

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 2214 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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KANU RAMA MORI & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR BB NAIK, SR ADVOCATE WITH MR PARTHIV A BHATT(5331) for the Appellants No. 1,2,3,4,5,6,7

MR RAJESH O GIDIYA(5222) for the Respondent No. 1

MR ZUBIN F BHARDA(159) for the Respondent No. 1

MR LB DABHI APP for the Respondent No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**and****HONOURABLE MR.JUSTICE P. M. RAVAL****Date : 07/10/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. The correctness of the judgment and order of sentence dated 21.06.2008 passed by the Additional Sessions Judge, Porbandar is questioned in this conviction appeal.
2. By the impugned judgment passed in Sessions Case No.23 of 2007, the learned Additional Sessions Judge, Porbandar, convicted and

sentenced the appellants under Section 143, 147, 148, 149, 364, 365, 302 of Indian Penal Code and Section 135 of the B.P. Act and sentenced to suffer the imprisonment as per the below schedule:

Name of accused	Conviction under section	Punishment	Fine	In default of fine
Kanu Rama-A1	S. 364 IPC	07 years	10,000/-	1 year
Kara Rama Kodiyatar – A2	S. 302 r/w. S.143, 147, 148, 149 of Indian Penal Code	R.I. for Life	15,000/-	1 year
Raju Rina Kodiyatar – A3				
		6 months	500/-	1 month
	S.135 of B.P. Act			
Gogan Rama Mori – A5	365	5 years	5,000/-	6 months
	S.302 r/w. S.143, 147, 148, 149 of Indian Penal Code	R.I. Life	15,000/-	1 year
	S.135 of B.P. Act	6 months	500/-	1 month
Veja Rama Mori – A6	365	5 years	5,000/-	6 months
Ramesh Veja Mori – A7	Under Section 302 r/w. S.143, 147, 148, 149 of Indian Penal Code	Life	15,000/-	1 year
Pala Gogan Mori – A8				
	Under Section 135 of B.P. Act	6 months	500/-	1 month

All sentences were ordered to run concurrently.

3. The facts, leading to the present appeal are as follows:

3.1 The appellants-accused were prosecuted and tried for the offence of murder, kidnapping and/or abducting, in order to commit a murder and kidnapping the witness and wrongfully confined him to extract the necessary information with respect to deceased Rajesh.

An FIR came to be registered with Ranavav Police Station, District: Porbandar against the 9 accused persons for the offence of murder and kidnapping as referred above.

The allegations are to the effect that, the deceased Rajesh was in relation with the daughter of A6. On the day of incident i.e. 30.11.2006, in the morning at about 8 o'clock, the deceased Rajesh had given a task to his friend PW.18 to hide the mobile charger in the area of village temple of Bileswar so as to facilitate the girl-x for chatting on mobile with him. PW.18 on the instructions of the deceased, came to temple area by driving his passenger rickshaw and hide the mobile charger under the stones nearby the temple. The accused party was vigilant on the relations of the deceased with girl-x. The uncle of girl-x A-5 Goganrama, came at the place by driving his Indica Car and upon seeing PW:18, he chased and restrained him on the curve of Bileswar Road. A5 took the weapon sticks from his car and after conversation with PW:18 about his act of keeping the mobile charger for girl-x, beaten up and took him inside the Indica car and then, he was presented before the co-accused at their farm.

In these background facts, the accused formed an unlawful assembly with a common object to kidnap Rajesh for his murder and in order to execute the common object of assembly, the A1 to A3 and driver A4 being member of the unlawful assembly, went to village Ranakandorna by traveling in an utility jeep. The co-accused A5 to A9 along with PW-18 decided to stand at one point and waited for arrival of A1 to A3. The deceased Rajesh when he was standing with his brother PW-3 was kidnapped and was compelled to take seat in the utility jeep and taking Rajesh with them, A1 and A3 arrived at the point where the co-accused A5 to A9 met them. The deceased Rajesh and PW-18 had been taken to place of offence situated near the dam area of the village Bileshwar. The accused thereafter, assaulted the deceased with sticks and also caused injuries to PW-18 and during the incident, PW-18 was directed to leave the place. The deceased was surrounded by the accused and sustained serious head injuries. The PW-18 after leaving the place, went to his house. The brothers of the deceased PW-3, 4 and 19 were in search of the deceased and after seeing the passenger rickshaw of PW-18, they got clue from the unknown person that the accused Gogan Rama took away PW-18 and proceeded towards Hanumangadh. The brothers of the deceased while on the way of Hanumangadh, met the accused Gogan Rama, who informed that they had killed Rajesh because he was maintaining relations with the hostel girl. The brothers of the deceased along with A5 came to place of incident, where they saw the A1 to A4, A6 to A9 having sticks in their hands and

deceased Rajesh surrounded by the accused lying on the floor. The accused informed the brothers of the deceased that they killed the deceased because of his relation with the girl X and they have no regret of the act and if they want to file FIR, then, filed by their names and further informed that, if you do not take the dead body of the deceased from the place, then, they will dispose of the same. Thereafter, the brothers of the deceased took the dead body of the deceased and came by Sumo car straight to the Government Hospital, Porbandar. On the basis of hospital yadi, the police came at the hospital. The PW-3 being brother of the deceased, lodged an FIR which came to be registered with Ranavav Police Station being C.R. No.122 of 2006, for the offences punishable under Sections 143, 147, 148, 149, 364, 365, 302 read with Section 149 of the Indian Penal Code. The investigation was entrusted to the PW.23 Mr. Mehta, PSI, Ranavav Police Station. The dead body of the deceased was sent for post-mortem and the post-mortem report revealed that, the cause of death was cardiac failure due to injuries to the vital organs, namely brain and head injury. The I.O. during the course of investigation, drew the panchnama of scene of offence, took the necessary samples from the place for FSL, recorded the statements of the material witnesses, arrested the accused-appellants and others, seized and recovered the weapons sticks (lathi) at the behest of the accused, obtained the injury case papers of the witness PW.18, seized the vehicles allegedly used in the offence by the accused, the passenger rickshaw which was allegedly used by PW.18 was found on the

Bileshwar Road and drew the panchnama thereof, obtained the necessary reports from FSL. Finally, the I.O. filed a chargesheet against 9 accused in the Court of learned Judicial Magistrate at Ranavav. As the case was exclusively triable by Sessions Court, the Magistrate committed the case to the court of Sessions at Porbandar. The sessions court framed the charge against the accused-appellants and others. All the accused in their respective statements did not admit the charge and claimed to be tried.

4. The prosecution adduced the following oral evidence in support of its case:

Oral evidence

PW 1 – Exh.28	Dr. BijendraRamsinh Sinha
PW 2 – Exh.31	Dr. Hemankumar Ramshankar
PW 3 – Exh.54	Baghabhai Karabhai, Complainant
PW 4 – Exh.56	Sarman Karabhai, Panch witness
PW 5 – Exh.58	Bhavesb Jayantilal, Panch witness
PW 6 – Exh.59	Rudabhai Virabhai, Panch witness
PW 7 – Exh.61	Boghabhai Ramabhai, Panch witness
PW 8 – Exh.62	Leelabhai Ramabhai, Panch witness
PW 9 – Exh.63	BatukbhaiTidabhai, Panch witness
PW 10 – Exh.64	Savdas Bhimabhai, Panch witness
PW 11 – Exh.65	KarsanbhaiMeramanbhai
PW 12 – Exh.66	DayabhaiGovindbhai, Panch witness
PW 13 – Exh.67	Merubhai Nathabhai, Panch witness

PW 14 – Exh.68	Bharatbhai Manubhai, Panch witness
PW 15 – Exh.69	Khimabhai Jagmalbhai
PW 16 – Exh.71	Arjunbhai Menandbhai
PW 17 – Exh.72	Bhimabhai Virambhai, Panch witness
PW 18 – Exh.73	Karabhai Rajabhai
PW 19 – Exh.78	Devendrabhai Rudabhai
PW 20 – Exh.79	Merubbhai Bhurabhai, Panch witness
PW 21 – Exh.80	Rasiklal Babulal
PW 22 – Exh.83	Sharadkumar Maganlal
PW 23 – Exh.85	Manoharlal Karshanbhai, PI

