

Date of institution : 15/03/2024

Date of decision : 31/07/2026

Remained pending for :

Days Months Years.

**BEFORE THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE
FIRST CLASS, TALAJA @ BHAVNAGAR**

(Presided over by Ms. M. J. Kikani)

Delivered on 31st July, 2026

CC NO: 446/2024

Alang Police Station I Cr. No. 04/2024

Ex:

Complainant: The State of Gujarat.

Represented by Addl Public Prosecutor Ms. F. M. Shekh

Versus

Accused: (1) Mr. Nathubha Vikramsinh Gohil

(2) Mr. Rajendrasinh Dilubha Gohil

Resident of Paniyani, Talaja, Bhavnagar

Represented by Ad. Mr. J. K. Dave

Offence:- Under Section 323, 504, 506(2) of

Indian Penal Code, 1960 & under Section 135 of the G. P. Act

FORM B

Date of Offence	05/01/2024
Date of filing FIR	06/01/2024
Date of filing Chargesheet	15/03/2024
Date of Framing Charge	14/06/2024
Date of Commencement of Evidence of Prosecution	01/08/2024
Date on which the matter is reserved for Judgment	01/07/2026
Date of Judgment	31/07/2026
Date of Sentence if Judgment is of Conviction	31/07/2026

DETAILS OF THE ACCUSED

Sr. No	Name of the Accused	Date of Arrest	Date on which bailed out	Offence Alleged	Conviction / Acquittal	Sentence	Period of Confinement while hearing application u.s 428 of Cr.P.C.
(1)	Mr. Nathubha Vikramsinh Gohil	Not Arrested	-	u/s 323, 504, 506(2) and 114 of IPC and u/s	Conviction for Accused no. 1 and Acquittal for	As per final order	-

(2)	Mr. Rajendrasi nh Dilubha Gohil	Not Arrested	-	135 of G. P. Act	Accused no. 2.		
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For the ease of reading, the entire judgment has been segregated in following parts.

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:- JUDGMENT :-

(1) BRIEF FACTS OF THE CASE:-

The facts in nut shall giving rise to this litigation is that when the complainant was at his farm, the accused came with the tractor and an altercation ensued between him and accused No.1 Nathubha Gohil. During the course of the quarrel, accused No.1 allegedly abused the complainant, brought a Dhoko- lathi from his tractor and inflicted a blow on the back of the complainant, while accused No. 2 allegedly joined him in abusing the complainant. It is further alleged that the accused threatened the complainant with dire consequences. The complainant sustained injuries and was shifted to the hospital for medical treatment. Upon registration of the offence vide I CR No. 04/2024 at Alang Police Station, investigation was undertaken and, upon completion thereof, charge-sheet came to be filed against the accused persons for the offences punishable under Sections 323, 504 and 506(2) of the Indian Penal Code as well as Section 135 of the Gujarat Police Act.

(2) TAKING THE COGNIZANCE & FRAMING OF CHARGE:-

Upon institution of charge-sheet this court has passed order to issue summons to the accused under Section 204 of the Code of Criminal Procedure, 1973. When the accused remained present before this court, the copies of case papers has been served to the accused as per mandate of Section 207 of The Code of Criminal Procedure, 1973. The charge was framed against the accused for the offence punishable under Section 323, 504 and 506(2) of the Indian Penal Code as well as Section 135 of the Gujarat Police Act. The prosecution has been given opportunity to prove the case against the accused by leading the evidence.

(3) EVIDENCE OF PROSECUTION :-

3.1 ORAL EVIDENCE.

Sr No.	Exhibit	Witness	Nature
PW 01	Exh. 08	Akhubha Kishorsinh Gohil	Panch Witness
PW 02	Exh. 10	Hathubha Siddhraisinh Gohil	Panch Witness
PW 03	Exh. 15	Lakhmanbhai Bhagwanbhai Dabhi	Complainant
PW 04	Exh. 19	Bijalbhai Lakhmanbhai Dabhi	Eye Witness
PW 05	Exh. 20	Vipulbhai Lakhmanbhai Dabhi	Eye Witness
PW 06	Exh. 22	Rajubhai Ghughabhai Baraiya	Eye Witness
PW 07	Exh. 23	Vikrambhai Bhupatbhai Dabhi	Eye Witness

PW 08	Exh. 28	Manishaben Bijalbhai Dabhi	Eye Witness
PW 09	Exh. 29	Asmitaben Vipulbhai Dabhi	Eye Witness
PW 10	Exh. 30	Nikunjbhai Pragjibhai	Medical Officer
PW 11	Exh. 32	Laljibhai Mepabhai Dabhi	Panch Witness
PW 12	Exh. 34	Dhirubhai Lavjibhai Dabhi	Panch Witness
PW 13	Exh. 39	Rajpalsinh Temubha Gohil	Investigating Officer
PW 14	Exh. 44	Dr. Kuldipsinh Bharatsinh Chauhan	Medical Officer

3.2 DOCUMENTARY EVIDENCE

Sr. No.	Exhibit	Description of the Document
(1)	Exh.09	Panchnama of Arrest
(2)	Exh. 16	Complaint
(3)	Exh. 31	MLC Certificate issued by CHC, Talaja
(4)	Exh. 33	Panchnama of Crime Scene
(5)	Exh. 40	Yadi for deputation of Investigation
(6)	Exh. 41	MLC Certificate issued by Medical officer, Sir T

		Hospital, Bhavnagar
(7)	Exh. 42	Notification
(8)	Exh. 43	FIR
(9)	Exh. 45	Refer Note of injured

(4) CRUX OF EVIDENCE OF PROSECUTION :-

4.1 PW-01 Akhubha Kishorsinh Gohil

PW 02 Hathubha Siddharajsinh Gohil

Both the (Panch Witness) deposed that on 22.01.2024, the witness was called to Alang Police Station where the police obtained the witness's signature on a panchnama already prepared by the police. The witness stated that the accused persons were present at the police station at that time. The witness further deposed that no muddamal was seized in the presence of the witness and no seizure panchnama was drawn before the witness. Upon being shown the copy of the panchnama, the witness identified the signature appearing therein as that of the witness but stated that, except for the signature, the witness had no knowledge about its contents. The witness were declared hostile by the prosecution. During the cross-examination by the learned APP, the witness denied the prosecution's suggestion that the witness had remained present during the investigation after being explained the purpose of the panchnama, that accused No. 1, **Nathubha Vikramsinh Gohil**, had produced the wooden stick allegedly used in the commission of the offence which was

seized under a panchnama in the presence of the witness, or that the tractor bearing registration No. **GJ-04-DN-3678** had also been seized in the witness's presence. The witness also denied the suggestion that no weapon was recovered from accused No. 2, **Rajendrasinh Gohil**, and that the relevant panchnama had been prepared and signed in the witness's presence. The witness further denied the suggestion that the witness was deposing falsely to save the accused.

4.2 PW 03 Lakhmanbhai Bhagwanbhai Dabhi (Complainant)

The complainant deposed that the accused are neighbours and are known to the witness. The witness stated that the witness is engaged in agriculture and has been cultivating agricultural land bearing Survey No. 113 situated at village Paniyali for the last about six years. According to the witness, out of the said land, five vigas stand in the name of Madhabhai Bhagwanbhai and the remaining land stands in the name of Vipulbhai Lakhmanbhai. The witness further stated that the witness's family has been in possession of the said land for about six years and has been cultivating bajra and jowar thereon. The witness also stated that a civil suit regarding the said land is pending before the Talaja Court.

The witness further deposed that on **05.01.2024**, while irrigating the agricultural field at about **10:30 p.m. to 11:00 p.m.**, accused **Nathubha** assaulted the witness with a wooden stick on the shoulder, causing the witness to fall down. According to the witness, accused Nathubha was accompanied by about **seven to eight persons**, who had come in a tractor and other motor vehicles. The witness stated that the witness's

son **Vipulbhai** called the 108 Ambulance, whereafter the witness was taken to Talaja Government Hospital. The witness further stated that the doctor administered an injection and referred the witness to Sir T. Hospital, Bhavnagar, where medical examination was carried out, medicines were prescribed and the witness was discharged thereafter. The witness deposed that the assault was committed because accused Nathubha claimed that the disputed land belonged to the accused. The witness identified the complaint bearing the witness's thumb impression. However, the witness stated that, due to the incident having occurred at night, the witness was **unable to identify the wooden stick** used in the assault.

The memory of the witness was refreshed on a limited aspect, the witness admitted having stated in the First Information Report that accused Nathubha and the tractor driver had abused the witness, demanded that the witness vacate the land and threatened to kill the witness.

In the cross-examination by the defence, the witness admitted being illiterate and having no knowledge of the revenue records or ownership reflected in Village Forms **6, 12 and 8-A**. The witness admitted that **Survey No. 105** stands in the name of **Vajubhai Maluji** and expressed ignorance regarding the sale deed executed in favour of accused Nathubha and the proceedings arising therefrom. The witness admitted that the witness's son **Ashokbhai Lakhmanbhai Dabhi** had challenged the revenue entry before the Collector, Bhavnagar, but expressed ignorance about the outcome of those proceedings. The witness further

admitted that the incident occurred during the night and that the witness suffers from diminished eyesight, but denied the suggestion that the darkness prevented identification of the assailant. The witness stated that after sustaining the blow, the witness became unconscious and thereafter the witness's son Vipulbhai took the witness to Talaja Hospital. The witness further stated that only Vipulbhai accompanied the witness to Talaja Hospital, while **Damjibhai** accompanied the witness to Bhavnagar Hospital. The witness admitted that at the police station, the police questioned **Rajubhai** and **Vipulbhai**, recorded their statements and thereafter obtained the witness's thumb impression. The witness further admitted that **Vipulbhai** and **Bijalbhai** are the witness's sons, **Vikrambhai** and **Rajubhai** are the witness's nephews, and **Asmitaben** and **Manishaben** are the witness's daughters-in-law. The witness denied the suggestions that the injuries were sustained due to a fall from a vehicle, that the accused had not caused any injuries, or that a false complaint had been lodged against the accused.

