

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 243 of 2019****With****R/CRIMINAL APPEAL NO. 594 of 2019****With****R/CRIMINAL APPEAL NO. 873 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE GITA GOPI****and****HONOURABLE MR.JUSTICE L. S. PIRZADA**

Approved for Reporting	Yes	No

ARJAN @ ASHOKBHAI DHANJIBHAI SHAIKH & ORS.**Versus****STATE OF GUJARAT****Appearance:****MR MEHUL SHARAD SHAH(773) for the Appellant(s) No. 1,2,3****MR MANAN MEHTA APP for the Opponent(s)/Respondent(s) No. 1****CORAM:HONOURABLE MS. JUSTICE GITA GOPI****and****HONOURABLE MR.JUSTICE L. S. PIRZADA****Date : 25/08/2026****JUDGMENT****(PER : HONOURABLE MR.JUSTICE L. S. PIRZADA)**

1. The present appeals are directed against the judgment and order dated 17.12.2018 passed by the learned Additional Sessions Judge, Botad in Sessions Case No.7 of 2018 (Old Sessions Case No.16 of 2015).

2. Since all the appeals are arising out of the same common judgment, they are decided and disposed of by this common judgment.

3. Original accused - Chaturbhai Karshanbhai Shaikh, who is respondent No.6 in Criminal Appeal No.594 of 2019 against acquittal preferred by the State and respondent No.5 in Criminal Appeal No.873 of 2019 against acquittal preferred by the original complainant has expired on 17.06.2025 and pursuant to that, vide order dated 28.07.2026, this Court has abated both the appeals preferred against original accused - Chaturbhai Karshanbhai Shaikh.

4. Criminal Appeal No.243 of 2019, preferred under Section 374 of the Code of Criminal Procedure, 1973 (for short, the "Code") by the appellants - original accused Nos.4,5 and 10, is directed against the judgment and order of conviction and sentence dated 17.12.2018 passed by the learned Additional Sessions Judge, Botad in Sessions Case No.7 of 2018 (Old Sessions Case No.16 of 2015) whereby, the appellants - original accused Nos.4,5 and 10 have been convicted for the offences punishable under Sections 302, 337

r/w Sections 34 and 120B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 r/w Section 120B of the Indian Penal Code with fine of Rs.10,000/- by each accused, in default, and to undergo six months simple imprisonment. So far as Section 337 r/w Section 120B of the Indian Penal Code are concerned, no separate sentence has been awarded.

5. Criminal Appeal No.594 of 2019, preferred by the State under Section 378(1) of the Code, is directed against the order dated 17.12.2018 passed by the learned Additional Sessions Judge, Botad in Sessions Case No.7 of 2018 (Old Sessions Case No.16 of 2015), acquitting the present respondents - original accused Nos.1,2,3,6,7,8 and 9 for the offence punishable Sections 302, 337 r/w Sections 143, 147, 148, 149, 34 and 120B of the Indian Penal Code and Section 135(1) of the G.P. Act.

6. Criminal Appeal No.873 of 2019 is preferred under Section 372 of the Code by the original complainant - first informant - Hareshbhai Trikambhai Dhoria against acquittal of original accused Nos.1,2,3,6,7,8 and 9 for the offences

punishable Sections 302, 337 r/w Sections 143, 147, 148, 149, 34 and 120B of the Indian Penal Code and Section 135(1) of the G.P. Act against the judgment and order of conviction and sentence dated 17.12.2018 passed by the learned Additional Sessions Judge, Botad in Sessions Case No.7 of 2018 (Old Sessions Case No.16 of 2015).

7. Factual matrix of the prosecution case is that on 11.07.2014, original complainant - Hareshbhai Trikambhai Dhoriya and his father - Trikambhai Bhikhabhai Dhoriya went to Botad as he had a date in the Court and thereafter, when he was returning back to home, he boarded S.T. Bus and got down at Kumbhara bus stand. At that time, original complainant - Hareshbhai reached there to pick up his father on motorcycle at about 8:00 p.m. in the evening. Thereafter, the complainant and his father were coming back on motorcycle and in the meantime, complainant - Hareshbhai Trikambhai stopped at the pan shop of one Bharatbhai at Nana Paliad village to get pan - mava. Thereafter, the father of complainant - Trikambhai Bhikhabhai Dhoriya had driven the motorcycle and proceeded towards his home and when he reached near the house of accused No.4 - Arjan @ Ashokbhai

Dhanjibhai Shaikh, complainant - Hareshbhai has heard the sound of "Save me - Save me", that is why, complainant - Hareshbhai ran to the place and saw that accused No.4 - Arjan @ Ashokbhai was having sickle in his hands and has given blow on the head of the father of the complainant, at that time, accused No.5 - Hanubhai Dhanjibhai Shaikh and other accused came with weapons and they were beating the father of the complainant and also throwing stones and, therefore, the complainant shouted for help. Thereafter, uncle of the complainant - Ranchhodbhai and other family members - Virambhai Shivabhai, Govindbhai Kamabhai and Hanubhai Khodabhai reached there but, they stood at some distance as they were under fear that the accused were armed with the weapons and they would also kill them, they did not go near the place of incident. It is the case of the prosecution that at the time of incident, accused - Hasmukhbhai Bhanabhai Shaikh, Bhanabhai Karshanbhai Shaikh and Akhabhai Bhanabhai Shaikh, who were having wooden sticks in their hands, were beating the father of the complainant i.e. Trikamabhai with sticks, accused No.6 - Chaturbhai Karshanbhai Shaikh, accused No.8 - Dhanjibhai Karshanbhai Shaikh and accused No.1 - Jagdishbhai Chaturbhai Shaikh

were also throwing stones on the father of the complainant - Trikambhai Bhikhabhai and accused No.3 - Jorubhai Ukabhai Shaikh was beating the father of the complainant with the stick. At that time, the accused No.4 - Arjan @ Ashokbhai Dhanjibhai Shaikh told that, "Bring the dumper, we will run the dumper over Trikambhai". Thereafter, accused No.10 - Hansrajbhai Shivabhai Shaikh came with a dumper and accused No.4 brought the father of the complainant on the main road in the market and accused No.5 - Hanubhai told accused - Hansrajbhai that, "You just get down from the dumper". Accused - Hanubhai sat on a driving seat and drove the dumper in reverse, ran it over the father of the complainant - Trikambhai. Resultantly, father of the complainant - Trikambhai succumbed to the injuries on the spot. Thereafter, all the accused sat in the dumper and ran away towards village: Kumbhar. Thus, all the accused hatched a criminal conspiracy, armed with weapons and forming unlawful assembly, committed the offence of murder.

7.1. Pursuant to the said incident, first informant - Hareshbhai Trikambhai has given First Information Report being C.R.No.I-37 of 2014 before the Paliyad police station for

the offence punishable under Sections 302, 337, 143, 147, 148, 149, 34 and 120B of the Indian Penal Code as well as Section 135 of the G.P. Act against total 10 accused persons. Thereafter, the investigating officer started investigation and after the investigation was completed, chargesheet came to be filed against all the 10 accused persons and the case has been committed by the learned Judicial Magistrate to the Sessions Court, Botad, which was numbered as Sessions Case No.16 of 2015 (New Sessions Case No.7 of 2018). The learned Additional Sessions Judge, vide Exh.13, has framed the charge against all the 10 accused persons for the offence punishable under Sections 302, 337, 143, 147, 148, 149, 34 and 120B of the Indian Penal Code as well as Section 135 of the G.P. Act. As all the accused persons have pleaded not guilty and chosen to be tried.

7.2. To prove the charge, the prosecution has examined and produced the following oral evidence:-

Oral Evidence:-

Sr.Nos.	Name	Exh.	Particular
1.	Dr.Dilipbhai Bhakabhai	26	Medical

	Ugrejiya		Officer
2.	Dr.Parvinbanu Amanulhaq	39	Witness
3.	Bharatbhai Khodabhai	41	Panch Witness
4.	Rameshbhai Kanjibhai Bhaliya	44	Witness
5.	Dr.Kiritkumar Nathubhai Bathvar	47	Medical Officer
6.	Natwarsinh Bhagwanbhai Padhiyar	57	Witness
7.	Oghabhai Tejabhai Olakiya	61	Panch Witness
8.	Hemantbhai Rupabhai Dhoriya	76	Panch Witness
9.	Sagrabhai Mohanbhai	79	Panch Witness
10.	Viralbhai Ghanshyambhai Mer	83	Panch Witness
11.	Bharatbhai Raysangbhai	85	Panch Witness
12.	Rajubhai Ramjibhai	93	Panch Witness
13.	Hirabhai Lakhabhai	95	Panch Witness
14.	Jaydevbhai Natubhai Rathod	96	Panch Witness
15.	Vikramsinh Abhesinh	97	Panch Witness
16.	Tapubhai Gatorbhai Dharjiya	101	Panch Witness
17.	Mansukhbhai Mashrubhai Rathod	102	Panch Witness
18.	Rameshbhai Dhudabhai Dervaliya	118	Panch Witness
19.	Prabhatbhai Bhavubhai	120	Panch Witness
20.	Mukeshbhai Tapubhai	122	Panch Witness
21.	Chanabhai Karamshibhai Zapadiya	124	Panch Witness
22.	Kishorbhai Raghavbhai Dabasara	125	Panch Witness
23.	Pravinbhai Jagabhai Dhoriya	127	Panch Witness
24.	Jivrajbhai Bhavubhai Minapara	129	Panch Witness

25.	Ranchhodbhai Bhikhabhai	132	Witness
26.	Hamirbhai Mohanbhai Dhoriya	134	Witness
27.	Bharatbhai Mathurbhai Zapadiya	136	Witness
28.	Arvindbhai Trikambhai Dhoriya	137	Witness
29.	Virambhai Shivabhai	143	Witness
30.	Hanubhai Khodabhai	144	Witness
31.	Hareshbhai Trikambhai Dhoriya	147	Complainant
32.	Dilipbhai Khimjibhai Vaghela	147	Investigating Officer
33.	Karshanbhai Vastabhai Bavaliya	181	Witness
34.	Bharatbhai Harjibhai Tokraliya	182	Witness
35.	Jivrajbhai Bhavubhai Mithapara	183	Witness

7.3. The prosecution has also produced the following documentary evidence:-

Documentary Evidence:-

Sr.No s.	Exhs.	Particulars
1.	27	Police yadi regarding postmortem of dead body
2.	28	M.L.C. case of Trikambhai Bhikhabhai
3.	29	P.M. Note of Trikambhai Bhikhabhai

4.	30	Yadi of blood sample of the deceased by Medical Officer, Paliyad
5.	32, 48	Police Yadi regarding collecting blood sample of accused
6.	33	M.L.C. case of Jagdishbhai Chaturbhai
7.	34	M.L.C. case of Hakabhai Bhanabhai
8.	35	M.L.C. case of Jorubhai Ukabhai
9.	36, 56	F.S.L. Medical Yadi of sample
10.	37	Inquest Panchnama
11.	40, 45	Report of F.S.L. Officer regarding inspection of the place of incident
12.	42, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 81, 82, 87, 88, 89, 90, 91, 92, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117	Chits bearing signatures of panchas
13.	49	M.L.C. case of Ashokbhai @ Arjanbhai Dhanjibhai
14.	50	M.L.C. case of Hanubhai Dhanjibhai
15.	51	M.L.C. case of Chaturbhai Karshanbhai
16.	52	M.L.C. case of Hasmukhbhai Bhanabhai
17.	53	M.L.C. case of Dhanjibhai Karshanbhai
18.	54	M.L.C. case of Bhanabhai Karshanbhai

19.	55	M.L.C. case of Hansrajbhai Shivabhai
20.	58	Police yadi made to Circle Inspector for preparing map of scene of offence
21.	59	Yadi regarding map of scene of offence prepared and sent by Circle Officer, Paliyad
22.	60	Map of the scene of offence
23.	62	Panchnama of the scene of offence
24.	77, 86,103, 123, 126	Panchnama
25.	80, 98, 121	Discovery Panchnama
26.	94, 128	Arrest panchnamas of accused
27.	148	Original complaint dated 12.07.2014
28.	159, 166, 167	Fax Message
29.	160, 163	Extracts of station diary
30.	161	After death panchnama
31.	162	Police yadi to register the offence
32.	164	Police yadi of taking charge of investigation
33.	165	Report of serious offence
34.	168	Police yadi sent to F.S.L. for analysis of muddamal
35.	169	Forwarding of muddamal
36.	170	Receipt of receiving muddamal by F.S.L.
37.	171	F.I.R. being C.R.No.I-62 of 2009 at Paliyad police station
38.	172	Copy of judgment of Sessions Case No.62 of 2009
39.	173	Notification regarding weapons ban
40.	174	Forwarding letter of F.S.L., Junagadh
41.	175	Biology report of F.S.L., Junagadh
42.	176	Analysis Yadi of F.S.L., Junagadh

43.	177	Serological report of F.S.L., Junagadh
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7.4. After the prosecution closed the evidence, the learned Sessions Court has recorded the further statements of the accused under Section 313 of the Code and considering the rival submissions of the learned advocates for the parties, the impugned judgment came to be passed on 17.12.2018 whereby, accused No.1 - Jagdishbhai Chaturbhai Shaikh, accused No.2 - Hakabhai @ Akabhai Bhanabhai Shaikh, accused No.3 - Jorubhai Ukabhai Shaikh, accused No.6 - Chaturbhai Karshanbhai Shaikh, accused No.7 - Hasmukhbhai Bhanabhai Shaikh, accused No.8 - Dhanjibhai Karshanbhai Shaikh and accused No.9 - Bhanabhai Karshanbhai Shaikh have been acquitted from the offence punishable under Section 302, 337 r/w Sections 143, 147, 148, 149, 34 and 120B of the Indian Penal Code and Section 135 of the G.P. Act by giving benefit of doubt.

