

GJBK180025332019



Presented on : 10-12-2019
Registered on : 10-12-2019
Decided on : 08-04-2026
Duration : 6 years, 3 months, 29 days

**IN THE COURT OF 6th ADDL DISTRICT JUDGE
AT DEESA, BANASKANTHA
(Presided Over by S.M.KANABAR)**

SC/83/2019

Exhibit No.62

Complainant :

Government of Gujarat
Through Police Station Officer DEESA RURAL POLICE STATION -
BANASKANTHA DISTRICT
106, APP OFFICE, TA- DEESA, DIST- BK
DEESABANASKANTHA

VERSUS

Accused:

1:MADARSING PARAMAJI VAGHELA
Age: 60 Occupation :
BHADATH, KUMBHANI PARTY, TA- DEESA, DIST- BK

2:NANSING MADARSING VAGHELA

Age: 27 Occupation :
BHADATH KUMBHANI PARTY
TA- DEESA DIST- BK

3:RAVATJI JESHAJI VAGHELA
Age: 62 Occupation :
BHADATH KUMBHANI PARTY
TA- DEESA DIST- BK

4:MAFUJI JESHAJI VAGHELA
Age: 65 Occupation :
BHADATH KUMBHANI PARTY
TA- DEESA DIST- B.K.

Advocate for Complainant : V B KANSARA,
APP for State : R V SOLANKI

**Offence punishable under : 308, 324,
323, 504, 506(2),114, of INDIAN
PENAL CODE.**

JUDGMENT
(Delivered on 8-4-2026)

Factual Aspect

(1) While preferring original complaint, it was filed by the original complainant stating that accused did illegal cultivation on the Gauchar land in the sim of village Bhadath and to protect that cultivation, they did surrounding boundaries passing electricity currents and on Dtd.12/8/2019 at

about 12-0 when complainant and witness were going to their house and due to mistake they touched the electricity boundaries made by the accused and received electricity current, hence, they went to say it to accused but at that time accused were agitated and accused No.2 assaulted on complainant with Axes on his left eye and accused No.1 and No.3 to 4 in collusion with each other beat the complainant by hand and feet and they also spoke abusive wordings with criminal intimidation of death to complainant, resultant, he filed complaint. The complaint was registered by the police for the offence punishable u/s. **308, 324, 323, 504, 506(2),114, of INDIAN PENAL CODE in DEESA RURAL POLICE STATION** vide First Crime Register No. 106/2019 on Dtd.12/8/2019 and after conclusion of the investigation, police filed charge-sheet before the magistrate court vide CC No.3458/2019 on Dtd.20/10/2019 and it was committed to the Sessions Court vide Sessions Case No. 83/2019 on Dtd.10/12/2019.

(2) **The Sessions Court verified the procedure of Section 207 of Cr.P.C and procedure of offer of legal aid to accused as per Para 125 and 128 of Criminal Manual and section 304 of Cr.P.C. As accused engaged private advocate and did not intend for legal aid,** the then Sessions Court initiated the hearing under Section 226 of the Cr.P.C. and charge was framed as per Section 228 of Cr.P.C. vide under Ex.20. It was read over to the accused and he denied plead guilty under Ex.21-24. Therefore, the procedure of recording of evidence of prosecution was initiated.

Evidence :-**FORM C****(3) LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**

RANK	EXHIBIT	NAME	NATURE OF EVIDENCE	STATUS
A. Prosecution				
PW1	26	Vijubha Naransinh Vaghela	Panch for Panchnama of crime spot	Hostile
PW2	28	Metubha Dansing Vaghela	Panch for Panchnama of crime spot	Hostile
PW3	30	Hathising Fataji Vaghela	Panch for Panchnama of body situation of accused and arrest of accused	Hostile
PW4	41	Manubha Shantuji Vaghela	Complainant	Supportive
PW5	43	Dr. Bhikhubha Ramabhai Akevadiya	Medical officer	Expert
PW6	48	Rambha Devusing Vaghela	Panch for Panchnama of body situation of accused and arrest of accused	Hostile
PW7	49	Hajubha Zenubha Vaghela	Victim	Supportive
PW8	51	Dalsugji Dharmuji	Witness covered	Supportive

