examination of chance print mark 'A' along with same size photograph's scrutiny, it was unclear due to lack of characteristics of

thread/fibres. The samples collected as to chance print were unfit. So, no evidence of any chance print with regards to (1) all those three accused had sat in the swift car after getting down from the car. (2) They were waiting and standing on the road (3) eventually all those three accused sat in the Zen car driven by accused Vijay Mer has been adduced by prosecution and prosecution has not succeeded to prove that all those three accused by swift car reached on the Bavla highway. It is also one missing link.

78. Physics department of FSL has conducted the scientific examination of one unsealed vehicle as parcel number 1, article No.1 Zen car like aqua and peacock feather colour old motor car with registration No.GJ-5-CA-1758 and tyres of the car as to sample were old tyres. The scientific officer-cum-assistant chemical analyzer has collected total 05 samples. Sample No.01 is the inside of Maruti Zen car examination but no substance found inside the Maruti Zen car and total 05 tyre prints with regards to survey tyres of Maruti Zen car scientific examination has been conducted in the microscope instrument as well as exterior vision examination. Due to insufficient and gloomy pattern of Maruti car tyres compared to Kurta worn by deceased, comparative scientific examination could not be conducted and looking to the tyre prints no comparison with the tyre mark were possible. So, in the Zen car no sum and substance found connected to crime and also not found any particles or evidence outside the car. No evidence as to tyre marks has been adduced by prosecution. So, all those evidence

are also a missing link to reach the conclusive events of circumstances. Accused-Vijay Mer had given lift to deceased-Pravinaben at Loliya village bus stand and dropped deceased Pravinaben at Ujala Circle. Apprx. 8-9 hours accused Vijay Mer along with his Zen car was waiting the surrounding area of Ujala Circle but no evidence has been collected by investigating officer about the Maruti Zen car which was running near Ujala circle is also a missing link. Investigation officer has not collected any clinching and cogent evidence about deceased-Pravinaben sat in the Zen car at Ujala circle.

79. To prove the last seen together theory, solely DNA profile report of the deceased's hair found in the Zen car are not sufficient because deceased-Pravinaben sat in the Zen car (1) In the morning-when she reached Ujala circle from Loliya village and (2) Deceased-Pravinaben was returning back to Loliya village from Ujala circle according to prosecution case. But hair fall may be happened at the time of reaching Ujala Circle from Loliya village or hair fall at the time of deceased-Pravinaben returned back on the way of Ujala circle to Loliya village. So, it is also a missing link. Two possible views come before court as to DNA report of hair of deceased collected by investigating officer.
80. Mere truck found near the side of road with head light on in idle condition is not a satisfactory/creditworthy evidence as to events of circumstances and it is also a missing link.
81. According to prosecution story, truck driver apprehended and turned out the truck, left the place and reached Tarapur highway

on the vehicle and eventually reached Junagadh. So, all those events are also connected to crime but mere ownership of the truck is not sufficient to prove the chain of the events of circumstances. Actual role played by the accused-Vijay Mer has not proved by prosecution as a link of events of circumstances. Prosecution has developed this case wherein on the one hand accused Vijay Mer was driving Zen car and on the other hand, it is submitted that Vijay Mer was driving truck eventually, he apprehended and left the place and has reached Tarapur highway and thereafter by vehicle reached Junagadh. So, role played by Vijay Mer is not proved by prosecution. It is also a missing link.

82. In the case on circumstantial evidence, motive behind the crime along with preparation, attempt, intention and commission of offence are very material. Not only that as discussed here in above, the chain of events of circumstances must be proved beyond reasonable doubt as clinching and cogent evidence. No presumption, assumption, surmise and conjuncture are taken into consideration for linking the evidence of events of circumstances. Motive is the important factor. But solely motive is not sufficient.
83. PW66-Harishbhai Amarabhai Chavda who is a retired ASI of the police department and brother of deceased-Pravinaben has deposed vide Exh.376 that on dated 27.02.2015, when he was discharging his duty between 17:00 hrs to 21:00hrs at Amrawadi police station, his sister deceased-Pravinaben went to Mirzapur Court at Ahmedabad to protest the bail application

submitted by the accused. On the same day, at 07:45 hours PW66 has called on the cellphone No.9904065950 of deceased-Pravinaben from his cellphone No.9173559117 but the cellphone was not picked up and has not replied. After some time, in-charge of 108 number ambulance called back on the cellphone of PW66 by cellphone of deceased-Pravinaben and inquired whose number was that. In the reply, PW66 told to in-charge of 108 ambulance that it is the cellphone number of his sister Pravinaben and asked about Pravinaben. In the reply, in-charge of 108 ambulance conveyed that the dead body of Pravinaben was lying near Rohika village Patiya. So, PW66 told 108 ambulance in-charge to inform police officials and he was on the way to the location and told them not to lift the dead body until he reaches there. After that PW66 went to Rohika village Patiya but dead body was not there and approximate 50 metres distance to Rohika village Patiya one truck No. GJ-7X-8999 was found parked in idle condition on the road. PW66 asked police officials about the dead body of deceased Pravinaben. In the reply, police officials told that dead body of deceased-Pravinaben was taken at Bagodara, CHC Center and lady PSI Mrs. Choudhari was present at the site. PW66 asked lady PSI Mrs. Choudhary about the cellphone of his sister. In the reply, Mrs. Choudahari told that the cellphone was kept in her custody for police investigation purpose and PW66 has demanded the relatives phone number from deceased Pravinaben's cell phone and the same has been provided. Meanwhile, PW66 was kept in dark and dead body of deceased Pravinaben had been brought at civil hospital, Ahmedabad for

performing postmortem. So, PW-66 reached at civil hospital Ahmedabad. On dated 01.03.2015, in the evening time, the case was sent to CID crime for police investigation. Thereafter, they accepted the dead body of Pravinaben. Due to night, the dead body was kept in the cold room and on dated 02.03.2015 got the custody of dead body and cremation rituals of deceased Pravinaben had been performed at Loliya village.

84. PW66-Harishbhai Chavda has further deposed that accused pressurized deceased-Pravinaben to enter into a compromise/amicable settlement as to murder case of the brother of PW66 namely Vijaybhai Amarabhai. In pursuant to that Pravinaben and Ganshyambhai Harjibhai submitted complaint as well as application before Koth police station and accused of murder of Vijay Amrabhai case along with relatives of accused assembled, conspired and under the guise of meeting of mind committed the illegal act of homicidal death of Pravinaben which amounts to murder. Complainant-Bipinbhai Ganpatbhai Solanki has lodged complaint before Bagodara police station and investigating officer has recorded the police statement. All the accused were identified by the PW66 during the course of trial. At the time of recording of evidence, only 02 persons accused Mafabhai Ranchhodbhai and accused-Kalubhai Ranchhodbhai were not present in the court.
85. The detailed cross-examination of PW66 has been conducted by Ld. Advocates for the defence and it is confessed by PW66 that police statement has been recorded on dated 06.03.2015. From 27.02.2015 to 06.03.2015 he had not gone to police station and

information received by him from 108 ambulance was not declared before investigating officer till dated 06.03.2015.

86. PW66 is the witness who stated that he called on deceased's cell phone at 07:45pm on dated 27.02.2015 but the phone was not picked up as no reply and after some time, in-charge of 108 ambulance called on cellphone of PW66. Therefore, it is the duty of the investigating officer to collect evidence between PW66 and deceased Pravinaben's cellphone as to missed call on cellphone. Police officials has used the cellphone of deceased-Pravinaben to get whereabouts of deceased's relatives. So, PW66 has limited knowledge and he has submitted the facts of pre-incident stage as well as amicable settlement of Vijay murder case. So, PW66 has attempted to mention the motive but mere motive is not sufficient.
87. PW51-Chandrakantbhai Punambhai Thakor has deposed vide Exh.293 that he is discharging his duty on 108 ambulance service, Government of Gujarat and on the day of occurrence, he was discharging his duty as an emergency medical technician (EMT) and the pilot of 108 ambulance was Premjibhai Naranbhai Parmar and on dated 27.02.2015, PW51 alongwith Premjibhai Parmar were on duty. Meanwhile, at 20:30Hrs. he got the information on the company's cellphone that one accident took place near Rohika village Patiya, Ahmedabad-Bagodara highway and instructed to reach there. Immediately, they both reached on the scene of crime and on the highway they found one female was lying. PW51 got down from the ambulance and checked the pulse of deceased. But it was

observed that the pulse stopped. So, PW51 has informed expert doctor of control room. Thereafter, PW51 has informed police officials. PW51 turned hostile and he has not stated the facts about the cellphone which was lying near the dead body. So said witness had handed over the cellphone to the police officials. Despite, no words as to handing over of cellphone to the police officials has been stated. Prosecution has proved the dead body was lying on the road and 108 ambulance witness has supported the facts in limited lines.