7.5. Accused No.4 - Arjanbhai @ Ashokbhai Dhanjibhai Shaikh, accused No.5 - Hanubhai Dhanjibhai Shaikh and accused No.10 - Hansrajbhai Shivabhai Shaikh have been acquitted from the offence punishable under Sections 143,

147, 148 and 149 of the Indian Penal Code and Section 135 of the G.P. Act.

7.6. Further, accused No.4 - Arjanbhai @ Ashokbhai Dhanjibhai Shaikh, accused No.5 - Hanubhai Dhanjibhai Shaikh and accused No.10 - Hansrajbhai Shivabhai Shaikh were convicted for the offence punishable under Section 302, 337 r/w Section 34 and 120B of the Indian Penal Code. Thereafter, the learned Sessions Court, after hearing accused persons on the quantum of sentence, accused No.4 - Arjanbhai @ Ashokbhai Dhanjibhai Shaikh, accused No.5 - Hanubhai Dhanjibhai Shaikh and accused No.10 - Hansrajbhai Shivabhai Shaikh, sentenced them for rigorous imprisonment for life for the offence punishable under Section 302 r/w Sections 34 and 120B of the Indian Penal Code with fine of Rs.10,000/- each and, in default, further imprisonment of six months simple imprisonment was awarded. No separate sentence has been awarded to the accused Nos.4,5 and 10 qua Section 337 and 120B of the Indian Penal Code. Being aggrieved and dissatisfied with the judgment and order of sentence dated 17.12.2018, the accused Nos.4,5 and 10 have preferred Criminal Appeal No.243 of 2019 and the State has

preferred Criminal Appeal No.594 of 2019 appeal against the judgment and order of acquittal. Against the rest of the accused persons, the original complainant has also challenged the order of acquittal by preferring Criminal Appeal No.873 of 2019.

CRIMINAL APPEAL NO.243 OF 2019

Submissions on behalf of the appellants.

8. Learned advocate Mr.Mehul Sharad Shah appearing for the appellants, assailed the judgment and order of conviction passed against the present appellants and submitted that the judgment and order of conviction and sentence passed by the learned Sessions Judge is contrary to the provisions of law and facts and evidence and, therefore, the same deserves to be quashed and set aside. It is submitted that the learned trial Court has erred in holding the present appellants - original accused Nos.4,5 and 10 guilty for the offence punishable under Sections 302, 337 read with Section 34 and 120B of the Indian Penal Code. It is submitted that as a matter of fact, the learned trial Court ought to have acquitted the present appellants from all the offences. It is submitted that the

prosecution has not proved the case beyond reasonable doubt against the present appellants.

8.1. It is submitted that as per the case of the prosecution, the incident in question has occurred on 11.07.2014 at about 8.30 p.m. near the house of original accused No.4 i.e. the present appellant at village: Nana Paliyad, Taluka & District Botad. It is submitted that as per the case of the prosecution, on 11.07.2014, the deceased went to Botad to attend the Court and on his return from Botad, he got down from the bus at Kumbhara bus stand. The complainant reached the bus stand on motorcycle at around 8.00 p.m. and when they both were returning home, the complainant got down from the motorcycle at a pan shop, while the deceased continued to proceed towards his residence on motorcycle and when the deceased was passing near the house of the original accused No.4, the complainant heard him calling out for help and he rushed to the place of incident. Thus, the incident took place, as per the case of the prosecution at 08:30 p.m.

8.2. It is submitted that to prove the charge against the accused persons, the prosecution has examined, in all, 35

witnesses, out of which, majority of the panchas have turned hostile and not supported the case of the prosecution. It is submitted that P.W.-1 - Dr.Dilip Bhakabhai Uagrejiya - Medical Officer, C.H.C. Paliyad, who conducted the postmortem of the deceased, was examined as at Exh.26 and as per his evidence, injury Nos.1,2 and 3 recorded in Column No.17 of the postmortem report are possible by hard and blunt substance while, injury No.4 is possible by lathi and by the reverse side of dhariya and injury Nos.5 and 8 are possible by lathi. In the cross-examination, it is admitted by him that he could not find any injury inflicted by any sharp-edged weapon neither he seen any injury of wheel marks in injuries in Column No.17 and the injuries received by the deceased are possible by the vehicular accident. It is also admitted in the cross-examination that crush injury is not only possible to a person crushed below the vehicle but, it is possible by hard and blunt substance and if any vehicle has been forcefully run over on a person, it is possible that blood stain on the tyre of the vehicle can be found but, no tyre mark has been found on the dead body and he has not seen any incised wound on the head of the deceased.

8.3. Further submitted that, another witness, who has examined the dumper recovered by the police, is P.W.2 - Dr.Parvinbanu Amanulhaq, who is F.S.L. Officer and was examined at Exh.39. As per her deposition, on the front side or back side of the dumper, no sign of any damage has been seen and even the front side and back side of the lights of the dumper were intact and no blood stain was found. It is admitted by the said witness in her cross-examination that no blood stain was found either on the front side or the back side of the tyres.

8.4. Further submitted that, panch of the inquest panchnama - P.W.3 - Mr.Bharatbhai Khodabhai was examined at Exh.41. Another witness P.W.4 - Rameshbhai Kanjibhai was examined at Exh.44, who is a local F.S.L. Officer and as per his deposition, he inspected the motorcycle, which has been found lying near the place of incident and prepared F.S.L. report. In his cross-examination, he admitted that the front side of the motorcycle is damaged and if two vehicles collide head on with each other, such damage caused to the motorcycle is possible.

8.5. Further submitted that the most important witness - P.W.25 - Ranchhodbhai Bhikhabhai was examined at Exh.132. In his examination-in-chief, he stated that at the time of incident, he was at his residence with Virambhai Shivabhai and Govindbhai Kamabhai. At that time, he received a phone call from his nephew i.e. the complainant, who was asking him to rush near the house of accused No.4 - Arjanbhai @ Ashokbhai and three of them went there. He further stated that the accused No.4 was carrying dhariya and others were holding lathis and, therefore, out of fear, they did not go nearby the place of incident and stood at a distance. In the cross-examination, he stated that five minutes after the incident, he received the phone call from the complainant and he came to know about the incident only upon receipt of the phone call. He admitted that the complainant had informed that his father i.e. deceased - Trikambhai had received injuries. He also admitted that at the time of incident, the other persons residing nearby, were not present but, after reaching the place of incident, he remained present at the site of the incident and police came there 30 minutes after the incident.

8.6. In the cross-examination, he stated that the complainant telephoned the police and he also admitted that he has not informed anything about the incident to the police at that time. He admitted that police has recorded his statement on the next day and he went to the police station.

8.7. Witness P.W.28 - Arvinbhai Trikambhai Dhoriya, who is the son of the deceased, was examined at Exh.137 and in his cross-examination, he stated that he went to the site of incident at about 8.30 p.m., remained there only for 5 minutes and as he saw his father's dead body and got scared, he went back to his home.

8.8. Witness - P.W.29 - Virambhai Shivabhai, who was examined at Exh.143, stated that on 11.07.2014, he was at the residence of Ranchhodbhai Bhikhabhai and since Ranchhodbhai had received a phone call from Hareshbhai - complainant, they all went to the site of the incident and thereafter, he narrated the same story, as stated by Ranchhodbhai.

8.9. However, in the cross-examination, he has admitted that

when he reached the place of the incident, the deceased had already expired. Thus, it is crystal clear that he is not the eye-witness to the said incident.

8.10. Further, another witness P.W.30 - Hanubhai Khodabhai -, who was examined at Exh.144, in his examination-in-chief, he stated that he went to Kalyanpara area on 11.07.2014 for his household work.

8.11. In his cross-examination, he admitted that he did not inform anyone as to for what kind of household work, he went to Kalyanpara. He has stated that he remained at the place of incident for about 15 to 20 minutes and in the morning, he came to know that the police had come to the place of the incident. He has stated that whatever he was aware about the incident, was disclosed to the police on 12.07.2014. Therefore, it is apparent that he is a got-up and chance witness, who did not witness the incident.

8.12. The most important witness and on whose deposition, the whole case of the prosecution hinges, is P.W.31 - complainant - Hareshbhai Trikambhai Dhoriya, who

was examined at Exh.147. In his examination-in-chief, the complainant narrated the incident, different from the one set out in the charge at Exh.13. As per the case of the prosecution in the charge, the deceased got down at Khumbhara bus stand at about 8.00 p.m. after completing his Court work from Botad and the complainant gone on motorcycle to pick up the deceased whereas, in the examination-in-chief, the said witness i.e. complainant has stated that he is working as diamond polisher at Botad and that, he got down from the bus at Khumbhara bus stand at about 8.00 p.m. and his father i.e. deceased – Trikambhai came on motorcycle from his home to pick up the complainant and, therefore, there is a clear contradiction between the two stories.

8.13. Further, in his deposition before the Court, he stated that he shouted for help and, therefore, his uncle - Ranchhodbhai and others came at the site of the incident and he had gone to the Paliyad Police Station to inform the police and thereafter, the police and Mamlatdar came at the place of incident. But, in his cross-examination, the complainant has admitted that he is working at Botad as diamond polisher and there was a holiday on the date of an incident as it was Friday.

He admitted that he, along with his uncle – Bhupatbhai, went to the police station to inform about the incident. He admitted that after the incident, his uncle Ranchhodbhai and several other people came at the place of incident. He admitted that when he went to the police station, he was aware that his father has already expired and he informed the person at the police station that his father was murdered but, the said person has informed him that the police had already left for the place of incident. He admitted that at that time, he did not give names of any of the accused persons or the weapons used by them or about the dumper to the police officers at the police station. He admitted that he did not inform that he had seen the incident. He admitted that when he came back at the place of incident, the police had already reached the place of the incident and thereafter, the mamlatdar and police have carried out the inquest panchnama of the dead body and at that time, he did not inform the police or the mamlatdar about names of the accused persons or the manner in which, the incident had taken place. Thereafter, on 12.07.2014 at about 3.00 a.m. during night hours, he has given the F.I.R. at the police station. He admitted that his uncle and other persons, who were present at the place of incident, did not inform the

police regarding the names of the accused persons and the manner in which, the incident had taken place. It is submitted that considering this, the deposition of the said witness is not found to be reliable and not trustworthy as he has not stated the truth before the Court.

8.14. Another witness - P.W.32 - Dilip Vaghela, who is a Police Inspector, was examined at Exh.158. As per the his deposition, on 11.07.2014, when he was at his residence, he received a phone call from one Mr.R.N. Patnada, P.S.O., informing him about the incident of scuffling at village: Nana Paliyad and, therefore, he went to the said village and Station Diary Entry No.17/14 was made at 22.50 hours in the station diary. He stated that the P.S.O. had sent the fax message to the Executive Magistrate for inquest panchnama.

8.15. In the cross-examination, the said witness admitted that no entry was made regarding his visit to the place of incident in the night. He received the information of scuffle at around 1:30 a.m. and went to Paliyad Police Station after learning about the incident. Further, he admitted that when the complainant went to the police station, at that time, no

F.I.R. was registered though P.S.O. was holding the post of Senior Constable and he was authorized to take the F.I.R. He admitted that there was no entry in the station diary about the fact that the complainant came to the police station for giving information regarding the incident and the complainant has not informed him that he had telephoned the police station and he has not inquired as to when the complainant had first visited the police station and why he did not give the name of the accused at that time. He stated that the P.S.O. is not shown as witness in the charge-sheet. He admitted that at time of drawing inquest panchnama of the dead body of the deceased, the complainant and the other witnesses, who were present, have not stated that they have seen the incident neither have they informed the police about the names of the accused persons. Even, he has not sent the motorcycle to the F.S.L. to get the opinion regarding the accident.

8.16. It is submitted that considering this, it is crystal clear that the F.I.R. has been given at about 3:00 a.m. in the early morning after consulting the other family members and then lodged a false complaint by giving names of the accused to frame them in the said case of serious offence.