4.3 PW 04 Bijalbhai Lakhmanbhai Dabhi

The witness deposed that the accused are residents of the same village and are known to the witness. The witness stated that the witness earns livelihood through agricultural labour and cultivation on a sharecropping basis. According to the witness, agricultural land bearing Survey No. 105 situated at village Paniyali stands in the names of the witness's father and grandfather, where vegetables and green fodder are cultivated jointly by the witness and the witness's brothers.

The witness further deposed that on **05.01.2024**, at about **10:00 p.m.** to

11:00 p.m., while the witness had gone to the agricultural field to irrigate the crops, accused **Nathubha Vikramsinh** along with other persons came to the field in a tractor and attempted to plough the land. When the witness objected, stating that the land had been sold to the witness's family by the Darbar brothers and that the accused had no right to cultivate the same, accused Nathubha assaulted the witness with a wooden stick on the shoulder, causing the witness to fall down. Thereafter, the witness was shifted to Talaja Government Hospital in a 108 Ambulance. The witness stated that injections were administered and, on the advice of the doctor, the witness was referred to Bhavnagar Hospital for further treatment. According to the witness, the witness remained admitted at Bhavnagar Hospital for about three days, where further treatment was provided and medical examination was carried out.

The witness stated that the assault occurred because the accused claimed ownership over the land and assaulted the witness with a wooden stick. The witness further stated that the witness could identify the weapon used in the assault and identified the muddamal wooden stick produced before the Court as the same weapon. The witness stated that the witness did not remember whether the police had recorded the witness's statement. During examination by the prosecution after being declared hostile on a limited aspect, the witness stated that though the witness had not stated before the police that accused Nathubha and the accompanying unknown person had abused the witness, threatened to get the land vacated and threatened to kill the witness, those facts had in

fact occurred at the time of the incident.

In the cross-examination, the witness admitted being illiterate. The witness stated that the witness did not know whether the police had come to the witness or recorded the witness's statement. The witness admitted that the residence of the witness is about **50 metres** from the place of occurrence and that the incident took place during the night. The witness further admitted that when the incident occurred, the witness had gone alone to irrigate the field while the other family members were at home. The witness stated that by the time the family members reached the place of occurrence, the witness had already fallen on the ground and was in a semi-conscious condition. The witness admitted that thereafter the witness was taken to the hospital and that the witness, along with **Vipulbhai** and **Ashokbhai**, had spoken with the doctors at Talaja as well as Bhavnagar Hospital. The witness expressed ignorance regarding the ownership reflected in the revenue records, the contents of Village Forms **6, 12 and 8-A**, the sale deed relating to Survey No. 105 and the name of the recorded owner of the land. The witness further stated that the police never visited the witness's house or agricultural field after the incident. The witness denied the suggestion that the injuries were sustained due to a fall from a motorcycle or that the witness was deposing falsely.

4.4 PW 05 Vipulbhai Lakhmanbhai Dabhi

The witness deposed that the accused are residents of the same village and are known to the witness. The witness stated that the witness is engaged in agriculture along with the witness's father and brothers.

According to the witness, agricultural land bearing Survey No. 105 situated at village Paniyali stands in the names of the witness's grandfather Madhabhai Bhagwanbhai, Jodhabhai Bhagwanbhai and the witness's father Lakhmanbhai Bhagwanbhai. The witness further stated that the said land had been purchased from Kalubhai Merubhai and Vajubhai Merubhai and that the witness's family is in possession thereof. The witness also stated that although the actual survey number of the land is Survey No. 105, Survey No. 113 has been wrongly reflected in Village Form No. 7/12.

The witness further deposed that on **05.01.2024**, at about **10:30 p.m. to 11:00 p.m.**, while the witness's father had gone to irrigate the crops, the witness heard the sound of a tractor. The witness stated that accused **Nathubha Vikramsinh**, accompanied by one unknown person, had brought the tractor to plough the land bearing Survey No. 105, which was in possession of the witness's family. When the witness's father objected, accused Nathubha assaulted the witness's father with a wooden stick on the left shoulder, causing the witness's father to fall down and sustain injuries. The witness further stated that the unknown person accompanying accused Nathubha was not known to the witness. As the witness's residence is situated adjacent to the agricultural field, the witness immediately reached the place of occurrence. The witness deposed that accused Nathubha abused the witness and other family members and threatened that unless possession of the land was handed over before the next morning, the witness and the witness's family would be killed. The witness further stated that a Thar vehicle and an Innova vehicle were parked on the road adjoining the field. According to

the witness, **Kishorbhai** called the 108 Ambulance, whereafter the witness's brother **Bijalbhai Lakhmanbhai** accompanied the injured to Talaja Government Hospital, while the witness followed on a two-wheeler. As adequate treatment was not available at Talaja Hospital, the injured was referred to Sir T. Hospital, Bhavnagar, where medicines were administered, X-ray examination was conducted and medical examination of the shoulder was carried out. The witness stated that the injured remained under treatment for about three hours before being discharged the next morning.

The witness further deposed that the motive for the incident was that the accused had purchased the disputed land from **Bhagatsinh Chhanubha** and assaulted the witness's father in order to obtain possession thereof. The witness stated that the police had recorded the witness's statement. However, upon being shown the muddamal wooden stick before the Court, the witness stated that the muddamal stick was **not** the same stick with which the assault had been committed.

In the cross-examination, the witness admitted that several facts stated before the Court had not been stated before the police by the witness's father. The witness admitted having knowledge of Village Forms **6, 12 and 8-A**, but expressed ignorance as to whether the person whose name appears in the revenue record is treated as the owner. The witness admitted that the names of the witness's family appear in the revenue records relating to **Survey No. 113/Paiki-8**, whereas the revenue entries of **Survey No. 105** stand in the name of accused No. 1. The witness expressed ignorance regarding the sale deed in favour of accused No. 1.

The witness further admitted that the witness's brother **Ashokbhai Lakhmanbhai Dabhi**, who is serving as a Taluka Development Officer, had objected to the mutation entry in favour of accused No. 1 before the Deputy Collector and that further proceedings were initiated before the Collector. The witness voluntarily stated that the Collector had granted thirty days' time to institute a civil suit. The witness admitted that earlier civil litigation concerning Survey Nos. **105** and **113** had also been instituted by family members. The witness denied the suggestions that the witness reached the place only after the injured had fallen, that only the injured was present at the place of occurrence, that the complaint was lodged only to avoid handing over possession of the land to accused No. 1, that the injuries were caused by a fall from a motorcycle, or that the witness was deposing falsely.

4.5 PW 06 Rajubhai Ghughabhai Baraiya

The witness deposed that both the accused are known to the witness as they are neighbours and that the complainant is the witness's grandfather. The witness stated that on 05.01.2024, between 10:00 p.m. and 11:00 p.m., the witness was present at the agricultural field. At that time, accused Nathubha, accompanied by one unknown person, came to the field in a tractor. The witness deposed that accused Nathubha demanded that the complainant vacate the possession of the land by the next morning and threatened to kill the complainant. Thereafter, accused Nathubha assaulted the complainant with a wooden stick on the shoulder, causing the complainant to become unconscious and vomit. The witness further stated that the 108 Ambulance was called and the

complainant was shifted to the Government Hospital, Talaja. According to the witness, the incident arose out of a dispute regarding agricultural land bearing Survey No. 113/Paiki-8 situated at village Paniyali, which had been cultivated and possessed by the complainant for several years. The witness stated that the witness personally saw the incident while remaining present at the place of occurrence. The witness further stated that the witness could identify the wooden stick used in the assault, described it as measuring about 3 to 3½ feet in length, and identified the muddamal wooden stick shown before the Court as the same stick used in the assault. The witness also stated that the police had recorded the witness's statement and identified the accused before the Court.

In the cross-examination, the witness admitted that the police met the witness on the day following the incident. The witness denied the suggestion that the police had only noted the witness's name, address and mobile number without recording any statement. The witness stated that the witness's agricultural field is situated at a distance of about **150 metres** from the complainant's field and admitted that the incident occurred during the night. The witness denied the suggestion that it was pitch dark at the time of the incident. The witness further denied the suggestion that, when the witness reached the spot, the complainant was already lying unconscious or that no person except the complainant, Vipulbhai and the witness was present there. The witness admitted that the identity of the unknown person accompanying accused Nathubha was not known to the witness at the time of the incident and that no identification parade of the said person was ever conducted. The witness admitted that the agricultural field of accused Nathubha is adjacent to

the complainant's field and that a long-standing dispute regarding the land existed between them. The witness further admitted having studied up to Standard VI and having knowledge regarding **Village Form No. 6, 12 and 8-A**. The witness admitted that the name of accused Nathubha Vikramsinh appears in the revenue records relating to the land cultivated by the complainant, that accused Nathubha is the recorded owner of the land, and that the complainant had not vacated the said land. The witness further admitted that the owner of the land is entitled to enter upon the land. The witness denied the suggestions that the complainant had narrated the incident to the witness only on the following day, that the complainant had sustained injuries due to a fall, or that the witness was deposing falsely on oath. The witness further stated that it takes about **3 to 5 minutes** to reach the place of occurrence from the witness's field. The witness denied the suggestion that the witness had not gone to the hospital or that the doctor had spoken only with Vipulbhai and the witness. The witness also stated that the police had called the witness to the complainant's house where other family members were present, and denied the suggestion that the police had not inquired with those persons.

4.6 PW-07 – Vikrambhai Bhupatbhai Dabhi

The witness has deposed that the complainant is his Paternal Uncle. According to him, on **05.01.2024** at about **10:30 p.m.**, while proceeding to Alang for his duty, he heard noise near his grandfather's field. On reaching there, he saw accused Nathubha Vikramsinh abusing his grandfather while an unknown person was driving a tractor in the field.

He stated that when the complainant stood in front of the tractor, accused Nathubha, armed with a wooden stick, struck a blow on the complainant's back, causing him to fall down. The accused also threatened the complainant to vacate the land by the next morning or else he would be killed. Thereafter, the accused and the unknown person left the place. The complainant was made to lie on a cot and, as he developed dizziness and vomiting, 108 Ambulance was called and he was taken to Talaja Government Hospital and thereafter to Sir T. Hospital, Bhavnagar for further treatment. He stated that the incident arose out of a land dispute between the parties. He identified the muddamal wooden stick as the weapon used in the assault and stated that the police had recorded his statement.