88. Similarly, PW52-Premjibhai Narabhai Parmar has deposed vide Exh.294 that he is discharging his duty in 108 ambulance service, Government of Gujarat as Pilot and Chandrakantbhai Punambhai Thakor was discharging his duty as an emergency medical technician (EMT) in the 108 number ambulance. PW52 has further deposed that on the day of occurrence i.e. on dated 27.02.2015, while he and Chandrakantbhai Punambhai Thakor were on duty, at about 20:27pm, one message was received about accident of one lady near Rohika village Patiya, Ahmedabad-Bagodara highway and therefore, they have reached at the said place of incident and Chandrakant has talked on cellphone and he has inquired that, one dead body of one lady is lying near Rohika village Patiya, Ahmedabad-Bagodara highway and what is relation between you and the said lady? in the reply, don't drag/move the body of lady, he is coming. Thereafter, as it was the night time and to control the traffic, he stayed there. But he did not see any vehicle at the place of occurrence and police officials have interrogated in this regard

and recorded his statement. So, said witness had not stated any words about the incident. Prosecution has proved the dead body was lying on the road and the witness/driver of 108 ambulance has supported the facts in limited lines.

89. PW88-Niteshgiri Bhikhangiri Meghanathi has deposed vide Exh.553 that in the year-2018 he was doing the profession of advocacy. He obtained Sanad from Bar Council of Gujarat vide Sanad No.G/217/2015 and he was working as deed writer as well as advocate. He was familiar to Vipulbhai Bhojabhai Galchar serving at Junagadh police department. Since he was knowing him since last 04 years. For execution of agreement to sale deed, Vipul along with one person namely Kandhal very frequently used to visit him. Kandhal was working on behalf of Vipulbhai. Kandhal was doing the work of maintenance of files, documents receipt receiving and paying money. On dated 28.02.2018, accused Kandhal told PW88 that his truck had been seized by Bagodara police station. So, PW88 has called papers and after doing study of said papers, Kandhal came in contact with Adv. K.D. Jethava, Amreli and for releasing the truck, Rs.50,000/- has been paid in the beginning. Accused-Kandhal was wanted in one offence registered before Bagodara police station but when PW88 reached at Bagodara police station, he came to know that Kandhal was wanted/absconding in criminal offence. In pursuant to the PW88 inquired and Kandhal said that no offence is made out against him. Therefore, PW88 has duly verified and called on Adv. Jethava's mobile No.7383905228 from his mobile No.9712187290 wherein advocate has advised

that no offence is made out against Kandhal. Truck would be released. After the passage of 02 days, accused Kandhal was arrested by police officials.

90. PW88 has done the act and came into contact with accused Kandhal by previous relations. Eventually, he helped Kandhal but said witness' oral testimony was not connected to crime and said witness has done the act of advisor.
91. PW58-Sanjaybhai Chandrakantbhai Luvana has deposed vide Exh.336 that he was running courier firm at Shop No.10 at Shubh Mangalam complex Junagadh which is publicly known as P.M. Enterprise courier services. For administration of the services, Yashbhai and Hiteshbhai were doing job in his firm and his courier service firm are existing different cities and towns. Name and cellphone number of sender of money is being noted on paper. For sending Rs.1,00,000/-, Rs.100/- is being charged as per rules. PW58 was not knowing by whom the money was sent and he was also not knowing the cellphone number of sender. But PW58 has categorically stated that receipt of his office slip wherein cell phone number 9724567250, name of sender as Kandhal, mobile No.9904154360, amount of Rs.49,950 and name of receiver has been denoted as Keshubhai. For money courier service, Rs.49,950/- transaction took place and slip vide Exh.337 is very clear about it.
92. In the present case, prosecution has examined Panch witnesses PW1 to PW32, PW35 and PW91 to PW94. During their depositions, they have identified their signature made on the

panchnamas, except this, they have not supported the prosecution story and eventually, all the panch witnesses mentioned hereinunder in the **Table 2** have turned hostile. The detailed cross-examination of those witnesses have been conducted by the Ld. AGP for the State Ld. advocates for the defence but nothing fruitful information revealed with regards to the chain of events of circumstances.

Table 2

Rank	NAME	Exh.
PW 1	Jayrambhai Chhanabhai Orvaniya along with cross-examination.	76
PW 2	Bhikhubhai Jivanbhai Mer along with cross-examination.	92
PW 3	Amaratbhai Nathabhai Parmar along with cross-examination.	98
PW 4	Dharmeshkumar Bodhubhai Gohil along with cross-examination.	100
PW 5	Bharatiben Prabhatbhai Makwana along with cross-examination.	106
PW 6	Nareshbhai Manubhai Makwana along with cross-examination.	109
PW 7	Vikrambhai Gambhubhai Makwana along with cross-examination.	111
PW 8	Mayurkumar Jesangbhai Makwana along with cross-examination.	112
PW 9	Rajeshkumar Narsinhbhai Makwana along with cross-examination.	114
PW 10	Rameshbhai Jesangbhai Makwana along with cross-examination.	118
PW 11	Rameshbhai Ranchhodbhai Gohil along with cross-examination.	120
PW 12	Shantibhai Manajibhai Valand along with cross-examination.	122
PW 13	Shahmahamad Habibbhai Shekh along with cross-	130

	examination.	
PW 14	Sultanbhai Kadarbhai Dantani along with cross-examination.	132
PW 15	Vishnubhai Jerambhai Ko. Patel along with cross-examination.	133
PW 16	Rajubhai Chaturbhai Solanki along with cross-examination.	140
PW 17	Laljibhai Ramsangbhai Rathod along with cross-examination.	143
PW 18	Himanshubhai Mukeshbhai Patel along with cross-examination.	147
PW 19	Imranbhai Inayatbhai Sama along with cross-examination.	149
PW 20	Vijaybhai Gulabji Thakor along with cross-examination.	151
PW 21	Pravinbhai Jivabhai Parmar along with cross-examination.	152
PW 22	Alpeshbhai Ganubhai Bharwad along with cross-examination.	154
PW 23	Sureshbhai Bhavarbhai Luhar along with cross-examination.	155
PW 24	Sujal Chandrakantbhai Shah along with cross-examination.	163
PW 25	Ranchhodji Bhadaji Thakor along with cross-examination.	164
PW 26	Kishorbhai Naranbhai Daki along with cross-examination.	167
PW 27	Lalabhai Rasikbhai Nai along with cross-examination.	175
PW 28	Rafikbhai Ibrahimbhai Sipai along with cross-examination.	176
PW 29	Shaileshkumar Ramanbhai Patel along with cross-examination.	185
PW 30	Anilsinh Shivaji Gol along with cross-examination.	186
PW 31	Pravinsinh Veruji Gol along with cross-examination.	189
PW 32	Pravinbhai Jesingbhai Vegad along with cross-examination.	194
PW 35	Satish Shashikantbhai Kyada (Patel) along with cross-examination.	201
PW 91	Jayeshbhai Manoharlal Harwani along with cross-examination.	558
PW 92	Sunil Chijandas Harwani(Sindhi) along with cross-examination.	565
PW 93	Pawan Mahendrabhai Suthar along with cross-examination.	583

PW 94	Sandipbhai Hareshbhai Meghnathi along with cross-examination.	584
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93. 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.”

94. That In the present case prosecution has examined PW80-Sharmisthaben Bhikhabhai Chaudhari, PSI, vide Exh.456. PW80 has deposed that in the year-2015, she was discharging her duty as PSI at Bagodara Police Station, meanwhile, the investigation of one A. D. No.2/2015 was handed over to her by PSO and therefore, she has conducted the investigation. Thereafter, to draw the Inquest Panchnama of the dead body of deceased-Pravinaben, Yadi sent to Ld. Executive Magistrate,

and thereafter Inquest Panchnama has been drawn by Ld. Executive Magistrate in the presence of Panchas. She has also drawn the Panchnama as to scene of crime in the presence of two Panchas and the said Panchnama has been drawn vide Exh.77. On dated 28.02.2015, by control message, informed FSL officer to conduct the spot examination and FSL Officer has conducted primary examination of the place of offence. One Panchnama vide Exh.78 has been drawn on dated 28.02.2015 with regards to the cellphone of deceased-Pravinaben was recovered in the presence of two Panchas and on dated 01/03/2015, postmortem of deceased-Pravinaben was performed, and clothes worn by the deceased-Pravinaben were handed over to police official and said clothes were recovered in the presence of Panchas and therefore entire police investigation as to case was handed over to Dy. S.P., Viramgam Division, Mr. R. D. Baranda.

95. Some Panch witnesses turned hostile and during the course of cross-examination some questions asked by respective Ld. Advocates for the accused and during the course of cross-examination, PW80 has stated that no police statement of the witnesses were recorded by her as to A.D. No.2/2015. Some questions asked about the name of Dy. S.P., time, visit or place, dead body sent to civil hospital, performing postmortem, and all those questions are not material for the defense of accused and when PSO has registered any criminal complaint, therefore, any duty casted upon her was discharged in the official capacity and PW80 has not done any act against the official duty, therefore,

no need to submit any order about her work at the time of lodging complaint, and duty of PSO is always according to official order passed by superior authority. Therefore, no question has been arisen about the duty discharged by PW80.

