

(2014) 03 GUJ CK 0101
In the Gujarat High Court
Case No : Criminal Appeal No. 1390 of 2008

Khodabhai Bhalabhai Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209 313
Penal Code, 1860 (IPC) — Section 300 302 304

Citation : (2014) 03 GUJ CK 0101

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : P.B. Goswami, for the Appellant; Chetana M. Shah, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—This appeal is at the instance of a convict and is directed against an order of conviction and the consequent sentence passed by the learned Additional Sessions Judge, Fast Track Court, Nadiad, in Sessions Case No. 135 of 2007 thereby holding the appellant guilty of murder and imposing the sentence of life imprisonment and fine of Rs. 5000/- with a further stipulation that in default of payment of the fine, the appellant would suffer further simple imprisonment for 3 months. Being dissatisfied, the convict has come up with the present appeal.

2. The translated version of the charges framed against the appellant are quoted below:

At about 06:00 hrs, on 08-05-2007 at village Sandesar - Nani Muvadi, you the accused had stated your father regarding selling the trees. Deceased Bhalaji Jogaji had refused the request Being displeased therewith, you the accused, beating with stick, caused serious fatal injuries on his body, resulting in his death and thus, committed the murder of your father, an offence punishable u/s. 302 of IPC within the jurisdiction of this Court.

3. The sum and substance of the prosecution case may be summed up thus:

3.1 Chandubhai Bhagabhai Chauhan, the complainant, was taking tea at about 6 O'clock in the morning on the day of incident when there was heated exchange of words and quarrel between his paternal uncle, Bhalaji Jugaji [deceased], and his son, Khodabhai [the accused]. Consequently, the complainant came out of the house and he found that near the "otala" of their house, Bhalaji and his son Khodabhai, were scuffling by catching hold of each other. Hence, he separated them, and thereafter, he left to make a phone call to Pujabhai, another son of his paternal uncle, who lives elsewhere. At that time, Khodabhai had chased to beat his father. Hence, going to the compound, he had talked to Pujabhai on his mobile No. 9909684386 informing him that Khodabhai was beating his father. After that, the complainant came out when he found that Khodabhai came to his house, lifting his father with a stick in hand and put him on a cot and threatening him that he would further beat him. As he was saying so, the complainant again talked to Pujabhai on phone asking him to come immediately as his father had been further beaten. As Khodabhai was moving with a stick, the complainant had not come out to see his uncle. After some time, as Pujabhai came, the complainant came to see him, and it was found that blows of stick had been given on back and his uncle had died.

3.2 The further case of the prosecution is that as Khodabhai had been reproached by the victim as he was not doing any work, he got infuriated and caused his death by beating him with a stick. According to the complainant, Javanbhai Ratanbhai Solanki, Rameshbhai Nanabhai Parmar, and, Karabhai Chandubhai Solanki were present at the time of the incident and they had also witnessed his uncle being beaten.

3.3 As the complaint in this regard was given by the complainant before the P.S.I. Kathlal at the spot, the same was sent for registration of the offence at Kathlal Police Station, which was registered as 1st Cr. Reg. No. 75/07 as per Section 302 of Indian Penal Code and further investigation was handed over to the P.S.I. Kathlal.

3.4 P.S.I. Kathlal drew inquest-panchnama and the panchnama of the place of the offence and of the clothes and of the physical condition of the accused. He also arranged to prepare the map of the scene of the offence. Panchnama of the discovery of muddamal was also drawn. The dead-body of the deceased was sent for post-mortem examination and the muddamal was sent to F.S.L. for examination. Statements of the concerned witnesses were recorded.

3.5 At the conclusion of investigation, as there was sufficient evidence against the accused, a charge-sheet had been filed against him for an offence punishable u/s 302 of Indian Penal Code in the Court of Judicial Magistrate, First Class at Kapadvanj. The learned Magistrate, after following the requisite formalities under the Code of Criminal Procedure, committed the case to the Court of Sessions u/s 209 of Criminal Procedure Code and the same was registered in the Sessions

Court as Sessions Case No. 135/07 and thereafter, the said case has been transferred for trial before the Sessions Court.

3.6 As the accused appeared before the trial Court, after verifying that he had received police papers, charges were framed against the accused which were read over to him. The accused pleaded "not guilty" and claimed to be tried.

3.7 The prosecution produced evidence of the following witnesses in support of its case:

3.8 The prosecution has also produced the following pieces of documentary evidence in support of its case:-

3.9 The evidence of the prosecution was explained to the accused and further statement of the accused was recorded in terms of Section 313 of the Code of Criminal Procedure when the accused denied the offence and stated that a false case had been filed against him.