5. The following piece of documentary evidence were adduced by the prosecution:

Documentary evidence

Exh.35	Inquest Panchnama of deceased body
Exh.36	Cause of death form
Exh.33	Examination of body of deceased
Exh.29	Kara Rama medical certificate yadi
Exh.30	Kara Rama injury certificate
Exh.37	Veja Rama blood sample collection yadi
Exh.38	Veja Rama blood sample forwarding yadi
Exh.39	Collection of blood sample yadi
Exh.40	Forwarding of blood sample yadi
Exh.60	Panchnama of place of Abduction
Exh.90	Panchnama of place of incident
Exh.41	Panchnama of blood sample and recovery of clothes

	of deceased
Exh.91	Panchnama of Risha of Karabhai
Exh.92	Veja Rama arrest panchnama
Exh.42	Panchnama of blood sample of Veja Rama
Exh.93	Panchnama of recovery of Jeep and Sticks of accused
Exh.86	Panchnama of Indica car and sticks used by accused
Exh.87	Panchnama of Identification of accused
Exh.88	Panchnama of Identification of Jeep and Car used in offence
Exh.89	Panchnama of Clothes wore by accused during offence
Exh.43	Panchnama of blood sample of accused
Exh.82	PM Yadi by PSO, Ranavav
Exh.94	Forwarding letter with complaint
Exh.44	Articles sent to FSL Yadi
Exh.45	Primary report of Mobile by FSL
Exh.46	Forwarding letter for analysis report of articles
Exh.47	Xerox copy of forwarding notes
Exh.48	Receipt of articles
Exh.49	Analysis report
Exh.50	Analysis report of articles
Exh.51	Serological report
Exh.52	Copy of RC book of Indica car
Exh.53	Copy of RC book of Utility Jeep

6. After closure of the prosecution evidence, the statements of accused persons under Section 313 of Cr.P.C. was recorded to which they stated that, they have been falsely implicated in the offence and they are innocent.

7. Though opportunity was extended, no oral evidence being adduced by the appellants-accused.
8. After hearing the parties and upon appreciation of the evidence, the trial court held the guilty the A1 to A3, A5 to A8 for the murder of deceased Rajesh and kidnapping the witness PW-18. The trial Court held guilty the accused for the offence of rioting and for the offence committed in prosecution of common object as defined under Section 148A and 149 of the Indian Penal Code. The trial Court acquitted the driver A4 and A9 Kishor Gogan of all charges.
9. Being dissatisfied with the judgment of conviction and order of sentence, the appellants-accused A1 to A3, A5 to A8 have come up with this appeal.

10. ORAL EVIDENCE ADDUCED BY THE PROSECUTION :

- 10.1. Dr. Hemantkumar Joshi (PW.2): The witness has been examined by the prosecution to prove the post-mortem report and cause of death. The witness was on duty on 30.11.2006 as Medical Officer with Bhavsinhji Hospital at Porbandar. He has deposed that, at about 10:05 p.m., a dead body of a person named Rajesh Karabhai Katara was brought for post-mortem. He has further deposed that, during the post-mortem, he noted the following external and internal injuries on the body of the deceased:

External Injuries :

- (i) Diffused reddish blue bruise on rt. Side temporal forehead;
- (ii) 5 cm oblique abrasion on lt. Cheek;
- (iii) both shoulders show diffused blue bruises upto deltoid
- (iv) both scapular and scapular regions show linear oblique multiple reddish blue contusions around 2 cm broad and 10 cm long;
- (v) Rt. Elbow shows 12 cm 12 cm red abrasion contusions;
- (vi) Rt. Wrist has multiple bruises
- (vii) Lt. Arm lower half shows multiple reddish blue contusion are linear oblique;
- (viii) Rt. Thigh lower part just above knee shows oblique 4 cm x 2 cm contusion reddish blue anteriorly
- (ix) Lt leg shin of tibia upper 2/3rd swelling – diffused multiple abrasions, contusions 1.5 cm x 0.5 cm CLW muscle deep inflamed margins,
- (x) Both gluteal regions show multiple reddish blue linear contusions;

Internal injuries :

- (i) Hematoma seen in the temporal region Rt side
- (ii) Depressed fracture of Rt. Temporal bone around 2 cm triangular shape.

The witness P.M. Doctor PW-2 has deposed that, the cause of death was cardiac failure due to injuries on vital organs namely brain and head injury and in his opinion, the injuries were sufficient in ordinary course of nature to cause the death and it could be possible by hard and blunt substance and on seeing the seized sticks articles, F, J, K, L, N, P, Q and R, the doctor has

opined that, the injuries could be possible with the seized weapons.

In the cross-examination, the doctor has deposed that, the external injuries no.2 to10 were not on the vital part of the body and same were simple in nature. The doctor has opined that, generally the injury of depressed fracture is not sufficient to cause death and in that kind of nature of injury, a person may or may not die. It is opined by the doctor in the cross-examination that, the deceased will be alive for 24 hours after sustaining the injuries and considering the colour of the injuries, the person might have died either on second or third day.

10.2. Badhabhai Karabhai Katara (PW.3): This witness is the brother of the deceased Rajesh. On the day of incident i.e. 30.11.2006, in his presence, his brother was kidnapped by the accused A1 to A3. The witness was in business of traveling business at Village: Rana Kandorna and was having taxi Sumo car, which he used to park nearby bus stand area of the village. On the day of incident, at about 1:30 p.m., A1 to A3 along with the driver A4, came before the witness in the utility jeep, and kidnapped Rajesh. In such circumstances, the witness has deposed in his chief-examination that A1 – Kanu Rama came out from the utility jeep and asked him that, where is Rajesh, as he wants to purchase mobile from him. The witness has stated that, Rajesh is now not in the business of mobile. The A1 again asked to the witness that where is Rajesh. Then witness has replied that Rajesh is standing beside him. It is further deposed that A1 forcefully took Rajesh inside the utility jeep and in

the jeep he found the presence of A2 and A3 and thereafter, taking Rajesh, they fled away towards Bileshwar Road. The witness has further stated that, he has chased the utility jeep by sumo car upto some distance and also co-accused who were standing on the road between village Ranakandorna and Varvada, boarded in the utility jeep. The witness has further stated that after seeing the entire episode, he was scared and did not have courage to follow further the utility jeep. The witness has stated that he reverse his sumo car and called his brother PW-4, who was serving as a Constable with Jamnagar Police Department and upon his advice, he tried to contact the community people and went to the house of Kanu Rama at Bileshwar, but the accused was not found at his home. The witness has deposed that, when he was on the way of Village: Bileshwar Road, he saw a passenger rickshaw of his nephew (PW.18), and upon inquiry, he received a message from unknown person that Gogan Rama took away the rickshaw driver towards Hanumangadh. The witness has further stated that, thereafter he drew his car towards Hanumangadh Road where he found the accused Gogan Rama in the Indica car. The witness has further stated that his brother Sarman Katara (PW.4) also came from Jamnagar. The witness has further stated that when they reached at the Hanumangath area, they saw presence of Gogan Rama A5 and upon inquiry from him, he learnt that, his brother Rajesh was done to death by the accused because he was maintaining relations with the hostel girl and at the instance of A5, they came to place of incident, where they found that deceased surrounded by the accused lying on the floor and also noticed the bodily injuries on the deceased. The

witness has further stated that the accused were armed with sticks and stated to him that, they killed Rajesh because of his relations with girl X and if you want to file FIR, then, filed it by their names. The witness has further stated that the body of the deceased then taken into sumo car and brought it to the government hospital at Porbandar, where he had lodged the FIR which he produced at Exh. 55. The witness has identified the accused in the court as well as their weapons (sticks).

