

**(2024) 12 GUJ CK 0011**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 1313 of 2004**

Ravat Govindbhai Ahir Versus

APPELLANT

Vs

The State Of Gujarat

RESPONDENT

**Date of Decision :** 03-12-2024

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 208, 209, 307, 313, 357, 374  
Indian Penal Code, 1860 — Section 307, 326, 504  
Indian Evidence Act, 1872 — Section 145, 155

**Citation :** (2024) 12 GUJ CK 0011

**Hon'ble Judges :** Divyesh A. Joshi, J

**Bench :** Single Bench

**Advocate :** Dharmesh D Nanavaty, Jay Mehta

**Final Decision :** Partly Allowed

## Judgement

Divyesh A. Joshi, J

1. The present appeal is filed by the appellant- original accused under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for short) challenging the judgment and order of conviction dated 26.07.2004 passed by the learned 2nd Fast Track Judge, Gondal, District Rajkot in Sessions Case No.4 of 1997, whereby, the appellant has been convicted for the offences under Section 307 of the Indian Penal Code (hereinafter referred to as "IPC" for short) and thereby, sentenced him to undergo five years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment.

2. The brief facts leading to filing of the present appeal are as under:-

2.1 On the fateful day on 14.10.1996, the complainant's brother was in the field and fetching water from the canal through water pump, at that relevant point of time, his servant was also there with him and the appellant came there and he asked him to stop the motor pump. The injured had not accepted his request to stop motor-pump on the contrary rather he continued with activities to fetch the

water from the canal through motor-pump. The injured replied that there was huge water lying in the canal, so the appellant also could get it from there. Due to which some verbal altercation took place between them, which ultimately converted into the scuffle, during the heat of moment dispute is escalated, the appellant had inflicted stick blow on the head of the victim and due to which, blood started oozing from the head and injured sustained very severe injury and due to which, he fallen down and became unconscious. The injured was immediately taken to the hospital for treatment. Whereas, after committing the said crime, the appellant ran away from the place of occurrence. Initially, a Janva Jog entry was registered with the 'A' Division Police Station, Rajkot. As the health of the injured victim getting deteriorated and could not get consciousness for initial period of treatment, therefore, the doctor had informed to the Police Station and ultimately, a criminal Complaint being FIR No.I-102 of 1996 registered for the offence under Sections-307, 504 of IPC with the Kotada Sangani Police Station against the present appellant.

2.2 Pursuant to the registration of the FIR, the investigation had commenced and at the end of day, after conclusion of the investigation, the Investigating Officer concerned had filed chargesheet against the accused before the Court of the learned Magistrate, Gondal at Rajkot.

2.3. Since the case registered against the appellant - accused was exclusively triable by the Court of Sessions, the Learned Magistrate after making inquiry about the suppliance of copies of papers, free of cost to the accused as provided under Section 208 of the Code of Criminal Procedure and upon satisfaction that the accused have engaged own Advocate for defence committed the case to the Court of Session Judge, Rajkot under Section 209 of the Code of Criminal Procedure, which came to be registered as Session Case No.04 of 1997.

2.4 On committal, the case was transferred and placed for trial before the Learned Additional Sessions Judge, Gondal, who had initially framed charge against the accused vide Exh.1 for the alleged offences. The charge was read over and explained to the accused. Plea of the accused came to be recorded vide Exh.2, wherein he pleaded not guilty to the charge and claimed to be tried.

2.5 Thereafter in order to bring home the charges leveled against the appellant - accused, the prosecution has examined 15 prosecution witnesses and also produced 15 documentary evidences, relevant details of which are mentioned in the impugned order.

2.6 After recording of the evidence of the prosecution witnesses was over, the learned Sessions Court explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Criminal Procedure Code. In his further statement, he denied the case of the prosecution in entirety. According to him, he has been roped in a false case despite the fact that he has not committed any offence.

2.7 At the end of trial, the learned Sessions Judge convicted the appellant – accused by impugned judgment and order and imposed sentence as stated in the judgment.

2.8 Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence passed under Section-307 of the IPC vide judgment and order 26.07.2004, the present appellant-accused has preferred the instant criminal appeal.

3. Heard learned advocate, Mr. Dharmesh Nanavaty for the appellant – accused and learned APP Mr. Jay Mehta for the respondents – State of Gujarat.

4. Mr. Dharmesh Nanavaty, learned advocate for the appellant submitted that the incident has occurred on 14.10.1996, for which, the FIR has been lodged against the appellant on the same day by the Police Constable in the Dr. Kiribhai Shukla, Neurosurgeons hospital at Rajkot. He further submitted that initially, Janva Jog Entry was registered in the "A" Division Police Station at Rajkot. Then-after, the said Janva jog Entry was transferred and registered as C.R. No.I-102 of 1996 for the offences under Sections-307 and 504 of IPC before the Kotada Sangani Police Station, Rajkot. He further submitted that after registration of the said FIR, the concerned IO had carried out the investigation. He further submits that the appellant was working as a supervisor and the injured victim was indulged in the activities of fetching water from the canal by illegally using the water pump and being the chokidar of the water works department, he had tried to stop him, but the victim has refused to remove the machine from the canal and due to which, verbal altercation took place, which was escalated and ultimately, culminated into scuffle and during the said incident as per the case of prosecution, the appellant had inflicted a stick blow on the head of the victim. Therefore, it can be said that at the time of incident, the appellant was having the stick in his hand and was having knowledge and there was no intention on the part of the appellant and in absence of intention, the basic and essential ingredient to constitute the offence under Section-307 of IPC could not be proved and hence, the appellant may be discharged from the said charge levelled against him.

