

(2009) 08 GUJ CK 0004
In the Gujarat High Court

Case No : Criminal Appeal No's. 874 of 2002 and 97 of 2003

Lilgar Kamjibhai Pargi and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 209, 374(2), 378(1), 378(3)
Penal Code, 1860 (IPC) — Section 141, 142, 143, 144, 145

Citation : (2009) 3 GLH 195 : (2009) 3 GLR 2440

Hon'ble Judges : J.R. Vora, J;H.B. Antani, J

Bench : Division Bench

Advocate : K.J. Shethna, in Criminal Appeal No. 874 of 2002 and Chetnaben M. Shah, APP in Criminal Appeal No. 97 of 2003, for the Appellant; Chetnaben M. Shah, Assistant Public Prosecutor in Criminal Appeal No. 874 of 2002 and J. Shethna in Criminal Appeal No. 97 of 2003, for the Respondent

Judgement

J.R. Vora, J.—A trial i.e. Sessions Case was conducted in all following 8 accused for the offences punishable under Sections 143, 147, 148, 447, 302, 326, 323 and 504 read with Section 149 alternatively read with Section 34 of the Indian Penal Code.

1. Ramesh Birsinh Vishwakarma
2. Chakrabahadur Karansinh
3. Shailesh Arshibhai Ahir
4. Jagdishbhai Lalgar Pargi
5. Pravinbhai Lalgar Pargi
6. Lilgar Kamjibhai Pargi
7. Lalgar Kamjibhai Pargi
8. Kamjibhai Dhanjibhai Pargi

A crime came to be registered before Morwa Police Station of Panchmahal District, being C.R. No. 1/98 of 2001, for the above-said offences against all the above 8 accused.

2. As per the brief prosecution case, an agricultural land of one Riipa Akham was situated in village Khedapa, Taluka - Santrampur and Rupa Akham was father of P.W. 8-Maniben. Thereafter, Kadana Dam was built up and said agricultural land consisted of the said part of the dam, Government offered agricultural land to Rupa Akham at village Agarwada. Rupa Akham was cultivating the land at Agarwada, and thereafter, he entrusted this agricultural land to original accused No. 8-Kamjibhai Dhanjibhai Pargi, years back. The stand of original accused No. 8-Kamjibhai Dhanjibhai Pargi was that the said land was sold to him by Rupa Akham and not entrusted only for cultivating. P.W. 8-Maniben therefore, instituted proceedings in the Court of Mamlatdar, Morwa for proper entries to be made in the revenue record. In the said revenue proceedings, ultimately, it was resolved that Maniben was the owner of the land as heir of Rupa Akham. On 19th of June, 2001, after these proceedings before Mamlatdar, P.W. 8-Maniben visited village Agarwada. The time of visit of Maniben at village Agarwada is in dispute by the defence, but it is certain that on 19th of June, 2001, P.W. 8-Maniben visited village Agarwada and had been to the said agricultural land at about 4-00 p.m. along with her husband. Maniben noticed that accused No. 8-Kamjibhai Dhanjibhai Pargi and his two sons i.e. accused No. 6-Lilgar and accused No. 7-Lalgar were cultivating her agricultural land by tractor. Maniben prevented them and stated that not to cultivate her land. At that time, deceased in the incident Kalyanbhai Dalabhai Pargi and injured complainant Jivabhai Dalabhai Pargi and other family members of these two persons were present near one hand pump situated near the field in dispute and the house of these persons also situated near this hand pump. As per the prosecution case, at the instance of Maniben, Kalyanbhai was assisting her in the proceedings, which were instituted by Maniben before Mamlatdar Court at Morwa. This was disliked by all accused Nos. 6, 7 and 8 and on this count, the family of accused No. 6-Lilgar Kamjibhai Pargi, accused No. 7-Lalgar Kamjibhai Pargi and accused No. 8-Kamjibhai Dhanjibhai Pargi were not on speaking terms with the family members of the deceased and his brother Jivabhai Dalabhai Pargi, who is complainant in the present case. The incident occurred at 4-30 p.m. in and out of the said disputed land at Agarwada. According to the prosecution case, P.W. 8-Maniben attempted to prevent original accused Nos. 6, 7 and 8 from cultivating the land, and at that time accused No. 7-Lalgar after fetching an axe and speaking abuses, rushed towards the complainant Jivabhai Dalabhai and deceased Kalyanbhai Dalabhai. Accused No. 7-Lalgar stated to deceased Kalyanbhai Dalabhai that Kalyanbhai was giving undue assistance and co-operation to Maniben, and therefore, Maniben had filed the proceedings before Mamlatdar Court, and saying so, accused No. 7-Lalgar inflicted two axe blows on the head of the deceased Kalyanbhai. Kalyanbhai had fallen on the ground. Complainant "Jivabhai, brother of the deceased Kalyanbhai, noticed the incident and ran towards Kalyanbhai. At that time, accused No. 6-

Lilgar Kamjibhai Pargi, who also had an axe with him, rushed towards Jivabhai-complainant and inflicted one blow on the head of Jivabhai. The blow was grievous and was bleeding from the head. At that time, accused Nos. 6, 7 and 8 were shouting, and therefore, accused No. 4-Jagdishbhai Lalgar Pargi and accused No. 5-Pravinbhai Lalgar Pargi both sons of accused No. 7-Lalgar Kamjibhai Pargi, came there and inflicted stick blows upon witness, Rughnath Hirabhai. cousin brother of the complainant. At that time, witness Rughnath Hirabhai was doing agricultural work in his field, which was adjoining to the disputed land. Accused No. 4-Jagdishbhai Lalgar Pargi and accused No. 5-Pravinbhai Lalgar Pargi and accused No. 8-Kamjibhai Dhanjibhai Pargi all the three, inflicted stick blows on the back of Rughnath Hirabhai, and at that time, accused No. 1-Ramesh Birsinh Vishwakarma, accused No. 2-Chakrabahadur Karansinh and accused No. 3-Shailesh Arshibhai Ahir came there and started pelting stones. It is the prosecution case that accused Nos. 1, 2 and 3 were residing at Gandhinagar and were called by accused Nos. 4 and 5 for this purpose only because accused Nos. 1, 2 and 3 were friend of accused Nos. 4, 5 and 6. In stone pelting, the family members of the complainant had received injuries. There was heavy commotion and accused persons ran away from the field towards their houses which were nearby. It was noticed by all of them that deceased Kalyanbhai Dalabhai had died on the spot. Thereafter, Hitesh Jivabhai, son of the complainant Jivabhai, brought injured Jivabhai in Government Hospital, Morwa. After taking treatment at Morwa Government Hospital, complainant reached at Morwa Police Station and offered complaint of the incident at about 20-30 hours. A crime was registered against all these accused and investigation was handed over to P.S.I. Mr. Ramjibhai Rupsinh Damor P.W. 13. He visited the place of offence on that very night and got prepared the inquest panchnama. On next day, a panchnama of scene of offence was also prepared and sample earth as well as blood-stained earth, etc. were seized from the scene of offence. Post-mortem of Kalyanbhai was conducted on the next day at Morwa Community Health Centre by P.W. 2 Dr. Niraj Dhirendrabhai Parikh, examined at Exh. 24. Investigating Officer Ramji Rupsinh Damor recorded statements of the concerned witnesses and original accused Nos. 4 to 8 were attested on 22nd of June, 2001 and in pursuance of discovery panchnama, accused had discovered weapons used in the offence. Accused Nos. 1, 2 and 3 were arrested on 20th of June, 2001 and on 21st of June, 2001, a test identification parade was held in the presence of Executive Magistrate so far as accused Nos. 1, 2 and 3 were concerned, and thereafter, a charge-sheet came to be filed against all the 8 accused in the Court of learned Chief Judicial Magistrate at Godhra and was numbered as Criminal Case No. 2241 of 2001. This case was committed to the Court of Sessions in pursuance of Section 209 of the Criminal Procedure Code and was made over to the trial Court.