The cross-examination of the witness was done at length. In the cross-examination, PW.3 has stated that, his brother was having learning driving with him and at the time of incident, he was married. The witness has admitted that, he was not knowing about the relation of the deceased with girl X. The witness has stated that, he met PW.18 on the next day of the incident. The witness has stated that, when the incident of kidnapping taken place, there were so many cars and rickshaws along with their drivers standing in the vicinity of the bus stand area. He also admitted that, opposite the bus stand, there are pan and other shops. He also admits that, when he saw the dead body of his brother, he did not find the shirt on his body. He also admits that since last 10 years, he is knowing the A1, A5 and A6. He also admits that, except the issue of meeting with the girl at the hostel, there was no any other dispute. He also admits that, the girls hostel is being run by A1 – Kanu Rama. He also admits that, at the time of incident of kidnapping, he did not raise any hue and cry. The witness also admits that, at the time of incident, there is outpost police chowky in the village. He also

admits that, till his arrival at the hospital, he did not try to contact his village police. He also admits that, his brother PW-4 came after two hours and met him at Hanumangadh Road. He also admits that, he did not find the rickshaw of PW.18 at Bileshwar Road. He also admits that, he met A5 at the distance of two kilometers from the place where the rickshaw was lying. The witness also admits that, in the FIR, the name of A9 has not been disclosed. The witness in his cross-examination has admitted that, after meeting Gogan Rama, the accused did not try to run away. The witness has also admitted that, when he and his brother reached at the place of incident, the accused upon seeing them have not tried to run away from the place. The witness has admitted that, he has not seen the incident of assault allegedly committed by the accused. It is admitted by the witness that confession of the accused that they have killed the deceased being made by Kanu Rama and other accused. The witness has further stated that, the organs of lower and upper body of his brother have been severely damaged. The witness has stated that at the place of incident, they stayed there for about 40 to 45 minutes along with the accused. The witness has further stated that the FIR came to be disclosed after one and half hour and during that period, he did not have tried to lodge an FIR with the police. Lastly, the suggestion being put to the witness in the cross-examination that, the accused have not kidnapped his brother for murder and nothing being confessed by the accused about killing of the deceased by them. However, the said suggestion being denied by the witness.

10.3. Dr. Bijendra Ramsingh Sinha (PW.1): This witness has examined PW.18 Kara Raja Katara and according to prosecution case, after kidnapping him by the accused, he was assaulted at two places. On 01.12.2006, at about 2:30 p.m., PW.18 was brought by Ranavav Police before the witness who was on duty with Ranavav CHC for medical examination. After examination of PW.18, the witness noticed the following injuries on his body:

- (1) Bruise (2x1 cms) on middle right arm on outer side;
- (2) Bruise (5x1 cms) on right thigh above knee joint;

According to opinion of the witness, the aforesaid injuries could be possible by hard and blunt substance and also possible by sticks.

In the cross-examination, the witness has stated that, the injuries were fresh. The witness has admitted that, if the patient voluntarily disclose history of the incident, then, it is imperative on his part to mention in the OPD papers. The witness has stated further that, in the present case, the patient did not have disclosed any facts of incident before him. It has been further stated that the injuries are simple in nature and it could be possible by accident also.

10.4. Ranman Katara (PW.4): This witness is the brother of the deceased Rajesh and on the day of incident, when Rajesh was kidnapped for murder, he was on duty as a Police Constable with

Jamnagar Police. The witness had come to Village: Bileshwar as he was informed by his brother PW.3 – Badha Kara about the incident of kidnapping. On receiving the information, he proceeded from Jamnagar. In these background facts, the witness has stated in chief-examination that, before he could come to Bileshwar, he saw a Tata Sumo Car near Hanumangadh and therefore, he stepped down from the bus and met his brother PW.3, Devendra Fogabhai, Devabhai and A5 – Gogan Rama. The witness has further stated that, he asked the accused Gogan Rama about the reason for kidnapping his brother. He has further stated that the accused Gogan Rama stated in response to his question that, “the deceased Rajesh used to come at ladies hostel to meet the girls and therefore, we have kidnapped Rajesh and after taking him at the place of incident, he was done to death and if you want to see him, I will show the place where Rajesh is lying.” The witness has further stated that, he along with his brother, went to the place of incident accompanied by the accused Gogan Rama where they saw A1 – Kanu Rama, A6 - Veja Rama, A7 – Ramesh Veja, A8 – Pala Gogan, A9 – Kishor Gogan and A2 – Kara Rama, A3 – Raju Reena and A4 – Jaga Natha. The witness in his chief-examination has further stated that the accused were armed with sticks and deceased Rajesh was lying on the surface of the land in an unconscious state of mind. The witness has further stated that, the accused have justified their act of murder saying that, they have killed Rajesh because he used to come at the Girls Hostel to meet the students. The witness has further stated that, he noticed the injuries on the body of Rajesh. The witness has also stated that at the place of incident, the accused challenged him that if you want to file FIR,

then file it by their names. The witness has further stated that, considering the condition of Rajesh, they brought Rajesh at Civil Hospital in a Sumo car and the doctor after examination, declared him dead on arrival. The witness is identifying the accused in the court as well as weapons.

In the cross-examination, the witness has stated that, on 30.11.2006, because of his night duty, he was not on duty in the day time and in Jamnagar, he was staying in Kanaiya Guest House near the bus stand area. The witness has further stated that, the bus in which he had traveled, was from the route of Jamnagar to Porbandar. The witness has stated that the distance from Jamnagar to Bileshwar is about 90 to 95 kilometers and after proceeding from Jamnagar, he met his brother after two hours. The bus belongs to a private party. The witness has admitted that, if any offence is disclosed to him, then being a Police Officer, it is his duty to inform the nearby police station. The witness has admitted that, till arrival of Ranavav Police at Porbandar, he has not tried to contact the local police. The witness has further stated that, he has informed the treating doctor at Porbandar about the facts of incident. The witness has admitted that, after arrival at Porbandar Hospital, the police came after one and half hour and during that period, he did not have tried to inform the Porbandar police or Jamnagar police about the incident. The witness has admitted that, he has no idea about the relation of the accused with girl X. The witness has further stated that, in his presence, the accused have not assaulted the deceased. The witness has denied to the

suggestion asked by the defense that, he never received a phone call from his brother, nor, he met his brother as well as Gogan Rama and did not have visited the place of incident.

10.5. Karabhai Rajabhai Katara (PW.18): The witness is related to the deceased and also his good friend. This witness is the sole eye witness, who claimed to have seen the entire incident and same being disclosed by him before the police. The witness in his chief-examination has stated that, on 30.11.2006, he came to bus stand of Village: Ranakandorna at about 8:00 a.m. where he met the deceased Rajesh. This witness has further stated that, Rajesh has asked him to help on the issue of providing mobile charger to the girl X. The witness has further stated that, the deceased given him a mobile charger which he had to keep in the temple area of Village: Bileshwar, so that the girl X could get it. The witness has further stated that, he was knowing about the relation of the deceased with the girl X, who is the daughter of A6. The witness has further stated that, he was also knowing that, the father and uncle of the girl had come to know about the relation of the deceased, as a result, the deceased had stopped to visit Village: Bileshwar. The witness has further stated that, on the instructions of deceased Rajesh, by driving his passenger rickshaw, he went to Bileshwar Temple, where he had hidden the mobile charger. The witness has further stated that, after hiding the mobile charger, he was seen by A5 Gogan Rama and when he was on the way towards village Ranavav, he had been chased by A5 and was restrained near the curve of Bileshwar Road and after some conversation with him, he was beaten up with sticks

and taken inside Indica car and presented him before the co-accused in the farm, where he was asked about the reason for hiding the mobile charger and in response to that, he has stated to the accused that at the instance of Rajesh he had hidden the charger. The witness has further stated that there were two vehicles namely utility jeep and Indica car. The witness has further stated that A1 to A3 went to Ranakandorna by utility jeep and other accused along with him proceeded in the Indica car and came at the decided point on the road. The witness has further stated that after sometime utility jeep came at the point and some of the accused who were in the Indica car boarded in the utility jeep and then both the vehicles along with the accused came at the place of incident situated at the scene of Toda Ozar near the demarcation wall of forest department. The witness has further stated that the accused came out from the respective vehicles at the place and seen the deceased Rajesh who also came out from the jeep. The witness has further stated that the accused took in their hands sticks and began to assault Rajesh and asked him about maintaining of the relation with girl X. The witness has further stated that in order to save himself, the deceased Rajesh tried to run away from the spot, however, the accused chased him and tied his hands and legs with the rope and again started to assault the deceased Rajesh. The witness has further stated that at that time, he was also assaulted by A1 and A5 and after the assault, they directed him to leave the place saying that, they do not want his presence.