5. Mr. Dharmesh Nanavaty, learned advocate for the appellant has vehemently submitted that it is the settled proposition of law that in a criminal trial, the prosecution has to prove his case beyond the reasonable doubt by leading cogent, reliable and convincing evidence and if the prosecution fails to prove his case by leading cogent, convincing and reliable evidence, in that event, the benefit of doubt should always go in favour the accused person. Therefore, in criminal trial, the burden to prove the charge is always lies on the head of prosecution. Mr. Nanavaty further submits that for the purpose of proving charge levelled against the appellant - accused, the prosecution has examined number of witnesses. If evidence of all those witnesses are read conjoining in juxtaposition, in that event, it would be found out that there are many glaring discrepancies, contradictions, omissions and improvements in the deposition of the prosecution witnesses. Almost all panchas have not supported the case of the

prosecution and they declared as hostile witnesses. He further submitted that despite the fact that the story put forward by the prosecution-witnesses are not in-consonance with each-other and there are so-many contradictions and discrepancies in the version of the prosecution witnesses. At the time of appreciation and evaluation of the evidence available on record, the learned Sessions Judge has not properly evaluated the evidence on record, the learned Judge has given undue weightage to the non-important evidence and discarded important evidence at the time of appreciation of evidence and by doing so, the learned Judge has committed grave error which ultimately leads to the wrong conclusion. The said view adopted by the learned Sessions Judge is unjust, unfair and erroneous and required to be quashed and set aside. He further submitted that it is the specific case of the prosecution that the so-called incident had occurred in the field and at that relevant point of time, the complainant was not there. Therefore, the complainant is not the eye-witness and as per the information received from the third party, he registered complaint. The person, who immediately rushed to the place of occurrence, had stated that he took the injured victim alongwith him and both had gone to the house of complainant by walking and from there, the injured victim was taken to the hospital on motorcycle. The wife of the injured had also stated that she was going towards field, at that time, her husband was coming alongwith their servant in injured condition, whereas, as per deposition of the complainant, he was standing outside his home, at that relevant point of time, his brother has come in injured condition on the motorcycle of Dhirubhai. The said evidence available on record clearly goes on to show that there are major contradictions in the deposition of prosecution witnesses and therefore, it can safely be said that story put forward by the prosecution witness is not (consistent one and therefore cannot be considered and/or relied upon) palatable and believable. He has further submitted that there is so-many discrepancies and lacuna in the evidence of the prosecution-witnesses and at the time of appreciating the material, the learned Sessions Judge has not give due weightage to the said set of evidence, whereas, the learned Judge has given undue weightage to the unimportant evidence and passed the order of conviction. Therefore, the said view adopted by the learned Judge is perverse, erroneous and against the settled principle of law and requires to be quashed and set aside. He further submitted that it is undisputed fact that initially, Janva Jog entry was registered before the Rajkot Police Station and thereafter, an FIR registered at Kotda Sanngani Police Station, Rajkot at the instance of information given by the doctor, ultimately, FIR registered against the appellant - accused. He further submitted that as per the case of prosecution, the injured victim had become unconscious after sustaining injury on the initial period of time and therefore, he could not be able to give history before the doctor. He further submitted that in-fact, the defence put forwarded by the applicant is proper one that the appellant was working as a Supervisor in the irrigation department and on the fateful day of incident, he has seen the injured victim was fetching water from the canal and he tried to stop him to fetch water illeglay from canal. In support of stopping the said activities, the injured victim

had made fight with the appellant and due to which, the said incident had occurred all of sudden due to provocation. The case of the prosecution is that during the scuffle, the appellant had given stick blow on the head of injured. The said incident had occurred in a spur of moment without any premeditation. He further submitted that it is the well within the knowledge one and all that generally, the village people used to keep stick with them and said conduct of villagers are nature one.

6. Mr. Nanavaty, learned advocate further submits that as per the case of the prosecution, such so-called incident has occurred in the broad day-light in the open field and at the relevant point of time, number of persons were working in the vicinity area and cultivating their field and they are the natural witnesses, but statement of single independent witness had not been recorded. The prosecution has put reliance upon the evidence of interested witnesses only, who were the eye-witnesses i.e. servant of the injured victim at Exh.10, another witness is the brother of the victim i.e. the complainant and wife of the injured at Exh.8, except them no other independent person had been examined as witness and if evidence of those interested witnesses are to be read together in a juxtaposition, in that event, it would be found out totally different narration and version of story had been deposed by the witnesses about the sequence of events of incidents, therefore, on the strength of the said material, prima-facie, it can safely be said prosecution is miserably failed to prove charges levelled against the accused and it should be sufficient to rule out, discard the accusations levelled by the complainant, without the necessity of recording any evidence.