8.17. Further, it is submitted that P.W.33 - owner of the dumper - Karshan Bavaliya, was examined at Exh.181. This witness has not supported the case of the prosecution and turned hostile. However, he stated in the examination-in-chief that it is not true that one Hanubhai Dhanjibhai Shaikh was keeping his dumper with him and running the same. He specifically stated that he did not know said Hanubhai Dhanjibhai Shaikh and even did not recognize him in the Court. He further submitted that so far as the medical evidence is concerned, in Column No.17 of the P.M. Note, eight injuries were found on the body of the deceased. Injury Nos.1 to 4 are in the nature of C.L.W., injury No.5 was swelling on the chest and injury Nos.6 and 8 were abrasion injuries. Column No.17 records no incised wound on the head of the deceased. The cause of death is recorded as cardio-respiratory arrest due to shock, resulting from crush injury and chest injury with hemorrhage. On this evidence, the learned trial Court has specifically found that the evidence was unreliable and did not prove guilt beyond reasonable doubt and accordingly, acquitted seven accused persons, by observing that *"the prosecution did not prove the allegation*

that the seven accused persons caused injuries with lathis and by pelting stones." But, on the very same evidence, however, the trial Court has convicted three accused persons i.e. accused Nos.4, 5 and 10, who are the appellants before this Court for the offence punishable under Sections 302, 337 read with Sections 34 and 120-B of the Indian Penal Code. Hence, it is submitted that the said judgment is not supported by any evidence.

8.18. It is submitted that as per the case of the prosecution, the incident took place at about 8:30 p.m. on 11.07.2014 and as per the deposition of the complainant before the Court, he went to the Paliyad police station immediately after the incident but, he did not disclose the names of the accused persons or the weapons used by them and how the incident actually took place nor he given any F.I.R. to the concerned P.S.O. and after the P.S.O. informed him that police has already left for the place of the incident, he returned back from the police station and when he reached the place of incident, police and Mamlatdar had already reached there.

8.19. It is submitted that so far as the narration given by the complainant regarding the incident is concerned, his conduct is not trustworthy and cast doubt on his credibility. The Police Inspector has stated that in Paliyad Police Station, station diary was made at 22:50 hours upon receiving a phone call from complainant - Hareshbhai. It is submitted that had the complainant already been to the police station immediately after the incident, there would have been no occasion for him to telephone the police again at 22:50 hours.

8.20. It is submitted that as per the complainant, when he came from the police station, police and Mamlatdar were already present at the place of incident whereas, the Police Inspector has stated in his evidence that he received the information at about 1.30 a.m. in the night and then he went to the place of the incident and, therefore, the evidence of the complainant is not corroborated by the other witnesses.

8.21. The complainant has also stated that he had shouted for help and, therefore, his uncle - Ranchhodbhai and others came at the place of the incident. However, those witnesses have stated that they have received a phone call

from the complainant 5 minutes after occurrence of the incident and, therefore, they went to the place of the incident.

8.22. It is submitted that as per the case of the prosecution, the deceased got down at Kumbhara bus stand after completing his Court work at Botad and the complainant had gone there on his motorcycle to pick him up. The complainant however, has deposed before the Court that he works as a diamond polisher in the factory at Botad, he got down at Kumbhara Bus Stand and that his father, Deceased - Trikambhai came on the motorcycle from home to pick him up. So, virtually, every element of the complainant's deposition is not corroborated by other witnesses or by the investigation done by the Investigating Officer. Further, it is submitted that the incident in question took place at 8:30 p.m. as per the case of the prosecution first time and telephone call was made by the complainant at Paliyad police station at 22:50 hours and entry No.17/14 was made in the station diary and in that also, it was only disclosed that a scuffle took place at village: Nana Paliyad and the phone call was made by the complainant himself and the mobile number is also mentioned in the station diary entry No.17/14. So when the incident took

place at 8:30 p.m. and the telephone has been made as per the case of the prosecution at 22:50 p.m. in the night, nothing was stated in the telephone by the complainant that how the incident took place, who are the assailants and his father has already expired.

8.23. It is submitted that the complainant was present at the time of drawing the inquest panchnama . Even at that time, the dead body was identified by the complainant himself and the said inquest panchnama was drawn on 12.07.2014 at about 00:45 a.m. to 1:45 a.m. In spite of the fact that the Police Inspector, Executive Magistrate and the complainant and other witnesses, who posed themselves as eye-witnesses were present but, nobody has given the names of the accused nor given the F.I.R. to the police nor stated anything about how, the incident took place and who are the assailants and, therefore, it creates a doubt. It is submitted that considering this, it is an admitted fact that the F.I.R. was registered at a belated stage at about 7 to 8 hours after the incident and in the peculiar facts of the case, belated F.I.R., implicating all the male members of a single family, is nothing but a concocted and fabricated F.I.R.

8.24. It is submitted that there is no evidence that sufficient light existed at around 8:30 p.m. at the time of incident to identify the accused. Further, not a single independent witness has been examined by the prosecution and all the witnesses, which were examined, are the interested persons, who are the family members of the deceased and the complainant.

8.25. It is submitted that so far as the motive part is concerned, as per the case of the prosecution, some of the accused have been convicted upon complaint given by the complainant and the family members and after that, after the conviction by the Sessions Court at Botad, they have preferred appeal before High Court and their sentence has been suspended and they have been released on bail and after two months this incident, took place but, this motive has not been established. Further, it is submitted that the prosecution has not explained how, the motorcycle ridden by the deceased came to be totally damaged with its front portion and various parts are broken or why, it was never sent for F.S.L. examination. It is evident from the situation of the motorcycle

that it has been collided with a heavy vehicle and the dumper never ran over the deceased and that is why, no blood stains were found on the tyres of the dumper. The owner of the dumper has also not supported the case of the prosecution. Therefore, the motive part and the manner in which, the case has been put-forward by the prosecution, has not been proved. It is submitted that from the evidence, it is clear that it is a case of accident and the said case of an accident has been converted into the case of murder, falsely implicating the accused persons.

8.26. It is submitted that it is a settled position of law that if two view are possible, looking to the evidence, the view favourable to the accused must be adopted by the Court and the defence is required only to establish a probable defence, not to prove it beyond the reasonable doubt. The burden always lie on the prosecution to prove its case beyond reasonable doubt, which, in the present case, the prosecution has failed to do so.

8.27. It is further submitted that the F.I.R. was filed at about 3:00 a.m. on 12.07.2014, naming ten male members of

a single family with no explanation for the delay and considering the fact that as per the deposition of the complainant, his first visit to the police station immediately after the incident and subsequently, when he returned to the place of incident, police inspector and the mamlatdar were present, inquest panchnama was drawn, he was present, the death body was lying there but, not stated anything how, the incident took place, who were the assailants and what type of weapons were used. Therefore, considering this, it is submitted by learned advocate Mr.Shah that the prosecution has miserably failed to prove the charges against the present appellants. It is further submitted that in the impugned judgment, the learned Sessions Court has recorded the findings that the witnesses are not trustworthy, not reliable and considering that the witnesses are not reliable and trustworthy, acquitted 7 accused persons without giving any cogent reasons and appreciating the evidence and merely on the same set of evidence, convicted the present appellants and the said conviction cannot be sustained in the eye of law. It is, therefore, submitted that the present appeal is required to be allowed.

8.28. In support of his arguments, learned advocate Mr.Shah has relied upon the following decisions:-

- (i) Narendrasinh Keshubhai Zala vs. State of Gujarat, reported in (2023)18 SCC 783;
- (ii) Satyanarain vs. State of Madhya Pradesh, reported in (1972)3 SCC 484;
- (iii) Nand Lal and others vs. The State of Chhattisgarh, reported in 2023 LiveLaw (SC) 186;
- (iv) Balaram vs. State of Madhya Pradesh, reported in 2023 SCC OnLine SC 1468;
- (v) Javed Shaukat Ali Qureshi vs. State of Gujarat, reported in (2023) 9 SCC 164;
- (vi) Anil Phukan vs. State of Assam, reported in (1993) 3 SCC 282;
- (vii) Adalat Yadav Etc. vs. State of Bihar, reported in AIR 2026 SC 2072;
- (viii) Saheb, S/o Maroti Bhumre Etc. Vs. State of Maharashtra, reported in AIR 2024 SC 4466.

Submissions on behalf of the respondent - State

9. Heard learned A.P.P. Mr.Manan Maheta appearing for the State.

9.1. It is submitted that so far as the present case in hand is concerned, the complainant and other witnesses have deposed before the Court and the learned Sessions Court has relied upon the evidence and found that the present appellants are

guilty for the offence punishable under Sections 302, 337 read with Sections 34 and 120B of the Indian Penal Code and sentenced them for life imprisonment.

9.2. Further, it is submitted that so far as the other 7 accused persons, who have been acquitted are concerned, the State and the original complainant have challenged the order of acquittal by filing the separate appeals.

9.3. It is submitted that so far as the motive aspect is concerned, it has been established by the prosecution before the learned trial Court and for that purpose, vide Exh.171, copy of the F.I.R. has been produced. As per the said F.I.R., it was given by Ukabhai Bhikhabhai Dhoriya against accused, namely, Ashok Dhanji, accused No.2 - Chaturbhai Karsanbhai, accused No.3 - Haubhai Dhanjibhai Shaikh, accused No.4 - Jorubhai Ukabhai Shaikh and Savitaben, wife of Chatrubhai for the offences punishable under Sections 307, 326, 325, 337, 338, 143, 147, 148 and 149 and Section 294(b) of the Indian Penal Code and Section 135 of the G.P. Act before the Botad police station vide C.R.No.I-64 of 2008. Pursuant to that, Sessions Case No.62 of 2009 was proceeded against these

accused persons and the learned Sessions Court, Botad, vide judgment dated 19.03.2014, was pleased to convict accused - Chaturbhai Karsanbhai, accused - Arajan @ Ashok Dhanjibhai and accused - Hanubhai Dhanjibhai for the offences punishable under Sections 325, 326 and 307 of the Indian Penal Code and subsequently, they were sentenced to undergo five years' simple imprisonment for the offence punishable under Section 307 and three years' imprisonment for the offence punishable under Section 326 of the Indian Penal Code by judgment dated 19.03.2014. The said judgment has been produced before the learned Sessions Court vide Exh.172. Considering this, it has also come on record that after the conviction, the convicted accused were sent to the judicial custody. Subsequently, they have preferred appeal before this Court and before this Court, their sentence has been suspended and they were released on bail. It is submitted that thereafter, on 11.07.2014, the said incident took place. So, the motive has been proved by the prosecution.

9.4. Further, it is submitted that in the impugned judgment, the learned Sessions Court has recorded the finding that

accused - Arjan @ Ashok Dhanjibhai Shaikh, who was armed with dhariya, has been established as per the deposition of complainant - Hareshbhai Trikambhai and he had given a dhariya blow to the deceased which was seen by the complainant. Accused - Hansrajibhai Shivabhai, at the time of the incident, came with a dumper and thereafter, Hanubhai Dhanjibhai Sheikh was sitting on the driving seat and ran over the dumper on deceased - Trikambhai Bhikhabhai Doriya and because of that, the deceased suffered injuries and succumbed to the injuries. It is submitted that, therefore, the learned Sessions Court has rightly convicted the present appellants - original accused for the offences punishable under Sections 302, 337 read with Section 120B of the Indian Penal Code and sentenced them. It is submitted that, therefore, the present appeal is devoid of any merits and requires to be dismissed.

Criminal Appeal No.594 of 2019

Submissions by learned A.P.P. Mr.Manan Mehta for the State

10. It is submitted that the present appeal has been preferred against the order of acquittal of the seven accused

persons. Further, it is submitted that the learned trial Court ought to have considered the fact that some of the accused already been convicted by the Court in Sessions Case No.62 of 2009 and when they were on bail, they have committed the present heinous crime of murder and this is a second offence by the accused persons and the appeal against the conviction in Sessions Case No.62 of 2019 is still pending.

10.1. The learned A.P.P. submitted that the learned trial Court ought to have considered the fact that there was a dispute regarding the agricultural land of the deceased and accused No.1, as they have adjoining lands and dispute was going on. It is submitted that the learned trial Court ought to have considered the depositions of PW-12 - Rajubhai Ramjibhai and PW-34 - Bharatbhai Harjibhai Tokraliya. Both these witnesses are the Medical Officers as well as F.S.L. officers and they have categorically stated that the deceased received serious injuries and it can be possible with the weapon used by the accused. The injury received on the head was possible by a heavy vehicle, which drove over by some of the accused and this fact has not been considered.

10.2. Further, it is submitted that P.W.7 - Odhabhai Tejabhai and P.W.8 - Hemantbhai Rupabhai, who are the panch witnesses, have supported the case of the prosecution, the muddamal recovery panchnama and the panchnama of the place of incident was carried out in the presence of these witnesses and this aspect has also not been considered.

10.3. Further, it is submitted that the witnesses have specifically stated the role attributed to the present respondent - accused and it has been established by the prosecution that the present respondent was pelting stones on the deceased and was also having a lathi and gave a lathi blow along with the other convicted co-accused persons.

10.4. Further, it has been established by the prosecution from the evidence that all the accused had formed an unlawful assembly and also established that every accused was a member of the unlawful assembly. So, once unlawful assembly has been proved by the prosecution beyond reasonable doubt, then every accused has to be convicted for the offence under Section 302 of the Indian Penal Code.

10.5. Considering this, the appeal preferred by the State is required to be allowed and the judgment of acquittal against the respondents is required to be quashed and set aside.