		Vaghela	under Section 6 of Evidence Act	
PW9	52	Prahaladsing Ramuji Vaghela	Witness covered under Section 6 of Evidence Act	Supportive
PW10	54	Dilavarkhan Sikandarkhan Katakadi	PSO	Police Witness
PW11	57	Bhavansinh Jalamsinh Vaghela	Witness covered under Section 6 of Evidence Act	Supportive
PW12	58	Govindji Rudaji Thakor	Investigating Officer	Police Witness
B. Defence Witnesses, if any:				
C. Court Witnesses, if any: Not examined				

(4) LIST OF PROSECUTION / DEFENCE /COURT EXHIBITS

SR. NO.	EXHIBIT	PRODUCED BY	DESCRIPTION
<u>A. Prosecution:</u>			
1	27	PW1	Panchnama of crime spot
2	31	PW3	Panchnama of body situation of accused and arrest of accused
3	44-45	PW5	MLC
4	55	PW10	Suchi Patra
5	56	PW10	FIR
6	59	PW12	Complaint
7	60	PW12	Yadi for medical certificate
<u>B. Defence : - No</u>			

C. Court Exhibits : No			
D. Material Objects : No			
Sr. No.	Mark	Identified by	Identification of Object

Further Statement

(5) Prosecution filed application for declaration of its evidence as closed on Dtd.10/3/2026. The further statement of the arraigned accused were recorded u/Sec. 313 of Cr.P.C on Dtd.25/3/2026, to enable them to explain the incriminating circumstances arising against him.

(6) They admitted the recording of evidence in them presence. They stated evidence of prosecution as false and filling of false case against them.

(7) **They** denied to step in witness box as well as to file evidence and claimed themselves as innocent and asked to acquit them from the offence charged.

(8) **Argument of Prosecution :-**

(i) The learned APP relied on the evidence of prosecution side and asked to pass appropriate order.

(9) **Argument of Defence :-**

(i) Learned advocate of defence argued orally. He argued that not a single evidence was incriminating against the accused for alleged offence and there was dispute of land between parties and therefore complaint was filed under that enmity. He stated the conflict between both the parties on same

day in same incident and alleged filling of false complaint.

ISSUES :-

(10) Following issues are necessary to frame for the final conclusion of the matter.

Sr. No.	Issues
1	Whether prosecution is able to prove beyond reasonable doubt that accused have committed the offence punishable u/s. 328, 308, 324, 323, 504, 506(2),114, of INDIAN PENAL CODE?
2	What is the Final Order?

:- FINDINGS THERE ON :-

(11) Following are the findings on the issues.

Sr. No.	Issues
1	In negative
2	As per final order.

:- REASONING:-

Discussion on Issue No. 1 :-

(12) A criminal trail mainly based either on direct evidence or on circumstantial evidence. In case on hand, the case is based on direct evidence of complainant and other witnesses as per the complaint filed. The complaint filed for the offence punishable u/s. **308, 324, 323, 504, 506(2),114, of**

INDIAN PENAL CODE, therefore, following evidence is the necessary for prosecution to established on record.

Sr. No.	Section	Essential Ingredients
A	308	<p>To prove an offence under section 308 of the Indian Penal Code, 1860 the prosecution is to prove the following</p> <p>(i) That an act was committed by the accused;</p> <p>(ii) That the said act was done with the intention or knowledge that he shall be guilty of culpable homicide not amounting to murder;</p> <p>(iii) That culpable homicide does not amount to murder,</p> <p>(a) if the act is done with the intention or knowledge referred to in section 300 of the Indian Penal Code, 1860, but under circumstances which would bring the case within one of the exceptions mentioned In that section, or</p> <p>(b) if the act is done with the intention or knowledge referred to in section 299 but not falling under clauses (2), (3) and (4) of section 300 of the Indian Penal Code, 1860.</p>
B	323	<p>The ingredients to prove the offence punishable under section 323 IPC are as follows:</p> <p>(1) That the accused persons voluntarily caused hurt to the complainant.</p>