3. A charge for the aforesaid offences came to be framed against all the 8 accused vide Exh. 3 on 8th of April, 2002 and all the accused pleaded not guilty, and hence, the prosecution tendered 13 witnesses in support to prove its case.

P.W. 1 complainant "injured Jivabhai Dalabhai Pargi, examined at Exh. 19; P.W. 2- Dr. Niraj Dhirendrabhai Parikh, who conducted the post-mortem of deceased and examined injured Jivabhai, has been examined at Exh. 24; P.W. 3-Dhanabhai Kalubhai, examined at Exh. 28, being panch of scene of offence panchnama, which is produced at Exh. 29; P.W. 4-Bhurabhai Ramjibhai, examined at Exh. 30 is panch of discovery panchnama, which is placed at Exh. 31, by which the accused Nos. 6, 7 and 8 alleged to have discovered the weapons, Exh. 32 is the panchnama of the arrest of accused Nos. 6, 7 and 8; P.W. 5 Sardarsinh Kanjibhai, has been examined at Exh. 33, a panch of test identification panchnama and that panchnama is placed at Exh. 34 in respect of accused Nos. 1, 2 and 3; P.W. 6-Rughnathbhai Hirabhai Pargi, examined at Exh. 35, is an eye-witness and he stated to have been received injuries by stick at the hands of accused Nos. 4 to 8; P.W. 7 Punabhai Chuniyabhai Pargi, is also an eye-witness and neighbour of the disputed lands, has been examined at Exh. 36; P.W. 8-Maniben Somabhai, examined at Exh. 40, is also an eyewitness, whose land was in dispute; P.W. 9-Somabhai Dhulabhai, is also an eye-witness and husband of P.W. 8-Maniben and is examined at Exh. 42; P.W. 10-Kanaksinh Jintubhai Pasaya, examined at Exh. 44 is Executive Magistrate, who draw the test identification panchnama of accused Nos. 1, 2 and 3; P.W. 11-Laxmiben Kalyanbhai, examined at Exh. 45, is the widow of deceased Kalyanbhai and she is an eye-witness; P.W. 12-Hiteshkumar Jivabhai Pargi, examined at Exh. 47, is also an eye-witness and son of the complainant injured, who had taken injured to the hospital and P.W. 13-Ramjibhai Rupsinh Damor, examined at Exh. 50, is Investigating Officer. Prosecution also produced on record Inquest Panchnama at Exh. 40, Exh. 15 panchnama by which the clothes of the deceased were seized; covering letter by which the muddamal was sent to Forensic Science Laboratory at Exh. 16, Forensic Science Laboratory report at Exh. 17, Serological Report at Exh. 18, complaint filed by Jivabhai at Exh. 20 and xerox copy of Station Diary at Exh. 21. Defence also produced on record some documentary evidence about attendance of Jivabhai on the day of the incident, injury certificate of Jivabhai is produced at Exh. 25 and Exh. 26 and post mortem note of the deceased is produced at Exh. 27.

4. This is all the evidence of the prosecution.

5. The trial Court thereafter brought the incriminating circumstances appearing against each of the accused and the case of each of the accused of total denial, except accused Nos. 6 and 7 produced on record written explanation, which is at Exh. 54. It was stated that the land in question was sold to them in 1982 for Rs. 4,000/- by Rupa Akham, father of Maniben and that deceased Kalyanbhai Dalabhai Pargi, Jivabhai Dalabhai Pargi and Rughnathbhai Hirabhai were instigating Rupa Akham to grab the land from them, and therefore, a civil suit for permanent injunction was filed by Rupa Akham in the Court of Civil Judge (J.D.) at Godhra, being Regular Civil Suit No. 314 of 1992, and in the said suit, interim stay was refused by the learned Civil Court, Rupa Akham preferred Misc. Civil Appeal No. 188 of 1993, which was also dismissed by the District Court, and

therefore, the possession of the land was with them only, and on account of instigation by deceased and Jivabhai, a false case was filed against the whole family. Along with the further written statement, certified copies of Regular Civil Suit and certified copy of judgment of District Court in Misc. Civil Appeal No. 188 of 1993 have been produced.

6. Thereafter, the learned trial Judge heard the prosecution as well as the defence and came to the following conclusion:

The original accused Nos. 1, 2, 3, 4, 5 and 8 were acquitted for the offences punishable under Sections 143, 147, 148, 447, 302, 326, 323, 504 and 149 of the Indian Penal Code while accused No. 6-Lilgar Kamjibhai Pargi was found guilty for the offence punishable u/s 324 of the Indian Penal Code and was acquitted for the offence punishable u/s 302 and other charges levelled against him and accused No. 7-Lalgar Kamjibhai Pargi was found guilty for the offence punishable u/s 302 of the Indian Penal Code and was acquitted for all other charges levelled against him as the learned trial Judge came to the conclusion that accused Nos. 6 and 7 both were responsible for their individual act and there was no unlawful assembly or rioting proved by the prosecution as well as role played by accused Nos. 1, 2, 3, 4, 5 and 8.