3.10 As indicated earlier, the learned Sessions Judge, on consideration of the materials on record, had found the appellant guilty of offence punishable u/s 302 of the Indian Penal Code and sentenced him as indicated hereinabove.

4. Being dissatisfied, the convict has come up with the present appeal.

5. Mr. Goswami, the learned advocate appearing on behalf of the appellant, strenuously contended before us that the learned Sessions Judge committed serious error in holding the appellant guilty notwithstanding several inconsistencies in the evidence adduced by the prosecution, and, at the same time, the other alleged eye witnesses, described in the complaint, were not examined. According to Mr. Goswami, in the facts of the present case, no reasonable individual will believe that the appellant killed his father mercilessly for the alleged petty reason. In other words, according to Mr. Goswami, there was no motive proved by the prosecution for the murder of his father by the accused.

5.1 By referring to the medical evidence adduced by the prosecution, Mr. Goswami further contended that from the evidence on record, it appears that there is no evidence to indicate that the mark of injuries were of recent origin nor can such injury in the ordinary course cause death of a person. In such circumstances, Mr. Goswami submits that it is a fit case for acquittal.

5.2 As an alternative submission, Mr. Goswami contended that even if it is assumed for the sake of arguments that involvement of the appellant has been proved in the incident, at the most, the present case can be said to be one of culpable homicide not amounting to murder. Mr. Goswami, therefore, prays for allowing the appeal or in the alternative, for conversion of the sentence to one punishable u/s 304 Part I or Part II of the Indian Penal Code.

6. Ms. Chetana Shah, the learned Additional Public Prosecutor, has, on the other hand, opposed the aforesaid contention of Mr. Goswami and has submitted that

in the case before us, at the time of incident, in the house, apart from the deceased and the accused, i.e. the father and the son, no other person was present and it has been well established from the evidence of the complainant that they were quarreling and subsequently, it was the appellant who lifted his father and placed him on a cot and within few hours, he died. Ms. Shah contends that the suggestion given by the appellant that the victim could sustain similar injuries by falling from a tree is an absurd case and even no such case was made out by the appellant by way of suggestion given to the other prosecution witnesses. Ms. Shah further contends that there is no just reason for disbelieving the evidence given by the prosecution witness which is consistent with the medical evidence produced by the prosecution. As regards the alternative argument of Mr. Goswami, Ms. Shah contends that if an old man of 63 years of age is beaten by a stick in the way as is reflected from the medical report, the same cannot come under the exceptions indicated in section 300 of the Indian Penal Code. Ms. Shah, therefore, prays for dismissal of the appeal.

7. Therefore, the only question that arises for determination in this appeal is whether in the facts of the present case, the learned Sessions Judge was justified in convicting the appellant for the charge of murder and imposing life sentence and fine.

8. In order to appreciate the respective contentions of the parties, it will be appropriate to refer to the oral evidence adduced on behalf of the prosecution.

9. Chandubhai, the complainant, is P.W. No. 1. In his deposition, he has stated that he resided at Nani Muvadi and was doing farming. His uncle and other relatives were residing in the line of his house. He has further stated that the incident had taken place at 06.00 a.m. on 8th May 2007. He was having tea at his house at that time. He has stated that though he did not hear any altercation, he found the accused Khodabhai sitting upon his father Bhalji and a stick was kept on the throat of Bhalaji. He, therefore, had gone there and separated them. Thereafter, he came to vada of his house to make a phone call to Punjabhai. At that time, Bhalaji was running and Khoda was chasing him, with a stick in his hands and Khoda gave four - five stick blows to Bhalaji. He, therefore, informed Punjabhai on phone that Bhalaji was being beaten by Khodabhai and asked him to come immediately. Thereafter, Khodabhai had himself brought Bhalaji at home after beating and laid him in a cot and told him not to speak much, otherwise, he would further beat him. Thereafter, he started from his house with a pot to fill water. Thereafter, Punjabhai and Ambalal both came. He also came and at that time a phone call was made to call a vehicle to take Bhalaji to the hospital. The vehicle did not come urgently. Meanwhile, Bhalaji died.

9.1 Thereafter, when the police came, he gave a complaint about the incident as he had witnessed the incident with his own eyes. He has proved the complaint and his signature on the complaint.

9.2 This witness has further stated that he did not know what was the actual reason of quarrel. However, he has stated that the accused Khodabhai was not doing any work and was wandering.