96. Likewise, PW81-Digvijaysinh Devisinh Sodha, Dy. S.P.,(CID, IB), Gandhinagar, has deposed vide Exh.466 that in the year-2015, he was discharging his duty as PI in the SOG Branch, meanwhile, on dated 28.02.2015, all the Police Officers of Ahmedabad(Rural) were present in a Crime Conference, held at Cansvilla. PW81 has further deposed that after the incident took place, all the police officials have arrived at the place of occurrence and to send the dead body of the deceased at Civil Hospital, Ahmedabad for the postmortem and therefore, as per the instruction of higher authority, they have reached at the Civil Hospital where, Bipinkumar Ganpatbhai Solanki has narrated the complaint before him and as per the version of the complainant, the complaint was denoted, read over to the complainant and obtained his signature and the offence was registered at Bagodara police station.
97. Likewise, PW81-Digvijaysinh Devisinh Sodha, Dy. S.P.,(CID, IB), Gandhinagar, has deposed vide Exh.466 that in the year-2015, he was discharging his duty as PI in the SOG Branch, meanwhile, on dated 28.02.2015, all the Police Officers of Ahmedabad(Rural) were present in a Crime Conference, held at Cansvilla. PW81 has further deposed that after the incident took place, all the police officials have arrived at the place of occurrence and to send the dead body of the deceased at Civil

Hospital, Ahmedabad for the postmortem and therefore, as per the instruction of higher authority, they have reached at the Civil Hospital where, Bipinkumar Ganpatbhai Solanki has narrated the complaint before him and as per the version of the complainant, the complaint was denoted, read over to the complainant and obtained his signature and the offence was registered at Bagodara police station.

98. PW82-Rohitkumar Dhuljibhai Baranda has deposed vide Exh.473 that he was discharging his duty as Dy. S.P., Viramgam Division and on dated 28/02/2015 at Cansvilla crime conference was held across all the police officials of Ahmedabad Rural and A.D. No.2/2015 was registered, in pursuant to that, said complaint was lodged in Bagodara Police Station under the instruction of the superior officer. PW82 has started to conduct the police investigation and on dated 01/03/2015, two accused namely (1) Kuldip @ Lalo Danubhai @ Mafabhai and (2) Bhimabhai Haribhai Bharwad were arrested. Accused-Bhimabhai Bharwad has produced his turban and it is seized after drawing Panchnama in the presence of two Panchas and Panchnama vide Exh.131 has been drawn. Thereafter, Kuldip @ Lalo and Bhimabhai Bharwad relative Bhikhabhai Bharwad has produced the clothes worn by accused at the time of occurrence and the said clothes were recovered as to procedure of Panchnama vide Exh.110. On dated 01/03/2015 accused Kuldip @ Lalo wanted to say something about incident, therefore, primary demonstration Panchnama has been drawn in the presence of two Panchas and accused, investigation officer,

Panchas and staff of police officials, by Government vehicle reached at the venue of crime and demonstration Panchnama vide Exh.113 has been drawn at the scene of crime and on dated 02/03/2015, accused Kuldip @ Lalo wanted to show the vehicle hidden by him and called two Panchas and Primary Panchanama was drawn and after making signature by PW- 82 police officials along with aforesaid all the persons went to place of concealed vehicle and accused shown one Swift Car, RTO Registration No. GJ-1-KC-8182 and it was seized and brought at police station and after completion of Panchnama vide Exh.121, further police investigation has been handed over by the instruction of superior officer, CID Crime, Gandhinagar and after that police investigation has been conducted by Dy. S.P., CI Cell, CID Crime, Gandhinagar and Ms. Komal Vyas has conducted the remaining police investigation.

99. Ld. Advocates for the respective accused have conducted the cross-examination of PW82 and during the course of cross-examination, PW-82 has categorically stated that Dy S.P., Rai has passed order to conduct the police investigation and PW-82 has confessed that, in the year 2015, the post of Dy S.P., Atrocity Cell was vacant but DSP, Rai has passed order to conduct the police investigation and at the time of drawing Demonstration Panchnama, PW-82 has visited the venue of crime. Some questions asked by Ld. Advocates for the respective accused but all those questions are not fruitful for the defense of the accused.

100. Similarly, PW83-Komalben Shaileshkumar Vyas has deposed

vide Exh.517 that in the year-2015, she was discharging her duty as Dy. S.P., CI Cell, CID Crime, Gandhinagar, meanwhile DSP, Crime-I vide order dated 02/03/2015, PW-83 has conducted the police investigation of the said case and affiliated police papers, documents of A.D. No.2/2015 and documents of complaint were obtained from PSI, S.B. Chaudhary, Bagodara police station and also obtained documents for Dy. S.P., CID Crime, Ahmedabad Zone, Mr. P.I. Desai and also obtained the documents from R. D. Barnda, Dy. S.P., Viramgam Division and PW-83 has studied all the documents and police papers and became well conversant to the documents. FSL Spot visit vide Exh.488 and opinion of FSL Officer dated 02/03/2015 has been received and attached to the police papers vide Exh.489. Predecessor police investigation officer, Mr. R.D. Barnda has arrested two accused and on dated 27/03/2015, FSL Officer has performed the inspection of place of offence and submitted the report vide Exh.490 and 3 photographs were sent by FSL Officer vide Exh.491. On dated 09/03/2015, two accused were in police custody and for performing the reconstruction Panchnama, two Panchas were called by PW-83, along with them Assistant Director, DFS, Gandhinagar, A. V. Hingrajiya, Scientific officer, Gandhinagar, Medical Officer, CHC Bagodara, Dr. Piyush Kalani, RTO Inspector, Ahmedabad, Inspector, G.J. Solanki, D.O. Inspecto C.I. Cell, CID Crime, Gandhinagar, Shri Munafkhan Pathan, D.O. Inspector Ahmedabad Rural CID Crime Ahmedabad Mr. T.N. Malek and videograph Tusharbhai Babubhai Solanki of Chandra Studio alongwith two panchas were accompanied and in the presence

of two Panchas, primary Panchnama has been drawn and thereafter accused, Panchas, aforestated all the persons, police officials, PW-83 by Government vehicle reached at the place which were shown by accused and Panchas, Panchanama vide Exh.177 was completed and Bagodara Police Station has recovered the Muddamal vide A.D. No.2/2015 on dated 17/03/2015 and said Muddamal was also recovered in the presence of Panchas and Panchanama vide Exh.148 has been drawn on dated 18/03/2015. The vehicle used for the commission of offence (swift car) was seized from the house of the accused wherein driving licence of Chetanbhai D. Parmar, Election ID of Shamantbhai Vashrambhai Bharwad, Election ID of Chetanbhai Danubhai Parmar, one prepaid SIM Card cover of Vodaphone, job cover of car on the name of Chetanbhai Parmar, two other job card of Manan Autolink Pvt. Ltd. And two retail invoice in the name of Chetan Danubhai Parmar, swift car manual and booklet, Election ID card of Alpeshbhai Kalubhai, school leaving certificate of Parmar Alpeshbhai Kalubhai, school leaving certificate of Parmar Chetanbhai Danubhai, Election ID card copy of Parmar Raghubhai Haribhai, copy of Election ID card of Bharwad Haribhai Vashrambhai, copy of school leaving certificate of Bharwad Sanjaybhai Bhimabhai, copy of school leaving certificate of Bharwad Hirenkumar Raghubhai, copy of school leaving certificate of Anilkumar Danubhai and some chits were recovered. The clothes and some other items and description of aforestated all those items has been described and all those Muddamal recovered in the presence of Panchas and

Panchnama has been drawn vide Exh.141 by PW-83. On dated 25/03/2015, shoes worn by deceased-Pravinaben were recovered by PSI V.D. Zala, Bagodara police station in the presence of Panchas and Panchnama vide Exh.134 has been drawn. Two accused were produced before PW-83 on dated 30/04/2015 and both the accused were arrested by PW-83 and Panchnama vide Exh.178 has been drawn as to physical condition of both the accused. Shoes of deceased Pravinaben was recovered by PSI, Zala and in pursuant to that, PW-83 has also recovered shoes worn by deceased at the time of occurrence by drawing Panchnama vide Exh.179. On dated 29/04/2015, one accused was produced before PW83 and Panchnama as to physical condition of accused has been drawn in the presence of Panchas vide Exh.150 and on the head of the said accused, mark of cancer surgery was found but said accused was healthy and well being, therefore he was arrested. PW83 had visited the house of the accused on dated 02/05/2015, two SIM cell phone seized and after completion of Panchnama vide Exh.153 in the presence of Panchas, PW-83 has made her signature on dated 02/06/2015 during the course of police investigation the cell phone used at the time of commission of offence was also recovered and Panchnama vide Exh.165 has been drawn. On dated 22/05/2015, one cell phone and SIM card were recovered and Panchnama drawn vide Exh.187. On dated 17/05/2015 accused produced before PW-83 and Panchnama of physical condition of accused has been drawn from accused, one cell phone recovered and Panchnama has been drawn vide Exh.166. On dated 23/05/2015, accused

was in police custody and conduct the reconstruction Panchnama as well as accused wanted to inform some facts about the occurrence, therefore, two Panchas called and Mr. T.N. Malek, D.P. CID Crime and videographer Arvindbhai Rambhai Patel accompanied PW-83 and primary Panchnama has been drawn in the presence of Panchas, thereafter, accused, one officer, PW-83 along with police official staff and Panchas in government vehicle reached at the place where incident happened and reconstruction Panchnama vide Exh. 188 has been drawn. On dated 29/05/2015 vehicle used to commit the crime has been seized by Panchanama drawn vide Exh.168. During the course of police investigation, the essential procedure has been performed to obtain the fingerprint and in pursuant to that fingerprint expert has give opinion and it is attached to the police investigation papers and said documents vide Exh.492 has identified by PW- 83 during the course of recording of evidence. Circle officer, Bavla has prepared map with regards to the venue of crime vide Exh. 493 and during the course of police investigation one yadi sent to Hon'ble Gujarat High Court for obtaining necessary data of CCTV footage, entry-exist register copy and in pursuant to that, Hon'ble Gujarat High Court has provided some papers and information as to same vide Exh.494. Thereafter, SIM card purchasing register copy of Balaji Enterprise vide Exh. 495 has also been obtained. Courier company original receipt vide Exh.335, vehicle sale deed vide Exh.349 and the other sale deed of vehicle vide Exh.350 are also received by PW-83 during the course of police investigation. Similarly, Courier original