Criminal Appeal No. 873 of 2019

Submissions by the learned advocate for the appellant-original complainant:

11. Learned advocate Mr.Pinakin Raval for the appellant adopted the arguments advanced by learned A.P.P. and submitted that the prosecution has proved charge against all the accused persons and so far as the accused, who are the present respondent Nos.2 to 8 are concerned, the charge against those accused has also been proved. Hence, the present appeal preferred by the appellant under Section 372 of the Code of Criminal Procedure is also required to be allowed and the judgment of acquittal qua respondent Nos.2 to 8 is required to be quashed and set aside.

Criminal Appeal Nos.594 of 2019 and 873 of 2019

Submissions made by the respondent-original accused

12. Heard learned advocate Mr.Parth Tolia for the

respondents.

12.1. He submitted that the learned Sessions Court has rightly come to the conclusion that the prosecution has miserably failed to prove the charge against the present respondents and acquitted them from all the charges.

12.2. Further, it is submitted that complainant - Hareshbhai Trikambhai Dhoriya, as per the finding of the learned Sessions Court, is partly believed and his conduct is considered to be doubtful. Further, deposition of another witness - Ranchodbhai Bhikhabhai, uncle of the complainant, was not believed by the trial Court. In the same way, deposition of witness - Virambhai Shivabhai, who had supported the case of the prosecution, was not believed by the learned trial Court.

12.3. So, considering this, when the conduct of all the witnesses, even the complainant, is doubtful, the learned Court has rightly come to the conclusion that so far as the charges against the present respondents are concerned, are not proved.

12.4. It is submitted that the doctor has admitted that the injury was possible by the vehicular accident. It is further submitted that considering the overall evidence produced by the prosecution, two views or two theories possible and considering this, the theory in favour of the accused should be taken into consideration.

12.5. Further, the Medical Officer has admitted in his evidence that there were no wheel marks found on the dead body and has also admitted that the injuries were possible by a vehicular accident.

12.6. Considering this, it is submitted that both the appeals preferred by the State as well as by the complainant are devoid of any merits and require to be dismissed.

12.7. Further, in support of his arguments, learned advocate Mr.Tolia has relied upon the following decisions:-

- (i). Criminal Appeal No.591 of 2020 in the case of Anjani Singh Vs. State of Uttar Pradesh.

(ii). Chandrappa and Ors. Vs. State of Karnataka, reported in (2007) 4 SCC 415.

(iii). Babu Sahebagoada Rudragoudar and Ors. Vs. State of Karnataka, reported in (2024) 8 SCC 149.

13. Heard the rival submissions of the learned advocates for the respective parties, perused the decisions relied upon by the learned advocates for the parties, perused the impugned judgment and also perused the Record & Proceedings.

14. Factual matrix of the present case are that on 11.07.2014, father of complainant i.e. Trikambhai Bhikhabhai Dhoriya went to attend the Court proceeding at Botad and after the proceeding was over, when he was returning, he got down at Kumbhara bus stand and complainant - Hareshbhai went on motorcycle to the bus stand to pick up his father at about 8:30 p.m. in the evening. When the complainant and his father were returning on motorcycle and when they reached near village: Nana Paliyad, complainant - Hareshbhai stopped to get his pan masala at one pan shop and his father - Trikambhai Bhikhabhai Dhoriya proceeded towards his home on motorcycle and when he reached near the house of accused No.4 - Ashokbhai Dhanjibhai, suddenly complainant -

Hareshbhai heard his father's shouting "save me - save me" and at that time, complainant - Hareshbhai ran towards the direction and found accused No.4 - Ashokbhai with sickle, who was giving sickle blow on the head of the father of the complainant - Trikambhai. At that time, accused No.5 - Hanubhai Dhanjibhai and other accused persons came there with the weapons and they assaulted Trikambhai Bhikhabhai and were also pelting stones on Trikambhai and, therefore, the father of the complainant was shouting for help. The uncle of complainant - Ranchhodbhai and other family members, Virambhai Shivabhai, Govindbhai Kamabhai and Hanubhai Khodabhai came there and they were standing a little bit away and did not go near the place of incident as they were frightened, as the accused persons were having the weapons. At the time of incident, accused - Hasmukhbhai Bhanabhai Shaikh, Bhanabhai Karshanbhai Shaikh and Akhabhai Bhanabhai Shaikh were having sticks in their hands and they were beating the father of the complainant i.e. Trikambhai with the sticks. Accused No.6 - Chaturbhai Karshanbhai, accused No.8 - Dhanjibhai Karshanbhai and accused No.1 - Jagdishbhai Chaturbhai were pelting stones on Trikambhai Bhikhabhai and accused No.3 - Jorubhai Ukabhai was also

beating Trikambhai Bhikhabhai by stick. At that time, accused No.4 - Ashokbhai Dhanjibhai stated that "bring the dumper, I will run over the dumper on Trikambhai" and thereafter, accused No.10 - Hansrajbhai Shivabhai Shaikh brought the dumper and accused No.4 and all the accused brought Trikambhai Bhikhabhai near the house of accused No.4 - Ashokbhai to the main road and at that time, accused No.5 - Hanubhai told accused - Hansrajbhai that, "you get down from the dumper and I will drive the dumper." Thereafter, he sat on the driver seat of the dumper and took the dumper in the reverse side and ran the dumper over Trikambhai Bhikhabhai. Again, he drove the dumper on the front side and all the accused sat in the dumper and ran away towards village: Kumbhara.

14.1. Pursuant to above, Trikambhai Bhikhabhai died on the spot and first informant i.e. complainant - Hareshbhai Trikambhai has given a complaint against 10 accused persons before the Paliyad police station vide C.R.No.I-37 of 2014 for the offence punishable under Sections 302, 337, 143, 147, 148, 149 read with Sections 34 and 120B of the Indian Penal Code as well as Section 135 of the G.P. Act. The said F.I.R.

came to be given on 12.07.2014 at about 3:15 a.m. in early morning.

14.2. Pursuant to registration of the F.I.R., investigation has been carried out and after completion of the investigation, chargesheet has been filed and the case was committed to the Sessions Court, which was registered as Sessions Case No.16 of 2015 (New Sessions Case No.7 of 2018).

14.3. Further, the learned Sessions Court, vide Exh.13, framed the charge against all the 10 accused persons for the offences punishable under Sections 302, 337, 143, 147, 148 read with Section 149, 34 and 120B of the Indian Penal Code and Section 135 of the G.P. Act.

14.4. To prove the charge, the prosecution has examined 35 witnesses and also relied upon 43 documentary evidences.

15. In this regard, now, first, it is required to consider the medical evidence adduced by the prosecution before the learned trial Court.

16. The prosecution has examined P.W.1 - Dr.Dilipbhai Bhakabhai Ugrejiya vide Exh.26, who has performed autopsy on the dead body of deceased - Trikambhai. In his deposition, the said witness stated that he has performed the autopsy on the dead body of the deceased along with the panel of doctors and as per his deposition, the following external injuries were found on the body of the deceased:-

(i) A sagittal C.L.W. 17.0 cm x 15.0 cm with underline Rt.frontal & Rt.parietal bone fracture with crush.

(ii) A sagittal C.L.W. of 19.0 x 9.0 cms x deep to frontal & parietal bones on Lt.side, wound is from Lt.eyebrow to Lt.parietal eminence.

(iii) A vertical C.L.W. of 20.0 x 8.0 cms x deep to muscles on Rt. Medial side of middle of arm to proximal part of forearm with fracture of Rt. Middle part of Humerus.

(iv) A vertical C.L.W. of 5.0 x 4.0 x 1.0 cms on medial side of Lt. elbow joint.

(v) Swelling with hematoma on anterior surface of sternal region of chest.

(vi) Abrasion of 7.0 x 5.0 cms. on Lt. medial side of lower part of arm in vertical direction.

(vii) Multiple small abrasions on anterior part of chest & upper part of abdomen.

(viii) Multiple small abrasions on upper & lower part of back.

17. As per the P.M. Note, from the internal examination of internal injuries, corresponding to injury No.(i) and (ii) were found and also fracture of frontal, both parietals and occipital with crushing of fractured bones, were found. In the brain, it was found dura, arachnoid mater and pia mater are teared and crushed and cranial cavity filled up with blood and remaining brain matter with intra-cranial hemorrhage. In the internal examination of the chest, hematoma on chest part of sternum was found and fracture of right 2nd to 7th ribs was found and plural tear was found on right side of the chest and tear of 5.0 x 3.0 cms at upper & middle lobe of right lung.

18. Thus, as per the opinion of the doctor, the cause of death is cardio -respiratory arrest due to shock, due to crush head injury and chest injury with hemorrhage. The said P.M. Note

was produced vide Exh.29.

19. Further, he deposed that after verifying the weapons in the Court, mainly, the sticks, sickle and stones, he opined that injury Nos.1,2 and 3 can be caused by hard substance, injury No.4 can be caused by back side of the sickle, injury Nos.5 to 8 can be caused by the sticks and injury Nos.1 and 2 can be caused, if any heavy substance is rolled over the person and these injuries can be caused by running over of a dumper.

20. The said witness was cross-examined and in the cross-examination, he admitted that during the postmortem, he has not found any injury on the dead body, which can be caused by the edged weapon. He admitted that in the P.M. Note, in column No.17, no injury of wheel mark has been mentioned and even in column No.19, there is no mention of any injury of wheel mark. He also admitted that if a death occurs due to any vehicular accident or if anybody forcefully runs over the vehicle then, on the tyre of the vehicle, blood and some body parts can be found. He admitted that on the place of death, even bloodstain and tyre marks may be found. He admitted that the said injury found on the dead body can be caused by a

vehicular accident. He admitted that the external injuries mentioned in Column No.17 do not have any wheel mark injury. So, this was the opinion expressed by the doctor, who performed the autopsy and as per his opinion, the injuries can be caused by the weapon and he also stated that no injury on the head was found, which can be caused by the edged weapon and even this type of injury can be caused in a vehicular accident.

21. Another witness P.W.2 - Dr.Parvinbanu Amanulhaq, who is the F.S.L. Officer and who was examined at Exh.39, has inspected the dumper bearing registration No.GJ-4X-7136 on 26.07.2014, which is alleged to be used in the said incident, which was parked outside the police station and upon inspecting the dumper, she has not found any sign that the said dumper met with an accident and the headlight and tale lights were intact, not damaged and she also has not found any bloodstain on the tyre of the dumper.

22. Further, the prosecution has examined P.W.3 - Mr.Bharatbhai Khodabhai, who was the panch-witness of the inquest panchnama, vide Exh.41. As per the deposition of this

witness, he stated that the dead body was shown by complainant - Hareshbhai and the dead body was lying behind the house of accused No.4 - Ashokbhai on the main road and when he saw the dead body, at that time, it was about 12:30 p.m. in night and the dead body was identified by complainant - Hareshbhai, stating that it is the dead body of his father - Trikambhai. When the said witness saw the dead body, the left portion of the head was crushed near the ear and bones were visible. He also found injuries on the left side of the neck and injuries on the right hand, left hand and the face was crushed. One mobile phone was found in the left side pocket of the shirt and on the left hand side, tyre mark were visible. He identified the signatures on the inquest panchnama, which has been produced vide Exh.37.

22.1. In the cross-examination, the said witness has stated that when he reached at the place of the incident, police came first and thereafter, the Executive Magistrate came. It was admitted in the cross-examination that at the time of inquest panchnama, complainant - Hareshbhai has not stated anything about how the incident took place and that is why, it has not been mentioned in the panchnama.

21.2. Another witness, P.W.4 - Rameshbhai Kanjibhai Bhaliya, who was examined vide Exh.44, was a Local F.S.L. Officer at the Mobile Investigation Van and on 12.07.2014 at about 18:00 p.m., he reached to the spot and made his report. When he inspected the place of incident, the incident has taken place in the main market on the road and he has taken blood samples, samples of clay stones and control stones. He had also taken the sample of the blood, sickle and one stick, which has been found lying on the spot. At about 27 ft. from the place of incident, one motorcycle being registration No.GJ-9-S-5191 was found in a damaged condition and the seat portion of the motorcycle was totally broken and front showcase and front side of the motorcycle was also damaged.

22.3. In the cross-examination, the said witness has admitted that looking to the condition of the motorcycle and damage to the motorcycle, there is a possibility that if two vehicles dashed head to head, then this type of damage can be caused to the motorcycle.

22.4. Another witness - P.W.7 - Oghabhai Tejabhai

Olakiya, was examined at Exh.61, who was the panch-witness of the scene of offence. The said witness has supported the case of the prosecution and also identified the sickle produced at Mark - G, wooden stick at Mark-H and stones at Mark-I, which were recovered from the spot.

22.5. The other panch-witnesses have not supported the case of the prosecution and now, the important witnesses, as per the case of the prosecution, who were the eye-witnesses, have been examined by the prosecution.