9.3 He has also stated that Khodabhai had beaten Bhalaji with a stick and he has identified the stick.

9.4 He has further stated that the police had taken the dead-body for performing postmortem examination.

9.5 In his cross-examination by the learned advocate for the accused, he has stated that Bhagabhai has other three brothers. The deceased Bhalaji has three sons. He has denied the suggestion that he did not have even talking relation with Khoda and his father. Khoda was not doing any work and was wandering. His house comes at second - third from the house of Khodabhai. He has admitted that the incident had not taken place near the house.

9.6 He has stated that he knew Ratanbhai of his village whose house is situated in the farm. The house of Ratanbhai is situated from his home at a distance equivalent to the distance of the Court situated on the opposite side.

9.7 He has admitted that when he came out due to shouting, Khodaji and his father Bhalaji both were going on foot towards the farm. He has denied that therefore, he felt that both the father and son were quarreling and consequently, he had gone to make the phone call to Punjabhai. He has denied the suggestion that he has not seen the accused beating his father. He has also denied the suggestion that he has not dictated in his complaint that he had seen Khodaji beating his father. He has stated that when he came out after making phone call, Bhalaji was lying in a cot. He has further stated that as he was having a mobile phone with him, there was no question of going to make a phone call. The vada is just behind his house and he had made the phone call by going behind the vada. He has admitted that as there was a stick in the hand of Khodabhai, he had not gone there under the fear that he would beat. He has denied that he had not gone to separate both of them.

9.8 This witness has further stated that the police arrived after one and half to two hours after the incident had taken place. He was conscious when the police came and he stated to the police what he had seen and the police had written what was dictated by him.

9.9 He has admitted that he has not stated to the police that the accused Khodiya had sat upon Bhalaji and a stick was kept on his throat. He has also stated that he has not stated to the police that the accused Khodabhai had given four - five stick blows to Bhalabhai. He has admitted that he had gone to fill the water after making phone call. According to him, Bhalabhai was calling the buffaloes by sitting in the cot. He has denied the suggestion that at that time, Bhalabhai was not present. He has denied a suggestion that he had a quarrel with Khodabhai before the incident and he and Khodabhai were not in talking

terms. He has denied the suggestion that he has not seen the incident and was giving a false name due to enmity.

10. P.W. No. 2 is one Pratapbhai, who is a panch witness to the inquest panchnama. He has stated that he was in his village on 8th May 2007. The police had come at 12 O'clock and therefore, he went to see. We went to the house of Punjabhai Bhalaji and one person was lying dead there. The name of that dead-person was Bhalaji Jugaji. Thereafter, the police took the dead-body in his presence. As the police said to put the signature, he had put his signature.

10.1 He has stated that the police took his signature upon a paper. He has stated that he did not know the second pancha, Pratapsinh Somaji Parmar and the said person was not with him and the second panchnama was not done in his presence. He has further stated that no other procedure was done except the panchnama of the dead-body. He has identified the panchnama and his signature thereon.

10.2 This witness was declared as hostile and permission was granted to the prosecution advocate to cross examine him.

10.3 In the cross examination, this witness has admitted that after the panchnama of dead-body, the complainant Chandubhai had shown the place, which was dictated after looking and examining the same. He has stated that looking that place, it is situate at the distance of about 130 steps away towards north. The police had seized the soil with blood and control soil in his presence. He has stated that he had not seen the small quilt of white colour with the scattered blood spots.

10.4 This witness in his cross-examination has further stated that he did not remember as to how many signatures were made by him. On showing him the receipt from muddamal article No. 5, 4, 3, he has identified his signatures on it. He has also identified his signature on the slip found on the muddamal article No. 4 shown to him.

10.5 In his cross-examination by the learned advocate appearing on behalf of the accused, he has admitted that there were different types of slips at that time. He has further stated that he went to the place and on asking to put signature, he put signatures inside his house.

11. P.W. No. - 3, Pratapji Somaji Parmar, is a panch witness to the inquest panchnama. In his deposition, he has stated that he was at his house on 8th May 2007 and at that time, the police came and took him at the place of Khodabhai. The dead-body of Bhalabhai was seen. The panchnama of the dead-body was done. He had put his signature on it and he had identified his signature.

11.1 This witness was also declared hostile and upon getting permission, the learned advocate appearing for the prosecution cross-examined him.

11.2 In his cross-examination, he has stated that he knew Chandubhai

Bhagabhai. He has stated that the police did not take blood-stained soil and control soil clay in his presence nor was the blood-stained quilt seized in his presence. He was shown the slips on exhibits 13, 14, and 15, and he has identified his signatures thereon.

11.3 He has denied that the police seized the bloodstained soil and control soil or the bloodstained quilt in his presence. He has also denied that the police had seized the bloodstained quilt in his presence. He has also denied the suggestion that he was giving false deposition to save the accused.