receipt and its copy vide Exh.337 has seized and books of accounts extract of courier company vide Exh.496 has also recovered and courier company has handed over the original receipt and abstract of register vide Exh.497 has also recovered. The original copy of the register of Chirag Telecom vide Exh.498 has received. P. M. Note of deceased also attached to the documents of chargesheet. The recovered Muddamal sent to FSL for scientific examination and expert opinion and FSL Officer has opined as to expert scientific examination. In pursuant to that, all those documents vide Exh. 499 to 511 were also recovered during the course of police investigation. PW83 has managed to record the statement of the complainant U/s 164 Cr.P.C. vide Exh.319. PW83 has made arrangement to record the statement U/s 164 of Cr.P.C. of the accused-Kandhal @ Kandho Hajabhai Kadchha before Ld. JMFC and in pursuant to that statement U/s 164 of Cr.P.C. vide Exh.512 has recorded by Ld. Magistrate. The concerned witnesses police statement recorded during the course of police investigation and the different chargesheets were submitted by PW-83 on different dates. Charge sheet has been submitted on dated 24/05/2015 and accused Kuldip @ Lalo second chargesheet accused Raghubhai and Vijaybhai on dated 27/07/2015 was submitted and accused Raghubhai passed away during the course of trial and said accused abated and remaining all the accused namely Kuldip @ Lalo along with other accused are present before the court during the course of trial. Muddamal articles are also identified and during the course of police investigation, there was no sufficient evidence against Alpesh Kalubhai Parmar and

Anil Mafabhai Parmar therefore on dated 23/07/2015 one report under section 169 CrPC has been submitted.

101. Similarly, PW86-Bharatsang Madhavsang Tank, S.P., has deposed vide Exh.541 that in the year-2017, he was discharging his duty as Dy. S.P. in the Cyber Crime Cell, CID Crime, Gandhinagar, meanwhile, has taken over the investigation of C.R. No.06/2015 registered with Bagodara Police Station for the offences punishable U/s 302, 396, 364, 201 & 120B of IPC r/w Section 3(1)(10) & 3(2)(5) of the Atrocity Act from the predecessor IO. Thereafter, on dated 06.03.2017, one accused-Samantbhai Vashrambhai Parmar(Bharwad) was appeared before him therefore, panchnama of physical condition of the accused was drawn, his mobile phone was recovered in presence of two panchas and panchnama for the same was prepared vide Exh.156. During the course of investigation, he has collected the certificate U/s 65b of the Indian Evidence Act from the Airtel, BSNL, Vodafone with regards to the call details and CDR vide Exh.542 to Exh.545. Thereafter, as the accused-Kandhal was in police custody and therefore, panchnama of accommodation where the accused was stayed during the absconding was drawn vide EXh.546. Thereafter, to make necessary arrangement to send the seized muddamal to FSL and FSL Officials have provided the opinion as well as 65b(4)(c) were collected vide Exh.547 & Exh.548. Thereafter, statement of concerned witnesses have been recorded and as the sufficient evidence found, therefore, charge-sheet against the accused-Samantbhai Vashrambhai Parmar(Bharwad) was filed and the

case was registered as Atrocity City case No.25/2021 but during the course of trial, the said accused has died, therefore, accused was declared as abated. Thereafter, against other accused, charge-sheet has been filed. To send the charge-sheet filed against the CCL before the Juvenile Board. To make the necessary arrangement to send all the muddamals seized by his predecessor Officer as well as by him.

102. The investigating officers of this case had made best endeavors to collect the evidence like statement of witnesses, panchnama, scientific evidence, expert evidence and electronic evidence but when chain of events of circumstances are not supported to the prosecution case and by & large except police official witnesses most of the witnesses including complainant who is a star material witness turned hostile and they had not supported the prosecution case. If all those witnesses would have been supported to prosecution case probably prosecution would be succeeded to prove the chain of circumstantial evidence without missing link or without missing gap but unfortunately all those hostile witnesses had averred hostile version and during the course of the cross-examination, witnesses have not supported the prosecution case and eventually accused are entitled to get the benefit of doubt.
103. PW-55, 33, 36, 37, 38, 39, 40, 42, 43, 45, 46, 48, 49, 50, 51, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 71, 72, 73, 74, 76, 77, 78 & 79. All the aforestated witnesses are very material for the prosecution case to prove the motive of the accused and also very important witnesses for last seen together theory, but all

those witnesses have not supported the facts of their respective police statement recorded by investigating officer during the course of police investigation. However, of course, statement under section 161 and 162 of CrPC are not the substantive piece of evidence but all those statements are used for contradiction and omissions purpose and Ld. AGP has conducted detailed cross examination and when material witnesses have turned hostile while they were stepping into the witness box, therefore their oral testimony fatal to the prosecution case and some witnesses out of all those witnesses mentioned here in above have submitted the documentary evidence and during the course of deposition, all those witnesses have not supported the facts of the documents and mere exhibition of documents during the course of deposition are not sufficient but when each and every documents adduced by prosecution during the course of the deposition of respective witnesses. Therefore, contents of the documents must be proved by prosecution and especially when present case are absolutely based on events of circumstances, therefore, it is the duty of the prosecution to prove the events of circumstances without missing gap or missing link and last seen together theory are very important for prosecution and mere motive to commit the crime are not sufficient in the case based on circumstantial evidence. The chain of events of circumstances are very material. However, last seen together theory in the criminal case based on circumstantial evidence are not mandatory to prove but especially the present case occurred at the fully crowded public area and deceased has departed the Mirzapur District and Sessions Court complex and arrived at the

Sarkhej highway, Ujala Circle, therefore, the distance between Mirzapur District and Sessions Court complex and Sarkhej highway, Ujala Circle are not 1 to 2 km distance, therefore, it is the duty of the prosecution to prove the links of evidences with regard to departure of deceased Pravinaben from Mirzapur District and Sessions Court complex to arrival at Sarkhej highway, Ujala Circle and on the day of occurrence, in the morning deceased Pravinaben departed from Loliya village and one accused was driving EECO Car and dropped deceased Pravinaben at Ujala Circle and thereafter, deceased Pravinaben reached at Mirzapur District and Sessions Court complex, so, prosecution has not succeeded to link the evidence of circumstances when deceased got down from the EECO Car at Ujala Circle, Sarkhej highway, and after that she reached at Mirzapur District and Sessions Court complex and in the evening she was returning back further at Ujala Circle but time gap between dropping down by accused from EECO car and in the evening, deceased Pravinaben returning back at the same place i.e. at Ujala Circle are approximate 6 to 7 hours, and 6 to 7 hours time gap are not little. For a moment, we assume or presume that deceased Pravinaben was coming back at Ujala Circle to attend at the Mirzapur District and Sessions Court complex but no iota of evidence with regards to any person who had seen deceased Pravinaben and any accused together. No credit worthy evidence has been adduced by prosecution that accused were met deceased Pravinaben at Mirzapur District and Sessions Court complex. Not only that, other co-accused were also not met deceased Pravinaben at Mirzapur District and

Sessions Court complex. Some accused were in judicial custody and some co-accused are the contract killer hired by the accused of Vijay murder case, therefore, the other co-accused who were not in judicial custody also not met the deceased Pravinaben, neither at the Mirzapur District and Sessions Court complex nor surrounding area of Ujala Circle. When case based on circumstantial evidence, it is the duty of prosecution to submit clinching and cogent evidence about last seen together theory, motive along with chain of events of circumstances. Case one hand, it is absolutely missing link and missing chain. Surmises and conjectures cannot be based in the case of events of circumstances and prosecution must prove every link of the chain and complete chain. So many infirmities and lacuna found in the prosecution case as well as in the investigation conducted by police officials.

104. The accused-Kandhal has called on cellphone by his mobile number 9722910002 to cellphone number 9723394656 but which person was talking on the cellphone with accused-Kandhal and it is not proved by prosecution beyond reasonable doubt. The certificate U/s 65(b) of the Indian Evidence Act, the call details adduced by the cellphone companies but when registration SIM number was other other names and merely allegations are not sufficient that SIM Card number were used by the accused-Kandhal at the time of occurrence and electronic evidence is the expert evidence and Court cannot be solely relied upon the electronic evidence despite certificate U/s 65(b) has been produced by the prosecution because prosecution has

not proved that all the accused were in contact with another on cellphone and prosecution has also not proved that all the accused talked with one another before committing the crime, therefore, the ingredients of conspiracy are not proved and it is also not proved by prosecution that all the accused were in contact at the time of commission of crime.