Accused No. 6-Lilgar Kamjibhai Pargi was sentenced to undergo rigorous imprisonment of 14 months and to pay Rs. 500/- in default to undergo rigorous imprisonment of 1 month while accused No. 7-Lalgar Kamjibhai Pargi was sentenced to undergo imprisonment for life and to pay fine of Rs. 2,000/-, in default to undergo rigorous imprisonment of four months.

7. Being aggrieved by the abovesaid judgment and order of conviction and sentence, the original accused No. 6-Lilgar Kamjibhai Pargi and original accused No. 7-Lalgar Kamjibhai Pargi, both preferred Criminal Appeal No. 874 of 2002 u/s 374(2) of the Code of Criminal Procedure while the State preferred Criminal Appeal No. 97 of 2003 u/s 378(1)(3) of the Code of Criminal Procedure against original accused Nos. 1, 2, 3, 4, 5 and 8 for their acquittal of all the charges. It is to be noted that original accused No. 6-Lilgar Kamjibhai Pargi - original accused No. 7-Lalgar Kamjibhai Pargi both were acquitted of charges u/s 149, etc. of the Indian Penal Code, but the State has not preferred any appeal against the acquittal of original accused Nos. 6 and 7 of the rest of the charges, for which they are acquitted.

8. Learned Senior Counsel Mr. K.J. Shethna for the appellants in Criminal Appeal No. 874 of 2002 and for the respondents in Criminal Appeal No. 97 of 2003 and learned A.P.P. Ms. Chetnaben M. Shah on behalf of the State-respondent in Criminal Appeal No. 874 of 2002 and for appellant in Criminal Appeal No. 97 of 2003 were heard in detail.

9. We have undertaken a complete and comprehensive appreciation of all vital feature of the case in both the appeals and the entire evidence on record with reference to the broad and reasonable probabilities of the case, have been

considered by us. The contentions raised by both the sides have also been taken into consideration. We have re-appreciated and scrutinized each corner of the case to come to our independent conclusion.

10. First of all, at this juncture, it is necessary to bear in mind that when prosecution proposes to establish the case through direct evidence of eye-witnesses, it becomes the duty of a Court to appreciate such evidence carefully. The evidence of eye-witnesses cannot be brushed aside lightly or on imaginary or flimsy ground. Ordinarily, an eye-witness is worthy of credence unless it is established that the witness has reason to fabricate the case against the accused and that the facts from other evidence on record establish that it would not be just and proper to rely upon such witnesses. In cases of eye-witnesses, such evidence is required to be tested by considering as to what was the proximity of the witnesses with the scene of offence, what was the opportunity available to them to have witnessed the incident, whether the particular eye-witness was capable of observing of incident taking place and reproduce the same before the Court, etc. Once, it is established that the presence of the eye-witness at the scene of offence was natural and that he had an opportunity to observe the incident, then unless it is shown that the evidence of an eye-witness is tainted for the sound reasons, such evidence must be acted upon. Needless it is to say that, each case stands on its particular facts, but generally, while appreciating the evidence of an eyewitness, the above cardinal rules should be taken into consideration by a Court.

11. Further, it must be noted that at least one of the eye-witnesses is injured witness and for this injury one of the appellants is convicted for the offence punishable u/s 324 of the Indian Penal Code. Injuries on complainant Jivabhai is proved by medical evidence. It must be noted that so far as the injured witnesses are concerned, their evidence is required to be considered in a particular manner. Injured witnesses even if they are related and interested are worthy of some credence subject to strict judicial scrutiny. This is so because when the injury is not apparently self-inflicted and is found corroborated by medical evidence immediately after the incident, ordinarily, the evidence of such injured witness cannot be assessed with the air of suspicion. Once, the presence of the witnesses is established by the prosecution at the scene of offence, then only further scrutiny by the Court would be in what manner the injured witnesses reproduce in Court the crime committed. The presence of eye-witnesses at the place of occurrence cannot be suspected. Further, injured witnesses, unless cogent reasons shown by the defence, would not omit the real culprits and implicate falsely the accused person. The evidence of injured witnesses being of great value to the prosecution and it cannot be doubted merely on some supposed natural conduct of a person during the incident or after the incident because it is difficult to imagine that how a witness would act or react to a particular incident. His action depends upon number of imponderable aspects. An injured eye-witness may be exaggerating in their say, but such exaggerations may be discarded but not his entire evidence. The Court while appreciating the

evidence of injured eye-witnesses must not attach undue importance to minor discrepancies, but must consider broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereo-type investigation must be ignored. It must not be forgotten that there is a tendency amongst the truthful witnesses even to back up a good case by false or exaggerated version. In this type of situation, the best course for the Court should be to discard the exaggerated version or falsehood but not to discard the entire version. Further, when a doubt arises in respect of certain facts stated by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story.

12. In the present case, at least 7 eye-witnesses are examined by the prosecution, out of which one is injured witness and is complainant Jivabhai Dalabhai Pargi.

13. It is not in dispute that the death of Kalyanbhai is culpable homicide and for that P.W. 2-Dr. Niraj Dhirendrabhai Parikh has been examined. On 20-6-2001, during 6-45 a.m. to 7-45 a.m. he conducted post-mortem on the dead body of the deceased. The deceased had two external injuries as has been mentioned in post mortem notes and deposed by doctor. These injuries are as under:

(1) 3 cms. ? 1 cm. ? 1 cm. size horizontal lacerated wound over mid-parietal region coagulated blood (+) in wound.

(2) 3.5 cms. ? 0.5 cm. ? 1 cm. size vertical lacerated wound over the middle of parietal bone between forehead and 1st wound coagulated blood (+) in the wound.

14. According to doctor, there were corresponding internal injuries that there was disruption in right fronto-parietal suture. The blood was coagulated. Other internal organs were congested and the injuries were sufficient in ordinary course of nature to cause death. Injuries were ante-mortem and the cause of death was due to haemorrhagic shock due to head injury. Vide Exh. 27 post mortem note is produced and doctor stated that blunt side of an axe could have caused such "injury. He has been cross-examined on this aspect, but nothing is found out to dislodge the evidence of this witness. Likewise, this very witness examined injured P.W. 1-Jivabhai Dalabhai Pargi and according to this witness, on the day of the incident i.e. 19-6-2001 while he was on duty at Community Health Centre at about 6-00 p.m. Jivabhai Dalabhai Pargi, aged about 45 years, without police yadi, had been to him for treatment. A certificate has been given by him which is at Exh. 25 in which it is mentioned that the patient gave the history of having assaulted with an axe and sticks on the same day at 4-00 p.m. The patient had the following injuries:

(1) 5 cms. ? 0.5 cm. ? 0.5 cm. vertical C.L.W. over the middle of scalp region.