The witness in his cross-examination has further stated that, he came on the main road from the place of incident and by private vehicle, he reached at village: Tarsai and then village :Ranakandorna. The witness has further stated that at about 11=00 o'clock night, when he was at home, the village police came to his house and he was given a courage to disclose true facts about the incident, because, he was scared by the act of accused and on the basis of assurance by the police of his safety, he narrated the entire facts of the incident. The witness has further stated that, the police brought him to the Ranavav CHC and after taking treatment thereof, he was dropped by the police at his home. On the aspect of motive, the witness has stated that, due to relation with the girl X, the deceased was done to death by the accused. The witness has further stated that on 02.12.2006, he was taken by the police at the place where his passenger rickshaw parked beside the road. In the chief-examination, the witness has identified the accused present in the court as well as the weapons allegedly used in the common of crime.

The lengthy cross-examination was done by the defense. In the cross-examination, the witness PW-18 has stated that prior to 6 to 7 months of the incident, he entered into traveling business and at that time, he was not holding license to drive a passenger rickshaw but he got the driving license after 4 months of the incident. The witness has stated that, it was his daily routine to come at the bus stand point in the morning at 7=30 and came to bus stand of the village. The witness has admitted the fact that after the

incident, for the very first time, he had disclosed the facts to the police, The witness has stated that on the day of incident, his family members went to village: Satapar for engagement ceremony. The witness has stated that, he came to cross road of the village after the incident at about 9-00 o'clock. The witness has further stated that there is a outpost chowki in the village and it was at the half kilometer away from the bus stand. The witness has stated that house of deceased Rajesh was 1 km away from his house. The witness has admitted that, after coming at home, he did not have tried to contact the family members of the deceased. The witness has further stated that, the village police came to his house at 11-00 pm and he was stayed at the police station for about half an hour and at about 12-30 he was taken to Ranavav CHC. The witness has stated that before the doctor he had not disclosed the name of assailants and after taking treatment, he went into sleep at home. The witness has stated that, in the morning next day, he met the brother of the deceased at the funeral and informed about the incident and name of assailants. The witness has stated that, on 01.12.2006, when he was interrogated by the police, he has not requested the police to bring back his rickshaw which was lying in the curve of Bileshwar road.

In the cross-examination, the witness PW-18 has stated that at the time of incident, the deceased was married and his marriage was performed before 1 year of the incident. The witness has stated that, he came to know before 4 to 5 months about the relation of the deceased. The witness has further stated that, he had not given

advised to the deceased that being a married person it would not be proper to maintain relations. The witness has further stated that, when he was asked to put a mobile charger at the temple area by the deceased, he has not refused to do it. The witness has further stated that, he does not have any idea about number of siblings the girl X was having at the time of incident. On the identification of the accused, witness has stated that he was knowing some of the accused by name and some of the accused to whom he had seen earlier. The witness has further stated that A1 and A5 is the elder brother of A6 and A6 is the father of girl X. On the issue of hiding the mobile charger, witness has stated that, the act of hiding the mobile charger has been seen by A5 and he was restrained near the curve of road. The witness has stated that after seeing A5, he did not have changed his idea to hide the charger. The witness has stated that, after seeing A5 he was scared and despite of this, he had completed his job. The witness has further stated that A5 at the time of restraining him, did not ask to take him at the place, where he has hide the charger. The witness has stated that when he was restrained by A5, he has given his introduction and further asked to A5 that what was his fault. The witness has further stated that in the reply, A5 stated that he will tell him what is his fault and then, he took the sticks from his car and given two blows on his buttocks and forced him to sit inside the car. The witness has stated that he was taken to farm of A5, which is at the distance of 3 kms. The witness has stated that when he was in the car, has not tried to make a hue and cry or seek any help. In the justification for not seeking any help, the witness has stated that A5 belonged to his

community and he was under hope that, he will scot-free upon reprimand. The witness has further stated that, at the farm, he stayed half an hour. On the issue of incident, the witness in the cross-examination has stated that, he was stayed upto half an hour there where two stick blows being caused upon him. The witness has stated that during said period, he did not have tried to run away from the place. The witness has stated that the accused while assaulting to Rajesh, asked him that why he is maintaining relations with X? The witness has stated that whether Rajesh has given any reply to the question asked by accused or not, which he did not know. The witness has stated that whether deceased had requested the accused to pardon him or not, he did not remember it. The witness has stated that the deceased tried to run away at the place and he was chased at the distance of 15 to 20 feet and thereafter, he was caught hold by the accused and his hands and legs being tide by the accused. The witness has stated that whether in defense the deceased resisted or not which the witness has replied that he did not remember it. The witness has been asked in cross-examination that he never had gone to the temple area to hide the mobile charger nor he had been kidnapped by A5 and then taken to the farm house as well as at the place of incident, where, he as well as deceased have been beaten by the accused and entire story of hiding charger and relations of girl X with the deceased, is concocted and fabricated, which the witness has denied the said defense. The witness has also denied that, no incident in his presence is being occurred, nor accused had beaten up the accused in his presence. The witness in the cross-examination, done by

accused Nos. 5, 7, 8 and 9, has admitted that in his police statement, he disclosed only name of accused Kanu Rama, Gogan Rama and Veja Rama and he did not disclosed the names of other accused nor disclosed the description or bodily features of them.

10.6 Devendra Rudabhai Katara (PW-19). This witness is the brother of the deceased and he was informed by complainant PW-3 about the incident of kidnapping of the deceased Rajesh. The witness has stated that he accompanied to PW-3 and others for search of deceased Rajesh and at about 3-00 o'clock noon, A5 met them at the curve of Bileshwar road and received information about kidnapping of Rajesh from A5, who was standing at the road. The witness has stated that A5 confessed before him that, due to relations of deceased with X, they killed Rajesh and he was lying at the place of incident. The witness has stated that, A5 escorted them to the place of incident, where, they saw A1 to A4 and other accused armed with sticks and on inquiry for motive of kidnapping and murder of Rajesh, the accused stated that, due to relations of Rajesh, they killed him.

10.7 Merubhai Ratiya (PW-20). This witness is the owner of Pan shop and the shop of situated near the bus stand of Ranakandorna. In the chief-examination, the witness has stated that before one year, at about 1-30 pm when he was sitting on the bench of his hotel, he saw A1 who came in utility jeep and thereafter, what happened he did not know. The witness has been turned hostile and has not supported the case of the prosecution.

10.8 Manharlal Karsandas Mehta (PW-33). This witness, at the time of incident, was serving as a PSI with Ranavav Police Station. The witness has stated in his chief-examination that on the basis of requisition Exh. 82, he came to Porbandar Civil Hospital, where the dead body of the deceased was kept in PM room. The witness has stated that when he reached at the hospital, he met PW-3 – brother of the deceased, who had disclosed the complaint of kidnapping and murder of his brother allegedly committed by the accused herein. The witness has stated that after registration of the offence, the investigation of the case entrusted to him and during the investigation, after inquest he sent the dead body of Postmortum and recorded the statements of available witnesses and tried to contact the witness Kara Raja – PW-18, and thereafter he recorded his statement and sent him for medical examination. The witness has stated that on 01.12.2006, he drew the panchnama of incident of kidnapping of the deceased and then reached at the place where the deceased was allegedly killed and after reaching the place, he drew the panchnama of place of occurrence and seized the necessary samples for FSL and thereafter again recorded the statement of witnesses, arrested the accused, recovered and seized the weapon sticks allegedly used in commission of crime. The witness has further stated that he has also seized the utility jeep and Indica car used in the commission of crime and after obtaining medical case papers and upon completion of the investigation, filed the chargesheet against the accused.