11.4 In his cross-examination by the learned advocate for the accused, he has stated that he has been living at Nani Muvadi village since birth. He did not know Ratan Ambalal. He has also stated that his house is far away from the house of Bhalaji.

12. One Dineshbhai Chotabhai Parmar is the P.W. No. 4. In his examination-in-chief, he has stated that he had gone to the outskirts of village Sandesar on 17th May 2007 at half past one. One stick was found from there and after some time, he came back. He has stated that it did not so happen that he came to police station and saw someone there. He has further stated that at first, the police came and called and they went to Sandesar and one stick was found from the thorny bushes (thicket). He has also stated that at that time one man named Khodabhai Bhalabai was present. He had not told anything to him. He has stated that no proceeding was done in his presence. He has stated that they went in a police jeep in which he, the other witness, the accused and police persons were traveling.

12.1 He has further stated that the accused was showing the way. From Kathlal, they went to the house of the accused at village Sandesar. Thereafter, they went to the outskirts via a river as shown by the accused. He took them to another villages, the name of which is not remembered by him and there, the accused Khodabhai had shown the stick, which was hidden in the bushes of berry. The police seized that stick in his presence. He has identified his signatures on the slips and also the stick, muddamal article No. 8. He has stated that when the stick was seized, his signature was taken in the slip and he has identified his signature on exhibit-21.

12.2 In his cross-examination by the learned advocate for the accused, he has stated that he has been living at Kathlal since birth and besides doing farming, he is also driving a rickshaw in Kathlal town. He has stated that as he was driving a rickshaw, all the police persons of Kathlal police station knew him. He has stated that he went to put his signature due to his acquaintance with the police persons. He has denied the suggestion that because the police asked him to put his signature, he had put the signature. He has further stated that the village is situated at outskirts of river but he does not know the name of that village. There was a temple. That temple is well known and many persons come for darshan. He has denied the suggestion that the police had taken out the stick

from the thorny bushes and had shown. He has admitted that the said place is an open place. He has denied the suggestion that because the police asked him to sign, he put his signature on a ready panchnama. He has admitted that he was panch on many occasions.

13. Rajaji Gagabhai Chauhan is the P.W. 5. He has stated in his deposition that the deceased Bhalaji was his uncle who had three sons and Khodabhai was the third son. He has further stated that he was living near Bhalaji's house which is situate at a distance of about twenty - twenty five feet. Bhalaji and his sons were living separately. Khodabhai and Bhalabhai both were living together.

13.1 He has further stated that the incident had taken place at 6.00 a.m. on 8th May 2007. A quarrel had taken place between Khodabhai and Bhalabhai and the accused Khodabhai put a stick on the throat of Bhalaji. Chandubhai, Bhagabhai and his wife Harkhaben separated them. At the relevant time, he was sleeping in the farm and he was awakened by the shouting. Thereafter, he went there and got them separated. Khodaji had remained in the house and Bhalaji had come near his house. Thereafter, Chandubhai called Punjabhai on phone. Thereafter, Bhalaji had run away and Khodabhai was chasing him. Khodabhai had beaten Bhalaji, caught him by his hand and brought him to home. Thereafter, the victim was laid down on a cot on which there was a mattress. Thereafter, Bhalaji had called buffaloes. Meanwhile, his two sons Punjabhai and Ambalal had arrived. Thereafter, this witness went to fill water. Bhalabhai died after an hour. Thereafter, police had arrived after half an hour. Police had inquired from him. He does not know why the quarrel had taken place. He has further stated that Khodabhai is the son of his uncle, and he knows him.

13.2 In the cross-examination of this witness by the learned advocate for the accused, this witness has stated that his farm was at a distance of about 300 feet away from the house of Bhalabhai. The millet bundles were brought in the farm and he went to the farm in the evening. He has stated that there is a distance of twenty-twenty five feet between his house and the house of Bhalabhai. He has denied the suggestion that he does not know what had happened between Bhalabhai and Khodabhai as he had gone to the farm. He has stated that he does not know the reason for which the quarrel had taken place between them. He has denied the suggestion that he has not seen Khodabhai beating Bhalabhai. He has affirmed that he has stated to the police that Khodabhai was beating Bhalabhai. He has also denied that when his wife shouted, Bhalabhai was sleeping in the cot. He has also denied the suggestion that as Khodabhai was not doing any activity, he had no talk with him. He has also denied that Khodabhai was quarreling off and on with all the persons in street. He has further stated that the deceased Bhalabhai was his real uncle and he had good relations with his uncle and all others.

13.3 He has further stated that the police took his statement on the very same day. He has denied the suggestion that he had not dictated to the police that Khodabhai had stayed in the house and Bhalabhai had stayed in another house.