(2) Bleeding from the wound. 5-6 stitch taken. - L.A.

(3) C/o. pain at local site.

15. He was treated as an outdoor patient and recovery period was given 8 to 10 days. The injuries could have been caused by blunt side of an axe. So far as this witness is concerned, a certificate in proforma has been produced by the defence at Exh. 26 wherein this very witness has been advised rest from 19-6-2001 to 18-7-2001. It is not properly mentioned whether he was treated as indoor patient or outdoor patient. Head injury has been mentioned and defence has attempted to make out a case from this certificate Exh. 26 that the injuries caused to the complainant by the accused becomes doubtful fact on account of Exh. 26. Though, it is to be noted that only question is asked by the defence in respect of the Exh. 25 and Exh. 26 certificates as to whether both were contradictory or not and the witness answered that it was not contradictory and no chance was given to the witness to explain about Exh. 25 certificate and Exh. 26 certificate. On appreciating this aspect, we do not find that Exh. 26 certificate is given in proforma by the doctor for the purpose of medical leave. By seeing the certificate, we could not believe that the earlier certificate given by the doctor at Exh. 25 is false as to the injuries caused to the complainant Jivabhai and his testimony should not be believed. The certificate at Exh. 25 is an elaborate certificate wherein it has been categorically mentioned that the complainant was treated as an outdoor patient and in this connection, Exh. 26 has to be seen and not in contradiction. This is the cardinal rule of appreciation of evidence. Therefore, nothing turns out merely because the doctor issued a certificate to complainant Jivabhai that he required one month rest and is fit for duty after one month. This certificate was issued as complainant Jivabhai was a Government employee and was serving as Education Inspector in that District. Therefore, from the evidence of P.W. 2-Dr. Niraj Dhirendrabhai Parikh, it is proved beyond doubt that, the death of Kalyanbhai was of culpable homicide and that Jivabhai P.W. 1 complainant was examined by him soon after the incident at about 6-00 p.m. and had received the injuries stated in the certificate at Exh. 25, coupled with the history given by the patient i.e. P.W. 1-Jivabhai.

16. Now, considering the evidence of eye-witnesses P.W. 1-Jivabhai Dalabhai Parikh, examined at Exh. 19, he stated that at the time of the incident on 19-6-2001 he reached at Agarwada because he was residing at Agarwada and had been to Santrampur, When he reached near the disputed land, he noticed that, accused Nos. 6, 7 and 8 with the help of accused Nos. 4 and 5 were cultivating the land belonged to Maniben, with tractor. Maniben was asking them not to cultivate her land and was saying that the land belonged to her. In the meantime, accused No. 7-Lalgar Kamjibhai Pargi with an axe in his hand, speaking abuses, ran towards the house of the witness. At that time, deceased Kalyanbhai was seen out of the disputed land and was sitting on a hand pump. On seeing the accused No. 7-Kalyanbhai stood up and stated that while he (Kalyanbhai) was abused and the land belonged to Maniben. Thereafter, as soon as Kalyanbhai stood up, accused No. 7-Lalgar Kamjibhai inflicted an axe blow on the head of Kalyanbhai and Kalyanbhai fallen down on the ground. Seeing this,

this witness Jivabhai, according to him, went towards Kalyanbhai. At that time, accused No. 6-Lilgar Kamjibhai Pargi came to him with an axe in his hand and inflicted one blow on his hand. The blood started oozing, and therefore, according to witness, he sat down on the ground. His cousin Rughnathbhai came there and accused Nos. 6 and 7 both started shouting. Therefore, accused Nos.4 and 5 both sons of accused No. 7-Lalgar, came there with sticks and inflicted blows on Rughnathbhai. On hearing shouts, three other persons, whom the witness referred as "goondas" who had been from Gandhinagar had started pelting stones and these stones were hit upon the family members of both the brothers i.e. families of Kalyanbhai and Jivabhai. Kalyanbhai and Jivabhai are both real brothers and according to this witness, accused No. 8-Kamjibhai Dhanjibhai Pargi was residing nearby. This witness stated that thereafter Hitesh kumar, son of Jivabhai came there and had taken him to the hospital where he had been treated, and thereafter, he offered complaint before police station, which is placed at Exh. 20 and has been identified by him.

17. This witness Jivabhai has been cross-examined in detail. Mostly, it has been asked that the land belonged to Kamjibhai Dhanjibhai Pargi and he was noticing the cultivation on land since years. It was asked that while the land was being cultivated by the tractor, Maniben tried to prevent, and therefore, altercations took place between Maniben and the accused persons. At that time, no accused had inflicted any injuries on Maniben. Though, the witness stated in his cross-examination that accused Lilgar inflicted injury by sharp-edged part of an axe upon his head. He also stated that he had seen only one axe blow being inflicted upon his deceased brother Kalyanbhai. He denied the suggestion that Kalyanbhai was unduly making attempts to grab the land belonged to the accused, and therefore, assisting Maniben. He was also alleged that Chimanbhai and Bhimji are his younger brothers and both were serving in Police Department. Bhimji was First Grade Jamadar and Chimanbhai was Police Constable. It was suggested to the complainant that the complaint came to be filed only when both these Bhimjibhai and Chamanbhai reached at village and at their instance the accused are falsely implicated. This suggestion has been denied by the witness. He also stated that he was admitted as an indoor patient and was in the hospital for about 10 days. He was asked about accused Nos. 1, 2 and 3 and part played by them. He was also asked as to whether Maniben was resident of village Agarwada and the witness denied and stated that Maniben was not residing at Agarwada and the witness denied and stated that Maniben was not residing at Agarwada and whenever she used to visit she came to the house of deceased Kalyanbhai and then she used to leave from Agarwada. He denied the knowledge about the civil suits which were pending at Godhra between the parties. He was asked about his wife, his brother and he himself were taking interest in the land of Maniben and he denied. In examination-in-cross, he further stated that on the day of the incident, he visited village Padedi-Adod. which is at the distance of 5 to 6 kms. He used to travel in bus and on the day of the incident, he used which vehicle, he Could not remember. He admitted that for his official activities he was

required to keep a diary of daily activities. Defence produced at Exh. 21 a xerox copy of the dairy maintained by this witness wherein it is written that on 19th of June, 2001 i.e. on the day of the incident, he was gone on medical leave. Defence wanted to show that on 19-6-2001, according to the remarks in Exh. 21 the witness was on medical leave and could not be present at the scene of offence and that he is not a truthful witness. In examination-in-cross he further stated that on infictive, blows on Kalyanbhai, he had raised shouts and 8 to 10 persons were gathered. There were two houses nearby, one of which belonged to Rughnathbhai Hirabhai. It is found from Exh. 20 complaint given by the witness that no important contradictions could be asked by the defence from the evidence of this witness.