22.6. The prosecution has examined Ranchhodbhai Bhikhabhai, P.W.25, vide Exh.132 and in his deposition he stated that the incident took place around 8 O'clock behind the house of Ashokbhai Sheikh. The other witness P.W.28 - Arvindbhai Trikambhai Dhoriya, who was examined at Exh.137, is the son of the deceased. As per his deposition before this Court, he stated that on 11.07.2014, after the incident has taken place, his brother i.e. complainant - Hareshbhai came to his house and narrated the way, the incident took place to the said witness and he has identified the accused. At that time, he was at his home and Virambhai

Shivabhai and Govindbhai Kamabhai were also present at his house. At that time, his nephew Hareshbhai telephoned him and called him near the house of Ashokbhai, as Ashokbhai and his brothers were beating his father. So, he, along with Virambhai and Govindbhai, reached there. At that time, his nephew Hareshbhai was shouting, "Save my father". At that time, he saw that Ashokbhai was armed with a sickle and his brother Hanubhai and other family members were armed with sticks and other weapons. As they were armed with weapons, under the fear, he did not intervene in the scuffle and saw the incident from a distance. Ashokbhai and other family members were beating his brother Trikambhai and thereafter, other accused persons were pelting stones at his brother. Thereafter, Ashokbhai asked to bring the dumper so that he could run over the dumper on Trikambhai. At that time, Hansrajbhai Shivabhai came with the dumper and all the accused brought Ashokbhai on the main road. Thereafter, Hareshbhai came with the dumper and thereafter, accused Hanubhai Khodabhai sat on the driver's seat and took it to the reverse side and ran over the dumper on the deceased Trikambhai. Subsequently, all the accused ran away. The reason for the incident was that there was a dispute regarding

the boundary of the land between Ashokbhai and the family of the complainant. In his cross-examination, he stated that one cabin was there at the place of the incident. His cabin was a pan shop and it belonged to one Hamirbhai Mohanbhai Dhoriya. Further, he admitted that after 5 minutes of the incident, Hareshbhai telephoned him.

22.7. In the cross-examination, he admitted that whatever he stated in the examination-in-chief, has been stated by his brother – Hareshbhai and he also admitted that he has not seen the incident in question.

23. Another witness – P.W.29 – Virambhai Shivabhai was examined at Exh.143. As per his deposition before the Court, he stated that on 11.07.2014, the incident took place near the house of accused – Ashokbhai and at the time of incident, he was at the house of Ranchhodbhai Bhikhabhai and at that time, Govindbhai Kamabhai was also present and Ranchhodbhai received a phone call from his nephew – Hareshbhai and Hareshbhai called them to come immediately behind the house of Ashokbhai and said that Ashokbhai and his family members were beating his father and thereafter,

said witnesses - Virambhai, Govindbhai and Ranchhodbhai reached at the back side of the house of Ashokbhai, at that time, Hareshbhai was shouting that "please save my father" and when they saw that Ashokbhai was having sickle in his hand, Hanubhai, Hasmukhbhai, Akhabhai and Bhanabhai were having wooden sticks in their hands and they were beating Triambhai, thereafter, Hanubhai Khodabhai came there but, as they were under fear, they did not go nearby the place of incident. At that time, Dhanjibhai, Chaturbhai and Jagdishbhai were pelting stones and Jorubhai Ukabhai was having stick in his hand and was beating Triambhai. Thereafter, Ashokbhai told to bring the dumper and Hansrajbhai Shivabhai came with a dumper and Ashokbhai and his brothers, brought Triambhai to the main road and Hanubhai told Hansrajbhai to get down from the dumper and Hanubhai sat on a driving seat and took the dumper on the reverse side and run the dumper over Triambhai. Thereafter, all the accused ran away sitting in the dumper. The said witnesses went near Triambhai and found that Triambhai has already expired. Pursuant to that, Hareshbhai has given a complaint against Ashokbhai and his father with Paliyad police station and as per the deposition of the said witness,

the motive for incident was that Ashokbhai, his brothers and deceased - Trikambhai had some dispute regarding the land, some cases have also been filed by each other and Ashokbhai and his brothers were convicted and subsequently, they have been released on bail after one month and because of this, incident in question took place. The said witness identified the accused persons and also identified the weapons.

24. The said witness was cross-examined and he stated that he remained at the place of incident for half an hour and thereafter, he went to his house and subsequently, went to the house of the father of the complainant. He further stated that when he again reached the place of incident, people had already gathered there and the dead body of Trikambhai was lying at the spot. Thereafter, the dead body was taken by the family members of Trikambhai to Paliyad Hospital and before they took the dead body to the hospital, Hareshbhai had informed the police about the incident. He also admitted in the cross-examination that at the time when the police were writing regarding the injuries on the dead body, at that time, he did not go near the police and not stated anything about the incident. He also did not state anything to the police at

Paliyad Hospital. Further, in the cross-examination, he admitted that when he reached near Trikambhai, Trikambhai has already expired. He admitted that after Trikambhai expired, Keshabhai Bhupatbhai and Arvindbhai reached there. He denied that the death of Trikambhai occurred due to a vehicular accident.

25. Another witness, P.W.30 - Hanubhai Khodabhai was examined vide Exh.144. As per his deposition before the Court, he stated that the incident took place on 11.07.2014 at about 08:30 p.m. in the evening and he was residing at village: Nana Paliyad. As per his deposition, on the date of the incident, he went to Kalyanpara area for some work and after the work was completed, while he proceeded to come back to his house, at that time, he found many people gathered near the house of Ashokbhai Dhanjibhai and Hareshbhai, son of Trikambhai, was shouting, "Save my father". At that time, his uncle Ranchodbhai, Virambhai and Govindbhai were present and Hasmukhbhai had a sickle in his hand, his brother Hanubhai, Hasmukhbhai, Bhanabhai and Akhabhai had wooden sticks in their hands and they were also beating Trikambhai. Father of Ashokbhai i.e. Dhanjibhai, Chaturbhai

and Jagdishbhai were pelting stones at Trikambhai. Jorubhai Ukabhai had a stick in his hand and he was also beating Trikambhai with the stick. At that time, Ashokbhai stated to bring the dumper and he would run over the dumper on Trikambhai. So, Hansrajbhai came driving the dumper and at that time, Trikambhai was lying near the wall of the house of Ashokbhai. Thereafter, he brought him from there to the road and, at that time, Hnubhai told Hansrajbhai to get down from the dumper and Hanubhai sat on the driving seat of the dumper and took the dumper towards the reverse side and ran over the dumber on Trikambhai. Thereafter, all the accused ran away sitting in a dumper. He identified the accused and also identified the muddamal articles/weapons.

26. The said witness was cross-examined by the defense and has admitted that Keshabhai, Bhupatbhai and Arvindbhai came to the spot after the assaulters ran away. Further, he admitted that after the incident, he went to his house and he did not inform the police about the incident and after reaching his house, he remained there till the morning at about 08:30 a.m. He also admitted that when he reached his house, at that time, it was about 9:00 p.m. in the evening and thereafter, he

went to sleep. He stated that he had informed the police about the incident on 12.07.2014 at about 04:00 o'clock and he had not seen any vehicle in the damaged condition at the spot.

27. Now, the main important witness i.e. P.W.31 - complainant - Hareshbhai Trikambhai Dhoriya, who was examined vide Exh.147, who is the son of the deceased and as per his deposition, he stated that their agricultural land was in the name of his father and it was in the sim of village: Nana Paliyad. Adjoining to their land, there is a land of Ashokbhai Dhanjibhai and there was a dispute regarding the boundaries of the land as Ashokbhai had encroached the land of the father of the complainant. For the last six years, altercation and scuffle had taken place between the father of the complainant and Ashokbhai. Once, Ashokbhai and his father had assaulted the father of the complainant, caused injuries on his head and also fractured his hand and leg, pursuant to that, a case was registered and it was conducted before the Court wherein, Ashokbhai and his brother were convicted and sentenced whereas, the father and uncle of the complainant were acquitted. Prior to two months from the date of the present incident, Ashokbhai and his brothers were released on

bail.

28. It is stated by the complainant that on 11.07.2014, his father went to Botad for some case matter and, at that time, he also accompanied his father. He stated that as he was a diamond polisher and was doing labour work at Botad for diamond polishing, after the case was over, his father came back to their house and at about 07:00 p.m. in the evening, when he finished his work, he got down at about 8:00 p.m. at Kumbhara bus stand. At that time, his father came on a motorcycle to Kumbhara bus stand to pick him up and thereafter, he and his father, both proceeded on a motorcycle to go to their home. Thereafter, when they reached at Nana Paliyad village, in the market, there was a pan shop of Bharatbhai so, he got down to have some pan and, at that time, it was about 08:00 p.m. in the evening. His father proceeded to his home on the motorcycle and suddenly, he heard shouting that, "Haresh save me" and that is why, he ran in that direction and saw that, Ashokbhai had a sickle in his hand and had given a sickle blow on the head of his father. At that time, Ashokbhai, Bhanubhai and his family members were also present with weapons and they were beating his father

and also pelting stones. At that time, his father shouted "Save me, save me" and cried for help. Therefore, his uncle - Ranchodbhai Bhikhabhai, Virambhai Shivabhai, Govindbhai Kamabhai and Hanubhai Khodabhai reached there. As the accused had weapons in their hands, they were under fear that they would also be killed and that is why, they did not go nearby. Hasmukhbhai Bhanabhai, Bhanabhai Karshanbhai and Akhabhai Bhanabhai had sticks in their hands and were beating his father with sticks. At that time, Chaturbhai Karshanbhai, Jagdishbhai Chaturbhai and Dhanjibhai Karashanbhai were throwing stones and Jorubhai Ukabhai had a stick and was also beating his father with the stick. At that time, Ashokbhai told them to bring the dumper to run it over Trikambhai. Thereafter, Hansrajbhai came with a dumper and Ashokbhai and his brothers brought his father, who was lying near the house of Ashokbhai, to the main market road. Thereafter, Hanubhai told Hansrajbhai to get down from the dumper and he sat on the driving seat and took the dumper to the reverse side and ran it over his father. Thereafter, he drove the dumper to the front side and all the accused ran away to the Kumbhara Village sitting in the dumper. He went near his father and found that his father's head had been

crushed and there were marks of the dumper on his head and he was lying there in a dead condition. Thereafter, he went to Paliyad Police Station to inform the police. The police and the Mamlatdar, Botad, also came there. The cause of the incident was old rivalry with the accused and because of that, all the ten accused had murdered his father. Further, he stated that he had given a complaint regarding the said incident, which has been produced vide Exh.148 and he also identified the accused and the weapons before the Court.

29. The said witness was cross-examined by the defence counsel. In the cross-examination, he stated that Paliyad village was 5 to 6 Kms. from the place of incident. After the incident, immediately, he went to the police station to inform the police. When he went to the police station, his uncle Bhupatbhai accompanied him on a bike and Bhupatbhai came there after occurrence of the incident. It took about 25 minutes to reach the police station from the place of incident. When he reached the police station, he already knew that his father has expired. When he reached the police station, one police person was there and he told him that his father had been murdered. At that time, the police personnel told him

that information regarding the incident was already given to the officer and that, they had left to reach the place of incident and, therefore, they returned back. He admitted that at that time, he had not given the names of the assailants or the weapons used in the incident to the police personnel and had also not stated to the police that he had seen the incident. He stated in the cross-examination that after leaving the police station, he and his uncle - Bhupatbhai returned to the place of incident. At that time, the police had already reached there and their family members - Ranchodbhai, Keshabhai, other persons from the village and neighbours had also gathered there. After the police came, within a short time, the Mamlatdar also came. He identified the dead body before the police and the Mamlatdar. He also admitted that at the time of the panchnama of the dead body, he had not given the names of the assailants nor informed the police about the weapons used. Thereafter, he stated that he had given the complaint at the police station after his father was taken to the hospital. He informed the police about the incident at about 03:00 to 03:15 a.m. in the intervening night. He admitted that he had not stated anything about the incident to anyone before informing the police in the night. Further, it is stated that he had seen

Ashokbhai having a sickle in his hand and giving a blow to his father on the head and, at that time, he was standing 15 to 20 feet away from his father. He stated that when he was standing there, he was shouting but, no person from the nearby residential houses came there. Further, he admitted that the inquest panchnama was started at about 12:30 to 12:45 and from 10:00 o'clock to 12:45 the police were making investigation and they were standing far away. At that time, the police had not inquired from him. He admitted that at that time, he had not told the police how the incident took place or who were the assailants. He admitted that his uncle had also not stated anything to the police. Thereafter, the dead body was taken to the hospital at about 02:00 to 02:30 in the night.