He has also denied the suggestion that he has not dictated to the police after Khodabhai brought Bhalaji at home by holding his hand, he laid him down on a cot by putting the mattress thereupon. He was sleeping in the farm at the time they had come. He has also denied the suggestion that when he came, Bhalabhai was sleeping. He has stated that it takes two-three minutes for coming from farm. He has also denied the suggestion that when he came, Bhalabhai was sleeping. He has further stated that when he came, the father and son both were quarreling and he had seen both of them quarreling. He has also denied the suggestion that he has not stated to the police that when he came, the father and the son, both were quarreling and beating.

13.4 This witness has stated that he knew Ratanbhai Ambalal and by pointing to the canteen near the court, he stated that the distance of Ratanbhai's farm from their house is similar distance of the canteen from the place of his deposition. He has denied the suggestion that no such incident of putting the stick had happened near the house. He has also stated that when he went, Chandubhai was present and Chandubhai had seen what was seen by him. The house of Chandubhai is situated at third number. He has denied the suggestion that he was giving false deposition for the reason that he did not have good terms with Khodabhai and had good relations with his uncle and he is falsely naming the accused for the reason of having feelings for the uncle.

14. Harkhaben Raijibhai Chauhan is P.W. No. 6. In her deposition, she has stated that Raijibhai is her husband. Her house and the house of Khodabhai come in same line. Bhalaji is her uncle-in-law and Khodaji and Bhalabhai both were living together.

14.1 She has further stated that she did not remember the date of the incident or when it had happened. She has stated that incident happened at 6.00 O'clock in the morning. Khodabhai was beating Bhalaji and at that point of time, she was returning from the farm and she had separated them. After separating, she brought Bhalaji at her house and thereafter, she had gone to take the grass bundle. When she came back with the grass bundle, Khodabhai had brought Bhalaji after beating and he laid him. She has also stated that she did not know as to why the quarrel had taken place. She has further stated that Bhalaji's son was called by making a phone call. Later on, she came to know that Bhalaji had died and the Police had inquired from her.

14.2 In the cross-examination by the learned advocate for the accused, this witness has stated that when the incident took place, her husband had gone to farm at night. The farm is a little far from her house. She has further stated that she did not know whether Khodabhai and Bhalaji were quarreling frequently. She has further stated that when she came out, she saw Bhalaji lying on the cot. She has further stated that she did not know where Khodabhai was wandering right from the morning. She has stated that she was not present when Bhalabhai was laid on the cot. She has further stated that she has not stated to the police that Bhalabhai was made to lie down at her house. She has also stated that she did

not know the reason for quarrel between Bhalabhai and Khodabhai. She has denied the suggestion that from the village people, she came to know of the fact that Khodabhai had beaten Bhalabhai. She has admitted that she had not seen Khodabhai beating. She has denied that the incident of beating had not happened. She has further stated that the deceased was her uncle-in-law and they were not going to the house of Khodabhai.

15. Punjabhai, the real brother of the accused, is the P.W. No. 7. In his examination-in-chief, he has stated that the accused is his real brother. He was living at village Kakarkhad at the distance of 5 Km away. He has stated that he and the accused were not living together. The incident had happened on 8th May 2007 at 6.00 a.m. when he was at Kakarkhad village. Chandubhai, the son of his uncle had informed him on phone that Bhalaji is killed and asked him to come. He has further stated that he had not told the name of the person who had killed him. He came at about 9 O'clock when the dead-body of his father was lying and none was present there. His father had sustained four to five injuries. He went to Kathlal Police Station but his complaint was not taken at Police Station. He came to know that police had gone to the place of incident and thereafter, when he came back, the police was present. Thereafter, the police had drawn the Panchnama. He has stated that he does not have relations with the families nearby. He has further stated that no one informed him on phone as to who had killed his father. He has denied that when he came, his father was alive and had talked with him.

15.1 This witness was also declared as hostile, and after taking permission from the Court, the learned advocate for the prosecution cross examined him.

15.2 In his cross-examination, he has stated that the police had taken his statement. He has denied that he has stated to the police in his statement before the police that a day prior to the incident at about six to half past six o'clock in the morning, Chandubhai, the son of his uncle had stated to him on phone that Khoda had beaten his father very much and his father had become unconscious and therefore, called him to come home immediately. He has also denied the suggestion that he had stated in his police statement that on calling his father by shouting, he told that Khoda had beaten him very much, he has broken his head, and to take him to hospital immediately and five minutes after saying so, his father had died at about 7 O'clock in the morning. He has denied the suggestion that although his brother had killed his father, he was giving a false deposition.