		(2) That hurt was such which caused bodily pain, diseased or infirmity to the complainant.
C	324	<p>An offence under section 324, following are the essential ingredients</p> <p>(i) That the accused voluntarily caused hurt to another person;</p> <p>(ii) That such a hurt was in exception to cases provided under section 334;</p> <p>(iii) That such hurt was caused</p> <p>(a) by means of any instrument for shorting, stapping or cutting, or any instrument which used as a weapon of offence is likely to cause death; or (b) by means of five or any heated substance; or</p> <p>(c) by means of any poison or any corrosive substance; or</p> <p>(d) by means of any explosive substance; or</p> <p>(e) by means of any substance which is deleterious to the human body to inhale, to swallow, or receive into the blood; or</p> <p>(f) by means of any animal.</p>
D	504	<p>This section requires two essentials:—</p> <p>(i) Intentionally insulting a person and thereby giving provocation to him.</p> <p>(ii) The person insulting must intend or know it to be</p>

		likely that such provocation will cause him to break the public peace or to commit any other offence.
E	506 (2)	For proving an offence under Section 506 (2) of IPC prosecution is required to prove: (i) that the accused threatened some person. (ii) that such threats consisted of death of the person (iii) that he did so with intent to cause alarm to that person, or to cause that person to do any act which he was not legally bound to do or omit to do an act which he is legally entitled to do as a means of avoiding the execution of such threat.
F	114	For proving an offence under Section 114 of IPC prosecution is required to prove: 1. There was abetment by accused. 2. The act was actually committed in pursuance of abetment. 3. The accused was present while the act was being committed.

(13) Some Legal Position for offence charged.

(I) Legal Position of Section 506 (2) IPC

A. In [Munsafkhan Yasinkhan Pathan and Ors. v. \(The\) State](#)

of Gujarat, which is unreported judgment mentioned in 2002(1) G.L.H. (U.J.) 4 held that Indian Penal Code, 1860 - Sections 506(2) & 503 Criminal intimidation- Threat to cause death or grievous hurt- Necessary ingredients- Complainant should have been alarmed by the threat administered to him- Evidence indicates a clear absence of any apprehension and/or fear so as to cause alarm to the complainant- No evidence that because of threat, complainant was unable to attend to his duties of any point of time after he lodged the complaint- Words uttered by the accused did not cause any alarm to the complainant- Offence not proved.

- B.** The same decision was referred in Pravinbhai Becherbhai Vankar vs State Of Gujarat on 3 November, 2006
- C.** Gujarat High Court in Mahasukhrai Keshavlal Joshi vs State Of Gujarat decided on 22 March, 2007 reported in 2007(2) GLH 201 held that It is settled that for making out a case of criminal intimidation under Section 506(2) of the Indian Penal Code, it must be established that the accused had an intention to cause an alarm to the complainant. Mere threat given by the accused, not with an intention to give an alarm to the complainant but with a view to deterring him from interfering with what the

accused believe either about his right or other status, would not constitute an offence of criminal intimidation.

- D. Mohammad Wajid vs State of U P | 2023 LiveLaw (SC) 624 | 2023 INSC 683** held that “Indian Penal Code, 1860 ; Section 504 - One of the essential elements for constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present. (Para 28) **Indian Penal Code, 1860 ; Section 506 - Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. (Para 27)**”
- E.** [2025] 2 S.C.R. 187 : 2025 INSC 105 Madhushree Datta v. The State of Karnataka & Anr held that The next question for determination is, whether the mere assertion of “filthy language” allegedly used by the appellants in scolding the complainant, is sufficient to establish commission of offences under Sections 504 and 509 of

the IPC. 21. In the above context, it would be apt to consider the provisions contained in Section 504 of the IPC. 2. A perusal of Section 504 of the IPC reveals that a mere act of insulting someone does not fulfil its requirements; the insult must be of such a nature that it provokes the person insulted to breach the public peace or engage in criminal conduct. Therefore, to establish the ingredients of Section 504 of the IPC, it must be demonstrated, based on the available material, that there was intentional insult with the intent or knowledge that such insult would provoke either disturbance of the public peace or the commission of any other offence. 23. We may, at this juncture, profitably refer to the decision of this Court in *Fiona Shrikhande v. State of Maharashtra & Anr.*, [2013] 9 SCR 240 : AIR 2014 SC 2013 wherein Section 504 of the IPC came up for interpretation and it was held as under : 13. Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a

person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, *prima facie*, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the

person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC.” AND This Court had the occasion to examine the ingredients of Sections 503 and 506 of the IPC in Manik Taneja and Another v. State of Karnataka & Anr.,¹⁶ where it was observed as follows: “11. xxxxxxxxxxxx A reading of the definition of ‘criminal intimidation’ would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.” 35. In the present case, the complaint does not specifically attribute any threats or intimidation to the second accused. Therefore, ingredients of Section 506 of the IPC, prima facie, are not made out against him. The argument that the first accused acted at the behest of the second accused is untenable, as Section 34 of the IPC, which imposes

vicarious liability in criminal matters, has not been applied in this case.”