In the cross-examination, the IO PW-23, has stated that the time of receiving the dead body mentioned by the doctor is 10.05 pm dated 30.11.2006. The witness has stated that, on 30.11.2006 and 01.12.2006 when he was on his way to the place of occurrence, where the dead body was lying, he did not find the rickshaw of PW-18 at the curve of Bileshwar road. The witness has stated that, it would not be possible to tie the legs and hands with the seized cotton thread. The witness has stated that he has not collected the call details of the witnesses. The witness has denied to the suggestions that he has falsely arrested the accused and without any sufficient evidence, has filed the chargesheet against the accused.

Submissions on behalf of the appellants – accused :

11. Mr. B.B. Naik, learned counsel appearing for and on behalf of the appellants accused made following submissions :

- (i) That the trial Court committed serious error in holding the appellants accused guilty of the offence of kidnapping and murder.
- (ii) That the learned trial Court grossly erred while convicting the accused appellants without appreciating the evidence in its right prospective;
- (iii) There are apparent contradictions and omissions in the statement of sole eye witness PW-18 and as such, his conduct was not natural. That the PW-18 in his cross-examination

deposed that the statement made before the police wherein, name of three accused as assailants being disclosed by him, namely A1 Kanu Rama, A5 Gogan Rama, and A6 Veja Rama, whereas, in the deposition, recorded before the Court, he named 9 persons as assailants including A1, A5 and A6. Thus, therefore, statement made in the depositions with respect to involvement of the accused in the commission of the crime are inconsistent with the earlier statement made before the police and thus, no reliance can be placed on evidence of such witness because such contradiction being very material and affect the core of the prosecution.

- (iv) That the sole testimony of PW-18 is not wholly reliable and his evidence is not of sterling quality. It is in this context, it was submitted that the witness had acted in an unnatural manner for the reason that he was highly interested person as he related to complainant party and also a good friend of the deceased. As per the prosecution case, the deceased was having soft corner with the daughter of A6 and she was intended to talk with the deceased on mobile but, the mobile charger was not available to her and that is why the deceased entrusted the task to handover the mobile charger to the girl X and as per the understanding, the charger required to be kept in the vicinity area of temple from where the girl X could get it in secrecy. The PW-18 went to the specific place to hide the charger, where A5 Gogan Rama seen him. Despite of presence of Gogan Rama, the witness saying that he had hidden the charger, which theory is not

convincing and acceptable. That, the incident arose on 30.11.2006 and the passenger rickshaw which the witness was driving, found by the police on 02.12.2006. That the investigation officer PW-23 admitted that on 01.12.2006 when he was on the way to visit the place where the murder took place, he did not notice the passenger rickshaw allegedly lying on the curve of the village road. That the IO during the investigation failed to seize and recover the mobile charger which was kept by PW-18 at the temple area. That the witness PW-18 in his police statement named only three persons as assailants and in the deposition before the Court, he named and identified 9 accused, alleging that they had killed the deceased Rajesh; that the witness had no knowledge that how many brothers and sisters the girl X was having at relevant time. That, the witness after seeing A5 while hiding the mobile charger did not try to escape from the place nor after his kidnapping by A5 sought any help or made hue and cry. That, on the incident of Rajesh, his evidence is vague and general and failed to specify that out of 9 accused, who had inflicted fatal blow on Rajesh. That, from the field where the incident occurred he did not try to escape from the place. That, story as projected by the witness that after the incident, he was permitted to leave the place by the accused is totally improbable and unacceptable. That, on 30.11.2006, according to version of the witness, by using private vehicle he came to his village Ranakandorna and went into sleep and at about 11-00 pm the village police came to his house and he was brought to the police station. That, the

deceased and the witness belonged to village Ranakandorna and the house of the deceased was at the distance of 1 km from the witness's house. That, the outpost chowki was also in existence in the village. That, the witness was having mobile of his brother with him. Under such circumstances, the witness did not inform anyone about the occurrence, which conduct create a doubt about the truthfulness of the story, which he had narrated before the Court and therefore, considering the inherent improbabilities in the prosecution story and the conduct of the eye witness PW-18, which is contrary to the ordinary course of human nature, no reliance cannot be placed on the evidence of such witness for recording conviction. Thus, it was submitted that, the conviction on the sole testimony of the eye witness can be sustained if evidence tendered by such witness is cogent, reliable and tune with the probabilities and inspire confidence. However, as pointed above, the presence of PW-18 at the temple place as well as at the scene of offence is highly doubtful and considering the admitted facts that he has changed his statement before the Court and falsely implicated the accused, his evidence cannot be said to be truthful, reliable and acceptable. In support of the submission, heavy reliance being placed by the defense on the case of **Rai Sandeep @ Deepu Vs. State, (2012) 8 SCC 21**, to contend that when the version of the witness on the core spectrum of the crime is not intact and should not match in material particulars and does not inspire confidence and worthy of credence, the evidence of such witness cannot be relied upon to hold the appellants guilty of

the offence.

- (v) That the evidence of PW-3 Badha Kara Katara and his two brothers PW-4 Sharman Katara and PW-19 Devendra Katara, are highly improbable and the witnesses being related and interested witnesses, their evidence in absence of any corroboration on a material aspect, cannot be said to be a trustworthy and credible. That, in the presence of PW-3 the deceased Rajesh was kidnapped by A1 to A3. That the place of offence is nearby village bus-stand and admittedly, in the vicinity there are pan shops, tea stalls and taxi stand, is also earmarked. Therefore, despite of availability of independent witnesses, the prosecution failed to examine such witnesses. That, the witnesses are got-up witnesses and in reality, there was no clue about whereabouts of the deceased and therefore, at the instruction of PW-4 Sharman Katara, who is serving as Police Constable, at Jamnagar, the story about kidnapping and other facts with respect to presence of accused at the scene of offence being concocted and falsely narrated by the witnesses. That, PW-3 after kidnapping his brother chased the utility jeep upto some extent and then, returned back to village : Ranakandorna, which conduct seems to be highly improbable as no prudent man will let go to culprits as per their plan, more particularly when he was driving Sumo car. The IO did not have examined the person who had given clue to PW3 that PW-18 was kidnapped by A5 Gogan Rama. That PW-4 on the day of incident was at Jamnagar and distance from Jamnagar to

Bileshwar is about 90 kms. and according to version of witness he came at Bileshwar in a private bus and met PW-3 on the road of Bileshwar. In order to prove the said facts, how PW-4 being informed by PW-3 and in a short span of time, how he could travel from Jamnagar and Bileshwar, the prosecution has failed to prove the said facts by examining the necessary witnesses. It is also highly improbable to accept the fact that A5 Gogan Rama met three witnesses at the Hanumangadh Road and he conveyed that the deceased was done to death by him and others and also invited the witnesses at the place of incident. Thus, the theory of kidnapping as well as seeing the accused at the scene of offence are unbelievable, highly improbable and unacceptable and in absence of any corroboration to the evidence of the witnesses, their presence throughout at the place cannot be believed and acceptable. Thus, the offence of kidnapping of deceased for murder is not proved and established. That, PW-4 being police constable, did not have informed either to the Jamnagar police or to the police of Bileshwar or Ranavav about the kidnapping of his brother by the accused. That PW-3 also sat quite and did not inform anyone about the offence of kidnapping which also create a doubt that, whether in his presence the deceased was kidnapped by accused or not. That the incident of kidnapping arose at about 1-30 pm and the dead body of the deceased kept at the PM room at about 10-00 pm. That during the said period, either of the witnesses informed the police about incident of kidnapping and murder of deceased, which proves that the

witnesses were unknown to the act of accused and later on the entire story being concocted with the help of PW-18 and initiated the prosecution at the belated stage.

- (vi) That the prosecution case was that, the accused came to know about the relation of the deceased with girl X and in order to take revenge of it, they formed unlawful assembly and abducted the deceased for murder and also kidnapped the witness PW-18 because, he had facilitated the deceased in maintaining the relationship. There is no evidence led by the prosecution to the effect that on 30.12.2006, all the accused were knowing the object of common assembling and in prosecution of common object, the deceased was kidnapped and then done to death by the accused. It is imperative on the part of the prosecution to prove the presence and participation in an unlawful assembly and the offence committed in prosecution of common object of the assembly. In the present case the sole eye witness PW-18 before the police mentioned only 3 names of accused and later on before the Court he involved 6 accused which shows that the precondition to prove the essential ingredients of Sections 141 and 149 are not proved and established. That, in absence of evidence about the presence of the accused and sharing the common object of the assembly, the conviction under Section 149 is not sustainable.