105. Ld. AGP has submitted one application to give the exhibit to the DNA report but as discussed hereinabove, the recovery of hair in the Car and DNA report found positive but solely evidence of DNA report of hair are not connected the last seen together theory as well as the events of circumstances and the chain of circumstantial evidence are broken, therefore, expert evidence are not supported the prosecution case.
106. In the present case, the complainant is the star material witness and in pursuant to that prosecution has examined complainant/PW55-Bipinbhai Ganpatbhai Solanki vide Exh.317. PW55 has deposed that he is residing with his grandmother and maternal uncle(Mama). On dated 27.02.2015, he was out of station and at about 06:00am in the morning, he telephoned on her maternal aunt Pravinaben's cellphone and she told him that she is at Ahmedabad and after noon time approximate 03:00pm, she would go at home so, you come accordingly. Thereafter, complainant/PW55 reached at home approximate 03:00pm to 03:30pm and took rest and the evening time has started and thereafter, his maternal aunt went at Bagodara for taking dinner for him but meantime, he has received message from the village that accident of his maternal

aunt's happened so, he reached at Bagodara and thereafter, firstly, he took Government hospital for the medical treatment thereafter, he went at police station and police officials have obtained his signature on a written paper and PW55 has identified his signature made on the complaint vide Exh.318. Thereafter, police officials have called him frequently at Bagodara police station and Gandhinagar upto One & Half months. After that, after passage of time of two years, police officials have taken him at Mirzapur Court at 5th floor and instructed to sit outside the Court on the bench and police officials have obtained his signature on a plane paper. PW55 has identified his signature made on the statement U/s 164 of Cr.P.C. but the Ld. advocates of the accused No.1 and accused No.2 have taken objection to exhibit it as only one side, the signature of complainant/PW55 found but the objection was overruled because and all the papers jointly exhibited vide Exh.319. PW55-complainant has further deposed that he did not narrate any facts against any particular person and he has not made any allegation against anyone. PW55 has also declined to identify the accused during the course of deposition and eventually, he turned hostile.

107. So, complainant/PW55-Bipin is the star material witness and backbone of the case but considering the deposition of the PW55/complainant, he turned hostile and not supported the prosecution story and due to adverse version made by the complainant/PW55-Bipinbhai Ganpatbhai Solanki, the motive as to crime are not proved and to prove the motive,

complainant/PW55-Bipinbhai is the star material witness and when case is based on circumstantial evidence, motive is very important ingredients.

108. Vijay murder case has been committed to Mirzapur Sessions Court, Ahmedabad and accused of the said case pressurized the complainant Pravinaben and witnesses to enter into the compromise and amicable settlement but Pravinaben and witnesses refused to accept the offer of compromise proposal and didn't come into pressure tactics. As and when accused of Vijay murder case intimidated Pravinaben and witnesses to enter into the compromise and each and every time lodged the criminal complaint and submitted application as to same before Koth Police Station. Complainant/PW55-Bipinbhai Solanki has not supported the facts of the complaint, he turned hostile, therefore, prosecution fails to adduce evidence as to motive and last seen together theory.
109. In pursuant to that when accused were enlarged on temporary bail and came at Loliya village, each and every instances the accused intimidated deceased-Pravinaben and witnesses to kill and for that complaints were lodged against accused. So, accused and their relatives were kept in the judicial custody during the course of 6 accused released on bail.
110. All the accused of Vijay murder case expressly and impliedly connected to conspiracy as to complainant Pravinaben's murder case, in the Sabarmati Central Jail custody to prove the illegal act of Pravinaben's murder, accused Vijay Devabhai Parmar(Mer) came to contact of all the 6 accused of Vijay

murder case and accused told Vijay Deva Parmar(Mer) in the judicial custody that they intent to do the murder of Pravinaben and they also intended to pretext the murder as an accident and if Vijay succeeds to do said illegal act, all the 6 accused would paid money to Vijay Deva Parmar(Mer) whatever he wish and Vijay Deva Parmar(Mer) was agreed to do the said act and as and when accused Vijay Deva Parmar(Mer) would be enlarged on bail in furtherance to do the act of murder, thereafter, in the month of October, 2014, all the 6 Bharwad accused and accused Vijay Deva Parmar(Mer) were released on temporary bail and came out from the Jail. But about pretext, no iota of evidence has been adduced by the prosecution and it is biggest missing link of circumstantial evidence.

111. Meanwhile, all the 6 Bharwad accused and accused Vijay Deva Parmar(Mer) accompanied one another and visited Loliya village and Bagodara village and under the guise of meeting of mind, it was decided that by hook or crook to abduct/kidnapp Pravinaben to kill her and thrown the dead body of Pravinaben on the highway and also decided to roll over the truck on the dead body of Pravinaben and intention of all the accused persons to convert the incident of murder into accident by pretext and also decided to disappear the evidence of murder case and all the accused persons had conspired everyone. But ingredients of conspiracy and meeting of mind are not proved by the prosecution beyond reasonable doubt.
112. All the six Bharwad accused surrendered in the judicial custody at Sabarmati Central Jail, after that accused Vijay Deva

Parmar(Mer) was enlarged on permanent/regular bail on dated 16.12.2014 by the order of the Hon'ble Gujarat High Court and he came out from jail.

113. Thereafter, all the accused for furtherance to commit the act of conspiracy, all the six Bharwad accused got the temporary bail and after coming out from the jail, all the 6 accused had called Vijay Deva Parmar(Mer) on the Limbadi-Surendranagar highway, therefore Vijay Deva Parmar(Mer) came along with his friend namely Kandhal @ Kandho Hajabhai Kadchha(Mer), at that time accused Vijay Deva Parmar(Mer) had demanded Rs.50,00,000/- from all the six Bharwad accused but ultimately after negotiation, it was fixed to pay Rs.12,00,000/- to them. It was also decided that, after killing Pravinaben to throw the dead body on the highway road and run over the truck, for that, to manage truck and driver and if driver is not arranged, Vijay Deva Parmar(Mer) himself run away the track on the dead body of Pravinaben and if in case, truck is not received, to decide to purchase old truck. But mere purchasing of old truck are not solely trustworthy evidence for the chain of events of circumstances and purchasing truck is not sufficient to prove the prosecution case beyond reasonable doubt.
114. Thereafter, Vijay Deva Parmar(Mer) and his friend Kandhal @ Kandho Hajabhai Kadchha(Mer) had obtained loan from Ram Finance, Porbandar to purchase truck bearing No.GJ-7X-8199 on his name and loan was sanctioned for truck purchase and it was decided to use the said truck for the murder of Pravinaben. It is not proved by the prosecution with the support of oral and

documentary evidence with clinching and cogent evidence.

115. After that, Kuldeep @ Lalo Mafabhai @ Danubhai Parmar (Bharwad) and Bhimabhai Bharwad, both enlarged on temporary bail and accused Raghubhai Haribhai Parmar(Bharwad) was suffering from cancer since beginning and he was enlarged on temporary bail. So, they have conducted meeting with other Bharwad accused and decided that, when Pravinaben would come on the date before Hon'ble Gujarat High Court and Hon'ble Sessions Court, to follow her and decided to show Pravinaben to accused Vijay Deva Parmar(Mer) from some distance and told to commit the act of murder of Pravinaben and in pursuant to that, as and when Pravinaben visits Hon'ble Gujarat High Court and Sessions Court, Mirzapur, to keep watch and performed fink(Reki), Pravinaben was about to come at Sessions Court, Mirzapur, Ahmedabad and the adjournment date was informed by accused Kuldip @ Lalo Bharwad to Vijay Mer and to do the illegal act of murder, accused Vijay Mer came to contact of Pravinaben and once in the EECO passenger car, Vijay Mer came at Loliya village, Pravinaben was sitting in the EECO car and took Pravinaben at Ujala Circle, Sarkhej from Loliya village and thus accused Vijay Deva Parmar (Mer) came to contact with Pravinaben. Mere visit at the Hon'ble High Court of Gujarat court complex and no CCTV footage were instaleed at the time of occurrence, therefore, meeting amongst accused alongwith deceased-Pravinaben are not proved.

116. All the six accused and other accused aided directly and

impliedly, did the act of conspiracy, under the guise of meeting of mind and conspiracy, accused frequently came out from the jail on the grounds of ailments of their family members by getting temporary bail and conducted watch and raky of Pravinaben. No iota of evidence has been adduced by the prosecution as to raky of deceased-Pravinaben conducted by the accused and mere suspicion and allegation about the raky cannot be taken place of conclusive proof or strict proof and it is also a missing link.

117. On dated 27.02.2015, there was adjournment date fixed by the Hon'ble Gujarat High Court and Sessions Court, Mirzapur, Pravinaben was about to attend the adjournment date, so, accused Vijay Deva Parmar(Mer) and accused Kuldip @ Lalo Bharwad as earlier meeting of mind, accused Vijay Mer was present along with his Maruti Zen Car No.GJ-5-CA-1758 near Loliya village as per the instruction given by Kuldip @ Lalo. The accused Vijay Mer was in connection with Kuldip @ Lalo on cellphone and deceased Pravinaben was about to attend the adjournment date in the court and as predetermined plan, accused Kuldip @ Lalo had called Vijay Mer by telephone talk and accused Vijay Mer was present near Loliya village with his Maruti Zen Car No.GJ-5-CA-1758. Kuldip @ Lalo had informed Vijay Mer on cellphone that deceased Pravinaben left from her house to attend the adjournment date before Hon'ble Gujarat High Court, she departed and after receiving information by accused Vijay Mer on cellphone by accused Kuldip @ Lalo, eventually Vijay Mer by driving Zen car came

at Loliya bus stand and Pravinaben has made gesture by raising her hand for lift and stopped Zen car and Vijay Mer gave her lift in his said car, Pravinaben sat in the car, conversation took place between both, cellphone contact number received from Pravinaben and dropped Pravinaben at Sarkhej, Ujala Circle and made fiduciary relation with Pravinaben and told Pravinaben that if you want to return back in the evening, he would wait. When last seen together theory are not proved and similarly motive is also not proved.