In his cross-examination, the witness admitted that several facts deposed by him in Court, including that he was proceeding to Alang for duty, that he reached the place while attempting to rescue the complainant from the tractor, and that the complainant was laid on a cot, were **not stated in his police statement**. He admitted that the incident occurred at night, though he asserted that visibility was available due to the lights of the tractor and a four-wheeler. He further admitted that there was a long-standing land dispute between the complainant and the accused, that the unknown person accompanying the accused has not been identified till date, and that no identification parade was conducted. He also admitted that he did not accompany the complainant to the hospital. He denied the suggestion that the complainant sustained injuries due to a fall or that he was deposing falsely because the complainant is his Paternal Uncle.

4.7 PW 08 Manishaben Bijalbhai Dabhi

The witness deposed that the witness resides at village Paniyali and is engaged in agriculture. The witness stated that the ancestral agricultural land of the family measures about six vighas, in which each branch of the family has a separate share. According to the witness, at the time of the incident, fodder crop had been cultivated in the agricultural field of the witness's brother-in-law, part of which had already been harvested while some crop was still standing. Vegetables had been cultivated in the portion of the land belonging to the witness.

The witness further deposed that on **05.01.2024**, at about **10:30 p.m.**, the witness heard the sound and lights of a tractor. Thereafter, the witness, along with the witness's husband, father-in-law, brother-in-law, sister-in-law and other family members, proceeded to the agricultural field. The witness stated that accused **Nathubha**, accompanied by one unknown person, had come in a tractor and had started ploughing the family's agricultural field. When the witness's father-in-law objected and requested the accused not to cultivate the land, the accused abused the witness's father-in-law. Thereafter, accused Nathubha assaulted the witness's father-in-law with a wooden stick on the shoulder, causing the witness's father-in-law to fall down. The witness further stated that the injured started vomiting and feeling giddy, whereupon the family members intervened and prevented further assault. The 108 Ambulance was called and the injured was first taken to Talaja Government Hospital. As the injured continued to suffer pain, the injured was thereafter shifted to Bhavnagar Hospital for further treatment and

subsequently brought home. The witness further stated that thereafter the injured and the family members went to Alang Police Station for lodging the complaint.

According to the witness, the incident occurred because of the pending civil dispute regarding the agricultural land between the parties. The witness stated that the police had recorded the witness's statement and identified the muddamal wooden stick shown before the Court as the same stick used in the assault.

In the cross-examination, the witness stated that the agricultural field is situated at a distance of about **50 to 60 steps** from the residence. The witness admitted that the incident occurred during the night but denied the suggestion that it was too dark to identify the assailants, voluntarily stating that the lights of the tractor were switched on. The witness admitted that when the tractor reached the field, the witness, the witness's husband, brother-in-law, sister-in-law and father-in-law were at home and voluntarily stated that all of them thereafter proceeded to the field. The witness denied the suggestion that, upon reaching the place of occurrence, the witness found the injured already lying on the ground. The witness stated that the injured was vomiting, feeling giddy and bleeding, but denied that the clothes of the injured were stained with blood or that blood had fallen on the ground, voluntarily stating that the injured had only vomited. The witness stated that the police met the witness about **15 days** after the incident, when the witness's brother-in-law, husband and father-in-law were present. The witness denied the suggestion that the police had inquired only with the male members of

the family or that the police had not recorded the witness's statement. The witness further admitted that the unknown person accompanying accused Nathubha was never identified and that no identification parade was conducted. The witness admitted knowing accused Nathubha as a resident of the same village and that the agricultural field of accused Nathubha is adjacent to the family's field. The witness denied the suggestions that accused Nathubha had merely gone to the accused's own field in the tractor, that the earlier civil litigation had been dismissed, that the injured had sustained injuries due to a fall while walking, that the police had merely inquired about the witness's name and address, or that the witness was deposing falsely only to support the witness's father-in-law.

4.8 PW 09 Asmitaben Vipulbhai Dabhi

The witness deposed that the witness resides at village Paniyali and is engaged in agriculture. The witness stated that the ancestral agricultural land of the family measures about seven vighas, in which each branch of the family has a separate share. According to the witness, fodder crop had been cultivated in the family's field and part of the crop had already been harvested, while some crop was still standing. The witness further stated that vegetables had been cultivated in the adjoining portion of the land belonging to the witness's brother-in-law.

The witness further deposed that on **05.01.2024**, at about **10:30 p.m.**, the witness heard the sound and lights of a tractor and, along with the witness's husband, father-in-law and other family members, proceeded to the agricultural field. The witness stated that accused **Nathubha**,

accompanied by one unknown person, had come in a tractor and had started ploughing the family's agricultural field. When the witness's father-in-law objected and requested the accused not to plough the land, the accused abused the witness's father-in-law. Thereafter, accused Nathubha assaulted the witness's father-in-law with a wooden stick on the shoulder, causing the witness's father-in-law to fall down. The witness further stated that the family members intervened and rescued the injured from further assault. Thereafter, the 108 Ambulance was called and the injured was taken to Talaja Government Hospital. As the injured continued to experience pain, the injured was thereafter taken to Bhavnagar Hospital for further treatment and was subsequently brought home. The witness also stated that thereafter the family members and the injured went to Alang Police Station for lodging the complaint.

According to the witness, the incident occurred because civil litigation regarding the disputed land was pending between the parties and, on account of that dispute, the accused assaulted the witness's father-in-law with a wooden stick. The witness stated that the police had recorded the witness's statement and identified the muddamal wooden stick shown before the Court as the same stick used in the assault.

In the cross-examination, the witness stated that the witness had studied up to **Standard III or IV** and could read and write to some extent. The witness denied the suggestion that it was too dark to identify the assailants and voluntarily stated that the lights of the tractor were switched on. The witness admitted that the agricultural field is situated at a distance of about **two to three vighas** from the residence and

voluntarily stated that the lights of the tractor were visible from the house. The witness admitted that the agricultural field of accused Nathubha is adjacent to the witness's field. The witness denied the suggestion that it was not possible to identify who was present in the field from the house. The witness further stated that, at the time the witness left the house, the witness's husband and father-in-law were present there. The witness denied the suggestion that the witness's father-in-law had already become unconscious before the witness reached the place of occurrence. The witness further denied the suggestion that blood was oozing from the mouth and nose of the injured when the witness reached the spot, but voluntarily stated that after the assault the injured vomited, felt giddy and thereafter blood started oozing from the mouth and nose. The witness denied the suggestion that blood had fallen on the clothes of the injured or on the ground. The witness stated that the police came to the house after the incident when several family members were present. The witness admitted that the police had inquired with **Vipulbhai**, denied that inquiry was made only with Vipulbhai, and stated voluntarily that the police had also inquired with the witness regarding the manner in which the incident had occurred. The witness denied the suggestions that the police had merely inquired about the witness's name and address, that the complaint was falsely lodged to grab the land of accused Nathubha, that the injured had sustained injuries due to a fall while walking, or that the witness was deposing falsely.

4.9 PW 10 Dr. Nikunjbhai Pragjibhai (Medical Officer)

The witness deposed that on 06.01.2024, while the witness was on duty at CHC, Talaja, injured Bijalbhai Laxmanbhai Baraiya, aged about 70 years, was brought to the hospital at about 12:50 a.m. through the 108 Ambulance without a police yadi. The witness examined the injured and prepared OPD No. 48826/2024 and MLC No. 739/2024. As per the history narrated by the injured, the injured had been assaulted by accused Nakubhai Vikrambhai Gohil with a stick at about 10:30 p.m. on 05.01.2024 in the agricultural field of the injured at village Prajapara, due to a land dispute. Upon examination, the witness found a reddish swelling measuring 10×2 cm over the right shoulder. The injured complained of pain over the right shoulder with restricted movement for the preceding two to three hours and pain over the upper back. The vital parameters, consciousness and general condition of the injured were found to be normal. The witness administered painkiller injection and prescribed tablets including antibiotics, calcium, vitamins and Famotidine. The injured was advised not to move the shoulder and was referred for X-ray examination and further treatment. The witness opined that the injury was fresh, would require about 10 to 12 days for healing and could be caused either accidentally or by the blow of a blunt object. The witness identified the MLC prepared in the witness's handwriting.

In the cross-examination, the witness admitted that the injured was conscious and able to speak and walk at the time of examination. The witness further admitted that the injured had not made any oral complaint before the witness. The witness denied the suggestion that there was no visible injury over the shoulder or that the witness had

omitted to mention such injury in the medical certificate. The witness further admitted that an injury similar to Injury No. 1 mentioned in the certificate could also be sustained if a person carrying heavy weight falls down.

**4.10 PW 11 Laljibhai Mepabhai Dabhi (Panch Witness) and
PW-12 Dhirubhai Lavjibhai Dabhi (Panch Witness)**

The witness deposed that about two years prior to the deposition, the police had called the witness and the then Sarpanch, Dayabhai, for drawing the panchnama of the place of offence after explaining its purpose. The witness stated that the place of occurrence was an open land situated adjacent to the house of Vipulbhai. According to the witness, the place was enclosed by thorn fencing on three sides and contained a well, a washing platform and a crop of cluster beans, besides dry fodder stacks. The witness further described the adjoining properties situated on all four sides of the place of occurrence. Upon being shown the copy of the panchnama, the witness identified the signature appearing therein as that of Panch Witness No. 1.

In the cross-examination, the witness stated that the complainant belongs to the witness's family. The witness denied the suggestion that the police had prepared the panchnama before reaching the place of occurrence and had merely obtained the signatures of the panch witnesses. The witness voluntarily stated that the panchnama was prepared by the police in the presence of the witness, was read over to the witness and thereafter the witness signed the same. The witness

admitted that the contents of the panchnama were not recorded by the police as dictated by the witness.

4.11 PW 13 Mr. Rajpalsinh Temubha Investigating Officers

The Investigating Officer deposed that on 06.01.2024, while serving at the concerned police station, the complaint of the complainant was recorded by the Police Sub-Inspector in his presence, after which the offence was registered under the relevant provisions of the Indian Penal Code and the Gujarat Police Act. The investigation was thereafter entrusted to him.