(II) Legal Position of Section 504 IPC

- A. [Dadia Ottamchand Motichand and Anr. v. Hemkunver Popatlal and the State](#) reported in 1961 (Vol.II) GLR 196 wherein Hon'ble High Court has held that: The insult, (which is one of the ingredients of the offence) may be by words or by conduct. Abusive words may amount to an offence under Section 504 Indian Penal Code, if other ingredients are present. If the other ingredients are not present, mere abuses would not amount to an offence under Section 504, I.P. Code.
- B. [Patel Narottam Tulsidas v. State of Gujarat](#) reported in 1973 GLR 522. Hon'ble Court hold that mere abuse not sufficient to prove the act within the meaning of Section 504 Intention to provoke any person to break peace essential.
- C. In [Munsafkhan Yasinkhan Pathan and Ors. v. \(The\) State of Gujarat](#), which is unreported judgment mentioned in 2002(1) G.L.H. (U.J.) 4 held that Indian Penal Code, 1860 - Sections 506(2) & 503 Criminal intimidation- Threat to cause death or grievous hurt- Necessary

ingredients- Complainant should have been alarmed by the threat administered to him- Evidence indicates a clear absence of any apprehension and/or fear so as to cause alarm to the complainant- No evidence that because of threat, complainant was unable to attend to his duties of any point of time after he lodged the complaint- Words uttered by the accused did not cause any alarm to the complainant- Offence not proved.

- D. The same decision was referred in Pravinbhai Becherbhai Vankar vs State Of Gujarat on 3 November, 2006
- E. **Mohammad Wajid vs State of U P | 2023 LiveLaw (SC) 624 | 2023 INSC 683** held that “Indian Penal Code, 1860 ; Section 504 - One of the essential elements for constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present. (Para 28) **Indian Penal Code, 1860 ; Section 506 - Before an offence of criminal intimidation is made out, it must be**

established that the accused had an intention to cause alarm to the complainant. (Para 27)”

- F. [2025] 2 S.C.R. 187 : 2025 INSC 105 Madhushree Datta v. The State of Karnataka & Anr held that The next question for determination is, whether the mere assertion of “filthy language” allegedly used by the appellants in scolding the complainant, is sufficient to establish commission of offences under Sections 504 and 509 of the IPC. 21. In the above context, it would be apt to consider the provisions contained in Section 504 of the IPC. 2. A perusal of Section 504 of the IPC reveals that a mere act of insulting someone does not fulfil its requirements; the insult must be of such a nature that it provokes the person insulted to breach the public peace or engage in criminal conduct. Therefore, to establish the ingredients of Section 504 of the IPC, it must be demonstrated, based on the available material, that there was intentional insult with the intent or knowledge that such insult would provoke either disturbance of the public peace or the commission of any other offence. 23. We may, at this juncture, profitably refer to the decision of this Court in Fiona Shrikhande v. State of Maharashtra & Anr., [2013] 9 SCR 240 : AIR 2014 SC 2013 wherein

Section 504 of the IPC came up for interpretation and it was held as under : 13. Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, *prima facie*,

that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC.” AND This Court had the occasion to examine the ingredients of Sections 503 and 506 of the IPC in Manik Taneja and Another v. State of Karnataka & Anr.,¹⁶ where it was observed as follows: “11. xxxxxxxxxxxx A reading of the definition of ‘criminal intimidation’ would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to

do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.” 35. In the present case, the complaint does not specifically attribute any threats or intimidation to the second accused. Therefore, ingredients of Section 506 of the IPC, prima facie, are not made out against him. The argument that the first accused acted at the behest of the second accused is untenable, as Section 34 of the IPC, which imposes vicarious liability in criminal matters, has not been applied in this case.”

(14) In case on hand, complainant deposed under Ex.41 but the complaint was not confronted to him and complaint was not proved through his deposition. When this court has inquired for it from the learned APP during the argument, he answered that the concerned judicial officer was having view that as the complainant has put his thumb impression, the complaint can not be identified and proved through his deposition.