12. In such circumstances as referred above, Mr. Naik, learned Senior counsel submitted that the prosecution has failed to prove its case by adducing cogent, acceptable and trustworthy evidence and as such

the judgment of conviction and sentence is liable to be set aside as the findings of the trial Court are contrary to the evidence on record and principles of criminal jurisprudence. Thus, therefore, it was prayed that there being merits in this appeal, same may be allowed and by allowing the appeal, the judgment of conviction and order of sentence be set aside and appellants may be acquitted of all charges.

Submissions on behalf of State:

13. On the other hand, Mr. L.B. Dabhi, learned Additional Public Prosecutor appearing for the State vehemently opposed the appeal and submitted that the trial Court committed no error in findings the accused appellants of the guilty of offence of murder and kidnapping. That the accused are related to each other and there was a motive behind the offence that deceased was having relation with the daughter of A6. That, in order to kill the deceased, the accused formed an unlawful assembly and in prosecution of common object, they, kidnapped PW-18 and thereafter, kidnapped the deceased for murder and taking the deceased at the place of offence, in the presence of PW-18, they assaulted the deceased with weapon sticks. The evidence of PW-18 and brothers of deceased are supported to each other and there is no reason for the witnesses to falsely implicate the accused in a serious charge of murder. Thus, the testimony of PW-18 is natural and while acting at the behest of deceased, he was caught by A5 and in the presence of co-accused, after his kidnapping, the deceased Rajesh was brought at the place of offence. That, it is difficult in a group assault to give meticulous version of the assault and therefore, when the accused being

members of unlawful assembly and actively participated in the role assigned to them and after kidnapping they assaulted the deceased, which give a reasonable inference that the accused acted in prosecution of the common object to kill the deceased. In such circumstances, the prosecution is able to prove the charge against the accused beyond reasonable doubt and thus, the State counsel prayed that there being no merit in appeal filed by accused and same may be dismissed.

14. We have considered the rival submissions made by respective counsel for the parties and perused the case records. The following facts are not in dispute.

- (i) The deceased Rajesh, PW-18 and other witnesses are resident of village: Ranakandorna, whereas, accused are resident of village: Bileshwar and the distance between two village is 30 kms. The A1 Kanu Rama was the office bearer of the girls hostel wherein the girls of the community could be admitted for the purpose of study etc. Both the parties belonged to same community and knowing each other.
- (ii) Deceased Rajesh was married at the time of incident. The allegations against the deceased was of maintaining relations with the girl X, who was the daughter of A6 Veja Rama. Veja Rama A6 is the brother of A1 and A5. The A7 is the son of A6, wherein, A8 and A9 are the son of A5 Gogan Rama.

- (iii) The trial Court by extended the benefit of doubt to the driver of utility jeep A4 and A9 Kishor Gogan, acquitted them from all charges.

15. In our opinion, the prosecution case can be divided in three parts namely:-

- (a) on 30.11.2006 between 8-30 to 11-00 am. PW-18 was kidnapped by A5 Gogan Rama because, at the instance of deceased Rajesh, he came nearby temple area of village Bileshwar to hide the mobile charger for girl X and after his kidnapping, he was brought to the farm of accused;
- (b) on 30.11.2006 at about 01-30 pm, A1 to A3 along with driver A4 came to village Ranakandorna by driving utility jeep and kidnapped the deceased Rajesh;
- (c) On 30.11.2006 after 02-00 pm the deceased was taken to the place of offence by the accused and in the presence of PW-18, due to his relations with daughter of A6, he was fatally assaulted with weapon sticks.

16. The following issues arise for our consideration:-

- (a) Whether it is proved that on 30.11.2006, the accused by forming an unlawful assembly and the accused A5 being member of assembly, kidnapped the witness PW-18 and wrongfully

confining him?

(b) Whether it is proved that on 30.11.2006, the accused by forming an unlawful assembly and being member of assembly, kidnapped the deceased and thereafter, he was done to death?

17. Upon careful examination of the evidence, it is evident that, deceased Rajesh despite of his marital status he was having soft corner with the daughter of A6 and the family was having strong reservation against the conduct of the deceased and the relation thereof. The root cause of the case was the relations and for maintaining said relations the continuous contact of the deceased and girl X was necessary and for that, the mobile phone was the instrument for them, but somehow the girl X was not having the mobile charger and the deceased with the help of PW-18, kept the mobile charger in temple area of the village so that it could be obtained by the girl X. The complainant party was not having any knowledge about the relation of the deceased Rajesh. The deceased was helping hand in the taxi business of his brother PW-3. The deceased was close to the PW-18 and this is why he was entrusted the task for hiding the mobile charger. In these background admitted facts, which proved from the oral evidence on record, the question is PW-18 being sole eye witness of the incident, it is possible to believe his presence at the temple area for hiding the mobile charger and at the scene of offence where the deceased was done to death by the accused. It is settled legal position of law that the court can and may act on the testimony of single eye witness though

uncorroborated provided, that testimony of sole witness is found wholly reliable. There is no legal impediment in convicting the person on a sole testimony of the witness but if there is a doubt about the testimony, the court will insist further corroboration to his testimony. In view of the wordings of Section 137 of the Evidence Act, it is not the number but the quality that is material and thus, even if a case against the accused hangs on the evidence of single eye witness, it may be enough to sustain conviction (**Vadivelu Thevar Vs. State of Madras, 1957 SC 614; Sunilkumar Vs. State of NCT, Delhi (2003) 11 SCC 367; Bipinkumar Mondal Vs. State of West Bengal AIR 2010 SC 3638**).

18. The testimony of PW-18 is to be considered on the touchstone of law which has been laid down by the afore-stated judgments of the Apex Court. The testimony of PW-18 – sole eye witness has been attacked on so many grounds, mainly, on his conduct and relation with the complainant party. We have examined carefully this aspect. It is evident from his evidence that, the witness was closely associated with the deceased as he was his good friend and that is why deceased had shared facts of his personal life including the relation of girl X. Thus, therefore, there is nothing wrong for the witness to act upon the request of the deceased on the subject of hiding the mobile charger and therefore, we do not find any infirmities or lacuna in the evidence of PW-18 with regard to story of hiding the mobile charger. We have also examined the aspect of hiding mobile charger despite the facts that accused no. 5 Gogan Rama had seen him. It is nowhere comes on the record that, accused

Gogan Rama prior to the incident was knowing PW-18 and therefore there was no reason for PW-18 to drop the idea of hiding the mobile charger, despite of presence of accused no. 5. As per the version of PW-18 after beating him up by A5 he was forced to travel into Indica car and along with the co-accused was taken at the scene of offence. Having regard to the motive for the offence, it was difficult for the witness to run away from the place and he was under impression that he might be reprimanded and set free by the accused because he was not in any manner personally involved to maintain the relation of the deceased and girl X. It is relevant to note that, after coming the utility jeep from Ranavav, the witness PW-18 was under custody of the co-accused and was inside the Indica car and after both the cars reached at the scene of occurrence, he came to know the custody of Rajesh which was with the accused. The witness PW-18 was permitted to leave the place after incident and at that time, before Rajesh could be assaulted he was beaten by A1 and A5 with the sticks. In such circumstances, it cannot be expected from the witness to give clear account of the assault, in other words, who had given a blow and on which part of the body. In such circumstances, the conduct of the eye witness, on the basis of not trying to run away from the place or not making any hue and cry would not render his evidence unreliable and this would not be a ground to discard the entire testimony, which is otherwise seems to be reliable and trustworthy. The witness after the incident went to his village and did not inform to anyone. This conduct would not itself be a ground to raise the doubt on the testimony of the witness, because, in a given situation, the person cannot act or react in a