During the course of investigation, he visited the place of occurrence and, in the presence of panch witnesses, prepared the **scene of offence panchnama** as pointed out by the complainant. He also prepared the **arrest panchnama** of the accused in the presence of panch witnesses. He recorded the statements of the material witnesses, namely Vipulbhai Lakhmanbhai Dabhi, Bijalbhai Lakhmanbhai Dabhi, Vikrambhai Bhupatbhai Dabhi, Rajubhai Ghughabhai Baraiya, Asmitaben Vipulbhai Dabhi and Manishaben Bijalbhai Dabhi.

The Investigating Officer further deposed that he collected the **MLC and medical papers** of the injured from the Government Hospital, Talaja, as well as the subsequent medical records from **Sir T. Hospital, Bhavnagar**, and made them part of the investigation. He also collected and produced the **notification issued by the District Magistrate, Bhavnagar**, alleged to have been in force on the date of the incident, and placed the same along with the charge-sheet.

He identified the original FIR, forwarding letter entrusting investigation, the scene of offence panchnama, arrest panchnama, medical documents, the District Magistrate's notification, the charge-sheet and other documentary evidence produced during trial. He also identified the **wooden stick (muddamal)** allegedly recovered during investigation.

In his cross-examination, the Investigating Officer admitted that the FIR referred to the presence of an **unknown person** along with the accused, but **no Test Identification Parade was conducted** in respect of such person. He admitted that there existed a **long-standing civil dispute regarding the land** between the complainant and the accused and that the adjoining lands belonged to them. He further admitted that **no incriminating articles or physical traces were recovered from the place of occurrence**, no bloodstained clothes of the complainant were seized, no independent witnesses from the vicinity were examined, and **no muddamal was recovered from accused No. 2**. He denied the suggestion that the witness statements were recorded to suit the prosecution case or that a false charge-sheet had been filed despite lack of sufficient evidence.

4.12 PW 14 Medical Officer Dr. Kuldipsinh Bahratsinh Chauhan

The Medical Officer, who was serving at Sir T. Hospital, Bhavnagar, deposed that on 06.01.2024 at about 4:30 a.m., the injured Lakhmanbhai Bhagwanbhai Dabhi, aged about 60 years, was referred to him from the Community Health Centre, Talaja for further treatment. The patient gave a history that on 05.01.2024 at about 10:00 p.m., at the agricultural field situated at village Paniyali, he was assaulted by Nathubha Gohil and

about ten unknown persons with a stick and sword.

On examination, the patient's vital parameters were normal. He found **one reddish-blue contusion measuring approximately 6 × 4 cm on the middle portion of the back starting from over the chest.** The patient was referred to the Surgery Department for further Treatment. X-ray and sonography were conducted, which **did not reveal any fracture or grievous injury.**

The witness opined that the injury was **possible by a hard and blunt object or by striking against a hard and blunt surface.** According to him, in the absence of any complication, such injury would ordinarily heal within **about three weeks.** He identified the MLC certificate, OPD papers, X-ray films and sonography report produced before the Court.

In cross-examination, he admitted that the patient was **conscious and able to speak** when examined. He further admitted that **there was no injury on the shoulder** of the patient and that **an injury of the nature noted in the MLC could also be caused if a person fell from a motorcycle onto stones.** He also admitted that the **X-ray and sonography reports were normal.**

(5) **FINAL ARGUMENTS FROM PUBLIC PROSECUTOR**

The learned Assistant Public Prosecutor argued that the prosecution has proved its case beyond reasonable doubt through the cogent, consistent and reliable ocular evidence of the injured witness, which stands duly corroborated by the medical evidence as well as the testimonies of other

eyewitnesses. It was submitted that the evidence of an injured witness carries great evidentiary value and ordinarily commands greater credibility as such witness has sustained injuries during the occurrence and there is no reason for falsely implicating the accused while sparing the real assailant.

It was further argued that the complainant (PW-03) has consistently deposed that accused No.1 Nathubha assaulted him with a wooden stick over the disputed agricultural land. His version finds substantial corroboration from PW-04 Bijalbhai, PW-05 Vipulbhai, PW-06 Rajubhai, PW-07 Vikrambhai, PW-08 Manishaben and PW-09 Asmitaben, all of whom have consistently attributed the assault to accused No.1 and have deposed regarding the motive arising from the land dispute. Merely because these witnesses are related to the complainant, their evidence cannot be discarded when it is otherwise trustworthy and inspires confidence.

The learned APP further submitted that the medical evidence of PW-10 and PW-14 fully corroborates the ocular version regarding the injuries sustained by the complainant. The injuries were found to be fresh and were possible by a hard and blunt object such as a wooden stick. The absence of grievous injury or fracture is not sufficient to discard the prosecution case when the occurrence itself has been established.

It was argued that the hostility of Panch Witnesses PW-01 and PW-02 regarding the recovery panchnama does not demolish the prosecution case since recovery is only a corroborative circumstance and conviction can safely rest upon reliable ocular testimony. Likewise, minor

discrepancies regarding survey numbers, duration of treatment, or identification of the stick are natural variations arising from lapse of time and do not affect the core prosecution case. It was submitted that the Investigating Officer has proved the investigation and the documentary evidence including the FIR, scene of offence panchnama and medical papers.

The learned APP further contended that the admitted civil dispute between the parties supplies a strong motive for the offence rather than creating doubt. The accused, in an attempt to take forcible possession of the disputed land, assaulted the complainant and threatened him with dire consequences. It was therefore prayed that the prosecution has successfully established the guilt of accused No.1 beyond reasonable doubt and that both accused deserve to be convicted in accordance with law.

(6) FINAL ARGUMENTS FOR DEFENCE

The learned advocate for the accused vehemently opposed the prosecution case and submitted that the prosecution has failed to prove the charges beyond reasonable doubt. It was argued that the entire prosecution case originates from a long-standing civil dispute relating to ownership and possession of agricultural land. The evidence on record itself establishes that the revenue entries stand in the name of accused No.1, that civil proceedings are pending between the parties, and therefore the possibility of false implication due to civil animosity cannot be ruled out.

It was further argued that the alleged recovery of the wooden stick has completely failed since both recovery panch witnesses (PW-01 and PW-02) have turned hostile and have categorically stated that no recovery was effected in their presence and that they merely signed the panchnama at the police station without knowledge of its contents. Consequently, the alleged recovery loses all evidentiary value.

The learned defence counsel further submitted that there are material contradictions and improvements in the evidence of prosecution witnesses. The complainant could not identify the alleged weapon, whereas some witnesses identified the stick and PW-05 specifically stated that the muddamal stick shown before the Court was not the weapon used in the assault. There are inconsistencies regarding the survey number of the disputed land, the place of injury, the nature of treatment, the persons accompanying the complainant to the hospital, the number of assailants, and the exact manner in which the incident occurred. Several witnesses admitted material omissions from their police statements, which amount to improvements affecting their credibility.

It was further argued that all the eyewitnesses are close relatives of the complainant and admittedly interested witnesses. Despite the alleged occurrence having taken place in an open agricultural field, no independent witness from the locality has been examined. The Investigating Officer himself admitted that no bloodstained clothes were seized, no physical evidence was recovered from the place of occurrence, no independent witness was examined, and no Test

Identification Parade was conducted in respect of the alleged unknown assailant.

The defence also relied upon the medical evidence, submitting that both Medical Officers admitted that the injuries were simple in nature and could equally have been caused by a fall against a hard surface or from a motorcycle. The X-ray and sonography reports revealed no fracture or grievous injury. Thus, the medical evidence does not conclusively support the prosecution version.

Lastly, it was argued that the prosecution has failed to establish the ingredients of the alleged offences beyond reasonable doubt. The contradictions, omissions, hostile witnesses, defective investigation and admitted civil dispute create serious doubt regarding the prosecution story. In criminal jurisprudence, such doubt must necessarily enure to the benefit of the accused. It was therefore prayed that both accused be acquitted of all the charges.

(7) POINTS FOR DETERMINATION

- (1) Whether the prosecution proves beyond reasonable doubt that on 05.01.2024 at about 10:30 p.m. to 11:00 p.m., at the agricultural field situated at village Paniyali, accused No.1 voluntarily caused simple hurt to the complainant by assaulting the complainant with a wooden stick, thereby committing an offence punishable under Section 323 of the Indian Penal Code?
- (2) Whether the prosecution further proves beyond reasonable doubt

that, during the course of the same incident, the accused intentionally insulted the complainant by using abusive language with the intention or knowledge that such provocation would cause the complainant to break the public peace or commit any other offence, thereby committing an offence punishable under Section 504 of the Indian Penal Code?

- (3) Whether the prosecution further proves beyond reasonable doubt that, during the course of the same incident, the accused threatened the complainant with death or other grievous consequences with the intention of causing alarm, thereby committing an offence punishable under Section 506(2) of the Indian Penal Code?
- (4) Whether the prosecution further proves beyond reasonable doubt that the accused committed the aforesaid acts in contravention of the notification promulgated by the District Magistrate, Bhavnagar, which was in force on the date of the incident, thereby committing an offence punishable under Section 135 of the Gujarat Police Act?
- (5) What Order?