30. Investigating Officer - P.W.32 - Dilipbhai Khimjibhai Vaghela, PSI, Rampol, was examined vide Exh.158. He deposed about his investigation. The said Investigating Officer was cross-examined by the defence counsel. In the cross-examination, he stated that at about 10:30 in the night, he first came to know about the incident. He admitted that it was disclosed from his investigation that after the incident took place, Hareshbhai Dhoriya came to Paliyad Police Station to

inform about the incident and, at that time, Hareshbhai had not given any complaint at Paliyad Police Station. He also admitted that when Hareshbhai came to inform the police station, P.S.O. Mr.Panda was present. He admitted that the PSO had all the authority to take the complaint. He admitted that in the station diary, there was an entry pertaining to Hareshbhai having given information about the incident on telephone. He also admitted that Hareshbhai had not stated before him that he had informed the police station on telephone. He admitted that he had not made any investigation regarding the telephone call of Hareshbhai to the police station and stated that he had not inquired from the complainant as to why, he had not given the names at the first instance, when he came to inform the police. He had not taken any explanation from Mr.R.N. Panda as to why, he had not taken the complaint of the complainant. Further, he admitted that at the time of drawing the inquest panchnama, complainant - Hareshbhai Trikambhai Dhoriya, was present there and he had identified the dead body. The inquest panchnama was drawn during the period from 00:45 hrs. to 01:45 hrs. Further, he stated that if the complainant had given the names of the accused, then he should have written the

names in the inquest panchnama. He further stated that at the time of the inquest panchnama, the complainant had not given the names of the accused persons. Further, he admitted that the complainant had stated before him that the injury had been caused by edged weapon and, therefore, in the inquest panchnama, it was mentioned that the injury had been caused by an edged weapon. It is admitted by him that in the complaint also, it was not stated by the complainant that the injury to his father had been caused by some hard and blunt substance. He admitted that at the time of the inquest panchnama, the complainant had not given any particulars of the vehicle being dumper. He also stated that after completion of the inquest panchnama, after about 45 minutes, the complaint of the complainant was taken. He admitted in his cross-examination that between the time when he reached the place of incident and left the place of incident, nobody had stated before him that they had seen the incident.

31. Further, he admitted that from the complaint and the statements of the witnesses, it was coming out that the incident took place at about 08:30 p.m. He admitted that he had recorded the statement of Bharatbhai, whose shop was in

the main market and in his statement, it was not disclosed that at the place of incident, he had not seen the accused. It was also admitted by him that the said witness had not seen the dumper and not seen the accused meeting there and also not seen the accused beating Trikambhai. He admitted that after the complaint of the complainant, he had not recorded his further statement. In his cross-examination, he stated that from the place of incident one sickle and one stick were recovered and, at that time, the complainant was present. He also admitted that it is true that nothing had been stated by the complainant as to how, the said sickle and stick were lying there. Further, he admitted that the dumper was seized from Nana Paliyad Village. He admitted that in the panchnama of seizure of the dumper, it was stated that the panchnama was drawn at Paliyad Village. He admitted that he had recorded the statement of the owner of the dumper and that, he had not cited the owner of the dumper as a witness in the charge-sheet. He admitted that the owner of the dumper was - Karshanbhai Vastabhai Bavalia. In the cross-examination, it was admitted that as per Station Diary Entry No.17/14 of Paliyad Police Station, at about 20:50 hrs., he had left the police station. It is true that Entry No.17/14 was given

regarding the information given by the complainant and the mobile number of the complainant was also written in the said entry. It was also admitted that as per the said Station Diary Entry, the complainant had given information regarding the scuffle. It is stated in the cross-examination that after they reached the place of incident, they came to know that the injured had already expired. Further, it was stated that as per the Station Diary Entry, when he reached the place of incident, he came to know that this was an incident of murder. He stated that he knew that in a case of murder, it was required to take the complaint as early as possible. He admitted that when he reached the place of incident, complainant - Hareshbhai was also present there. He admitted that he had not made any efforts to record the complaint of the complainant at the spot. He admitted that at the time of the inquest panchnama, the dead body was identified by Hareshbhai and, before the inquest panchnama was drawn, Hareshbhai had not stated anything about how the incident had taken place. Even he had not made any inquiry from Hareshbhai regarding the incident at the spot.

32. Thereafter, the prosecution has examined PW-33 -

Karshanbhai Vastabhai Bavaliya vide Exh.181, who is the owner of dumper No.GJ- 4-X-7136, who had not supported the case of the prosecution and was declared hostile. He stated that he himself was driving the said dumper and he had a driver, namely, Vishubhai, who was his partner and he is not knowing any Hanubhai Dhanjibhai Shaikh and stated that he could not identify Hanubhai Dhanjibhai Shaikh.

33. These are the witnesses who have been examined.

34. So, from the evidence of PW-1 - Dr. Dilipbhai Bhakabhai Ugrejia examined vide Exh.26, who performed the autopsy on the dead body of the deceased, he found eight external injuries and corresponding internal injuries. As per the opinion of the doctor, the cause of death is cardio-respiratory arrest due to crush head injury and chest injury with hemorrhage. From the overall evidence, it appears that it is the opinion of the doctor that the injuries can be caused by a stick and sickle. Injury Nos.1 and 2, more particularly, mentioned in Column No.19, are pertaining to the internal injury in the head, which can be caused by a heavy substance being rolled over. Thus, it is the opinion that this injury can be

caused in a vehicular accident. However, there were no tyre marks found on the body of the deceased.

35. In the nutshell, the prosecution case is that accused - Ashokbhai first gave a blow of sickle on the head of deceased -Trikambhai and thereafter, the other accused, armed with sticks, also assaulted deceased - Trikambhai and other accused persons pelted stones. Thereafter, Trikambhai was brought to the main road and thereafter, the dumper was brought by one Hansrajbhai Shivabhai Sheikh. Accused No.10 - Hansrajbhai Shivabhai Sheikh came with a dumper and accused No.5 - Hanubhai Dhanjibhai Sheikh sat on a driving seat of the dumper and thereafter, he drove the dumper to the reverse side and ran over it on deceased - Trikambhai and thereafter, all the accused persons ran away sitting in the dumper.

36. In this regard, so far as examination of the witnesses is concerned, one Mr.Ranchodbhai Bhikhabhai, has poses himself as an eye witness to the incident. As per his deposition, his nephew - Hareshbhai telephoned him and, therefore, he reached the place of incident and saw that the

accused were armed with weapons and accused - Ashokbhai and another accused person were beating Trikambhai and pelting stones. Thereafter, because of fear, he did not reach near the place and stood far away and thus, were seeing the incident from a distance. Thereafter, they saw that Hanubhai drove the dumper and he ran it over the deceased. As per his deposition, the incident took place at about 08:00 p.m. in the evening.

37. So far as other witness - P.W.28 - Arvindbhai Trikambhai, who is the son of the deceased, is concerned, it is emerging from his deposition that he is a hearsay witness and his brother Hareshbhai told him about the incident. So, he is not an eye-witness to the incident.

38. P.W.29 - Virambhai Shivabhai, examined vide Exh.143, has stated similarly as per Govindbhai. As per his deposition, he was at the place of Govindbhai and at that time, a phone call of Hareshbhai come and they reached the place and saw the incident. He also identified the accused persons. He did not try to save - Trikambhai and they saw the incident from a distance.

39. Similarly, so far as witness P.W.30 - Hanubhai Khodabhai is concerned, as per his deposition, he saw some people gathered near the house of accused - Ashokbhai Dhanjibhai and at that time, son of Trikambhai i.e. Hareshbhai was crying for help and shouting, "Please save my father." At that time, Ranchodbhai, Virambhai and Govindbhai were present. He saw accused Ashokbhai armed with a sickle and other accused persons armed with sticks and they were beating Trikambhai and also pelting stones. Thereafter, accused Hanubhai ran over the dumper on Trikambhai.

40. Another important witness i.e. P.W.31 - complainant - Hareshbhai Trikambhai Dhoriya has been examined. As per his deposition, he is posing himself as an eye-witness and, as per his deposition, it emerges that on the date of the incident, when his father went to Botad for some Court proceedings and returned to home, at about 7 O'clock in the evening, complainant - Hareshbhai was also in Botad and came back by S.T. Bus and got down at Kumbhara bus stand. His father came on a motorcycle to pick up and then, his father rode the motorcycle and proceeded to their house on the motorcycle.

At that time, near the pan shop in the market, the complainant got down for having some pan masala and his father - deceased Trikambhai proceeded to his house on the motorcycle. Subsequently, he heard a sound, "Haresh, please save me" and he ran there and saw that accused - Ashokbhai had a sickle in his hand and had given a blow of the sickle to his father on the head and bleeding had started from that injury. Subsequently, other accused persons, who were also armed with weapons, were beating his father and pelting stones at his father. At that time, when his father was shouting "save me, save me", his uncle - Ranchodbhai Bhikhabhai, Virambhai Shivabhai, Govindbhai Kanabhai and Hanubhai Khodabhai were near the place of incident. As the accused persons were armed with weapons, they did not go near to rescue him from the fight. Subsequently, as per his deposition, he stated that he saw Hansrajbhai came with a dumper and thereafter, accused Hanubhai sat in the dumper. All the other accused brought Trikambhai on the main road and thereafter, Hanubhai took the dumper on the reverse side and ran over the dumper on his father and all the accused persons ran away. When he reached the spot, he saw that his father was lying there and on the head, he found some marks

of the dumper. His father has already expired and thereafter, he proceeded to Padiyad Police Station to inform the police. Subsequently, he gave the complaint regarding the incident.

41. Further, the learned Sessions Court has framed the charge against the accused persons and it has been specifically charged against the accused that on 11.07.2014, father of complainant - Trikambhai Bhikhabhai went to Botad for Court proceedings and after completing the Court proceedings, when he was returning, he got down at Kumbhara bus stand and complainant - Hareshbhai went to pick up his father on motorcycle at the bus stand. Both were coming back on the motorcycle. At that time, the complainant Hareshbhai got down to have pan masala at the pan shop of Bharatbhai. Thereafter, his father proceeded on the motorcycle and drove towards his home. So, as per the deposition of the complainant before the Court, he stated that he came to pick his father, while in the charge and, more particularly, in the complaint produced vide Exh.148, it is stated that his father came on a motorcycle to pick him up from Kumbhara Bus Stand. While, in his deposition before the Court, he stated that he went on a motorcycle to pick his

father from the ST Bus Stand. So, contradictory versions emerge from the deposition of original complainant - Hareshbhai Dhoriya.

42. It is an admitted position that as per the case of the prosecution, the incident took place on 11.07.2014 at about 08:30 p.m. in the evening. Now, in this regard, it is required to be considered that as per the deposition of complainant - Hareshbhai, he immediately went to the Paliyad Police Station to inform the police about the incident and from his evidence, it emerges that one P.S.O. was there and he stated to the complainant that the police had already left to reach the place of incident. He immediately came to the place of incident and saw that the police had already reached there and after some time, the Executive Magistrate also reached at the place of incident. In this regard, from the evidence, it emerges that as per the extract of the station diary, more particularly, Entry No.17/14 made on 11.07.2014, which has been produced vide Exh.160, it emerges that at about 22:50 hours, an entry was made pertaining to one phone call of Hareshbhai Trikambhai Dhoriya, came from village: Nana Padiyad from mobile No.9327027326, it was informed that some fight has taken

place at Nana Padiyad village and he requested to send the police. After receiving the phone call, they informed the Police Sub-Inspector and other police personnel to immediately leave for the place of incident at Nana Padiyad village. So, as per Exh.160, as per the station diary entry, the information pertaining to the incident was given by the complainant - Hareshbhai Trikambhai from his mobile phone to the police at about 22:50 hours for the first time. In the said call, it was only mentioned that some fight had taken place at Nana Padiyad village and it was registered in Station Diary vide Entry No.17/14.

43. It is also coming on record that pursuant to Station Diary Entry No.17/14 dated 11.07.2014 made at about 22:50 hrs., inquest panchnama of the dead body of the deceased was drawn at the place of incident, which was started at about 00:45 hours on 12.07.2014 and was completed at 01:45 a.m. So, if the inquest panchnama, which has been produced vide Exh.37, is seen, it speaks that it was carried out at the place of incident only and it was pursuant to Entry No.17/14 made in the station diary at Paliyad Police Station. From the inquest panchnama, it emerges that at that time, complainant -

Hareshbhai Trikambhai Dhoriya was present, the police and the Executive Magistrate were also present. At that time, they saw the dead body lying at Nana Padiyad, Kalyanpara area in the main chowk, near the backside of the house of one Mr.Ashokbhai Dhanjibhai Sheikh, resident of Nana Paliyad i.e. original accused No.4, on the road in the main market. It also emerges from the inquest panchnama that the dead body was identified by Hareshbhai Trikambhai Dhoriya, who is the first informant and had complained about the incident. As per the panchnama, the reason for death of the person was because of an injury by an edged weapon and a heavy vehicle being run over the head and because of that serious injury, death had occurred. This reason has been stated and subsequently, the dead body was sent to C.H.C. Paliyad for postmortem. The panchnama was drawn in the presence of two panchas, namely, Rameshbhai Kodabhai Gohil and Bharatbhai Kodabhai Gohil and in the presence of Mr. N.K. Pandya, Executive Magistrate, Botad and D.K. Vaghela, Police Sub-Inspector, Paliyad Police Station, who is the Investigating Officer.

44. Panch-witness - P.W.3 - Bharatbhai Khodabhai has been examined vide Exh.41. It emerges from the evidence produced

before the learned trial Court and, more particularly, from the deposition of complainant - Hareshbhai Trikambhai, who has been examined as PW-31, that he had given the complaint at Nana Padiyad Police Station. As per his deposition and from the documentary evidence, it emerges that the first information regarding the complaint was given by complainant - Hareshbhai on the intervening night of 11/12.07.2014 at about 03:15 a.m. The said complaint was given against 10 accused persons and was registered as C.R.No.I-37 of 2014 for the offences punishable under Sections 302, 337, 34, 143, 147, 148, 149 and 120B of the Indian Penal Code and Section 135 of the G.P. Act. Pursuant to the complaint given by complainant - Hareshbhai, the offence was registered and the entry to that effect was made in the station diary of Nana Padiyad Police Station being Entry No.3. The said station diary entry has been produced at Exh.163 and the Yadi to register the offence has been produced vide Exh.162. The said Yadi was given by Mr.D.K. Vaghela before whom, the complaint was given by complainant - Hareshbhai. As per the said Yadi, the time of incident was on 11.07.2014 at about 20:30 hours and it was disclosed on 12.07.2014 at about 03:15 a.m.