15.3 In his cross-examination by the learned advocate for the accused, he has admitted that he did not have good relation with the persons of his locality. He has also admitted that the persons nearby were quarreling with Khodabhai for even trifle matters and they were even quarreling with his father. He has stated that Chandubhai and all others were talking with each other frequently to involve Khodabhai in an offence. He has further admitted that no offence was registered against Khodabhai in the police record and he has no personal information with regard to the present offence.

16. The Doctor who conducted the post-mortem, Dr. Bhaskar Maganbhai Kansar, is examined as P.W. No. 8. In his examination-in-chief, he has deposed that on 8th May 2007, he was discharging his duties in the Community Health Center, at Kathlal and at that time, one police constable having Buckle No. 16 came to the Community Health Center - Kathlal with yadi No. 75/07 for conducting postmortem of the dead-body of Bhalaji. The post-mortem started at 03:05 hours and was completed at 04:35 on 8th May 2007.

16.1 He has further stated that there was a white Dhoti and a white sando on the dead-body and the clothes were smeared with blood. His physical structure was normal, weak. Rigor mortis was present in both the hands and legs. His both the eyes were closed. Nothing abnormal was detected in his ears, nose, teeth and tongue. His mouth was closed. The following external injuries were found on the body of the deceased:-

1. A CLW of 3 x 2 x 1 c.m. on the front and upper part of right tibia.
2. A CLW of 3 x 2 x 1 c.m. on the part of head on the left frontal region.
3. A contusion of 16 x 3 c.m. in the right scapular region.
4. One another contusion of 19 x 4 c.m. spread upon back side from right lower scapular region.
5. One another contusion of 14 x 4 c.m. spread on back side from right scapular region.
6. One incised wound of 3 x 1 x 1 on the index finger of right hand.
7. One incised wound of 2 x 1 x 1 c.m. between the ring finger and of left hand.
8. One abrasion of 2 x 2 c.m. on the left elbow. One another contusion of 5 x 3 c.m. was there on the right hip.
9. One contusion of 8 x 4 c.m. on right scapular region.
10. One another contusion of 6 x 4 c.m. on left scapular region.

On internal examination, the following injuries were found:-

On Head

1. A CLW of 3 x 2 x 1 c.m. on the left frontal region. In the internal examination, his mucosa was pale.

On Chest

1. Fracture from the front side of the seventh and eighth ribs of right side.
2. Pleura (lung partition) was pale.
3. There was mucosa on larynx, trachea and on colmas.
4. Right lung was pale.

5. Left lung was pale.
6. Pericardium (cover of heart) was pale.
7. Heart was empty.
8. Large blood veins were abnormal.

On Stomach

1. The wall was abnormal. The cover of skin in stomach (paratonium) was pale. Approximately, one and half to two liters blood was there in abnormal cavity in stomach anus.
2. The cavity of mouth, teeth, tongue and pharynx - as per column no 30.
3. Esophagus, palmucosa.
4. Stomach and material found from inside were semi - solid food material.
5. Small intestine and the material found from it was liquid food material.
6. Large intestine and the material found from it were fecal material - excreta.
7. Weight of liver and Pancreas - rapture.
8. Stomach and Suprarinals - pale.
9. Spleen and Kidneys were pale, bladder was empty, no any abnormal was there in genital organs.
10. No abnormal was there in spinal cord.

16.2 In the opinion of this witness, the reason of the death of deceased Bhalaji was due to hemorrhagic shock liver rupture. This witness had proved the postmortem report and his signature thereon.

16.3 This witness has further stated that the injury of liver rupture can be caused by the weapon like stick and the said injury is enough for death.

16.4 In the cross-examination of this witness by the learned advocate for the accused, this witness has stated that he has been performing duty since eight years at Community Health Centre at Kathlal and he has done many such post-mortems. The post-mortem form is in prescribed proforma and it is being written accordingly. He has admitted that the description of the injuries are not written in column No. 17. He has stated that he can understand whether the injury is fresh. He has denied the suggestion that he is saying for the first time in the court that the injury was fresh. He has stated that Liver may not burst due to contusion but the external injury is caused. He has denied the suggestion that if a person falls down from the tree in up side down condition and if the stomach is pressed and it clashes with hard material, there are chances of rupture. He has also denied the suggestion that if a person falls down from upper side in up side down condition, there are chances of the fracture of rib. He has further denied

the suggestion that if a person falls down from the upper part, there are chances of fractures on ribs as well as other fractures. He has denied the suggestion that some injuries of the dead-body were old. He has also denied the suggestion that despite there were old injuries, the same are shown as fresh injuries. He has admitted the contusion on the body may remain for a long time. The injuries of contusion were within 24 hours. He has admitted that the description of the injuries were not written in column No. 17 and he was stating for the very first time in the Court on the date of recording of his evidence. He has further admitted that rupture could not be caused by beating with the stick. He has further denied that the injury of the head may be caused if a person falls up side down.