FINDINGS

- (1) In Affirmative
- (2) In Negative

- (3) In Affirmative
- (4) In Affirmative
- (5) As per final Order

(8) ANALYSIS OF THE EVIDENCE OF PROSECUTION

8.1 PROOF AS TO INVOLVEMENT OF THE ACCUSED IN THE OFFENCE

Upon careful appreciation of the entire oral and documentary evidence, this Court finds that the prosecution has successfully established the involvement of accused No.1 in the commission of the offences alleged. The complainant, being an injured witness, has consistently deposed that accused No.1 assaulted the complainant with a wooden stick during the incident in question. The testimony of the complainant is natural, cogent and inspires confidence and receives substantial corroboration from the evidence of PW-04 Bijalbhai Lakhmanbhai Dabhi, PW-05 Vipulbhai Lakhmanbhai Dabhi, PW-06 Rajubhai Ghughabhai Baraiya, PW-07 Vikrambhai Bhupatbhai Dabhi, PW-08 Manishaben Bijalbhai Dabhi and PW-09 Asmitaben Vipulbhai Dabhi, all of whom have consistently attributed the overt act of assault and criminal intimidation to accused No.1. The medical evidence adduced through PW-10 and PW-14 further corroborates the prosecution version by establishing that the complainant sustained fresh blunt-force injuries which were possible by a blow from a hard and blunt object such as a wooden stick. Though the recovery panch witnesses have not supported the prosecution and certain

discrepancies have emerged regarding recovery of the muddamal, such deficiencies in investigation are not sufficient to discard otherwise reliable and trustworthy ocular evidence. The omissions and minor inconsistencies elicited during cross-examination relate to peripheral aspects and do not strike at the core of the prosecution case. Conversely, so far as accused No.2 is concerned, the prosecution has failed to attribute any specific overt act or establish active participation in the commission of the alleged offences. Mere presence at the place of occurrence, in the absence of cogent evidence establishing common intention or participation, is insufficient to sustain a conviction. Accordingly, this Court is satisfied that the prosecution has proved beyond reasonable doubt the involvement of accused No.1 in the offences under consideration.

8.2 DISCREPANCY IN IDENTIFICATION OF WEAPON

Learned defence counsel has laid considerable emphasis on the discrepancy in the identification of the muddamal wooden stick by the prosecution witnesses. However, this contention does not persuade this Court to discard the otherwise reliable prosecution case. It is well settled that the weapon of offence is merely a corroborative piece of evidence and not the foundation of the prosecution case. In the present case, the prosecution primarily rests upon the direct ocular testimony of the injured witness, which has received substantial corroboration from the eyewitnesses as well as the medical evidence. The complainant has consistently stated that accused No.1 assaulted the complainant with a

wooden stick, though the complainant expressed inability to identify the specific stick produced before the Court due to the incident having occurred during the night. While PW-05 stated that the muddamal stick was not the same weapon used in the assault, other eyewitnesses identified the muddamal as the weapon of offence. Such variation in identification of the particular stick after a considerable lapse of time is neither unnatural nor sufficient to discredit the substantive evidence regarding the assault itself. The identity of the assailant and the factum of assault have remained consistent throughout the prosecution evidence. Moreover, the medical evidence establishes that the injuries sustained by the complainant were possible by a hard and blunt object like a wooden stick. Therefore, the discrepancy relating to identification of the muddamal weapon pertains only to a collateral circumstance and does not go to the root of the prosecution case. It is, therefore, held that such discrepancy is not fatal to the prosecution case and does not create any reasonable doubt regarding the commission of the offence by accused No.1.

8.3 EVIDENCE TO BE WEIGHED AND NOT COUNTED

This court also takes into consideration that Section 134 of the Indian Evidence Act, 1872 clearly provides that the Evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. It is settled principle that even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and

trustworthy, could lead to a conviction. Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

The oral testimony may be classified into three categories, viz.: (i) Wholly reliable; (ii) Wholly unreliable; (iii) Neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.¹ It is settled principle that particular number of witnesses is required, in any case, to prove a fact. It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the court to be wholly reliable, the same can form the foundation for recording a conviction. Hence, the conviction of the appellant does not call for interference based on the sole testimony which is found to be reliable.² As far as the appreciation of the ocular evidence in the criminal case is concerned, it is a settled proposition that Ocular evidence undoubtedly fares better than other kinds of evidence and is considered evidence of a strong nature. The principle is that if the eyewitness testimony is “wholly reliable”, then the court can base conviction thereupon. This

1 Munna Lal v. State of Uttar Pradesh AIR 2023 SC 634

2 Muthyala Sunil Kumar v. Union of India, 2024 LiveLaw (SC) 45

applies even in cases where there is a sole eyewitness. For an eyewitness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value.³ This court firmly believe that the Evidence examined as a whole, must reflect/ring of truth. The court must not give undue importance to omissions and discrepancies which do not shake the foundations of the prosecution's case.⁴ In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness.⁵ 'It's quality & not quantity of witnesses which matters': Supreme Court relies on solitary eyewitness testimony to affirm sentence.⁶

For the sake or argument, it can be argued that the witnesses are not reliable but, In the present case, the evidence of the complainant is wholly reliable and therefore, the evidence of the prosecution does not require any further corroboration to prove the case of the prosecution beyond reasonable doubt. This court firmly believes that the evidence of the complainant and other eye witnesses are of Sterling Quality⁷ and passes the test of following intrinsic values:

3 Manjunath v. State of Karnataka 2023 INSC 978

4 Ravasaheb @ Ravasahebgouda v. State of Karnataka (2023) 5 SCC 391

5 Narendrasinh Keshubhai Zala v. State of Gujarat (2023) 2 SCR 746

6 Ajai @ Ajju v. State of Uttar Pradesh AIR 2023 SC 996

7 Rai Sandeep @ Deepu v. State (NCT of Delhi), (2012) 8 SCC 21

1. The Complainant is consistent from the very beginning till end.
2. The testimony of the complainant is natural and in conformity with the Complaint/prosecution case.
3. There is no contradictions or prevarications.
4. The complainant has withstood effective cross-examination.
5. The account of the occurrence, identity of the accused and sequence of events have remained intact.
6. The oral, documentary and scientific evidence has broadly supported the core version of the witness.

Hence, this court considers the evidence of the complainant sufficiently reliable to reach to any conclusion in this case.

8.4 DEFENCE OF RELATED WITNESS

The contention of the learned defence advocate that the testimony of the complainant's relatives deserves rejection solely on the ground of relationship is legally untenable. It is a settled principle of law that evidence of a related witness cannot be discarded merely because of such relationship. It is settled proposition of Law that ordinarily a close relative would be the last person to screen the real culprit and falsely implicate an innocent person and that relationship is not a factor to affect credibility but is only a circumstance requiring careful scrutiny.⁸ The said principle has been consistently followed in many cases and additionally it has been observed that evidence of related witnesses cannot be rejected on that ground alone if it is otherwise trustworthy.⁹

⁸ Dalip Singh v. State of Punjab, AIR 1953 SC 364

In addition to this, this court firmly believes that a related witness cannot be equated with an interested witness and that the evidence of such witness must be evaluated on the touchstone of intrinsic reliability and consistency.¹⁰

The learned defence counsel has contended that the material prosecution witnesses are close relatives of the complainant and, therefore, their testimony ought not to be relied upon. This contention does not merit acceptance. It is a settled principle of criminal jurisprudence that the evidence of a related or interested witness cannot be discarded merely on the ground of relationship. What is required is a careful and cautious scrutiny of such evidence to ascertain whether it is credible, consistent and trustworthy. In the present case, the evidence of the related witnesses has been subjected to detailed cross-examination, yet nothing substantial has been elicited to discredit their version on the material aspects of the occurrence. Their testimonies are consistent regarding the identity of accused No.1, the manner of assault, the weapon used, the place of occurrence and the motive behind the incident. Their presence at the scene of offence is also natural, having regard to the fact that the incident occurred in the agricultural field situated adjacent to their residence. Mere relationship with the complainant does not render them untruthful or unreliable. Equally, there is no material on record to indicate that these witnesses have deposed falsely with the sole object of

9 Masalti v. State of U.P., AIR 1965 SC 202

State of U.P. v. Krishna Master, (2010) 12 SCC 324

10 Mohd. Rojali Ali v. State of Assam, (2019) 19 SCC 567

ensuring that the accused is convicted or sent behind bars. On the contrary, their evidence inspires confidence and finds due corroboration from the testimony of the injured witness as well as the medical evidence. Accordingly, this Court finds no legal or factual basis to reject their testimony merely because they are related to the complainant.

8.5 DISCREPANCY AS TO PLACE OF BODILY INJURY

The learned defence counsel has sought to create doubt by pointing out that PW-10 noted a reddish swelling over the right shoulder, whereas PW-14 found a contusion over the middle portion of the back. This contention, in the opinion of this Court, does not go to the root of the prosecution case. The medical evidence of both Medical Officers is not contradictory but complementary. PW-10 examined the injured immediately after the incident at the Community Health Centre, Talaja, and found swelling over the right shoulder with pain and restricted movement. Thereafter, the injured was referred to Sir T. Hospital, Bhavnagar, where PW-14 examined the injured a few hours later and noticed a contusion extending over the upper back. It is not uncommon for the exact description or location of a blunt-force injury to vary marginally depending upon the stage of examination, the progression of swelling or bruising, and the manner in which different medical practitioners describe the same injury. Significantly, both Medical Officers have consistently opined that the injuries were fresh, simple in nature and were possible by the impact of a hard and blunt object such as a wooden stick. Neither doctor has expressed any opinion inconsistent

with the prosecution version or suggestive of fabrication. Therefore, the slight variation in describing the precise location of the injury is only a minor discrepancy and not a material contradiction affecting the credibility of the prosecution case. The medical evidence, when read as a whole, substantially corroborates the ocular testimony regarding the assault by accused No.1 and does not create any reasonable doubt in the prosecution case.

8.6 ABSENCE IN RAISING PROBABLE DEFENCE WHILE RECORDING OF STATEMENT OF ACCUSED U/S 313 OF CODE OF CRIMINAL PROCEDURE, 1973

This court firmly believe that the examination of the accused is not a mere formality, the questions put to the accused and answers given by him, have great use. The scope of section 313 of the Cr.P.C. is wide and is not a mere formality. The object of recording the statement of the accused under section 313, Cr.P.C. is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution.¹¹ It is important that the attention of the accused must specifically be drawn to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Court is under legal obligation to put all incriminating circumstances before the accused to solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding

11 Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507

right on the accused. Circumstances not put to the accused in his examination under section 313, cannot be used against him.¹² The written statement under Section 313(5) has to be considered in the light of the evidence led by the prosecution to appreciate the truthfulness or otherwise of such case and the contents of such statement weighed with the probabilities of the case either in favour of the accused or against him.¹³ This court has also taken the fact into consideration that even during recording of further statement of the accused under section 313 of the Cr.P.C., the accused was given the opportunity to clarify the facts which raise the probable defence.