118. When Pravinaben came at Mirzapur Court for adjournment date, Bharwad accused and their friends intimidated that “આ ઢેઢ ડીને આજે ઉઠાવી જવાની છે અને જાનથી મારી નાખવાની છે”. During the course of whole day, accused Vijay was staying surroundings Ujala circle area and in the evening time, Bharwad accused were scattered and standing from some distance to the said car, before that, Kuldip @ Lalo informed Vijay Mer that if Pravinaben come and sit in your car, you misscall me. Pravinaben came there between 19:40 hours to 19:50 hours evening on Sarkhej area by walking and accused-Vijay Mer gave her lift in his said car and as discussed/predetermined meeting, accused-Vijay Mer miscalled to Kuldip @ Lalo and informed that Pravinaben sat in his car and Kuldip @ Lalo and Vijay Mer started to go on the way of Bavla by said car and accused Kuldip @ Lalo, Bhima Hari, Raghu Hari and Tapubhai Chhelabhai Chhotiya Bharwad were also sitting on the swift car No.GJ-01-KC-8182 and under the guise of pre-meeting of mind and conspiracy, went ahead on Bavla Road and accused were

standing on the highway road and accused Vijay Mer stopped his Zen car, thereafter accused Kuldip @ Lalo, Bhima Hari, Raghu Hari, all those 3 persons were coming and sitting in the Zen car, meanwhile, Pravinaben suddenly shouted and accused Bhima Bharwad strangulated the neck of Pravinaben by Lungi worn on his head, and Pravinaben was struggling to save herself, one end of Lungi was caught hold by Raghubhai and second end of Lungi was caught hold by Bhimabhai, both have pulled lungi and strangulated, at the time the accused Kuldip @ Lalo gave punch blow on the chest of Pravinaben and also inflicted punch blow on the head and causing grievous hurt to Pravinaben and did the illegal act of homicidal death which amounts to murder. Complainant-Bipinbhai has not supported the prosecution story despite, he is the star material witness as to motive. No person had seen Pravinaben as a pedestrian near Ujala circle area. Moreover, no person has seen Pravinaben alongwith accused-Vijay Mer and Kuldeep @ Lalo together near the Car and no person had seen Pravinaben sat in the Car of Kuldeep @ Lalo. Prosecution has failed to prove that accused-Vijay Mer has miscalled to Kuldeep @ Lalo because CDR, call details and location are not proved by the prosecution with clinching and cogent evidence and no iota of evidence with regards to the accused-Kuldeep @ Lalo, Bhima Hari, Raghu Hari and Tapubhai Chhelabhai Chhotiya Bharwad were sitting in the swift car and it is also a big missing gap in the evidence of prosecution. No person has heard the shouting of Pravinaben in the Car but when Swift car was inside closed door, therefore, there is no question has been arisen to hear the

shouts of the Pravinaben at the time of incident but it is the duty of the prosecution to prove the events of circumstances with regards to accused-Bhima Hari and accused-Raghu Hari had strangled Pravinaben and in absence of said evidence, Court cannot be linked the chain of events of circumstances.

119. To show the murder of deceased-Pravinaben as accidental death, dead body of Pravinaben pulled from the car and thrown on the road, at that time, Vijay Mer was driving truck vehicle and he was far from some distance. Meanwhile, Vijay apprehended and Vijay Mer took his truck near the dead body of Pravinaben and turned his truck on the left side and where dead body of Pravinaben was thrown, from some distance of dead body of Pravinaben, parked truck, engine of truck was kept on, and headlights of truck were also kept on, parked the truck, got down from the truck, reached near bushes(Bavlni jhadi) passed by open place and went at Tarapur highway road, at that time, one Tata magic vehicle was going to Rajkot and Vijay raised his hand and stopped Tata magic vehicle sat in the said vehicle which came at Limbdi, meanwhile, Kandho came along with his Car and at Limbadi crossroad and the said car was driven by Vijay and eventually Vijay and Kandho both went to Junagadh. Mere two accused accompanied and travelling together is not the unbroken chain, however, ofcourse, no person had seen that Vijay and accused-Kandhal @ Kandho both were travelling at Junagadh together and mere allegation and suspicion are not sufficient.

120. Thereafter, accused-Vijay Mer demanded the remaining money

of the contract killing from accused and for that he met accused Bhimabhai and accused Kuldip @ Lalo in Sabarmati Central Jail, at that time, accused Kuldip @ Lalo provided cellphone number of his close relative Ranabhai Ratnabhai to accused Vijay and told Vijay to talk with him. Accused Vijay and his friends went to village Chandreliya at the house of Ranabhai Ratnabhai and accused Raghubhai and Tapubhai also reached there and paid Rs.2,00,000/- as contract killing to Vijay Mer. Thereafter, by Angadiya/Courier service, Rs.3,00,000/- was sent to brother of accused Kandho namely Bharatbhai at Manavadar village. Only obtaining the amount of Rs.2 lakh through courier service are not clinching evidence and such type of receipt to accept Rs.2 lakh are not trustworthy evidence to prove the chain of events of circumstances.

121. Accused (1) Kuldip @ Lalo, (2) Bhima Hari Parmar, (3) Raghu Hari Parmar were involved earlier in one murder case and accused No.(4) Vijay Devabhai Parmar-Mer is a contract killer and previously he was arrested as to commit the offence by taking money. So, said accused is well conversant and well acquainted with the legal devices, police investigation method and law full investigation, therefore by pre-meeting of mind, did the act of conspiracy and when he commits any offence, prima-facie evidence can be disappeared and not remaining. Thus, all the accused pre-planned and kept themselves in connection with one another and different mobiles, registered SIM numbers and cellphone instruments were purchased on the other person's name and used the said cellphones. All the

accused had hidden their identity. All the accused belong to one family and all are living under the same roof and shelter as well as adjoining houses in the same area and conspired by all the accused, thereby all the accused under the guise of meeting of mind committed the act of conspiracy, kidnapped/abducted Pravinaben and committed the homicidal death which amounts to murder and looted Rs.50,000/- kept in her purse, and also looted golden chain, ATM card, documents of Vijay's murder case evidence and before committing the act of murder of Pravinaben(she belongs to scheduled caste) and uttered abusive filthy language on the caste based comments and against the caste and community of Pravinaben, intimidated to kill her and eventually killed her, very important evidence with regards to the crime were destroyed and disappeared and all the accused committed the offence. To substantiate and bring home the charges against the present accused, the prosecution has examined as many as 94 witnesses in the present case. By & large, most of the witnesses those who are very material to link the chain of events of circumstances are not supported the prosecution story and when meeting of mind and conspiracy amongst the accused are not proved, therefore, the chain as to above facts are absolutely broken.

122. In the case of circumstantial evidence, motive and "last seen together" theory are very important. Chain of incriminating circumstances are connected to the motive and "last seen together" theory and when dead body of the deceased was found, therefore creditworthy and trustworthy evidence are

essential for prosecution case. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused, in other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence.

Principles behind circumstantial evidence

123. The Hon'ble Supreme Court has laid down following principles on circumstantial evidence :

- i. *the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,*
- ii. *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
- iii. *the circumstances should be of conclusive nature and tendency,*
- iv. *they should exclude every possible hypothesis except the one to be proved, and*
- v. *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

[(i)Bhim Singh Vs. State of Uttarakhand, (2015) 4 SCC 281 (para 23), (ii)Dhanraj Vs. State of Haryana, (2014) 6 SCC 745 (paras 18 & 19), (iii)Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509 (para 15), (iv)Sharad Bridhichand Sarda

Vs. State of Maharashtra, (1984) 4 SCC 116 (paras 120 & 121)]

Circumstantial evidence & requirements for conviction :

124. Circumstantial evidence, in order to be relied on, must satisfy the following tests;

- i. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.*
- ii. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused.*
- iii. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by the accused and none else.*
- iv. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence in other words, the circumstances should exclude every possible hypothesis except the one to be proved.*

125. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The court considers ordinary human probabilities. **[Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281].**

126. Ld. Advocate for the accused has placed heavily reliance on the following dictums;

- 1.Sharad Birdhi Chand Sarda(supra), 2.Kali Ram(supra), 3.Khuman Singh(supra) and 4.Hitesh Verma(supra).**

127. Considering the above principles, all the elements mentioned here in above by the Hon'ble Apex Court are not proved by prosecution beyond reasonable doubt, and considering the entire evidence adduced by prosecution, number of missing links and gaps found to connect the links of events of circumstances. When missing link found in the prosecution case, therefore two views are possible on the evidence adduced wherein one pointing to the guilt of the accused and other the innocence of the accused. Each and every criminal case has its own facts, and when assumption and presumption cannot be made against accused in the case based on circumstantial evidence. Which type of role played by the accused to commit the serious and heinous crime of murder of Pravinaben and it is the duty of the prosecution to prove that the truck found in the running condition engine and switched on headlights near incident happened but it is not proximate events of circumstances to connect the crime.