18. Against this witness, it has been argued by the learned Senior Counsel for the appellants that genesis of the story which the witness has narrated in Para 2 of his deposition is improbable. The incident could not have happened that Maniben was preventing the tractor by which the accused alleged to have been cultivating the land. It is alleged that this witness unduly help the prosecution and has deposed against the accused and in Para 4 of his deposition stated that at the instance Maniben, deceased Kalyanbhai was attending Mamlatar's Court along with Maniben at village Morwa. It is submitted that it was not in dispute that there was enmity on this count between the family of the accused and the family of the deceased and this witness. Mostly, it is vehemently submitted that the incident occurred at 4-00 p.m. and the complaint came to be filed at about 8-30 p.m. on that day. It is submitted that village Morwa is 10 to 15 kms away from the place of incident, it would take hardly 10 to 15 minutes to reach on motor cycle as per prosecution case. It was submitted, that therefore, the F.I.R. is filed late and according to this witness, he first went to the hospital there, he might have taken some time and then even no attempt was made to file the complaint. Therefore, it is submitted that the allegation of the defence has substance that the prosecution witness awaited two persons i.e. younger brothers of this witness, who are serving in Police Department and after premeditation, complaint came to be filed as per the advice of these relatives police officers. Therefore, this witness is not required to be believed. It is also commented upon that this witness did not know the survey number of the disputed land and denied that he knew Rupa Akham, father of Maniben. It is further stated by the witness in uncertain terms that there was altercations between Maniben and accused and accused Nos. 6 and 7 also raised shouts and that this witness has further fabricated a medical certificate at Exh. 26 and in his diary at Exh. 21 it has been mentioned that on 19th he was on leave on account of sickness. It was submitted that for above reasons though, this witness is injured, is not worthy of any credence.

19. While appreciating the evidence of this witness, it becomes clear that there is no contradiction at all with the complaint filed by him. What is transpired from the evidence of this witness, we find is that the accused were cultivating the land and deceased Kalyanbhai was not even in the disputed land. The fact remains

that, deceased Kalyanbhai was assisting Maniben in the proceedings before Mamlatar Court at the request of Maniben and when Maniben attempted to prevent accused from cultivating the land, in that process, accused No. 7 ran towards deceased Kalyanbhai and inflicted blows on the head of the deceased. The evidence of injured eye-witness appears to be natural and in lengthy cross-examination, nothing could be brought by the defence as to disbelieve the witness. He is supported by the medical evidence as discussed above. Even before the doctor, he gave the history of assault and had been to hospital soon after the incident. It must be borne in mind that in the dispute Kalyanbhai died on the spot and the witness Jivabhai had got injuries. Even as per the evidence on record, which is not much challenged that about 6-00 p.m. only Jivabhai could start to take the treatment and then to report to the police. In these circumstances, the First Information Report could not be said to have been lodged late as the witness must be in shock of death of Kalyanbhai and Jivabhai was injured. We do not find any manipulation or improbability in the contents of the First Information Report as has been argued by learned Senior Counsel for the appellants. The incident is narrated in First Information Report as has been in the evidence of witnesses and there is no contradiction in this regard as to render the evidence of this witness impeachable. About Exh. 26 certificate issued by the doctor, the main case of the prosecution has not been affected at all. Exh. 26 certificate is in proforma and some portion as to indoor or outdoor patient has not been dealt with properly and negligently by the doctor, and otherwise, this certificate categorically indicates that the patient was advised to rest for one month from 19-6-2001 to 18-7-2001, and therefore, nothing is made out to discriminating this witness from this fact nor this witness could be impeached by the diary produced on record in which it is stated that on 19th of June, 2001 i.e. on the day of the incident, the witness was on sick leave. This appears to be a bona fide error because by creditworthy evidence the complainant Jivabhai has stated in uncertain terms that he came to the scene of offence i.e. at residence at about 4-00 p.m. after his job was over. There is no reason that this deposition of the complainant should be viewed as doubtful especially when the incident through overwhelming evidence is proved in corroboration of medical evidence, and therefore, nothing turns out from the cross-examination of the defence on this aspect.

20. P.W. 6 second eye-witness of the incident Rughnathbhai Hirabhai Pargi also corroborated in all respects the prosecution case. He stated that he happened to be the cousin of deceased. His agricultural land was situated near the disputed land. He stated that the land belonged to Rupa Akham, father of Maniben. Incident occurred before 10 months of recording of his evidence. At that time, he was at his house and his house was situated in his field. On hearing the voice of Maniben, his attention was drawn to the disputed land and he found that accused Nos. 6, 7, 8 as well as accused Nos. 4 and 5 were cultivating the land of Maniben. Accused Nos. 6 and 7 had axes with them and accused No. 7 was abusing Kalyanbhai and went towards the house of Kalyanbhai. Kalyanbhai was

sitting near the hand pump and confronted accused No. 7 that why was accused No. 7 abusing him. At that time, accused No. 7 inflicted two blows of axe on the head of the deceased and on seeing this, complainant Jivabhai ran towards that side. At that time, accused No. 6 inflicted an axe blow on the head of the complainant. Accused Nos. 6 and 7 were shouting, and therefore, accused No. 8 and accused Nos. 4 and 5 came there with sticks and stick blows were given to this witness. At that time, accused Nos. 1, 2 and 3 came and started pelting stones.

21. P.W. 6 Rughnath has been cross-examined in detail. He admitted that Maniben and his brothers were not residents of village Agarwada. He denied the suggestion that years back Rupa Akham had given the land to accused No. 8. He denied the knowledge that the possession of the land was with accused Nos. 6, 7 and 8. He denied the knowledge that who was paying the taxes in respect of this land. He denied the suggestion that when accused were cultivating the land, Kalyanbhai, Jivabhai and this witness had been there to prevent the accused and Jivabhai and Kalyanbhai both dragged accused No. 6 who was sitting on the tractor and injury was caused on the leg of the accused No. 6. He denied the fact that he himself, Jivabhai and Kalyanbhai had encroached upon the land by quarreling with the accused and for attempting to encroach the possession of the land. Some questions are asked about Maniben that whether after the incident, she stayed at village Agarwada and witness stated that till the sun set he had seen Maniben. The only contradiction which could be proved through Investigating Officer in his examination is in respect of the fact that he had stated before the police that son of Rupa Akham was staying at Rajasthan and was doing agricultural work at Dariyavas. He had also stated before the police that at the time of the incident Kalyanbhai was sitting and stated that - "'lalia" land belongs to the land owner and that you are abusing me". Except this, there are no contradictions in the evidence of this witness. Therefore, in all respects, the witness supports the prosecution case and only because he is an interested and related witness, his evidence could not be discarded.