45. Thereafter, the panchnama of the scene of offence was drawn and further investigation was started by the Investigating Officer pursuant to the F.I.R. being C.R.No.I-37/2014, which is the offence in the present case. Considering this, it emerges from the evidence of all the witnesses, it is an admitted position that the incident took place at about 08:30 p.m. on 11.07.2014 and as per Station Diary Entry No.17/14, information was given by the complainant Hareshbhai to Nana Padiyad Police Station on a mobile phone that some fight had taken place at Nana Padiyad Village and he requested to send the police. In this regard, considering the testimony of original complainant - Hareshbhai, he has not stated that he telephoned Nana Padiyad Police Station and informed the police about the incident. On the contrary, as per his deposition, he stated that when he reached near the place where, his father - Trikambhai was lying, he found that his father has already died and he immediately proceeded to Padiyad Police Station and thereafter, the police came.

45.1. In the cross-examination, he also admitted that after the incident, he immediately went to the police station to

inform the police and that he went to the police station with one Mr.Bhupatbhai on a bike and it took only 25 minutes to reach the police station. When he reached the police station, he was already knowing that his father has expired. When he reached the police station, one police personnel was present there and he told him that his father had been murdered. So, at that time, the police personnel stated that his officer had already been informed and they had left for the place of incident. Immediately, they returned from the police station and reached the place of incident, at that time, the police had already reached there where, Ranchodbhai Keshabhai and other neighbours also present. As per his deposition, he identified the body and also showed the place of incident at the time of drawing the panchnama of the scene of offence. So, it emerges that the complainant Hareshbhai is not telling the truth before the Court. He has not stated that he had telephoned the police and informed that some fighting had taken place. This information was given for the first time to Nana Padiyad Police Station at about 22:50 hrs. in the night. The incident took place at 08:30 p.m. and for the first time, the information was given at about 22:50 hrs. on the mobile phone to the police station and the only information given by

complainant - Hareshbhai was that some fight had taken place at Nana Padiyad Village and requested to send the police. Interestingly, from this evidence and the cross-examination, it emerges that immediately after the incident at 08:30 p.m., within 10-15 minutes, the incident might have been completed and the complainant was knowing that his father has already expired. In spite of that, the said fact was not informed to the police till 22:50 hrs. and even at 22:50 hrs., the only information was given that some fight had taken place at Nana Padiyad Village, even the names of any accused persons or the weapons used in the crime were not stated to the police. Further, it emerges from the evidence that the inquest panchnama of the dead body of deceased - Trikambhai was drawn pursuant to Station Diary Entry No.17/14, that is, regarding the entry made at 22:50 p.m. vide Entry No.17/14 pursuant to the information that some fight had taken place in Nana Padiyad Village. Even from the evidence of the Investigating Officer - Mr.D.K. Vaghela, who was also present before whom, the complainant had given his complaint and in the said panchnama vide Exh.37, it has been clearly stated that after the inquest panchnama, the panchas and everyone came to the conclusion that the death of the deceased was

caused by an edged weapon and a heavy vehicle ran over the head of the deceased and, because of that, the death has occurred.

45.2. The timing of the inquest panchnama is very important. It was drawn in the intervening night of 11/12.07.2014 and started at 00:45 a.m. and completed at 01:45 a.m. Interestingly, complainant and all other eye-witnesses were present there. Even from the inquest panchnama, it emerges that a cognizable offence had already taken place, as per the opinion of the panchas and everyone. The said panchnama was drawn in the presence of the Executive Magistrate and the Police Sub-Inspector, Paliyad Police Station, namely, Mr.D.K. Vaghela. But at that time also, the complainant or the witnesses have not stated anything about the incident. Thereafter, the dead body of the deceased was sent to CHC, Paliyad for post-mortem and as per the case of the prosecution, after the post-mortem was completed, complainant - Hareshbhai gave a complaint, which has been produced vide Exh.148. The said complaint was given before D.K. Vaghela, Police Sub-Inspector, Paliyad Police Station at about 03:15 a.m. in the early morning of 12.07.2014. So,

considering this, for the first time at about 03:15 a.m. in the morning, when the complaint was given, names of all the ten accused were given, weapons used by them and how the incident took place was also stated by the complainant. Pursuant to that, the offence was registered by the police. So, till 03:15 a.m., neither the complainant nor the witnesses, in spite of the fact that the police and the Executive Magistrate were present, nobody has informed the police as to how, the incident took place, who were the assailants and what type of weapons were used. Nothing was stated by the complainant and the witnesses, even though the same P.S.I. was present at the spot. Further, as per the case of the prosecution, the incident took place at 8:30 p.m. in the evening of 11.07.2014 and for the first time, information was given at 22:50 hrs. at the police station regarding some fight having taken place at village: Nana Paliyad. During that period, what the complainant and other witnesses were doing is not coming on record and no explanation has been given, the dead body was lying at the spot from 8:30 p.m. till 22:50 hrs. and thereafter, the police came. The inquest panchnama started in the intervening night of 11/12.07.2014 at about 00:45 a.m. Till then, the dead body was lying at the spot. Neither the

complainant nor the witnesses had even taken the pain to take the body to the hospital. Such explanation is not coming from the evidence of all the witnesses. It emerges that the complainant and other witnesses, who posed themselves as eye-witnesses are not narrating the correct facts before the Court and they are concealing something. Either the timing of the incident is not correct or it might be that, after consulting the family members, they have given the names of the ten accused persons at 03:15 a.m.

45.3. Further, it emerges that at 22:50 hours, when the complainant informed the police regarding the fight being taken place, at that time, as per the case of the prosecution, the complainant was knowing that his father - Trikambhai has already expired, despite that he did not inform the police regarding the correct facts. This fact has been admitted by Mr.D.K. Vaghela in his evidence also. Considering the incident as narrated in the deposition of the witnesses, it is not corroborated by the entry made in the station diary, inquest panchnama and the depositions of the complainant as well as the Investigating Officer.

46. It is also coming on record that there was an old enmity between the complainant and the accused persons. Considering the fact that the incident took place at 8:30 p.m., police was present at about 12:45 a.m., inquest panchnama was started and even when the Executive Magistrate was present there, the complainant and his family members, so called eye-witnesses were also present but, nobody has come-forward to give information regarding the names of the accused, weapons used by them and how the incident took place to the police. So, considering this, for the first time, the names of the accused have been given at 3:30 a.m. in the morning and considering the fact that there was an old enmity, as per the case of the prosecution, the motive itself is that pursuant to the complaint given by the complainant, trial was proceeded against the accused persons, they have been convicted by the Sessions Court and taken into judicial custody and subsequently, appeal has been preferred by them before this Court and they have been granted bail by the Court, implication of the false accused persons by consulting with the family members cannot be ruled out because, at the first instance, there was an ample opportunity when police was present at the spot however, the complainant and all the

other eye-witnesses have not given the names of the accused persons to the police nor stated about the weapons used in the incident and how, the incident took place.

47. Further, it is also required to consider the conduct of the witnesses, more particularly, complainant – Hareshbhai, who is the son of the deceased and other witnesses, who are the close relatives of the deceased. They were watching the said incident from some distance and as per the case of the prosecution, deceased – Trikambhai was shouting for help and in spite of that, neither the complainant nor the other eye-witnesses have tried to intervene into the fight to save deceased – Trikambhai.

48. In this regard, learned trial Court, in the impugned judgment, has recorded the findings regarding the conduct of the complainant and the other eye-witnesses and, more particularly, in para 60, the learned trial Court has recorded that at the time of occurrence of incident, the complainant was watching the incident from the distance without intervening in the fight and trying to save his father so, the conduct of the complainant is not found to be natural. The

learned trial Court has also recorded that so far as the other witnesses are concerned, either they have been called by the complainant by phone call or after hearing the shouts of deceased – Trikambhai, they came there, so they are chance witnesses and, therefore, they reached the spot after the incident has already over. So, those persons cannot be termed as eye-witnesses because, majority of the witnesses came after the incident. The learned trial Court has, interestingly, questioned the conduct of the complainant and other witnesses and, more particularly, in para 95 of the judgment, it is recorded that looking to the manner in which, the incident took place, as the complainant and the witnesses were seeing the incident from the distance, which took place in the night and considering the conduct of the complainant and the witnesses, the statement of the complainant cannot be believed. So, these are the findings recorded by the learned trial Court.

49. After recording the findings, the learned trial Court come to the conclusion that as the testimonies of the witnesses and the complainant are not trustworthy and reliable and no reliance can be placed on their testimonies,

given the finding that the accused - Hasmukhbhai Bhanabhai, Bhanabhai Karshanbhai, Akhabhai Bhanabhai and Jorubhai Ukabhai were armed with sticks and by the sticks, they have caused the injuries to the deceased, which cannot be believed and it has not been established by the prosecution by adducing cogent evidence that accused - Chaturbhai Karshanbhai Shaikh, Dhanjibhai Karshanbhai Shaikh and Jagdishbhai Chaturbhai Shaikh have pelted stones and by that, caused injuries to the deceased and which is also not proved by the prosecution and, therefore, 7 accused persons have been acquitted by the learned trial Court. Interestingly, when the Court has come to the conclusion that the testimonies of the complainant and other eye-witnesses were not found trustworthy and reliable, it has not been established that they have seen the incident, their conduct was not natural and considering this, as accused - Arjan @ Ashokbhai Dhanjibhai Shaikh was armed with sickle, accused - Hansrajbhai Shivabhai came with a dumper and accused - Hanubhai Dhanjibhai Shaikh thereafter, sat on the driver seat and ran over the dumper on the deceased, the learned trial Court has, in para 96, come to the conclusion that the prosecution has proved the case against the 3 accused

persons for the offences punishable under Sections 302, 337 read with Sections 34 and 120B of the Indian Penal Code. So, such findings are not corroborated by the evidences produced in the Court. On one hand, the learned trial Court is not believing the version witnesses and on the basis of the same unreliable evidence of the complainant and other witnesses and also considering the unnatural conduct of these witnesses, acquitted 7 persons and convicted 3 accused persons.

50. Further, so far as recovery of the weapons is concerned, the panchas have not supported the case of the prosecution. The discovery panchnama has been produced vide Exhs.80, 98 and 121 and the panch-witness has also not supported the case of the prosecution. Investigating Officer - Mr.D.K. Vaghela, in his deposition, has not stated about the particular version, what the accused has stated and how, discovery has been made, though the discovery is not proved by the prosecution.

51. In the present case, as discussed, above, the most important aspect is that the incident took place at about 8:30

p.m. till 3:15 a.m. No F.I.R. has been given in spite of the fact that at 22:50 hrs., the complainant informed the police regarding some fighting took place in Nana Paliyad, inquest panchnama which was started in the intervening night on 11/12.07.2014 at 12:45 to 1:45 a.m. carried out on the spot where the dead body was lying at the place of incident, police officers were present, Investigating Officer - D.K. Vaghela, Executive Magistrate were also present but, neither the complainant nor any eye-witnesses come forward and stated anything either about the accused persons or the weapons.

52. As discussed above, in detail, regarding appreciating of evidence, the first aspect is regarding trustworthiness and reliability of the prosecution witness, more particularly, so far as P.W.31, who is complainant - Hareshbhai Trikambhai Dhoriya, another witness P.W.30 - Hanubhai Khodabhai, P.W.29 - Virambhai Shivabhai and P.W.26 - Hamirbhai Mohanbhai Dhoriya are concerned, it has been recorded by the learned trial Court that the depositions of these witnesses are not trustworthy and reliable and the conduct of the above witnesses is not natural and the learned trial Court has recorded the finding that their testimony cannot be found to

be reliable and trustworthy and no reliance can be placed on the same. However, the learned trial Court has acquitted seven accused persons, relying upon the above witnesses but, convicted the present appellants i.e. 3 accused persons qua the offence punishable under Sections 302, 337 read with Sections 34 and 120B of the Indian Penal Code however, the above 3 accused have been acquitted by the learned trial Court for the offence punishable under Sections 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the G.P. Act and other 7 accused persons have been acquitted from all the charges.

53. In this regard, it is required to consider the judgment of the Hon'ble Apex Court in the case of Balaram (supra) wherein, the Hon'ble Apex Court has held as under:-

“18. As already discussed herein above, previous enmity is a double edged weapon; on the one hand it provides the motive, whereas on the other hand, the possibility of false implication cannot be ruled out.

19. We find that when the Trial Court has disbelieved the testimony of PW.5-Ramkali

and PW.6-Mulchand insofar as accused Uma Charan was concerned, it could not have applied a separate standard while considering the case of the present appellant-Balaram and Rameshwar (since deceased).