This court has perused the Further Statement of accused where in the evidence of the prosecution was merely denied summarily and it was stated that the accused is falsely implicated in the false allegations. But, has not even denied the case of the prosecution substantively. The accused is completely silent about the recovery made from his possession. Therefore, this court is of the opinion that the defence shown by the advocate of the accused does not bear substance in reality.

8.7 REASONABLE DOUBT V. AMBIGUITY

The learned defence counsel has sought to assail the credibility of the complainant in context of First Information Report by placing reliance upon a suggestion put to the complainant during cross-examination that the Investigating Officer had interrogated Rajubhai and Vipulbhai,

12 State of U.P. v. Mohd. Iqram & Anr; AIR 2011 SC 2296

13 Premchand v. State of Maharashtra 2023 INSC 207

recorded their statements and thereafter obtained the thumb impression of the complainant on the complaint. On the strength of the said admission, it has been argued that the complaint was never lodged by the complainant and that the prosecution has failed to establish the genesis of the case. This Court is unable to accept the said submission. A careful reading of the cross-examination reveals that no specific suggestion was ever put to the complainant that the complainant had not narrated the facts of the incident before the police or that the contents of the complaint were not based upon the complainant's version. Equally, no suggestion was put that the complaint was fabricated by the police or by any third person without the knowledge or consent of the complainant. The suggestion was confined only to the sequence in which the police interrogated the persons present and thereafter obtained the thumb impression of the complainant over the complaint. Merely because the police, before reducing the complaint into writing, questioned the persons accompanying the injured or verified certain facts cannot, by itself, lead to the inference that the complaint was not lodged by the complainant. Such an inference is neither a necessary nor a logical consequence of the answer elicited in cross-examination. If it was indeed the defence case that the complainant never narrated the incident to the police or that the complaint was not the complainant's version, it was incumbent upon the defence to put such a case specifically and unequivocally to the witness. In the absence of such a suggestion, the Court cannot permit the defence to build an entirely different case during the course of final arguments by reading into the evidence something which the witness was never called upon to answer.

The same approach is discernible in relation to the medical evidence. During cross-examination, the complainant admitted that Vipulbhai had spoken with the Medical Officer at the Community Health Centre, Talaja. Proceeding on that admission, the learned defence counsel argued that the complainant himself had never disclosed the history of assault to the Medical Officer. This submission is equally devoid of merit. At no point during cross-examination was the complainant specifically asked whether the complainant had not disclosed the history of assault to the doctor or whether the complainant had no conversation whatsoever with the Medical Officer. The mere fact that Vipulbhai also interacted with the doctor does not necessarily exclude the possibility of the complainant having narrated the history personally. In fact, the medical evidence shows that the history of assault by accused No.1 was recorded in the medico-legal case papers. Had the defence intended to dispute the source or correctness of the history recorded by the Medical Officer, it was expected to confront both the complainant and the Medical Officer with a clear and specific suggestion to that effect. Instead, the defence has attempted to derive an inference from an incomplete suggestion, thereby creating ambiguity where none actually exists. It is a settled principle that cross-examination must fairly put the defence case to the witness so as to afford the witness an opportunity to explain or deny the same. A party cannot be permitted to take advantage of an ambiguity of its own making and thereafter invite the Court to treat such ambiguity as constituting a reasonable doubt. **Reasonable doubt must arise from the evidence on record and from legitimate infirmities in the prosecution case; it cannot be manufactured by**

inviting the Court to draw speculative inferences from questions which were never squarely put to the witness. Ambiguity and reasonable doubt are conceptually distinct. While reasonable doubt must be real, substantial and founded upon the evidence, ambiguity arising out of an incomplete or evasive line of cross-examination cannot be elevated to the status of reasonable doubt. This Court is, therefore, of the considered opinion that the submissions advanced by the defence on both these aspects are founded upon ambiguity rather than upon any substantive contradiction or omission in the prosecution evidence and, consequently, do not create any reasonable doubt regarding the prosecution case.

8.8 PROOF BEYOND REASONABLE DOUBT AND CONSEQUENCES THEREOF

This court firmly believe that the circumstances from which the conclusion of guilt is to be drawn should be fully established - 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” - 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. However strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt.¹⁴ Insofar as the burden of proof is concerned, the burden is

¹⁴ Pritinder Singh @ Lovely v. State of Punjab 2023 INSC 614

always on the prosecution to prove Premchand v. State of Maharashtra 2023 INSC 207 that the accused is guilty. If there is any reasonable doubt the benefit of doubt should always go to the accused. The first principle of criminal jurisprudence is that an accused is always presumed to be innocent till he is proved guilty. If the prosecution is successful in discharging the initial but heavy burden, then the onus shifts on the accused to counter the same either by effective cross examination, or examining himself as a witness, or somebody on his behalf. If he has given any plausible explanation in his examination under Section 313 of the Cr.P.C., the judge while considering the overall evidence, would hold either the case is proved beyond reasonable doubt or not. If evidence so adduced is not one of proof beyond reasonable doubt, benefit of doubt would be extended to the accused. Doubts would be called reasonable if they are free from a zest of abstract speculation and that reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based on reason and common sense. 'Reasonable Doubt' must grow out of the evidence in the case or from the lack of it as opposed to mere vague apprehensions.¹⁵ This court also takes into consideration the words of Hon'ble Justice V. R. Krishnan Iyer wherein it has been held that 'in an anxiety to apply the jurisprudential presumption of innocence of an accused, court should not forget to moderate the same by a pragmatic need to make criminal justice potent and realistic.'¹⁶ Applying the settled principle that proof

15 State of Madhya Pradesh V. Dharkole @ Govind Singh & Others [2004] 13 SCC 308,

16 Shivaji Sahabrao Bobade & Others v. State of Maharashtra AIR 1973 SC

beyond reasonable doubt does not mean proof beyond all possible doubt,¹⁷ this Court is of the considered opinion that the prosecution has successfully established the involvement of the accused in the commission of the alleged offences beyond reasonable doubt.

(9) MARSHALING OF FACTS AND APPRECIATION OF EVIDENCE

9.1 CHARGES UNDER SECTION 323 OF THE INDIAN PENAL CODE, 1860.

Section 323 of the Indian Penal Code prescribes punishment for voluntarily causing hurt. To bring home the charge under the said provision, the prosecution is required to establish that the accused voluntarily caused bodily pain, disease or infirmity to the complainant within the meaning of Section 319 IPC and that such act was committed with the intention or knowledge contemplated under Section 321 IPC.

In the present case, the complainant (PW-03), being an injured witness, has categorically deposed that on the date of the incident accused No.1 assaulted the complainant with a wooden stick on the shoulder, causing the complainant to fall down and sustain injuries. The evidence of the injured witness carries great evidentiary value, as the presence of such witness at the place of occurrence cannot ordinarily be doubted. The testimony of the complainant has remained consistent on the material

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17 Inder Singh v. State (Delhi Administration), (1978) 4 SCC 161

particulars regarding the identity of accused No.1, the manner of assault and the motive behind the occurrence. Nothing substantial has been elicited in the cross-examination so as to render the testimony of the complainant unreliable or unworthy of acceptance.

The version of the complainant finds substantial corroboration from the evidence of PW-04 Bijalbhai, PW-05 Vipulbhai, PW-06 Rajubhai, PW-07 Vikrambhai, PW-08 Manishaben and PW-09 Asmitaben, all of whom have consistently deposed that accused No.1 assaulted the complainant with a wooden stick during the dispute relating to possession of the agricultural land. Merely because these witnesses are related to the complainant, their testimony cannot be discarded. Their presence at the place of occurrence is natural, considering that the incident occurred in the agricultural field adjoining their residence. Upon careful scrutiny, their evidence is found to be consistent on the material aspects of the prosecution case and there is nothing on record to indicate that they have falsely implicated accused No.1 with the sole intention of securing the conviction of an innocent person.

The medical evidence also lends assurance to the ocular testimony. PW-10 Dr. Nikunjibhai noticed a fresh reddish swelling over the right shoulder with restricted movement, while PW-14 Dr. Kuldipsinh found a fresh contusion over the upper back. Both Medical Officers have opined that the injuries were possible by a hard and blunt object such as a wooden stick. Although both doctors admitted during cross-examination that similar injuries could also be sustained by a fall, such opinion merely indicates another possible mode of causation and does

not negate the prosecution version, particularly when there is clear and reliable direct evidence regarding the assault. The slight variation in the description of the exact location of the injury does not amount to a material contradiction, as both injuries are on the upper torso and were noticed within a short interval of each other. Thus, the medical evidence substantially corroborates the prosecution case.

The defence has also sought to rely upon the hostility of the recovery panch witnesses and the discrepancy regarding identification of the muddamal wooden stick. However, recovery of the weapon is only a corroborative circumstance. The prosecution case in the present matter principally rests upon direct ocular evidence, particularly the testimony of the injured witness, which inspires confidence. Therefore, failure to prove recovery of the weapon or inconsistency regarding identification of the particular stick does not demolish the otherwise cogent prosecution evidence. Likewise, the omissions and minor discrepancies pointed out during cross-examination pertain to collateral matters and do not affect the core prosecution case that accused No.1 voluntarily assaulted the complainant.

The prosecution has thus successfully established that accused No.1 intentionally inflicted a blow with a wooden stick upon the complainant, resulting in bodily pain and injuries. Such act squarely falls within the definition of "voluntarily causing hurt" as envisaged under Sections 319 and 321 of the Indian Penal Code and is punishable under Section 323 thereof. Consequently, this Court holds that the prosecution has proved beyond reasonable doubt that accused No.1 committed the offence

punishable under Section 323 of the Indian Penal Code. Conversely, in the absence of any evidence attributing any overt act to accused No.2, the prosecution has failed to establish the charge under Section 323 IPC against accused No.2, who is therefore entitled to the benefit of doubt.

9.2 CHARGES UNDER SECTION 504 OF THE INDIAN PENAL CODE, 1860.

Essential Ingredients

Section 504 IPC provides that whoever:

- Intentionally insults;
- Thereby gives provocation to any person;
- Intending or knowing that such provocation will cause that person to break the public peace or commit any other offence,

shall be punished.