22. Independent eye-witness Punabhai Chuniyabhai Pargi, examined at Exh. 36, also is helpful to the prosecution. He stated that the disputed land was situated near his house and he had been to village Morwa that day and he had returned at about 3-30 p.m. At about 4-30 p.m. he noticed that some altercations were taking place between Maniben and accused No. 8, they were near hand pump. Hand pump was situated near the house of the deceased. He inquired from Maniben that what was the quarrel and Maniben replied that the quarrel was in respect of the land. At that time, accused No. 7 came running abusing deceased Kalyanbhai. Kalyanbhai stated that why was he being abused when he had nothing to do with the land. In the meantime, the accused No. 7 inflicted two axe blows on the head of Kalyanbhai, he fallen down on the ground and when Jivabhai intervened, accused No. 6 inflicted an axe blow upon the head of Jivabhai. He also stated that his son Hiteshkumar took Jivabhai to the Government Hospital at Morwa. In examination-in-cross, again he was

confronted as to the possession of the land and about the visits of Maniben at Agarwada and an attempt is made that the deceased and Jivabhai wanted to usurp the possession of the land in question and Maniben was only pawn of Jivabhai and Kalyanbhai. The contradiction was asked as to whether he stated before the police that when he got down from the taxi, he noticed that Maniben and Kamjibhai Dhanjibhai Pargi - accused No. 8 were exchanging words. The contradiction which proved from the evidence of Investigating Officer is that Punabhai Chuniyabhai Pargi stated before the Investigating Officer that Jivabhai was taken to Morwa Government Hospital by his son, and thereafter, from his family members of Jivabhai, he came to know that accused No. 8 and his associates were cultivating the land of Maniben and when Maniben refused, the quarrel ensued. Investigating Officer also stated that in his statement the witness stated that Lilgar and Lalgar i.e. accused Nos. 6 and 7 shouted for running, and therefore, accused No. 8, accused Nos. 4 and 5 and accused Nos. 1, 2 and 3 came at the scene of offence. Except this, there are no contradictions in the evidence of this witness. It is argued that this witness is not an eye-witness and he heard about the incident from the family members of Jivabhai. But as stated above, we have already noticed that, the witness has stated the incident in simple and natural way, it could not be dislodged by the defence.

23. P.W. 8-Maniben Somabhai, examined at Exh. 40, also stated that the land in question was being cultivated by accused No. 8 and on refusing him, the quarrel ensued, in which accused No. 7 inflicted two axe blows on Kalyanbhai. In simple and natural manner, Maniben stated that accused No. 7 came running giving abuses to Kalyanbhai with an axe in his hand and Kalyanbhai stated that why he was being abused, accused No. 7 inflicted two axe blows on the head of Kalyanbhai. She has also supported the fact that the accused No. 6 inflicted an axe blow on the head of the complainant, and thereafter, he was shifted to the hospital. Some altercations were taken place in her field. In examination-in-cross, she denied the suggestion that Lilgar-accused No. 6 was dragged from the tractor and his leg was injured. In Para 11 of the examination-in-cross, she admitted that, before the incident there was rain, and therefore, she had been to Agarwada for cultivating the land and her husband Somabhai was with her. Land was being cultivated by Kalyanbhai and his family members with the tractor. She has fully supported the prosecution case in all respects. The contradiction which was proved in her evidence from the evidence of the Investigating Officer is that before the police Maniben stated that accused were requested by her not to cultivate her land, but accused ignored her and had cultivated the land. She also stated before the police that thereafter accused No. 8 and his family members were going to cultivate the land of one Amarchand, which was adjoining land and there the deceased and injured Jivabhai had caused obstruction, and when accused directed Jivabhai and Kalyanbhai to remove the obstruction, the quarrel ensued. She also stated before the Investigating Officer that Kalyanbhai stated that why accused No. 7 was abusing him. Except this, there are no contradictions at all in the deposition of this witness. It has been vehemently urged that this

witness had never been to Agarwada and the land was cultivated by accused only. It has also been submitted that Maniben has brothers and even then why Maniben alone came to Agarwada and tried to prevent the accused from cultivating the land. It is also submitted that the witness has admitted that Lilgar was sitting on the tractor. It is submitted that contradiction in the manner of the incident occurred has been proved in the evidence of Investigating Officer. It is submitted that how on that day Maniben had been to Agarwada. At one stage, she stated that she reached Agarwada in the morning and stayed for some hours and went to the land. At other place, she stated that while she was coming in bus, she noticed that the accused were cultivating her land, and therefore, according to the learned Counsel for the appellants, the evidence of this witness could not be believed.

24. While going through the evidence as a whole of this witness, we find the ring of truth, so far as the main incident is concerned. It is to be noted that there were earlier litigations about this land and on filing the suit, father of Maniben, had not been granted any temporary injunction against the accused. At the same time, it must not be lost sight of that in a proceeding before the Mamlatdar in revenue record, name of Maniben was entered into as heir of Kalyanbhai so far as this land was concerned. It is also to be noted that deceased Kalyanbhai was assisting Maniben in this regard. Therefore, Maniben was considering that the land belonged to her while accused considered that land was in their possession. This fact did not destroy the prosecution case, but proved the motive for the crime. It could not be said that since Maniben was not visiting Agarwada frequently and she had a brother who was not taking interest, the whole prosecution was fabricated. It might be that Maniben had visited the land in question for once on the day of the incident, but it does not lead to any inference that the incident did not occur. It is immaterial how Maniben reached at Agarwada and whether she was frequently visiting Agarwada or not, the fact remains that, on the day of the incident, Maniben tried to prevent the accused from cultivating the land in question, the accused No. 7 inflicted blows on the head of the deceased while accused No. 6 inflicted an axe blow on the head of the complainant. Therefore, what is urged on behalf of the appellants were so-called circumstances have no consequence as they are not affecting at all of the main core of the prosecution case. Therefore, there is no reason to disbelieve this important witness.