17. Circle Inspector of Taluka Panchayat, Kathlal, Suryakant Ninama, is examined as P.W. No. 9. In his examination-in-chief, he has stated that while he was performing as such, a yadi was received from Kathlal Police on 17th May 2007 for preparing the map of the scene of offence of this case. He, therefore, went to the place of the incident on 6th June 2007, and had prepared the map of the scene of offence. The Panchnama of the place of the incident was given to him therewith. He had prepared the map on site as per the measurement. He has proved the map and his signature thereon.

17.1 In the cross examination, this witness has admitted that there is a distance of about three farms between the house of the deceased, the house of the complainant, Chandubhai and that of scene of offence and big farms are situated there. He has also admitted that there is a grazing land after leaving the farm from the scene of offence and neem trees are situated there. The house of Ratanbhai is situated at western side from there. He has admitted that there is a distance of about 200 steps.

18. The Investigating Officer, Govindji Nanji Parmar, is P.W. No. 10. In his examination-in-chief, he has stated that he was performing duty as a P.S.I. at Kathlal Police station on 8th May 2007 and at that time, P.S.O. informed him that a quarrel has taken place at Nani Muvadi village of Sandesar village and one person had died. They had therefore gone to the said village and taken the complaint from Chandubhai Bhagabhai Chauhan and sent it to be registered.

18.1 He has further stated that a public report was done after informing the superior officer. FSL was informed. The inquest Panchnama of the deceased was done between 12:00 to 12:30 hrs. The Panchas have put their signatures in his presence. He has proved the panchnama.

18.2 He has further stated that the statements of the concerned witnesses were taken. The weapon, which was used by the accused was seized in the presence of the panchas by reaching the scene personally to the site as shown by him. A panchnama was done as dictated by the panchas. The panchas had put their signatures in his presence. The statements of the concerned witnesses were taken. Yadi was done to perform the P.M. of the dead body. As there were

evidences against the accused, the Charge-sheet was filed in the Court.

18.3 He has further stated that he had taken the statement of the witness Punjabhai Bhalabhai Chauhan wherein he had stated that "yesterday during six to half past six o'clock in the morning, the son of my uncle Chandubhai Bhagabhai has informed me on the mobile phone that Khoda has beaten very much to your father, and your father has become unconscious, so you come home immediately Hence he and Ambalal and I had come immediately to Sandesar. Further, it was dictated, so on calling my father loudly, he said, Khoda has beaten me very much. He has broken my head. Take me to hospital immediately. Saying accordingly, my father died after about five minutes at about seven o'clock in the morning."

18.4 In his cross-examination by the learned advocate for the accused, he has stated that Punjabhai had come to police Station. He has denied that he came to inform the fact of an offence. The phone was received between 10.00 and 11.00 O'clock in the morning. At that time, Punjabhai was present. The persons and the witnesses were at some distance at the time when the complaint of the complainant was taken. The complaint was written as dictated by the complainant. He has denied the suggestion that the incident had not taken place near the house. He has further denied that the complainant has not dictated in the complaint that he felt that the father and son both are quarreling and, therefore, he had gone to make phone call to Punjabhai. He has admitted that the complainant had not dictated in the complaint that, the accused sat over upon victim and stood keeping the stick on the throat of the deceased. He has also admitted that the complainant has not dictated in the complaint that, the accused had given the stick blows to the deceased or that the deceased was calling the buffaloes sitting on the cot.

18.5 This witness has denied the suggestion that the signatures of only the panchas were caused to be made in the panchnama. He has also denied that the stick which was lying in an open area and it was shown by him to panchas. He had taken the statement of Raijibhai Bhagabhai. He has denied that he has not dictated that Khodabhai has beaten Bhagabhai.

18.6 He has admitted that the houses of the persons are situated all around the place of the incident. He has also admitted that it did not appear proper to him to take the statements of the persons of houses nearby. He has denied that no such statements were taken. He has stated that he has taken the statement of Ratnabhai Ambalal. He has denied the suggestion that Raijibhai has not dictated in his statement that Khodabhai had brought Bhalaji at home by holding his hand and putting the cot and mattress thereupon, he had laid him. He has also admitted that Raijibhai has not dictated that the father and son were quarreling when he came home from the farm. He has denied that Raijibhai has not dictated that Khodabhai had put a stick on the throat of his father and stood upon him and he himself wrote it.