Thus, mere abuse or insult is not sufficient. The prosecution must prove:

1. The insult was intentional;
2. It was of such nature as to provoke breach of peace;
3. The accused intended or knew that such provocation would result in breach of peace.

This court firmly believes that mere use of abusive words, without intention to provoke breach of peace, do not attract Section 504 IPC. The element of mens rea is essential¹⁸ and the insult must be such as to

provoke a person to break public peace.¹⁹

Appreciation of Evidence

In the present case, the prosecution has alleged that accused No.1 abused the complainant while demanding that the complainant vacate the disputed agricultural land. Though PW-03, PW-05, PW-06, PW-07, PW-08 and PW-09 have generally stated that accused No.1 abused the complainant, none of the witnesses has specifically deposed regarding the exact abusive words allegedly uttered by accused No.1. More importantly, the prosecution has not led any cogent evidence to establish that such alleged abuses were intended or were likely to provoke the complainant to break the public peace or commit any other offence. On the contrary, the evidence on record reveals that after the alleged incident, the complainant was immediately shifted to the hospital for medical treatment and thereafter approached the police for redressal of the grievance. There is nothing on record to suggest that the complainant was provoked into committing any breach of peace or that accused No.1 had the intention or knowledge contemplated under Section 504 IPC.

Furthermore, some of the allegations regarding abuses and threats have emerged as improvements over the previous police statements, thereby requiring cautious appreciation. Even if it is accepted that abusive words were uttered during the altercation, the same, by itself, would not constitute an offence under Section 504 IPC unless the statutory ingredients are affirmatively proved. Criminal liability under Section

18 Manik Taneja v. State of Karnataka, (2015) 7 SCC 423

19 Vikram Johar v. State of Uttar Pradesh, (2019) 14 SCC 207

504 IPC cannot be founded merely upon vague and omnibus allegations of abuse in the absence of satisfactory proof regarding the nature of the insult and the intention behind it.

Accordingly, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt the essential ingredients of the offence punishable under Section 504 of the Indian Penal Code. Consequently, accused No.1 is entitled to acquittal for the said offence. Since no independent role has been attributed to accused No.2 in this regard, accused No.2 is also entitled to acquittal under Section 504 IPC.

9.3 CHARGES UNDER SECTION 506(2) r/w 114 OF THE INDIAN PENAL CODE, 1860.

Essential Ingredients

Section 506(2) IPC applies when there is:

- A threat to cause death or grievous hurt;
- Intention to cause alarm;
- Actual capacity of the threat to cause alarm.

The threat must be intended to cause alarm²⁰ and the threat must be real and not merely casual words.²¹

Essential Ingredients of Section 114 IPC

20 Manik Taneja v. State of Karnataka, (2015) 7 SCC 423

21 Vikram Johar v. State of Uttar Pradesh, (2019) 14 SCC 207

Section 114 IPC becomes applicable when:

- An offence is committed by a principal offender;
- The abettor is present at the time of commission of the offence;
- Such presence attracts the same liability as if the abettor himself committed the offence.

Appreciation of Evidence

Section 506(2) of the Indian Penal Code provides punishment for aggravated criminal intimidation. To constitute an offence under the said provision, the prosecution must establish that the accused threatened the complainant with death or grievous consequences with the intention of causing alarm to the complainant or compelling the complainant to do or omit to do any act which the complainant was not legally bound to do or omit.

In the present case, the complainant (PW-03) has categorically deposed that accused No.1, while asserting ownership over the disputed agricultural land, threatened the complainant to vacate the land and further threatened to kill the complainant. Though the complainant did not reiterate the exact words of threat in the examination-in-chief, upon refreshing memory with reference to the First Information Report, the complainant admitted having stated therein that accused No.1 had threatened to kill the complainant if possession of the land was not handed over. The said testimony receives substantial corroboration from PW-05 Vipulbhai, who deposed that accused No.1 threatened that unless possession of the land was handed over before the next morning, the

complainant and the entire family would be killed. Similar evidence has been given by PW-06 Rajubhai, who stated that accused No.1 demanded that the complainant vacate the land by the next morning and threatened to kill the complainant. PW-07 Vikrambhai has also consistently deposed that accused No.1 threatened the complainant with death if the land was not vacated. The evidence of these witnesses, read conjointly, establishes that the threat was not a casual utterance but was directly connected with the demand to surrender possession of the disputed land.

The surrounding circumstances also lend assurance to the prosecution case. The threats were allegedly extended immediately after accused No.1 assaulted the complainant with a wooden stick during the course of a long-standing land dispute. The threat was, therefore, accompanied by overt physical violence, thereby imparting credibility to the apprehension created in the mind of the complainant. The conduct of the complainant in immediately seeking medical treatment and thereafter approaching the police for lodging the First Information Report also indicates that the threat was perceived as genuine and was sufficient to cause alarm. Thus, the intention to intimidate the complainant into relinquishing possession of the disputed land is clearly discernible from the evidence on record.

The defence has pointed out certain omissions and improvements regarding the precise words of intimidation. However, such omissions do not go to the root of the matter. It is well settled that every witness is not expected to reproduce the exact words of threat verbatim after a lapse of time. What is material is the substance of the intimidation. In

the present case, all the material witnesses have consistently deposed that accused No.1 threatened the complainant with death in order to compel the complainant to vacate the disputed land. Their evidence remains consistent on this material aspect and inspires confidence. There is no reason to discard such testimony merely because the exact language employed by the accused has not been reproduced identically by every witness.

However, so far as accused No.2 is concerned, no witness has attributed any specific act of criminal intimidation or any overt act to the said accused. The evidence on record does not establish that accused No.2 either extended any threat or shared any common intention with accused No.1 to commit the offence of criminal intimidation. Mere presence at the place of occurrence, in the absence of cogent evidence regarding participation, is insufficient to attract criminal liability under Section 506(2) of the Indian Penal Code.

Accordingly, this Court is of the considered opinion that the prosecution has successfully proved beyond reasonable doubt that accused No.1 committed the offence punishable under Section 506(2) of the Indian Penal Code. The prosecution has, however, failed to establish the said charge against accused No.2, who is therefore entitled to the benefit of doubt.

9.4 CHARGES UNDER SECTION 135 OF THE G. P. ACT

Essential Ingredients

To prove an offence under Section 135 of the Gujarat Police Act, the

prosecution must establish:

- Existence of a valid prohibitory notification in force;
- Possession of prohibited weapon in violation thereof.

Appreciation of Evidence

Appreciation of Evidence for the Offence under Section 135 of the Gujarat Police Act

Section 135 of the Gujarat Police Act provides for punishment where any person contravenes a notification or order duly promulgated under the provisions of the Act. In the present case, the prosecution has alleged that accused No.1 committed the offence while carrying and using a wooden stick in contravention of the notification issued by the District Magistrate, Bhavnagar, which was in force on the date of the incident.

The prosecution has examined PW-13, the Investigating Officer, who has deposed that during the course of investigation he collected the notification issued by the District Magistrate, Bhavnagar, and produced the same along with the charge-sheet. The said notification has been duly exhibited and forms part of the documentary evidence. Nothing substantial has been elicited in the cross-examination of the Investigating Officer to discredit either the existence, validity or applicability of the said notification. Thus, this Court finds no reason to disbelieve the documentary evidence establishing that the notification was in force on the date of the incident.

This Court has already held, while appreciating the evidence under Section 323 of the Indian Penal Code, that the prosecution has

successfully proved beyond reasonable doubt that accused No.1 voluntarily assaulted the complainant with a wooden stick. The ocular evidence of the injured witness, duly corroborated by the eyewitnesses and the medical evidence, establishes the use of the wooden stick during the commission of the offence. Once the prosecution has proved that accused No.1 carried and used the said weapon in violation of the notification promulgated by the District Magistrate, the ingredients of Section 135 of the Gujarat Police Act stand satisfied. The failure of the recovery panch witnesses to support the prosecution regarding the recovery of the muddamal does not dilute this conclusion, as the offence under Section 135 is founded upon the proved use of the prohibited weapon during the incident and not merely upon its recovery.

However, so far as accused No.2 is concerned, the prosecution has failed to establish that the said accused was carrying any weapon or had committed any act in contravention of the notification. No incriminating article has been recovered from accused No.2, nor has any witness attributed the use or possession of any weapon to the said accused. In the absence of cogent evidence establishing contravention of the notification by accused No.2, the prosecution has failed to prove the charge under Section 135 of the Gujarat Police Act against the said accused.

Accordingly, this Court holds that the prosecution has successfully proved beyond reasonable doubt that accused No.1 committed the offence punishable under Section 135 of the Gujarat Police Act, whereas accused No.2 is entitled to the benefit of doubt and deserves to be

acquitted of the said charge.

(10) CONCLUSION

In present case, the prosecution has proved that case beyond reasonable doubt by leading cogent evidence and the evidence of prosecution stands unshadowed by any doubt raised by the defence as to occurrence of the incident. The involvement of the accused is proved by the direct and trustworthy ocular evidence of the prosecution witnesses which is corroborated by the ocular evidence of other witnesses and thereafter non explanation as to incriminating evidence of the accused has added to the circumstances pointing guilt towards the accused. It is fact on the record that the prosecution is successful in discharging the initial but heavy burden, by proving the case of the prosecution beyond all reasonable doubt and the onus got shifted on the accused to counter the same either by effective cross examination, or examining himself as a witness, or somebody on his behalf. But, in this case, no shadow of reasonable doubt could be raised by the defence. Moreover, the accused has neither raised any clear defence nor has given any plausible explanation in his examination under Section 313 of Cr.P.C. Therefore, having regard to the above facts and reasons stated therewith, it can be deduced that the entire sequence of events strongly point towards the guilt of the **Accused No 1**, and that the accused have failed to offer any credible defense in this regard. Therefore, this court, after analysing and testing the over all evidence on the parameters of cardinal principles of Criminal Jurisprudence, would hold that the case is proved beyond

reasonable doubt and therefore, taking into consideration the evidence led, arguments advanced and authorities cited, I pass following order in the interest of Justice.