25. The other three witnesses are P.W. 9-Somabhai Dhulabhai, examined at Exh. 42, husband of Maniben, P.W. 11-Laxmiben Kalyanbhai, widow of deceased, examined at Exh. 45 and P.W. 12-Hiteshkumar Jivabhai Pargi, examined at Exh. 47, son of injured Jivabhai. Somabhai, in all respects supported the prosecution case and in cross-examination contradictions in respect of how both of them reached at Agarwada, is brought on record, but they are of no consequence. How they reached at the disputed land and contradiction between Maniben and this witness has been asked and they are also of no consequence. In cross-examination, this witness has stated that before the incident they had no

negotiations at all about the land with the accused, would not affect the prosecution case. It could not be presumed that Maniben had given cause to the accused for provoking only because this witness stated that accused No. 7 was excited and inflicted blows on the deceased. It could not be said that Somabhai should be disbelieved only because he stated that they waited at the disputed land for hours. Except this, nothing is brought about in cross-examination of this witness. Likewise, Laxmiben, widow of the deceased, has also narrated the incident in the natural manner as it had occurred. We do not find anything in cross-examination except that, there was long-standing enmity between the families of the accused and the family of the witness. Some questions are asked about the time factor but it must be borne in mind that Laxmiben is a rustic-villager and she has described the time of incident in her language perfectly. She stated that Maniben came to the disputed land when the sun had already risen and the time of the incident was when the sun was towards setting. P.W. 12-Hiteshkumar also stated the incident in truthful manner. Only because he also stated that accused No. 7 inflicted injuries in excitement does not mean that the accused were provoked by the prosecution witnesses as there is no such evidence. Going through the evidence of Investigating Officer in respect of contradictions of these witnesses, we do not find any material contradictions.

26. Prosecution has examined Executive Magistrate and panchas of panchnama of test identification parade in respect of accused Nos. 1, 2 and 3 who were not known to the witnesses. On appreciating the evidence, we find that this fact is not material to decide the fact in issue. As discussed here-in-above, in all, there are 7 eye-witnesses in this case. The evidence of these eye-witnesses appears to be credible and trustworthy. It must be noted that credibility of a witness is not a matter related by rules and procedures. It depends upon many factors like power to speak truth, and will of the witness to express truth and truth only. It must be ascertained that how much regard the witness is having for the truth. While deciding the credibility of the witness, endeavours should be made to discern enmity from inner conscious of witness which depends upon various circumstances arising out of the prosecution. The best method to ascertain credibility of a witness has to be decided by referring to his evidence as a whole and not analyzing the evidence in parts and dissecting the whole evidence. The material factors are probability depending on the circumstances of the prosecution case, contradictions going to the root of the matter and overall circumstances arising out of the evidence recorded. A witness is normally considered independent and credible unless springs from sources which are likely to be tainted.

27. There is nothing on the record to impeach the credibility of the above witnesses as to the main incident. The contradictions as per the settled law only goes to the root of the case would be material and would impeach the credibility of the witness. There may be two types of contradictions in the evidence of witnesses. One category covers the contradiction which witnesses create between the prosecution case and the deposition which they give before the

Court. Meaning thereby, that when witnesses may improve their version in the Court from the version they gave before the police during investigation and these are the contradictions between the statements given by the witnesses before the police u/s 161 of the Code of Criminal Procedure and the deposition given in the Court. To appreciate the evidence of witness, it must always be an endeavour of each Court to ascertain whether witnesses improve the prosecution case in this respect and contradicts the original version of the prosecution case as to destroy the genesis of the story which was revealed from the investigation. Such contradictions can be proved through the Investigating Officer. The second type of contradiction is a contradiction amongst the witnesses. That is to say that the prosecution case developed by the witnesses in their deposition is destroyed by the other witness deposing something contradictory to other prosecution witness. We have examined the evidence of 7 eye-witnesses and Investigating Officer and we find that no such contradictions which goes to the root of the prosecution case could be established except minor discrepancies. Only major contradictions could affect the core of the prosecution case and that there may be discrepancies in the prosecution case in narration of witnesses because the power of expression and style of each person would be different and not alike. When an eye-witness is examined at length, it is quite possible for him to make some discrepancies even no truthful witness can possibly escape from making some discrepant details, but it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of a version that the Court would be justified in jettisoning his evidence of such witness. Mere variations falling in the narration of an incident must be ignored and adopting very serious view in this regard would be unrealistic approach for judicial scrutiny. Such discrepancies are not vital and cannot affect the credibility of the evidence of witnesses. It is immaterial therefore, when Maniben and Somabhai came to Agarwada and reached to the disputed land. It is immaterial that how each person present at the time of incident acted and reacted as might have narrated by each of the witnesses because parrot like narration of the witnesses in this respect would be unrealistic scenario.

28. Thus, while appreciating the evidence of these seven witnesses and the Investigating Officer, it is proved beyond doubt that accused No. 7 inflicted two axe blows upon the deceased which caused death of the deceased Kalyanbhai and accused No. 6 inflicted injury on the head of the complainant. It is immaterial that the complainant refers to only one blow on the deceased in the complaint as well as in the deposition. It would happen that in the commotion and depression and tension the complainant might not have seen the second blow inflicted upon the deceased by accused No. 7. All other witnesses supported the fact that the accused No. 7 inflicted two blows on the head of the deceased which was corroborated by medical evidence. Therefore, there is no substance in this contention on behalf of the appellant.

29. Now, we are left to decide whether accused Nos. 1, 2, 3, 4, 5 and 8 are liable for any offence because the trial Court has acquitted these accused of all

charges. It must be noted that all the accused were charged for the offences punishable under Sections 302 and 326 with the aid of Sections 143, 147, 149, etc. It is also to be noted that the main blow was given by accused No. 7 who is appellant in Criminal Appeal No. 874 of 2002 and other blow was given by accused No. 6, who is also appellant in Criminal Appeal No. 874 of 2002 but they are not respondents in Criminal Appeal No. 97 of 2003 filed against other accused for their acquittal. Meaning thereby, that no acquittal appeal is filed against original accused Nos. 6 and 7 for their acquittal under Sections 143, 147 and 149 as well as against original accused No. 6 for his acquittal u/s 302 of the Indian Penal Code. Appeal No. 97 of 2003 is preferred by the State against accused Nos. 1, 2, 3, 4, 5 and 8 against their acquittal.