18.7 He has further stated that he had taken the statement of Harkhaben. He has denied that he himself had written the fact of complaint of the complainant. He has stated that he does not whether the persons of the street of Khodabhai have no good relations with him. The fact of the complaint was read over to the complainant. He has further stated that the statements were not read over to the witnesses after having been dictated. He has denied a suggestion that a false charge-sheet has been made.

19. After hearing the learned counsel for the parties and after going through the aforesaid material on record, we find that there is no dispute that the deceased and the accused, the father and the son respectively, used to stay together and in that house, there was no other person. It appears from the evidence of the complainant, P.W. No. 1, who is the uncle's son of the accused and the nephew of the deceased, that on hearing the shouts of quarrel between the deceased and the accused, he came out of his house which is adjoining place of residence of the complainant and found that his uncle was being pressed on the ground and the accused was lying on his father with a stick in his hands. On seeing the aforesaid incident, he came to the place and separated the father and the son and thereafter, telephoned to the elder son of the deceased informing that the accused was beating his father and requested him to come immediately. It has been well established from the evidence on record that the said elder son was living elsewhere and he also came to the spot. The said elder son was examined as P.W. No. 7 and he was declared hostile and thereafter, was cross-examined by the learned Additional Public Prosecutor for the prosecution. Although the elder son has become hostile, in his evidence he has admitted that he received a telephone call from his cousin, the P.W. 1-complainant, and after hearing the incident of torture upon his father, he came to the spot at about 9 O'clock. In his evidence, he has, however, not supported the prosecution that the father made a statement to him that it was the accused who had beaten him.

20. From the above facts, we find that the learned Sessions Judge was quite justified in believing the version of P.W. No. 1-complainant who is an eyewitness of the incident of quarrel followed by the fact that the victim had subsequently died as a result of the beating by a stick. The fact that the cause of death was the injuries caused by a stick has been well established from the post-mortem report and the deposition of the Doctor who performed the post-mortem. It appears that to the said Doctor, a suggestion was given by the learned advocate appearing on behalf of the accused that if somebody falls from a tree such kind of injuries could be caused, but the same has been denied by the Doctor.

21. We, moreover, find that in his statement u/s 313 of the Code of Criminal Procedure, there is no explanation that his 63 years old deceased father had climbed on a tree and had fallen therefrom, resulting in the injuries and consequent death.

22. We also do not find any reason to disbelieve the evidence of Raijibhai Gagabhai Chauhan, P.W. No. 5, and Harkhaben Raijibhai Chauhan, P.W. No. 6,

who had witnessed the quarrel between the deceased and the accused at the relevant point of time along with the fact that the accused was chasing his father with a stick.

23. From the aforesaid set of evidence, we find that what has been well established is that there was a quarrel between the deceased and the accused, and the accused, with a stick in his hand, had laid down his father on the ground when they were separated by the P.W. No. 1-complainant. It has further been proved that the deceased subsequently had lifted the father and placed him on a cot in a seriously injured condition and within a hour or two, he died. Once the fact that the accused was found quarreling with the victim coupled with the fact that there was a scuffle between the two and the accused had a stick in his hand has been proved, the death of the victim by the said stick has been well established by circumstantial evidence and such fact has been corroborated by medical evidence.

24. We cannot shut our eyes to the fact that being the only inhabitant of the house with the deceased, and the further fact that there was a quarrel between the two with a stick in the hands of the accused, the prosecution has clearly proved that it was not a case of accident but was a case of murder by the accused. It is true that some of the witnesses having become hostile, the prosecution case has become weak to some extent but the evidence on record is sufficient to prove that it was the appellant who, by the stick in his hand, struck his father repeatedly knowing full well that such injuries, in the normal course, will cause death of a man aged 63 years. We do not find any reason to disbelieve the version of the P.W. No. 1, P.W. No. 5 and P.W. No. 6, who are all relative and neighbours of both the deceased and the accused and are fully reliable witnesses. Their evidence is consistent with the medical evidence. The other son of the deceased, the P.W. No. 7, although become hostile, has not disputed the fact that at the relevant time, the P.W. No. 1 had telephoned him by mobile asking him to come immediately and consequently, he came. It appears that subsequently, to save his brother, he deviated from his early statement before the police.

25. We are also not impressed by the submission of Mr. Goswami that at the most this was a case u/s 304 Part I of the Indian Penal Code in view of the fact that by taking such plea, the victim is taking advantage of his cruelty and with full knowledge that the way the victim was beaten was sufficient to cause the death of a person. Such being the position, we affirm the findings and the consequent sentence imposed upon the appellant by the learned Sessions Judge. The appeal is, thus, devoid of any substance and is consequently dismissed.