20. We are of the considered view that the testimony of PW.5-Ramkali and PW.6-Mulchand would come in the category of wholly unreliable witnesses. As such, conviction on the basis of their testimony, in our view, would not be sustainable.”

54. From the above pronouncement of the Hon’ble Apex Court and as discussed above, the learned trial Court has recorded the finding that the complainant and other eye-witnesses are not trustworthy and reliable, their conduct is unnatural and on the same testimony, had taken a separate standard while considering the case of the present three appellants, who have been convicted and the said conviction cannot be sustained in eye of law.

55. Now, so far as other important aspect qua the case of the prosecution regarding the dumper is concerned, the dumper has been driven over deceased – Trikambhai but, in this regard, the owner of the dumper – P.W.33 – Karshanbhai

Vastabhai Bavaliya was examined and he has not supported the case of the prosecution however, he also has been declared hostile but, he specifically stated that one Mr.Vishubhai is the driver of the said dumper and is his partner, who used to drive the dumper No. GJ-4-X-7136 and the prosecution case is that the said dumper was driven by Hansrajbhai and thereafter, by accused No.5 - Hanubhai Dhanjibhai Shaikh, who ran the dumper over the deceased, which aspect has not been corroborated by the evidence of the prosecution.

56. Further, the more important aspect is regarding delay in lodging the F.I.R. In this regard, it is required to consider the pronouncement of the Hon'ble Apex Court in the case of Nand Lal (supra) wherein, the Hon'ble Apex Court has held as under:-

25. Believing the contents of the FIR that the incident has taken place at around 08.30 PM and that the injured persons had reached Baloda Bazar at around 10-11 PM where they were informed that they could not be treated unless a report was lodged, a further delay of around four to five hours in lodging the FIR

has not been explained. The distance between Baloda Bazar and Suhela Police Station is approximately 15 Kms. It has come on record that there is an all-weather road connecting the two places. As such, at the most, it would take around 30-40 minutes to reach Suhela Police Station from Baloda Bazar. This delay of four hours in lodging the FIR is not at all explained.

30. That leaves us with the appeal of the other 3 accused, namely accused No. 8 Nandlal, accused No. 9 Bhagwat and accused No. 10 Ramdular. For considering their case we will have to take into consideration the delay in lodging the FIR. No doubt that in each and every case, delay in lodging the FIR would not be fatal to the prosecution case. It will depend upon facts and circumstances of each case. In the present case, as already discussed hereinabove, assuming that the incident had taken place at 08.30 PM and the injured persons were at Baloda Bazar between 10-11 PM, and taking into consideration that the distance between Baloda Bazar to Suhela Police Station is 15 Kms., a delay of four hours in lodging the FIR would cast a serious doubt on the genuineness of the prosecution case. It becomes more glaring since accused No. 11 Naresh Kumar had, in any case, informed the police about the incident prior to

11.45 PM. The suppression of the FIR lodged by him with respect to the attack on him by Atmaram (PW-1), so also the suppression of the FIR lodged by Atmaram (PW-1) against accused No. 11 Naresh Kumar, adds to the doubt.

31. We may gainfully refer to the following observations of this Court in the case of Ramesh Baburao Devaskar and Others v. State of Maharashtra:

“19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante- timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital.”

As held by this Court, the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case.”

57. Further, the Hon’ble Apex Court in the case of Manoj Kumar Sharma vs. State of Chhattisgarh, reported in 2016 (9) SCC 1 wherein, the Hon’ble Apex Court has held as under:-

“18) Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent No. 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations,

Respondent No. 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the following decision of this Court in Jai Prakash Singh vs. State of Bihar & Anr. (2012) 4 SCC 379 wherein it was held as under:-

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR

reflects the firsthand account of what has actually happened, and who was responsible for the offence in question.”

58. Considering the dictum of the Hon’ble Apex Court, the law is very much clear that if there is a delay in lodging the F.I.R., that should be explained properly inasmuch as, an inordinate and unexplained delay may be fatal to the prosecution and the accused persons.

59. Now, in this regard, so far as evidence adduced by the prosecution before the learned trial Court is concerned, in the present case, it is an admitted position that the incident in question took place at 8:30 p.m. on 11.07.2014 on the road in the main market. Further, as per the evidence, it emerges that original complainant - Hareshbhai, other witnesses, his relatives were present and as per the case of the prosecution, they have seen the offence. It also emerges that deceased - Trikambhai died on the spot. It is coming on record that for the first time, the information to the police, more particularly, at Nana Paliyad police station was given by complainant - Hareshbhai from his mobile phone at 22:50 p.m. and the same was registered in the station diary vide Entry No.17/14. As

per the information given by the complainant, some fighting took place at village: Nana Paliyad and he requested to send the police but, on the contrary, it is coming on record that deceased - Trikambhai died on the spot at 8:30 p.m. only so, at 22:50 p.m. in spite of the fact that the complainant was knowing about the death of his father, he has not reported the same to the police but, only reported that some fight has taken place at Nana Paliyad village. Further, pursuant to the station diary Entry No.17/14, the inquest panchnama was drawn at the place of incident where, the dead body was lying and at that time, the complainant and other witnesses were present, Investigating Officer - Mr.D.K. Vaghela and Executive Magistrate were also present and as per the case of the prosecution, after the incident, all the accused ran away, police personnel were there, Executive Magistrate was there, even the dead body was identified by complainant - Hareshbhai and the inquest panchnama was carried out between intervening night at 11/12.07.2014 from 12:45 to 1:45 a.m. but, nobody has come-forward even to inform the police that how the incident took place, who were the assailants and what type of weapons were used by the accused. On the contrary, in the inquest panchnama, which

has been produced before the learned trial Court vide Exh.37, it has been clearly stated that as per the opinion of the panchas, the cause of death was because of the injuries caused by edged weapons and some heavy vehicle has been run over on the head of the deceased and because of that, the death has been occurred. In spite of this fact, when the complainant, eye-witnesses and police were present and as the accused were not present there, there was no question for the witnesses of any fear or to remain under threat but, nobody has reported to the police that who were the accused, what type of weapons were used and how, the incident took place. Thereafter, the dead body was sent for postmortem to C.H.C., Paliyad and at about 3:15 a.m., the F.I.R. was lodged by complainant - Hareshbhai Trikambhai Dhoriya. It is coming on record that at the hospital also, police was there but, all the witnesses, who were present, have not disclosed the names of the accused.

60. Hence, considering the overall circumstances, as discussed above, in spite of the fact that the complainant and other witnesses, claimed to be the eye-witness to the incident, have not disclosed the names of the accused and not stated

about the weapons, though the police was present there. Hence, there is a delay and no explanation has been coming forward from the prosecution side that till 8:30 to 12:45, when the inquest panchnama was started, what happened during the said period. Thus, there is a delay of almost 6 hours in lodging the F.I.R. So, the possibility cannot be ruled out that the complainant and other witnesses might have, in deliberation and consultation with each other, lodged an F.I.R. and, therefore, false implication of the accused persons cannot be ruled out and delay in lodging the F.I.R. in the above circumstances, is fatal to the case of the prosecution and no finding has been recorded by the learned trial Court regarding the aspect of delay in lodging the F.I.R.

61. Further, as per the case of the prosecution, when the witnesses, after hearing shouts of Trikambhai, have rushed near the place of incident, at that time, other persons had already gathered there but, the prosecution, except the family members, has not examined the other independent witnesses. As the incident in question took place on the road in the main market of the village at about 8:30 p.m., no other independent witnesses have been examined. So, clearly, it creates doubt on

the case of the prosecution that selective witnesses have been examined by the prosecution and they have concealed the real facts before the Court.

62. Further, as per the complaint of complainant - Hareshbhai Trimanbhai Dhoriya, he got down at Kumbhara bus stand and called his father to pick him up and thereafter, deceased - Trikambhai and the complainant were riding on a motorcycle and when, they were returning back to their home, in the meantime, the incident took place. However, as per the case of the prosecution and as per the deposition of the complainant, after the case proceedings got over in the Court at Botad, his father came from S.T. bus from Botad to Kumbhara village and the complainant went there on his motorcycle to pick up his father. So there are contradictory versions regarding, who went on motorcycle to pick up whom, the deceased or the complainant.

63. So, on overall consideration of the testimonies of all the witnesses, as discussed above, the prosecution has miserably failed to prove the charge against the accused persons as the deposition of the complainant and other witnesses are not

corroborated by any other independent evidence. Even there is a delay in lodging the F.I.R., which is fatal to case of the prosecution, as discussed above. Even the testimonies of the complainant and other witnesses are not found to be trustworthy and reliable and their conduct is also unnatural. Considering this, the prosecution has miserably failed to prove the charge against the present appellants – original accused Nos.4, 5 and 10. Hence, the findings recorded by the learned trial Court qua convicting the present appellants require interference.

64. So far as Criminal Appeal No.594 of 2019 preferred by the State against acquittal of accused Nos.1,2,3,6,7,8 and 9 and Criminal Appeal No.873 of 2019 preferred by original complainant – Hareshbhai Trikambhai Dhoriya against acquittal of the above referred accused are concerned, appreciation of the depositions of the witnesses has already been discussed above. Further, it is pertinent to note that respondent No.6 – Chaturbhai Karshanbhai Shaikh has expired during the pendency of the appeal.

65. Considering the judgment of the Hon'ble Apex Court in

the case of Chandrappa and Ors. (supra), the Hon'ble Apex Court, while dealing with an appeal against the order of acquittal, has laid down the general principles regarding the powers of the appellate Court, read as under:-

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal

against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

66. Applying the above principles in the case on hand, as discussed above in detail, the testimonies of the witnesses, the learned trial Court, after considering and appreciating the evidence, not found the depositions of complainant -

Hareshbhai and other 4 eye-witnesses to be trustworthy and reliable, even their conduct was found to be unnatural and considering the same, the learned trial Court has acquitted the above accused persons.

67. We have perused the judgment passed by the learned trial Court and considering the above principles laid down by the Hon'ble Apex Court, we do not find any reason to interfere with the findings and judgment of acquittal passed by the learned trial Court. Hence, considering the same, Criminal Appeal Nos.594 and 873 of 2019 are required to be dismissed.

68. As discussed above, we have considered the following aspects:-

(i) The evidence of complainant - Hareshbhai and other witnesses is not found to be trustworthy and reliable.

(ii) The conduct of the complainant and other witnesses is not natural as all the witnesses were close relatives of deceased - Trikambhai and in spite of the fact that they were standing at the distance and watching the incident as per their say, have not even tried to intervene in the fight and

save Trikambhai.

(iii) There is a inordinate delay in lodging the F.I.R. in spite of the fact that the police was present at the place of incident, all the witnesses and complainant were also present, no effort has been made to report the police regarding the incident and they have not given the names of the accused and also not stated about use of weapons and how the incident has taken place.

(iv). Further, the learned trial Court, on the same set of evidence, found that the witnesses are not trustworthy and reliable and found to be unnatural and on the same set of evidence, acquitted 7 accused persons and convicted 3 accused persons, which, do not find any corroboration with the other evidence.

(v) Discovery of the weapons has not been proved by the prosecution.

(vi). As per the opinion of the Medical Officer, the said injury can be caused in a vehicular accident also so, this possibility

cannot be ruled out.

69. Thus, considering the above aspects, Criminal Appeal No.243 of 2019 is required to be allowed and Criminal Appeal Nos.594 and 873 of 2019 are required to be dismissed.

70. We pass the following final order:-

70.1. Criminal Appeal No.243 of 2019 is allowed. Judgment dated 17.12.2018 passed by the learned Additional Sessions Judge, Botad in Sessions Case No.7 of 2018 (Old Sessions Case No.16 of 2015), convicting the present appellants i.e. accused No.4 - Arjan @ Ashokbhai Dhanjibhai Shaikh, accused No.5 - Hanubhai Dhanjibhai Shaikh and accused No.10 - Hansrajbhai Shivabhai Shaikh for the offences punishable under Sections 302, 337 read with Sections 34 and 120B of the Indian Penal Code and sentencing them to undergo life imprisonment with fine of Rs.10,000/- each, in default, further simple imprisonment for six months for is hereby quashed and set aside and accused No.4 - Arjan @ Ashokbhai Dhanjibhai Shaikh, accused No.5 - Hanubhai Dhanjibhai Shaikh and accused No.10 - Hansrajbhai Shivabhai Shaikh are ordered to be acquitted for

the charge under Sections 302, 337 read with Sections 34 and 120B of the Indian Penal Code. Further, as accused No.4 – Arjan @ Ashokbhai Dhanjibhai Shaikh, accused No.5 – Hanubhai Dhanjibhai Shaikh and accused No.10 – Hansrajbhai Shivabhai Shaikh are in judicial custody, in the District Jail, Bhavnagar, they be released forthwith by the District Jail Authority, Bhavnagar, if they are not required in any other proceedings.

70.2. Registry is directed to send the copy of this judgment and communicate to the District Jail Authority, Bhavnagar on e-mail forthwith.

70.3. Criminal Appeal Nos.594 and 873 of 2019 are hereby dismissed.

70.4. Record & Proceedings, if any, be sent back to the concerned learned trial Court forthwith. Direct service is permitted.

(GITA GOPI,J)

(L. S. PIRZADA, J)

Hitesh