(III) HOW TO EXHIBIT DOCUMENT HAVING THUMB IMPRESSION

* Rajasthan High Court – Jaipur in Bheek Chand And Ors. vs Parbhujji on 21 September, 1962 reported in Equivalent citations: AIR1963RAJ84 held that 6. Another serious

error committed by the learned District Judge was that he held that a person not knowing English or Sindhi himself could not prove that the writings in English or Sindhi were made by Parbhujji. [Section 67](#) of the Evidence Act does not lay down any particular kind of proof for proving that a particular writing or signature is in the hand of a particular person. The fact that a particular person has written a particular writing can be proved by the direct evidence of those persons who have seen him making the writing on the particular document irrespective of whether or not they can read what was written, it has to be remembered that a document can be executed not only by affixing one's signatures, but also by making a mark on it. When a document bearing a thumb-mark of a person is proved it is not necessary that the person proving the affixation of the thumb-mark should be able to identify the thumb-mark. All that is required is that he should be able to identify the document on which he states that the thumb-mark was affixed. In the present case the documents on which Parbhujji was alleged to have made English and Sindhi writings were written in Hindi which all the witnesses, who came forward to prove the writings of Parbhujji, knew. They were competent

witnesses to prove the writings of Parbhuji on these documents in English and Sindhi in spite of the fact that they did not know English and Sindhi. In the AIR Commentary on Evidence Act the following appears as point 15 under [Section 67](#) :- "A person who is produced to prove the signature or handwriting on a document under [Section 67](#) must be able to identify the handwriting or signature. The essential can be fulfilled only when the witness is himself acquainted with the language in which the handwriting or signature has been made. Hence where an illiterate person who does not know the script of a document and who is unable to recognize the signature or handwriting on the document merely says that it was written and signed in his presence it is not a sufficient proof of the document." 7. It is not correct to say that a person can only prove the handwriting on a document when he is himself acquainted with the language in which the handwriting or signature has been made. Although 1948 R. D. (Bihar Reports) on which the observation purports to have based is not available here it is clear from the contents that in the case in which the above observation was made the person who had come forward to prove the writing was an illiterate person. For such a

person it is difficult to identify the document on which he has seen someone making a writing. An illiterate person cannot therefore ordinarily prove a writing or signature made by another person. But a person knowing the language in which a document is written can identify the document with certainty and when he has seen another person making a writing on it he can prove that writing without knowing the language in which the writing by that person was made.

- * Supreme Court of India In Pulen Phukan And Ors. vs The State Of Assam on 28 March, 2023 2023 LiveLaw (SC) 265 2023 SCC OnLine SC 350; referred the contention that “10.1 The first informant PW-1 opens her statement by stating that she knows the accused persons by name and face. She further states that she knows the accused persons present in the dock on the day of her statement; the two absconded accused Dhajen and Muhiram are not present; she then reiterates the contents of the FIR; while Robi Phukan (PW 2) was being assaulted, the deceased fled by the back court yard; the accused persons chased the deceased who entered into the house of Anjana Phukan (PW4); she followed the accused persons who also entered into the house of

Anjana Phukan (PW4); that Kuleswar assaulted the deceased with iron rod and Pulen Phukan gave a blow on the neck of the deceased, as a result of which he fell down. The accused thereafter left that place. She then states that while the accused persons were taken to the Police Station she along with Jogmaya Phukan (PW-3) came to the Police Station where the FIR was written and she put her thumb impression; she proves her thumb impression on the FIR which is marked as Ex.-1; thereafter she proceeds for the Mission Hospital where the body of the deceased had reached. In her cross-examination she states that Chabua Police Station is about 3 kms. away from her house; she reached the Police Station at about 3-4 PM; she did not read Ex.-1 which was written in the Police Station and only her signatures were obtained thereon; it was also not read over to her; she does not know what is written in it; the police did not question her. Then she denies the suggestion about the assault being incorrect. Lastly she states that on the date of occurrence, the police were accompanying the accused.”