30. Vicarious liabilities in criminal law is engrafted from Sections 141 - 149 of the Indian Penal Code otherwise criminal law does not recognize vicarious liabilities. Any member of unlawful assembly becomes liable for the act of any other members of unlawful assembly, if the offence is committed in furtherance of common object as has been mentioned in Section 141 of the Indian Penal Code and to ascertain common object and the application of principles of vicarious liability, circumstances of the prosecution case has to be scrutinized critically before an accused is convicted as a member of an unlawful assembly. It must be proved by cogent evidence that accused were actuated by common object of the assembly and that object must be one of those set out in Section 141 of the Indian Penal Code. Where common object of unlawful assembly is not proved, the accused person cannot be convicted with the help of Section 149 of the Indian Penal Code. Sharing of the common object by all the accused has to be ascertained while appreciating the evidence from the facts and circumstances of the each case and there cannot be any general rule or straightjacket formula in this regard. Some help may be obtained from nature of weapons used, manner and sequences of attack and the setting and surrounding under which the occurrence took place. Common object is different from common intention. While appreciating the evidence of above witnesses, it is not established that the charge against all accused that they had a common object to encroach upon the land of Maniben and to cause death of deceased Kalyanbhai and to inflict injuries on the body of injured Jivabhai is proved beyond doubt. The charge of unlawful assembly could not be established by the prosecution from the evidence recorded during trial though there were more than five persons. Scrutinizing the evidence minutely of each of the witnesses, it is culled out that there is no evidence on record that all the accused were even present in the field when the incident in question had started. On the contrary, the evidence is that P.W. 8- Maniben prevented accused Nos. 6, 7 and 8 not to cultivate the land, and thereafter, the incident occurred in a manner that accused No. 7 ran towards the deceased who was sitting outside the field at the hand pump. After that, accused No. 6 also reached near Kalyanbhai and inflicted injuries to Jivabhai and this had occurred outside the field and near the house of Jivabhai. Thereafter, it appears that, the accused Nos. 6 and 7 shouted, and therefore, accused Nos. 4, 5 and 8,

according to the evidence of all the seven witnesses, reached near the place of offence and it is the allegation that they inflicted stick blows even upon witness Rughnathbhai Hirabhai Pargi. It is the evidence, that thereafter, only accused Nos. 1, 2 and 3 came to the scene of offence and they pelted stones, and therefore, if the sequence and manner of the weapons used is scrutinized, as has been disclosed through the evidence, it is clear that there would not be any common object or even an existence of unlawful assembly among the accused. There is no evidence that all the 8 accused or some of the accused or 5 accused shared common object to kill Kalyanbhai, and all of them acted in pursuance of common object or there is no evidence that all the accused knew about the common object and in furtherance of that common object, the quarrel ensued nor there is evidence that during the incident, unlawful assembly was formed and common object was put in action by one amongst them. Sequence discloses that the act first was done by accused No. 7, thereafter accused No. 6, thereafter accused Nos. 4, 5 and 8 with sticks came to the scene of offence, and thereafter, accused Nos. 1, 2 and 3 alleged to have pelted stones, and therefore, what appears from the evidence and appreciation of the evidence as whole some that the acts of the accused were individual and there was no unlawful assembly of any sort. There was no relation between the act done by accused No. 7 first, then accused No. 6, thereafter accused Nos. 4, 5 and 8 and lastly accused Nos. 1, 2 and 3, and hence, we come to the definite conclusion that the prosecution could not establish the existence of unlawful assembly and the act done by the accused in furtherance of common object. What is established is the individual liability of each of the accused. So far as the allegation of giving stick blows and pelting stones are concerned, there is no cogent evidence. The witnesses have stated that first accused Nos. 4, 5 and 8 came after accused No. 6 and 7, and thereafter, accused Nos. 1, 2 and 3 who belonged to Gandhinagar came and pelted stones. There is no medical evidence as to the stick blows given to witness Rughnath. Witnesses have stated about the injuries on account of pelting stones but there is no injury proved in respect of this also. The evidence is ambiguous in respect of who inflicted injuries by pelting stones and who were injured.

31. Test identification was held in respect of accused Nos. 1, 2 and 3, but that evidence is not material as their individual act attributed to them, could not be proved beyond doubt, and therefore, it has not been established by the prosecution that the accused Nos. 4, 5 and 8 inflicted injuries on Rughnath with sticks and that accused Nos. 1, 2 and 3 were responsible for pelting stones and inflicting injuries. It must be noted that, to this extent only, the evidence of the prosecution witnesses is not cogent, but so far as the act of the accused Nos. 6 and 7 are concerned, the same has been established beyond doubt and in the circumstances the acts of accused Nos. 6 and 7 were individual act, for which no other accused could held liable as a member of unlawful assembly because existence of unlawful assembly could not be established by the prosecution.

32. Though, it has been argued on behalf of the appellants that one of the accused i.e. accused No. 6 was dragged from the tractor and received injuries in

the same incident. It has been urged that, this indicates altercations between accused No. 6 and the witnesses. It has been urged that there is evidence that the accused No. 7 was exited and particularly when the land belong to accused, they had right to defend their property, and therefore, even if the accused No. 7 is held liable, he would be liable for the offence punishable u/s 302, Part-II of the Indian Penal Code and not u/s 302 of the Indian Penal Code. We are unable to accept this contention as the evidence disclosed the intention on the part of the accused Nos. 6 and 7 for their individual act, and there is nothing in the evidence that any provocation was given by any of the prosecution witnesses. It was Maniben who only was preventing accused not to cultivate the land while deceased was not in the field and he was sitting near the hand pump and Jivabhai was also not there, but because both of them were assisting Maniben in the proceedings before the Mamlatdar Court, without any reason or provocation, accused No. 7 ran towards Kalyanbhai and inflicted blows. Likewise, accused No. 6 also inflicted an axe blow upon the injured Jivabhai.

33. When the prosecution case is proved by direct evidence of seven witnesses, it is not necessary to discuss any other witness of discovery, scene of offence panchnama, etc.

34. The net result of the above discussion is that the appeal against the acquittal of accused Nos. 1 to 5 and 8, being Criminal Appeal No. 97 of 2003, has no merit at all and is required to be dismissed, while there is no merit also in Criminal Appeal No. 874 of 2002 preferred by the original accused Nos. 6 and 7 for the conviction and sentence passed by the trial Court.

35. In view of above of the matter, the following order is passed:

Criminal Appeal No. 874 of 2002 filed by appellant No. 1-original accused No. 6-Lilgar Kamjibhai Pargi and appellant No. 2-original accused No. 7-Lalgar Kamjibhai Pargi and Criminal Appeal No. 97 of 2003 filed by the State against original accused Nos. 1 to 5 and 8, both Criminal Appeals stand dismissed.