ORDER

- I. The accused **(1) Mr. Nathubha Vikramsinh Gohil** Resident of Paniyani, Talaja is held **GUILTY** under Section 248(2) of Cr.P.C, 1973 for the commission of offence under Section 323 and 506(2) of IPC, 1860 and under Section 135 of the G. P. Act.
- II. The accused **(1) Mr. Nathubha Vikramsinh Gohil** Resident of Paniyani, Talaja is held **NOT GUILTY** and acquitted under Section 248(2) of Cr.P.C, 1973 for the commission of offence under Section 504 of IPC, 1860.
- III. The accused no **(2) Mr. Rajendrasinh Dilubha Gohil**, Resident of Paniyani, Talaja is held **NOT GUILTY** and acquitted under Section 248(1) of Cr.P.C, 1973 for the commission of offence under Section 323, 504 and 506(2) of IPC, 1860 and under Section 135 of the G. P. Act.
- III. The matter is fixed for hearing of Sentence.

Pronounced and signed on 31st day of July, 2026 in the open court.

Dt: 31/07/2026

Talaja.

(Ms. M. J. Kikani)

GJ01549

Additional Judicial Magistrate First Class,

Talaja @ Bhavnagar.

HEARING ON SENTENCING

At about 3:00 p.m. this court has heard the APP and Defence counsel for the quantum of the sentence.

The learned Assistant Public Prosecutor has submitted that the **Accused No. 1** has been found guilty for the offences punishable under Sections 323 and 506(2) of the Indian Penal Code and Section 135 of the Gujarat Police Act.

Learned APP has submitted that the offences proved against the accused are serious in nature and cannot be treated lightly. It is argued that the victim is a senior citizen aged about 72 years old and the assault was committed at his farm. The accused not only assaulted the victim but also criminally intimidated him and his family members. It is further submitted that the evidence on record reveals that attempts were made to pressurize the complainant and her family members into compromising the matter, which is evident from the hostility of certain witnesses. Learned APP has argued that the conduct of the accused demonstrates disregard for the rule of law and that any undue leniency would undermine public confidence in the administration of criminal justice. It is therefore prayed that the accused be awarded an appropriate substantive sentence commensurate with the gravity of the offences proved against them.

Per contra, the learned defence counsel has submitted that the accused are first-time offenders and there is no material on record to indicate previous criminal antecedents. It is argued that the incident arose out of a sudden quarrel between neighbouring parties and was not a premeditated act. It is further submitted that the accused are permanent residents of the locality, have family responsibilities and are the sole earning members of their respective families. Learned defence counsel has further submitted that the incident is of the year 2017 and the

accused have faced the ordeal of criminal proceedings for several years. It is therefore prayed that a lenient view be taken and that the accused be released on probation under the provisions of the Probation of Offenders Act, 1958 or, in the alternative, be awarded only a nominal sentence.

The learned defence counsel has further submitted that the accused belongs to a modest background and that a harsh sentence would adversely affect future prospects. It is therefore prayed that a lenient view be taken while awarding sentence and that the minimum punishment prescribed under law be imposed. The defence has also requested that the Court consider the age, background and possibility of reformation of the accused while determining the quantum of sentence.

This Court firmly believes that the object of sentencing policy is to ensure that crime does not go unpunished and that the victim of the crime, as also the society at large, derives satisfaction that justice has been done. The Hon'ble Supreme Court has observed that punishment should be proportionate to the crime and reflect the conscience of society.²² This court firmly believes that undue sympathy in imposing inadequate sentence would do more harm to the justice system and undermine public confidence in the efficacy of law.²³ and it is the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed.²⁴ This court firmly believes that sentencing must reflect the seriousness of the offence and its

22 State of Madhya Pradesh v. Bablu Natt, (2009) 2 SCC 272

23 State of Punjab v. Bawa Singh, (2015) 3 SCC 441

24 Sumer Singh v. Surajbhan Singh, (2014) 7 SCC 323

impact on the victim and society²⁵ and sentencing should achieve a balance between deterrence and reformation and must not be disproportionately lenient.²⁶

This Court has duly considered the request made by the learned defence counsel for extending the benefit of probation to the convicts. However, the prayer does not merit acceptance. The evidence on record establishes that the victim is a 72 year old senior citizen who was assaulted by the convicts in the farm he used to cultivate crops. The offence was not confined to a mere verbal altercation but culminated in physical violence resulting in injuries to the victim. The evidence further reveals that the victim was subjected to threats and intimidation. The conduct of the convicts, therefore, cannot be treated as a mere technical or trivial violation of law.

The object of the Probation of Offenders Act is to reform deserving offenders where the circumstances of the case justify such indulgence. However, the benefit of probation is not to be granted as a matter of course and the Court must consider the nature of the offence, the manner of its commission and its impact upon the victim and society.²⁷

In the present case, the offence has been committed against an elderly and physically fragile senior citizen whose ability to defend himself was naturally limited. The evidence on record clearly establishes that there existed a long-standing civil dispute regarding the agricultural land between the parties. It is, in fact, an admitted position that civil litigation concerning the disputed property

25 Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359

26 Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648

27 State of M.P. v. Saleem @ Chamaru, (2005) 5 SCC 554.

was pending. Instead of resorting to the due process of law for enforcement of the alleged rights over the property, accused No.1 chose to take the law into his own hands by assaulting the complainant and criminally intimidating him with the object of compelling him to vacate the disputed land. Such conduct strikes at the very foundation of the rule of law. No person can be permitted to employ force, violence or intimidation to secure possession of property when the rights of the parties are sub judice before a competent Civil Court. The manner in which the offence was committed demonstrates a deliberate attempt to overawe and terrorise an elderly person into surrendering possession by means of criminal force and threats. Granting the benefit of probation in such circumstances would not only undermine public confidence in the administration of criminal justice but would also send an erroneous message that persons may resort to violence and intimidation to achieve what they cannot obtain through lawful means. While the object of the Probation of Offenders Act is reformatory, the discretion to extend its benefit must be exercised having regard to the nature of the offence, the manner of its commission, the character of the offender and the larger interests of society. Considering the age and vulnerability of the victim, the motive behind the offence, the deliberate use of violence and criminal intimidation to influence possession of the disputed property, and the overall facts and circumstances of the case, this Court is of the considered opinion that the present case is not a fit case for extending the benefit of probation to accused No.1.

This Court is conscious of the principles of proportionality, parity, totality and parsimony in sentencing. The age of the accused, socio-economic background,

possibility of reformation and absence of prior criminal antecedents (if any) have been taken into consideration. However, giving undue sympathy to accused would result in inadequate sentence and would ultimately lead to failure of justice.²⁸ Hence, Considering the gravity of the offence, this Court is not inclined to extend the benefit of probation to the accused. In view of the above discussion, and in the wider interest of justice, this Court proceeds to pass the following final order on sentence.

ORDER

- I The accused **(1) Mr. Nathubha Vikramsinh Gohil** Resident of Paniyani, Talaja is ordered to under go rigorous imprisonment for the period of three Months for the commission of the offence punishable under Section 323 of IPC, 1860.
- II The accused **(1) Mr. Nathubha Vikramsinh Gohil** Resident of Paniyani, Talaja is ordered to under go rigorous imprisonment for the period of three years for the commission of the offence punishable under Section 506(2) of IPC, 1860.
- III The accused **(1) Mr. Nathubha Vikramsinh Gohil** Resident of Paniyani, Talaja is ordered to under go rigorous imprisonment for the period of One Month for the commission of the offence punishable under Section 135 of G. P. Act.

28 State of Karnataka v. Krishnappa, (2000) 4 SCC 75

- IV The **Accused No. 1** shall pay Compensation of Rs. 25,000/- to the complainant to meet up the cost of Litigation and Medical Expenditure.
- V The Sentence shall run Concurrently.
- VI The period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment as per mandate of Section 428 of the Code of Criminal Procedure, 1973.
- VII The copy of the decision be given to the **Accused No. 1** free of Cost as per the provision enshrined under Section 363 of the Code of Criminal Procedure, 1973

Pronounced and signed today on 31st Day of July, 2026 in Open Court.

Dt: 31/07/2026

Talaja.

(Ms. M. J. Kikani)

GJ01549

Additional Judicial Magistrate First Class,

Talaja @ Bhavnagar.

APPENDIX**FORM C****LIST OF PROSECUTION WITNESSES**

Sr No.	Exhibit	Witness	Nature
PW 01	Exh. 08	Akhubha Kishorsinh Gohil	Panch Witness
PW 02	Exh. 10	Hathubha Siddhrajsinh Gohil	Panch Witness
PW 03	Exh. 15	Lakhmanbhai Bhagwanbhai Dabhi	Complainant
PW 04	Exh. 19	Bijalbhai Lakhmanbhai Dabhi	Eye Witness
PW 05	Exh. 20	Vipulbhai Lakhmanbhai Dabhi	Eye Witness
PW 06	Exh. 22	Rajubhai Ghughabhai Baraiya	Eye Witness
PW 07	Exh. 23	Vikrambhai Bhupatbhai Dabhi	Eye Witness
PW 08	Exh. 28	Manishaben Bijalbhai Dabhi	Eye Witness
PW 09	Exh. 29	Asmitaben Vipulbhai Dabhi	Eye Witness
PW 10	Exh. 30	Nikunjbhai Pragjibhai	Medical Officer
PW 11	Exh. 32	Laljibhai Mepabhai Dabhi	Panch Witness
PW 12	Exh. 34	Dhirubhai Lavjibhai Dabhi	Panch Witness
PW 13	Exh. 39	Rajpalsinh Temubha Gohil	Investigating Officer
PW 14	Exh. 44	Dr. Kuldipsinh Bharatsinh Chauhan	Medical Officer

LIST OF PROSECUTION EXHIBITS

Sr. No.	Exhibit	Description of the Document
(1)	Exh.09	Panchnama of Arrest
(2)	Exh. 16	Complaint
(3)	Exh. 31	MLC Certificate issued by CHC, Talaja
(4)	Exh. 33	Panchnama of Crime Scene
(5)	Exh. 40	Yadi for deputation of Investigation
(6)	Exh. 41	MLC Certificate issued by Medical officer, Sir T Hospital, Bhavnagar
(7)	Exh. 42	Notification
(8)	Exh. 43	FIR
(9)	Exh. 45	Refer Note of injured