* Supreme Court of India in Jaspal Singh vs State Of Punjab on 20 April, 1979 Equivalent citations:

AIR1979SC1708, 1979CRILJ1386, (1980)1SCC487, 1979(11)UJ718(SC), AIR 1979 SUPREME COURT 1708, 1979 CRILR(SC&MP) 487 1979 SCC (CRI) 920, 1979 SCC (CRI) 920 held that 8. Learned Counsel for the appellants also relied on the evidence of Dr. Mohinder Partap PW. 1, who has stated that the deceased had reached the hospital on 4.8.71 at 2 a.m. Although the injured was speaking same thing his statement could not be recorded. On the other hand, the witness recorded the statement of the mother Tej Kaur who seems to have given a different version and suggested that her son Bhupinder Singh deceased had an injury on his abdomen which was caused by the falling of a bag containing wheat on his stomach. The thumb impression of Tej Kaur was sent to the expert who was of the opinion that this could not be the thumb impression of Tej Kaur. The science of identifying thumb impression is an exact science and does not admit of any mistake or doubt. The report of Dr.K.S. Puri clearly demonstrates that the thumb impression on the statement Exh.P B was not that of Tej Kaur but was of some other woman who appears to have falsely represented to the Doctor that she was the mother of the deceased. This is supported not only by the

fact that the thumb impression of Tej Kaur on the statement of P.B was forged but also by the categorical statement of PW 6 wherein she denied having made any such statement before the Doctor. The Doctor although examined as a witness in court was never made to identify Tej Kaur who was also one of the witnesses, nor was any application given by the accused that the Dr should be called upon to identify Tej Kaur, PW. 6 in order to test the validity of the statement that it was really Tej Kaur who made the statement Exh P.B. before the Doctor. In these circumstances, therefore, the evidence of the Doctor does not appear to be of any assistance to the defence.

- * Allahabad High Court in Mangal Giri vs State Of U.P. on 31 August, 2018 Case :- JAIL APPEAL No. - 5108 of 2010 held that 21. The deposition of this witness U/s 164 [Cr.P.C.](#) was recorded before the Magistrate too. When the sealed envelope of statement U/s 164 [Cr.P.C.](#) was opened, showed and read over to the witness, she admitted the said statement and has proved it as Ex.Ka-1 stating the thumb impression and signature on it being of her own.
- * Bansilal Vs State of M.P. Madhya Pradesh High Court 17 Feb 2003 Criminal Revision No. 570 of 1997 (2003) 02

MP CK 0100 held that In order to prove the execution of a document executed by an illiterate person, it must be shown and proved that the person executing it consciously subscribed to it in the sense that he put his thumb mark on it after having known and understood its contents. Mere proof that the person's thumb impression appears on the document, cannot, by itself, amount to execution of the document. It is well settled in law that if an illiterate person affixes his thumb mark to a document, the onus to prove that the document was properly explained to the person affixing his thumb mark so as to make him understand its true import is on the person relying on the document.

(15) Therefore, in case on hand such kind of procedure was not followed by the prosecution and this court is not agreed with the reply given by the learned public prosecutor regarding denial of permission by the concerned the then Sessions Judge. It was the duty of learned public to ask confrontation of the complaint to complainant and if the learned Sessions Judge was on some legal view, it might be rejected and at present stage it may be considered as the proved through the deposition of witness deposed under Ex.58 but until the procedure was not followed this court is not able to believe the complaint of Ex.59 as the proved due to following decisions given by the Hon'ble Apex Court.

(IV) HOW TO BELIEVE COMPLAINT AS PROVED

- * Supreme Court of India in case of Lalita vs Vishwanath on 30 January, 2025 reported in 2025 INSC 173 and 2025 LiveLaw (SC) 179 held that “27. Before we close this matter, we deem it necessary to explain one very important aspect of the procedural law so far as it relates to proving the contents of the First Information Report through the Investigating Officer. In other words, if the first informant has passed away before stepping into the witness box, then whether the contents of such First Information Report can be proved through the evidence of the Investigating Officer and read into the evidence. 28. In the case on hand, as noted above, the First Information Report was lodged by the father of the deceased. However, before the father could step into the witness box, he passed away. In such circumstances, the Trial Court permitted the Investigating Officer to prove the contents of the First Information Report Exhibit-35 and read into evidence as per [Section 67](#) of the Evidence Act. 34. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R.

can be used by the defence to impeach the credit of the person who lodged the F.I.R. under [Section 154\(3\)](#) of the Evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.”