particular way and it depends upon the mental state of mind of the person concerned and nature of fear generated. It is relevant to note that the witness had hardly spent 3 to 4 hours at his home after the incident and at 11-00 pm the police went to his house and brought him at the police station and was taken to the hospital for treatment. The medical evidence of the treating doctor PW-1 proves that the witness sustained simple injuries on his body and same cannot be termed to be a self inflicted injury. Thus, the witness has sustained injuries in the same incident and his presence at both the places in absence of any contrary evidence cannot be doubted. Upon careful examination of testimony of PW-18, it appears that he made exaggeration in the deposition with respect to name and number of assailants. In the police statement, the name of 3 accused. i.e. A1 Kanu Rama, A5 Gogan Rama and A6 Veja Rama being disclosed as assailants, whereas, when he stepped into witness box, he named 9 accused as assailants. In our opinion, on this count, entire testimony of witness cannot be discarded only because in certain aspects he did not have disclosed the names of the assailants. The major portion of the evidence of PW-18 is found to be true, reliable and trustworthy and so far as involvement of the accused no. A2, A3, A7 and A8 are concerned, his evidence found deficient because the said contradiction and improvements of the witness would said to be a major contradiction. We have carefully scrutinized the rest of the evidence with care and caution and found that, except the accused A2, A3, A7 and A8, the testimony qua A1, A5 and A6 is trustworthy and the substratum of the prosecution case with respect to causing fatal injuries to deceased Rajesh remains intact, because, the accused

were there at the place and it was the version of PW-18 that they had assaulted the deceased. Therefore, considering the major contradictions with regard to involvement of the accused, as referred above, the testimony of PW-18 qua them i.e. A2, A3, A7 and A8 in causing the fatal injuries to the deceased is not believable and acceptable.

19. For the reasons afore-stated, the testimony of PW-18 with respect to his kidnapping by A5 and thereafter causing injuries to the deceased by A5, A1 and A3 are found to be trustworthy, reliable and inspires confidence and mainly on the ground of his making exaggeration on the involvement of other accused would not be a ground to discard the entire prosecution case, which is otherwise acceptable to prove the complicity of the A1, A5 and A6 in the commission of crime. Thus, it is proved by the prosecution that, PW-18 was kidnapped by A5 with intend to wrongfully confine him and was taken to the place of occurrence, where in his presence the A1, A5 and A6 caused fatal injuries on the body of the deceased Rajesh with weapon sticks.
20. It is the case of the prosecution that before the deceased was done to death by A1, A5 and A6, he was kidnapped by A1 to A3 with the intention to kill him. The available evidence in this regard is the evidence of PW-3 Badha Kara Katara, who is the brother of the deceased. PW-20 Meru Bhura Ratiya though declared hostile but he has supported to the extent that, the accused A1 Kanu Rama came to bus stand in his utility jeep. A1 is the elder brother of A6 Veja Rama and deceased was having soft corner with daughter of A6. We have carefully examined the testimony of PW-3 Badha Kara. The witness

is not the witness of murder as he had not seen the accused causing injuries to the deceased. So far as offence of kidnapping and murder is concerned, we found a ring of truth in his evidence because, there is no reason for him to falsely give the name of A1 in the incident of kidnapping. The presence of A1 at the bus stop of Ranavav village is established. In such circumstances, on careful examination of the evidence of PW-3, his brother Rajesh on the issue of relation with girl X, who happened to niece of A1, was abducted and taken to the place of incident. The presence of Rajesh in utility jeep with A1 is further got corroborated from the evidence of PW-18 as at the place of offence, Rajesh came out from utility jeep. The version of PW-18 is to the effect that after his kidnapping by A5 and on arrival at the farm of the accused, one group i.e. A1 to A3 went to Ranakandorna in utility jeep. Thus, we do not find any infirmities and improbabilities in the evidence of PW-3 so far as act of kidnapping of his brother by A1. The presence of accused A2 and A3 with A1 as stated by PW-3 would not automatically raised the inference that, two accused were part of common object of A1, A5 and A6. Thus, merely presence of A2 and A3 with A1 at the time of kidnapping would not enough to prove their complicity in the offence of kidnapping. Thus, the prosecution has successfully proved beyond reasonable doubt that on 30.11.2006 at about 1-30 pm the deceased Rajesh was kidnapped by A1 and was brought to the place of incident and fatally assaulted by A1, A5 and A6.

21. We have examined the issue of unlawful assembly. Section 141 defines “unlawful assembly”, which says that the prosecution has to

establish that there was an assembly of 5 persons; the assembly had a common object; the said common object was to consist one or more of the 5 illegal objects specified in Section 141. Section 142 provides a punishment for the members of an unlawful assembly. Section 148 says about the punishment of rioting and Section 149 provides that every person who at the time of committing the offence being member of unlawful assembly, is guilty of that offence. In the fact of the present case, out of 9 accused, two accused namely A2 and A9 have been acquitted of all charges and their complicity in the offence is not believed by the trial Court. We have after analysis on the evidence on record, held and observed that, the involvement of A2, A3, A7 and A8 on the basis of evidence of PW-18 as well as PW-3, are not proved and established. In such circumstances, considering the overact of A1, A5 and A6 resulting into fatal injury sustained by the deceased, it is proved and established that the act was done by the said accused in furtherance of their common intention as the deceased was having soft corner with daughter of A6 and being family matter and real brother, A1, A5 shared the common intention to teach lesson to the deceased and for the positive result, he had been abducted and/or kidnapped and due to their assault, he succumbed to the injuries and therefore charge under Section 149 can be converted into Section 34 of the Indian Penal Code if the criminal act done by the accused less than 5 in number, in furtherance of their common intention and in the facts of the present case, their common intention is proved by the prosecution.

22. Let us deal with the contention raised by the defense on the issue of lodging of late FIR. In the facts of the present case, from 01-30 pm dated 30.11.2006, the deceased Rajesh alleged to have been kidnapped by the accused A1 and after 2-30 pm or thereafter, he was taken to the place of incident and at about 8-15 pm, the FIR came to be registered. It was the contention that despite of sources available to inform the police, the witnesses failed to inform the police and that too when the witness was in police force. In the facts of the present case and reading the evidence in true prospective, we are not impressed with the contention that, the delay in lodging the FIR would impact on the prosecution case. It is relevant to note that PW-18 who claimed to be eye witness met the witnesses on the next day. The witnesses brought the dead body of the deceased from the scene of offence after 5-00 pm. The parties belonged to same community and knowing each other and at the time of kidnapping, there was no idea for them the accused kidnapped him for causing fatal injuries. In such circumstances after 5-00 pm to 8-30 pm i.e. for 3-30 hrs delay would not be said to be inordinate delay and therefore, on this ground the entire prosecution case cannot be discarded.
23. It is the contention of defense that the conduct of PW-18 eye witness and PW-3 brother of the deceased are unnatural and against the settled human tendency and there are major contradictions and omission found in their evidence, which create a doubt on the truthfulness and veracity of their evidence. We are not agree with the contentions as raised herein. We have at length discussed in this judgment how these two witnesses are truthful and their evidence

inspires confidence. The witness PW-18 involved the other persons, merely on that ground, inference cannot be drawn that his presence at the spot become doubtful and he is not an honest witness. In the present case, it is possible to disengage the truth from falsehood to shift the grain from the chaff. We may profitably refer the case of **State of Punjab Vs. Jagirsinh, 1974 (3) SCC 277 and Lehna Vs. State of Haryana, 2002 (3) SCC 76**. Hon'ble Supreme Court after referring the principle *falsus in uno falsus in omnibus* (false in one thing, false in everything), has observed and held that, even if a major portion of the evidence is found to be deficient, to prove the guilt of an accused, notwithstanding acquittal of the other co-accused person, the conviction can be maintained as it is the duty of the court to separate the grain from the chaff and where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that, evidence has been found to be deficient to prove the guilt of the other co-accused persons.