128. In the case of State of **Rajasthan Vs. Babu Meena in (2013) 4 SCC 206**, it is observed that:-

“Oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applied with greater vigor in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.”

129. The accused-Kandhal @ Kandho in Atrocity Case No.40/2021 and said accused has submitted one application before the Dy. S.P. CID Crime to record his statement U/s 164 of Cr.P.C. In

pursuant to that statement U/s 164 of Cr.P.C. has been recorded by the Ld. Judicial Magistrate First Class, Sanand on dated 13.04.2015. Ld. Judicial Magistrate First Class has passed the order to secure the presence of the accused-Kandhal @ Kandho before the Court on dated 13.04.2015 and looking to the statement recorded the Ld. JMFC, all the inquiry has been conducted and accused has submitted the detailed statement as to incident and facts of the entire statement supported to the prosecution story but this Court has given permission to conduct the cross-examination of the accused-Kandhal @ Kandho as to statement vide Exh.512 U/s 164 of Cr.P.C. and during the course of cross-examination, accused-Kandhal @ Kandho has categorically stated that he doesn't know whether he was in police custody or not on dated 13.04.2015 and he has not submitted any application before the police officials to record his statement U/s 164 of Cr.P.C. but police has informed accused-Kandhal @ Kandho that he would be witness of the case and all the signatures in the statement U/s 164 of Cr.P.C. has not made by him but when he was sitting outside the Court on the bench, police official has received his signature in the ready documents and he is not knowing about the statement U/s 164 of Cr.P.C. vide Exh.512 and accused has no knowledge about the facts of the statement vide Exh.512 and in addition, accused-Kandhal @ Kandho has categorically stated that he is not familiar with Vipulbhai Bhojabhai Garchar. The statement U/s 164 of Cr.P.C is not conclusive proof, strict proof or substantive piece of evidence but it is used for the corroboration only and whatever facts mentioned in the statement U/s 164 of

Cr.P.C. vide Exh.512 by the accused-Kandhal @ Kandho are not supported the prosecution case and prosecution has relied upon the statement of accused-Kandhal @ Kandho but when accused-Kandhal @ Kandho has submitted the adverse version during the course of trial after recording of further statement U/s 313 of Cr.P.C., therefore, the adverse deposition of accused-Kandhal @ Kandho as to statement U/s 164 of Cr.P.C. vide Exh.512 is absolutely fatal to the prosecution case and oral testimony of accused-Kandhal @ Kandho is also a missing link for the prosecution case. The Court cannot compelled accused-Kandhal @ Kandho to give evidence against him and right to silent is valuable right of the accused but when Investigating Officer has received the application from the accused to record the statement U/s 164 of Cr.P.C. and at the time of filing of charge-sheet, accused-Kandhal @ Kandho has been denoted as accused, therefore, the statement U/s 164 of Cr.P.C. are absolutely against the prosecution case and also missing gap with regards to the events of circumstances.

130. With regards to the above-mentioned discussion, this Court relies upon the catena of following judgments;-

1. **Bisipati Padhan Vs. State in AIR 1969 Orissa 289 : Ram Kishan Vs. Harmit in AIR 1972 SC 468, State Vs. Shriram Lohiya in AIR 1960 SC 490 :-** *A statement of a witness u/s 164 of the Code is not substantive evidence, but it is a former statement made before an authority legally competent to investigate the fact. Such a statement can be used either for corroboration of the testimony of a witness u/s 157 of the Act or for contradiction thereof u/s 145 of the Act .*
2. **Mohanlal Vs. State of Mah. In A.I.R. 1982 SC 839 :-** *Section 145 of the act applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding.*

3. **Binay Kumar v/s.State of Bihar A.I.R. 1997 SC 322:-** *If the witness disowns having made any statement which is inconsistent with his present stand his testimony in court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second part of section 145 of the act.*
4. **State v/s. Kartar in A.I.R. 1970 SC 1305 :1970 Cr.L.J. 1144 :-** *Statements under Section 164 of the Code are not substantive evidence. But it can be used to corroborate or contradict the maker under section 145 and 157 of the Act.*
5. **Ramchander v/s State A.I.R. 1981 SC 1036 : 1981 Cr.L.J. 609:-** *When a witness whose statement under section 164 of the Code was recorded was not sticking to his statement so recorded, the Court should not rebuke him nor threaten him that he should be prosecuted of perjury.*
6. **Ram v/s. State – A.I.R. 1968 SC 1270 : 1968 Cr.L.J. 1473 :-** *Unless witnesses resile from their statements recorded under section 164, those statements cannot be deemed doubtful.*
7. **Haladhar v/s State 1979 Cr.L.J. NOC 128:-** *Recording of statement under section 164 of the Code sometimes becomes very much necessary in the interest of a case if the police seek to weaken or demolish a case or refuse to take steps for recording the statement of the witness at the earliest opportunity, the magistrate may record the statement of the witness and de-facto complainant under section 164 (5) of the Code.*
8. **Audumbar Vs. State 1999 Cr.L.J. 1936:-** *if a witness turns hostile his statement u/s 164 of the code even if proved by examining a magistrate cannot be used as a substantive evidence.*

131. The Hon'ble Supreme Court of India has laid down the ratio in case of **BALLU @ BALRAM @ BALMUKUND AND ANOTHER VS. THE STATE OF MADHYA PRADESH, Criminal Appeal No.1167/2018 dated 2nd April, 2024** is required to be considered. It is held in Para 6, 7 & 8 which are as under;

“6. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra¹, wherein this Court held thus:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and

essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant* case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused ‘must be’ and not merely ‘may be’ proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.”

132. Considering the above legal provisions and dictums of the Hon’ble Apex Court, evidence adduced in present case creates doubt and suspicion but strong suspicion cannot take the place of proof beyond reasonable doubt and circumstances should be of a conclusive nature and tendency and it is sine-qua-non or condition precedent that the circumstances from which the conclusion of guilty is to be drawn should be fully established and in the present case prosecution absolutely fails and the Hon’ble Apex Court has also observed in Para 9 that

“14. Similar, In case of Harljan Bhala Teja vs. State of Gujarat (2016) 2 SCC 665, the Supreme Court has held that:- "No doubt,

where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence. If the charge is proved beyond reasonable doubt on record, and convict the accused."

133. The ratio laid down by the Hon'ble Apex Court in case of Ravi Sharma Vs. State(Government of NCT of Delhi) & Anr. in Para 13 & 15 which are as under;

"13. Having accepted the views of the trial Court holding that the last seen theory has not been proved, a conviction cannot be rendered on the basis of evidence, which was rejected qua motive, through the mouth of PW2. The trial Court gave its reasons for rejecting the evidence of PW2. It had the advantage of seeing and assessing the demeanor of this witness, which the High Court did not have. PW2 has stated that there was a money transaction which led to a dispute between the accused and the deceased and that he had assured the appellant that it would be repaid. This also occurred few days before the date of occurrence. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. This position of law has been dealt with by this Court in the case of **Tarsem Kumar v. Delhi Administration (1994) Supp 3 SCC 367** in the following terms:

"8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling

motive on the part of the accused which led him to commit the crime in question.”

15. However, once again, we would like to reiterate the settled position of law that a mere suspicion, however, strong it may be, cannot be a substitute for acceptable evidence, as held in *Chandrakant Ganpat Sovitkar v. State of Maharashtra*, (1975) 3 SCC 16.

“16.It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety.....”

134. The Hon’ble Apex Court has constantly held that in criminal cases particularly those based on circumstantial evidence, if two reasonable views are possible 1. pointing to the accused’s guilty and 2. their innocence, the view favouring the accused must be adopted. This principle is rooted in the presumption of innocence and the requirement that guilty must be proven beyond reasonable doubt. Case on hand, especially, when prosecution evidence supports two plausible interpretations, the interpretation that supports the accused’s innocence should be preferred and prosecution has miserably failed to prove its case beyond reasonable doubt and therefore, view favouring accused’s innocence to be adopted when two views are possible and last seen together theory are not proved. Electronic evidence as to CDR, Call details and certificate U/s 65(b) of the Indian Evidence Act have been adduced but it is merely an expert evidence and prosecution has failed to prove the talks amongst accused had taken place recently before the incident took place, therefore, mere certificate U/s 65(b) of the Indian Evidence Act are not sufficient and therefore, very difficult to find out the last seen together theory because DNA report of the hairs of deceased-Pravinaben would not solely clinching and

cogent evidence as to events of circumstances and it is absolutely missing link with regards to the circumstantial evidence and prosecution has shown that the motive to commit the crime is only to fatal to Vijay's murder case i.e. Atrocity Case No.2/2021 but it is judicial notice taken into consideration that this Court has imposed conviction to the accused of Vijay's murder case i.e. Atrocity Case No.2/2021 and in support of motive only evidence of presumption and assumption are submitted by the prosecution and surmises and conjecture cannot be taken the place of conclusive proof or strict proof and therefore, all the accused are entitled to get the benefit of doubt.