- * Supreme Court of India in case of Jayantibhai Chaturbhai Patel vs State Of Gujarat on 16 December, 2025 reported in 2025 INSC 1443 held that “19. Furthermore, it is also relevant to observe that three independent witnesses who were present at the place of occurrence, i.e. in the

hospital/clinic of the appellant-accused, though cited as prosecution witnesses in the chargesheet, were not examined by the prosecution. Furthermore, the medical evidence also does not support the version of the prosecution. Merely because the victim has levelled allegations against the appellant-accused in the FIR and the investigating officer has deposed before the Court with regard to the contents of the said FIR, it cannot be presumed that the allegations levelled in the FIR are true and correct unless the same is proved during the course of trial by leading cogent evidence.”

(16) Now the contention of complaint of Ex.59 with the deposition of Ex.41, it can not be said that contention of Ex.59 is said to be proved as per law.

(17) Witness of Ex.49, 51, 52, 57 deposed in support of complainant but not as per the contention given in complaint of Ex.59 and it is admitted fact in Ex.59 that there was enmity between the parties and there was dispute of land. On the date of alleged incident of assault, the presence of complainant and his nephew named as Hazubha Jenubha was stated in complainant but Hazubha who was deposed under Ex.49 gave another version of dispute and alleged the injury to his own father named as Hazubha.

(18) All panch witnesses were turned hostile and prosecution has to prove panchnama in the deposition of investigating officer but panchnama were not proved as per the decision cited below.

(V) PROOF OF PANCHNAMA

- * Hon'ble Supreme Court in case of Rajesh v State of MP reported in 2023 INSC 839 decided on 21st September 2023 in Criminal Appeal No(s). 793-794 of 2022 held that 29. Recently, in [Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh](#) AIR 2022 SC 5273, a 3-Judge Bench of this Court observed that the requirement of law that needs to be fulfilled before accepting the evidence of discovery is by proving the contents of the panchnama **and the Investigating Officer, in his deposition, is obliged in law to prove the contents of the panchnama.** It was further observed that it is only **if the Investigating Officer has successfully proved the contents of the discovery panchnama in accordance with law that the prosecution would be justified in relying upon such evidence and the Trial Court may also accept the same.** It was held that, in order to enable the Court to safely rely upon the evidence of the Investigating Officer, it is necessary that the exact words attributed to the accused, as the statement made by him, be brought on

record and, for this purpose, the Investigating Officer is obliged to depose in his evidence the exact statement and not merely say that the discovery panchnama of the weapon of the offence was drawn up as the accused was willing to take it out from a particular place.

- * Gujarat High Court in case of Kapilkumar Ramashish Chandeshwar ... vs State Of Gujarat on 5 September, 2023 NEUTRAL CITATION R/CR.A/931/2015 CAV JUDGMENT DATED: 05/09/2023 held that “29. The Apex Court has held that in case the panchas to the discovery panchanama do not support the case of the prosecution and are declared hostile, the contents of the panchanama can be proved and the panchnama can be accepted as a legal evidence through the evidence of the Investigating Officer. It is held that the Investigating officer is under an obligation to prove the contents of the panchanama, and only if he is successfully proves the contents the trial court may accept the evidence of the Investigating Officer. The Supreme Court has affirmatively stated that "In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record

and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place."

- * Supreme Court of India in Ramanand @ Nandlal Bharti vs The State Of Uttar Pradesh on 13 October, 2022 reported in AIR 2022 SC 5273 held that 56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence." AND "62. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of Murli v. State of Rajasthan reported in (2009) 9 SCC 417, held as under: "34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what

has been stated by the panchas or the person concerned in the witness box.....”

- * Gujarat High Court Mahesh Parbatbhai Surela Koli vs State Of Gujarat on 30 July, 2025 NEUTRAL CITATION R/CR.A/2731/2008 JUDGMENT DATED: 30/07/2025 HELD THAT “We may refer the language of Section 27 which says that, when any fact is deposed to as discovered in consequences of information received from a person accused of any offence, in police custody and if the information relates distinctly to the fact discovered, the said confession may be presumed to be true. Thus, in the facts of present case, the evidence of discovery as relied by the prosecution is not reliable and trust worthy as the alleged weapon is found in an open and accessible place and direct link between the accused statement and his exclusive knowledge of the weapon's concealment is severed. The another infirmities we have found in the prosecution case on the admissibility of disclosure statement made during the discovery and recovery. The witnesses of discovery panchnama Exh.173 and the I.O. PW:38 failed to prove the contents of the panchnama as mandated by the Supreme Court in the case of Ramanand vs. State of U.P. (2022) Livelaw SC 843. The Supreme