24. The next contention raised about the non-recovery of mobile charger by the IO. In our opinion, merely the mobile charger being not recovered or seized during the course of investigation by the IO can be said to be irregularity in conducting investigation but that would not be a ground to acquit the accused and reject the case of the prosecution.
25. It was the contention that the trial Court has committed manifest error in convicting the accused under Section 302 Indian Penal Code as act of the appellants cannot be said to have intended to cause that

particular injury to the deceased nor the act by which death was caused is done with an intention to cause death or such bodily injury as it likely to cause death and therefore, the case of the appellants would not fall under Section 300 of the Indian Penal Code. In the present case, there is no dispute that death of Rajesh was homicidal in nature. The PM doctor PW-2 while performing PM noted simple injuries on the body of the deceased namely Nos. 2 to 10. According to PM doctor, he noticed a depressed fracture in temporal bone and there was a hemorrhage in the brain and it was further opined that, head injury sustained by the deceased was sufficient in ordinary course to cause death and it could be possible by hard substance and cause of death as opined, was cardiac failure due to brain and head injury. In such circumstances, the issue falls for our consideration, whether act of the accused is murder or culpable homicide not amounting to murder? On this aspect, it is apt to refer the case of State of AP Vs. Rayavarapu Punnayya (1976 SCC 382), wherein, the Supreme Court has explained the difference between the murder and culpable homicide. In para-12, the Supreme Court held and observed that,

“12. In the scheme of IPC, culpable homicide is genus and “murder” its specie. All murder is culpable homicide, but no vice a versa. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called culpable homicide of the first degree. This is the gravest form of culpable homicide,

which is defined in Section 300 as murder. The second may be termed as culpable homicide of the second degree. This is punishable under the first part of Section 304. Then, there is culpable homicide of third degree. This is lowest type of culpable homicide and the punishment provided for it is also the lowest amongst the punishment provided for the third degrees and same is punishable under Section 304 Part II of the IPC. Section 300, says about when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 begins by stating that, the circumstances when the culpable homicide turns out into murder which is punishable under Section 302 of the IPC and exception in the same section says when the offence is not murder but culpable homicide not amounting to murder under Section 304 IPC.”

26. After referring the aforesaid decision, the difference between two terms was further elucidated in *Rampal vs. State of U.P.* (2012) 8 SCC 289. Paras-16 and 21 of the judgment read thus:

“16. that the safest way of approach to the interpretation and application of Section 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of the Court in *Virsa Singh v. State of Punjab* [AIR 1958 SC 465: 1958 Cri. LJ 818] and *Rajwant Singh v. State of Kerala* [AIR 1966 SC 1874 : 1966 Cri LJ 1509], speaking for the court,

R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the cases come within any of the Exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.”

“21. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person

would be liable to be awarded, if he commits either of the offences. An analysis of these two sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of Section 304 includes only those cases in which offence is really murder, but mitigated by the presence of circumstances recognized in the Exceptions to Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in the case of Fatta v. Emperor [AIR 1931 Lah 63]”

- 27, Recently, in the case of Chunni Bai Vs. State of Chhattisgarh (AIR 2025 Supreme Court 2370), the Supreme Court, after referring the

observations made in the case of Rayavarapu Punnayya and Rampal Singh (supra), in Para-21, observed thus:

“21. From the above extracts, it can be understood that one of the criteria to determine, in any given case, as to whether the act amounts to murder or culpable homicide not amounting to murder is the presence or absence of intention of the offender. If the intention to cause death or to cause such bodily injury as is likely to cause death or the knowledge, which obviously has to be a conscious one, that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury, comes out aloud and clear in the case, it would be most appropriate to categorise it as a case of murder under Section 300 IPC in which event, penal provision of Section 302 IPC would be attracted. On the other hand, if the “intention” in causing the death or to causing such bodily injury is not so clear, the case will fall under the less stringent category of “culpable homicide not amounting to murder” as punishable under Section 304 IPC.”

28. Keeping in mind the afore-stated principles and applying the same to the facts of the present case, the accused have inflicted stick blow on the head of deceased Rajesh. The motive was to teach the lesson to Rajesh as despite of his marital status, he was having soft corner with the daughter of A6 and naturally when the parties belonged to

same community, and being a villagers, it is difficult for them to bear such kind of conduct of the person. Except depressed fracture injury, no other serious injuries would be noted on the vital part of the body of the deceased. Thus, having regard to the injuries sustained by the deceased and manner in which the single blow being caused on the head of the deceased, it is difficult to hold that A1, A5 and A6 intended to cause death or intended to that particular injury to cause death. However, knowledge on the part of the accused could be attributed that by inflicting such kind of injuries, the death might be caused. Therefore, having regard to the peculiar facts of the present case and on appreciation of evidence on record, the case of the accused would not fall in any of the clauses of Section 300 and case would fall under Section 304 Part-II of the Indian Penal Code, which says for punishment for culpable homicide not amounting to murder.

29. For the reasons recorded above, the prosecution succeeded in proving the case beyond reasonable doubt against A1, A5 and A6 that they have killed Rajesh after kidnapping by A1 and committed the offence under Section 304 Part-II read with Section 34 Indian Penal Code. Accordingly, the judgment of conviction and sentence under Section 302 read with Section 149 qua A1, A5 and A6 is hereby set aside.

The case against A1 is also proved for kidnapping under Section 364 IPC the deceased Rajesh for culpable homicide not amounting to murder. The prosecution also succeeds in proving the case against A5 for kidnapping PW-18 for wrongful confinement under Section 365 IPC. and causing voluntary injuries to PW-18 under Section 323 IPC.

The accused A2, A3, A7 and A8 have been acquitted of all charges and their conviction and order of sentence under Sections 143, 147, 148, 149, 302, 364 read with Section 149 and Section 135 of BP Act rendered

by the trial Court is set aside. The conviction rendered by trial Court to the accused A1, A2, A3 and A5 under Section 143, 147, 148 & 149 is hereby set aside.

So far as sentence part is concerned, we pass the following order:

- (i) A1 Kanu Rama Mori for the offence under Section 364 of Indian Penal Code, instead of 7 years, his sentence is reduced to 5 years rigorous imprisonment, with the fine amount as awarded by the trial Court.
 - (ii) A5 Gogan Rama, instead of 5 years, his sentence is reduced to 3 years RI for the offence punishable under Section 365 and fine amount as awarded by the trial Court; the sentence awarded by the trial Court under Section 323 and fine is remained same.
 - (iii) A1 Kanu Rama, A5 Gogan Rama and A6 Veja Rama for the offence under Section 304 Part-II of the Indian Penal Code, read with Section 34 Indian Penal Code, sentenced to undergo 7 years rigorous imprisonment with the fine amount of Rs.15,000/- as awarded by the trial Court with default sentence and if they have already paid, then there is no need to repay the same;
 - (iv) Sentence awarded qua A1, A5 and A6 under Section 135 of the BP Act is remained same.
 - (v) All the sentences as referred qua A1, A5 and A6 are ordered to be run concurrently and whatever period they had undergone, would be given set off, in accordance with law.
30. Accordingly, this conviction appeal filed by the A2 – Kara Rama, A3 – Raju Rina, A7 – Ramesh Veja, A8 – Pala Gogan is allowed and their conviction and sentence rendered by the trial Court in Sessions Case No. 23 of 2007 passed by the Additional Sessions Judge, Porbandar dated 21.06.2008 for the offence punishable under Sections 143, 147, 148, 149,

365, 302 read with Section 149 and Section 135 of the BP Act is hereby set aside and they have been acquitted of all charges. They are on bail. Their bail bonds stand cancelled and surety is discharged.

31. So far as appellant Kanu Rama Mori – A1, appellant – Gogan Rama Mori – A5 and appellant Veja Rama Mori A6 are concerned, the appeal is allowed in part in aforesaid terms as referred in para – 29 this judgment. They are on bail. Their bail bond stand cancelled. The jail remarks show that, they have served 2 years and 1 month of their sentence. They are directed to surrender the concerned authority to undergo remaining part of the sentence. The registry shall send the R&P to the concerned court henceforth.

The appeal stand disposed of in the aforesaid terms and direction.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

FURTHER ORDER:

32. After pronouncement of the judgment, the learned Senior Counsel appearing for the appellants – convicts requested for 6 weeks time to surrender to the jail authority. We grant 5 weeks time to surrender to the authority. If they do not surrender in a stipulated given time, the trial Court shall issue necessary order for securing their presence.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

P.S. JOSHI/08/10

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 08/10/2025 12:55:44