135. In so far as Section 364 of IPC is concerned, according to the prosecution story, all the accused conspired one another and kidnapped/abducted deceased-Pravinaben may be with the intention of murder and in the Zen car, all the accused with meeting of mind put deceased-Pravinaben in danger of being murdered but when present case is exclusively based on the circumstantial evidence, therefore, motive for commission of crime are not proved by prosecution but mere motive is not sufficient to prove the case beyond reasonable doubt as discussed hereinabove and when chain of events of circumstances are not proved as well as prosecution has absolutely failed to prove the last seen together theory, therefore, no question has been arisen that prosecution succeeded to prove the ingredients U/s 364 of IPC and case on hand, more than five persons are accused and prosecution has put up its case and adduced documentary evidence as well as

oral evidence with regards to all those accused are conjointly committed the dacoity, commits murder in so commit dacoity and considering the ingredients of Section, the liability of other persons as co-extensive with one who has actually committed murder but in the present case, prosecution is not succeeded to prove the ingredients U/s 300 of IPC i.e. homicidal death which amounts to murder and when prosecution is not succeeded to commit murder offence, therefore, no question has been arisen to commit the offence of dacoity conjointly by all the accused.

136. Section 201 of IPC are applicable when all the accused are knowing or having reason to believe that an offence has been committed and causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment for with that intention gives any information respecting the offence which he knows or believes to be false but case on hand, no iota of evidence has been proved by the prosecution as to the disappearance of any evidence of the commission of a crime and ocular/eye witness were not present at the time of commission of offence, therefore, prosecution has adduced its evidence(oral/documentary) with the theory of circumstantial evidence but as discussed hereinabove, so many missing link or missing gap found in the prosecution evidence, therefore, prosecution miserably failed to prove the ingredients U/s 201 of IPC.

137. In so far as section 120B of IPC is concerned, in so far as the terms of the definition of criminal conspiracy are concerned,

prosecution has to prove two or more persons who must be parties do a crime and it is essential to bring the charge of conspiracy whom to the accused persons to prove that there was the crime to commit an offence between two or more persons but herein this case, there is no evidence that has been adduced satisfactorily by the prosecution that offence U/s 120B of IPC was made out and mere allegations are not sufficient and prosecution has also failed to prove the charge of criminal conspiracy, an agreement two or more person to be accused or done some illegal act or some agree which is not illegal by illegal means and when motive is not proved but meeting of mind and conspiracy by all the accused are also not proved by the prosecution beyond reasonable doubt.

138. In so far as Section 3(1)(10) & 3(2)(5) are concerned, when main offence has not been proved, therefore, no question has been arisen to prove the abusive and filthy language on caste based comment and Section 3(2)(5) of the Atrocity Act is especially connected to offence of IPC charged leveled against all the accused and when prosecution has failed to prove the charges leveled against the accused with regards to Section 3(1)(10) & 3(2)(5) of the Atrocity Act. Therefore, the prosecution has failed to prove the ingredients U/s 3(1)(10) & 3(2)(5) of the Atrocity Act.
139. Case on hand, motive is not proved by the prosecution. Not only that but last seen together theory are also not proved the prosecution beyond reasonable doubt. Events of circumstances with regards to the homicidal death which amounts to murder of

Pravinaben are also not proved by the prosecution beyond reasonable doubt and as discussed hereinabove, when two possible views come before the Court, therefore, accused are entitled to get the benefit of doubt.

140. The family members of the deceased-Pravinaben are contesting the long battle and mother of Pravinaben are very old aged lady and she is living at wear and tear condition and mother of Pravinaben has lost her two family members, it is submitted by Ld. AGP Mr. J.C. Patel that Vijay's murder case accused are convicted and further submitted that Rs.6 lakh compensation order has been passed to pay the mother of deceased-Vijaybhai Amrabhai Chavda. Unfortunately, prosecution has failed to prove its case beyond reasonable doubt with the support of the chain of circumstantial evidence and no eye witness was present to see Pravinaben and accused together but mother of Pravinaben is the widow and accused are entitled to get the benefit of doubt. The primary purpose of the Gujarat Victim compensation scheme is to rehabilitate the victim, regardless of the conviction outcome and for the future maintenance of deceased family compensation is necessary, therefore, it is irrespective for the final outcome of the case whether conviction or acquittal order and the Gujarat compensation scheme ensures that the victim's right to rehabilitation and support are prioritized, therefore, according to the victim compensation scheme, compensation order are just and proper.

141. The accused has been charged for the offences punishable U/s 302, 364, 396, 506(2), 201 & 102B of the Indian Penal Code as

well as Section 3(1)(10) & 3(2)(5) of the Prevention of Atrocities Act, 1989 but the fact of culpable homicidal death which amounts to murder, kidnapping/abduction, theft, causing disappearance of evidence of offence and criminal intimidation to the complainant/ocular witnesses has not been proved by the prosecution. The complainant and ocular witnesses have not supported the facts of the complaint and turned hostile. The evidence of star material witness has not supported the prosecution case. At this juncture, corroborative piece of evidence cannot be taken into consideration and all those corroborative piece of evidence cannot take place of conclusive proof or strict proof. In the light of my discussion about the testimony of the prosecution witnesses is not found to be trustworthy, reliable and prosecution has not succeeded in proving that the accused has committed any offence as stated in the FIR. Therefore, the accused are entitled to get the benefit of doubt. Thus, in view of the above discussion, the Court decides point Nos.1 to 4 accordingly.

Point No.5:-

142. Considering the foregoing discussions and reasons assigned hereinabove, the accused persons are entitled to get the benefit of doubt as the prosecution has not succeeded to prove the charges leveled against the accused persons for the offences punishable under Section 364, 302, 396 201, 506(2) & 120B of the Indian Penal Code and Section 3(1)(10) & 3(2)(5) of the Atrocity Act. Hence, in the interest of justice, I pass the following order:-

:: O R D E R ::

- In case **Atrocity Case No.5/2021**-the accused No.1-**Kuldeep @ Lalo Danubhai @ Mafabhai Parmar (Bharwad)** and accused No.2-**Bhimabhai Haribhai Parmar(Bharwad)** are hereby **acquitted as benefit of doubt** Under Section : 235(1) of the Criminal Procedure Code from charges leveled against him for the offences punishable under Section **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section **3(1)(10) & 3(2)(5)** of the Atrocity Act in connection with **C. R. No.I-6/2015** registered with **Bagodara** Police Station.
- In case **Atrocity Case No.6/2021**-the accused No.1-**Raghubhai Haribhai Parmar(Bharwad)(declared abated)** and accused No.2-**Vijay Devabhai Parmar-Mer** are hereby **acquitted as benefit of doubt** Under Section : 235(1) of the Criminal Procedure Code from charges leveled against him for the offences punishable under Section **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section **3(1)(10) & 3(2)(5)** of the Atrocity Act in connection with **C. R. No.I-6/2015** registered with **Bagodara** Police Station.
- In case **Atrocity Case No.27/2021**-the accused-**Hiren Raghubhai Parmar(Bharwad)** is hereby **acquitted** Under Section : 235(1) of the Criminal Procedure Code from charges leveled against him for the offences punishable under Section **302, 364, 396, 506(2), 201 & 120B** of IPC as well as Section **3(1)(10) & 3(2)(5)** of the Atrocity Act in connection with **C. R. No.I-6/2015** registered with **Bagodara** Police Station.
- In case **Atrocity Case No.36/2021**-the accused No.1-**Chetanbhai**

Mafabhai Bharwad, accused No.2- Tapubhai Chhelabhai Chhotiya Bharwad, accused No.3- Anil Danubhai @ Mafabhai Parmar(Bharwad) and accused No.4- Alpeshbhai Kalubhai Parmar(Bharwad), are hereby acquitted as benefit of doubt Under Section : 235(1) of the Criminal Procedure Code from charges leveled against him for the offences punishable under Section 302, 364, 396, 506(2), 201 & 120B of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act in connection with C. R. No.I-6/2015 registered with **Bagodara** Police Station.

- In case **Atrocity Case No.40/2021-the accused-Kandhal @ Kandho Hajabhai Kadchha(Mer)**, is hereby acquitted as benefit of doubt Under Section : 235(1) of the Criminal Procedure Code from charges leveled against him for the offences punishable under Section 302, 364, 396, 506(2), 201 & 120B of IPC as well as Section 3(1)(10) & 3(2)(5) of the Atrocity Act in connection with C. R. No.I-6/2015 registered with **Bagodara** Police Station.
- In case **Sessions Case No.2/2023-the accused-Vipul Bhojabhai Garchar**, is hereby acquitted as benefit of doubt Under Section : 235(1) of the Criminal Procedure Code from charges leveled against him for the offences punishable under Section 302, 364, 396, 506(2), 201 & 120B of the Indian Penal Code in connection with C. R. No.I-6/2015 registered with **Bagodara** Police Station.
- Accused are directed to furnish bail bond with surety sum of **Rs.10,000/- by each for the period of six months** U/s 437(A) of Criminal Procedure Code, before the Registrar of District Court

at Dholka, Ahmedabad[Rural].

- The accused No.1-**Raghubhai Haribhai Parmar(Bharwad)** in case **Atrocity Case No.6/2021** had expired, therefore, he was abated vide order dated 14.08.2023, hence, he has declared as abated.
- 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.
- Muddamal be disposed off under the provisions of criminal manual, after appeal period is over.
- Yadi of this judgment be sent to the Jail Authority.

Signed & Pronounced in the open Court on this 30th day of March, 2026.

Date :30/03/2026.
Place:Ahmedabad.
P.D. Mishra

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