Court has emphasized that, the contents of discovery panchnama must be proved by the prosecution before accepting the evidence of discovery and there is an obligation on the part of I.O. to prove the contents of discovery panchnama. In the present case, upon careful examination of the oral as well as documentary evidence, neither the panchas, nor the I.O. have deposed the exact statement and/or words uttered by the accused on the aspect of discovery of facts and recovery of weapon. In view of the settlement position of law and the evidence adduced by the prosecution in the present case, the evidence of discovery in the form of disclosure statement and recovery of weapon at the instance of accused-appellant is not proved and established and the same cannot be read in evidence against the accused.”

(19) The position of deposition of investigating officer is narrated by the hon’ble Higher Court in following decisions.

(II) Value of Evidence of Investigating Officer.

- * Hon’ble Supreme Court of India in case of RENUKA PRASAD VERSUS THE STATE reported in 2025 LiveLaw (SC) 559 held that “The statements made by the IOs regarding the motive, conspiracy and preparation comes out as the prosecution story, as discernible from

the Section 161 statements of various witnesses who were questioned by the police during investigation; which statements are wholly inadmissible under Section 162 of the Cr.P.C. Merely because the IOs spoke of such statements having been made by the witnesses during investigation, does not give them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission or instances from which conspiracy could be inferred as also the preparation, established beyond reasonable doubt. We are unable to find either the motive, the conspiracy or the preparation or even the crime itself to have been established in Court, at the trial through the witnesses examined before Court. The witnesses had turned hostile, for reasons best known to themselves. The only inference possible, on the witnesses turning hostile is that either they have been persuaded for reasons unknown or coerced into resiling from the statements made under Section 161 or that they had not made such statements before police officers. Merely because the story came out of the mouth of the IO, it cannot be believed and a legal sanctity given to it, higher than that provided to Section 161 statements under Section 162 of the Cr.P.C.”

(20) There is no proper establishment of evidence in deposition of any witness as necessary to prove the offence punishable u/s. 504 and 506 (2) of Indian Penal Code.

(21) Therefore, this court can not pass any conviction merely relying of inconsistent deposition of complainant as well as injured witness and his relatives, where there is previous enmity. This court is not on the view to believe the charge as proved beyond reasonable doubt, this court is not on the view to pass the order as per the evidence recorded in the case and the decision on issue No.1 is given in negative.

Issue No. 2 :-

(22) As the version of prosecution is not proved. The deposition of eye witnesses is not in consistence to pass the conviction and therefore, the court can not rely on such kind of evidence and the court has no other option except to pass following final order.

- : FINAL ORDER :-

[1] Accused Named as

1.	1:MADARSING PARAMAJI VAGHELA Age: 60 Occupation : BHADATH, KUMBHANI PARTY, TA- DEESA, DIST- BK
2	2:NANSING MADARSING VAGHELA Age: 27 Occupation : BHADATH KUMBHANI PARTY TA- DEESA DIST- BK
3	3:RAVATJI JESHAJI VAGHELA

	Age: 62 Occupation : BHADATH KUMBHANI PARTY TA- DEESA DIST- BK
4	4:MAFUJI JESHAJI VAGHELA Age: 65 Occupation : BHADATH KUMBHANI PARTY TA- DEESA DIST- B.K.

are acquitted from the charged offence punishable under section u/s.308, 324, 323, 504, 506(2),114, of **INDIAN PENAL CODE.**

- [2] **Accused are ordered to file bail and bond worth of Rs.10,000/- by each with one surety for the appeal period as per the direction of section 437A of the Code of Criminal Procedure.**
- [3] The Muddamal articles are ordered to destroy after expiry of limitation period of appeal or the final outcome of appeal, which ever is earlier.

Pronounced in the open Court this 8th April 2026.

Place – Deesa

Date - 8-4-2026

(Shilpa Mansukhlal Kanabar)
6th Additional Sessions Judge
Bansakantha at Deesa
Code-GJ00814

PROCEEDINGS

08/04/2026	Matter is listed for judgment
	Accused are present with advocate
62	Judgment declared
	Bail Bond of Accused
	Disposed of accordingly

(Shilpa Mansukhlal Kanabar)
6th Additional Sessions Judge
Bansakantha at Deesa
Code-GJ00814