7. Mr Nanavaty further submitted that to prove the charge of guilt, the prosecution has to prove that at the relevant point of time, the appellant was keeping stick with him, in fact, the panchas of the recovery of stick have not supported the case of the prosecution and therefore, the prosecution is miserably failed to lead evidence to the effect that the recovery of stick was made at the instance of accused. He further submits that in-fact there was no blood stained found upon the stick. He further submits that so far as recovery of the stick is concerned generally the peoples residing in the village kept the stick on their hand and the panchas of discovery panchnama has not supported the case of the prosecution and therefore, it can be said that recovery of the weapon used in the commission of crime at the instance of the appellant is not proved, therefore, the benefit of doubt should go in favour of the appellant. He further submits that during the course of cross-examination, the defence counsel has put very particular query to the panchas that generally villagers are keeping stick with them and if the stick, which was shown, are to be seen, in that event, all sticks look a like an identical in nature, the witness has given answer in affirmative. Therefore, the evidence shows that prosecution fails to prove its case by leading cogent and reliable evidence.

He further submitted that the entire sequence of events, which clearly goes on to show that the said incident is occurred in a spur of moment without any

premeditation, and from the attending circumstances and evidence available on record, it could be inferred that there was no intention on the part of appellant to commit offence of attempt to murder and in absence of intention, the basic and essential ingredient to constitute the offence under Section 307 of IPC could not said to have been proved. Hence, the appellant may be discharged.

8. Mr. Nanavaty, learned advocate further submits that in the case of attempt to murder, the mens-rea is a relevant and essential ingredients and in absence of mens-rea, the conviction and sentence in attempt to murder case cannot be sustained. He further submits that even if the incident is believed as alleged, it is not of such a nature where the appellant – accused has ever tried to injure the victim so as to cause grievous injury or to cause his death, therefore, the conviction under Section-307 IPC was not warranted. He further submitted that if the evidence of the doctor and prosecution-witnesses are to be seen, in that event, it would be found that during the incident, it is the case of single blow. At the time of commission of crime, one stick blow is inflicted on the head of the victim by the appellant and the said fact is also corroborated by the medical evidence. The injured has sustained one solitary injury and the punishment imposed upon the appellant – accused is grossly inadequate and requires to be modified as the said incident is occurred in the year 1996, at that relevant point of time, the appellant was 26 years old and we are in the year 2024, more than 28 years have been lapsed and therefore, considering the principle of law laid down by the Hon'ble Apex Court, the sentence imposed upon the appellant may be reduced from 05 years to 02 years. He further submits that the incident has occurred due to sudden provocation and there was no intention on the part of the appellant, therefore, considering the sequence of events so-called alleged in particular manner , the order of conviction can be modified and reduced the sentence imposed upon the appellant from 05 years to 02 years.

9. Mr. Dharmesh Nanavaty, learned advocate has put reliance upon following decisions:-

(1) 1996 (0) AIJEL-HC 201424 Bashirkhan @ Babukhan Mohammadkhan Pathan Vs. State of Gujarat

(2) 2007 (0) SIJEL-HC 219416 Ali Mohmad Siddique Baloch Vs. State of Gujarat

(3) 2014 (0) AIJEL-HC 231892 Anasbhai Habibbhai Pathan Vs. State of Gujarat

(4) 2023 (0) AIJEL-SC 70763 Panchram Vs. State of Chattisgarh

(5) 2024 (0) AIJEL – SC 73978 Raju Vs. State of Uttarakhand

10. Referring the ratio laid down in the aforesaid decisions, learned advocate submitted that the case of the applicant is squarely covered by the said decisions and, hence considering the facts of the case, this appeal may be allowed and the impugned judgment and order may be quashed and set aside and appellants may be acquitted.

11. Per contra, Mr. Jay Mehta, learned APP appearing for the respondent – State of Gujarat has objected the present appeal with a vehemence and submitted that by leading cogent and convincing and reliable evidence, the prosecution has successfully proved the charge of guilt levelled against the appellant – accused. Learned APP further submitted that it is the specific case of prosecution that the injured victim was fetching water from the canal through motor-pump in his field and at that relevant point of time, the appellant had gone there and he tried to stop the motor-pump and due to which, the dispute cropped up and the appellant had inflicted stick blow on the head of the injured victim and due to which, the victim fallen down and sustained serious injury. Learned APP further submitted that the the servant of the victim was there in the field immediately he rushed to place and seen entire incident and took the injured to the hospital immediately after the occurrence of incident, the injured was shifted to the hospital, at that relevant point of time, he was unconscious state of mind and could not be able to speak and talk anything. He further submitted that the victim was unconscious for more than 15 days. Therefore, the history was not recorded before the doctor. To prove the charge of guilt levelled against the appellant – accused, both doctors were examined as prosecution-witnesses by the prosecution and they have come with the specific case that the injured was brought to hospital for preliminary treatment and they deposed that the victim was unconscious state of mind at the time of admission and therefore, the doctor was not in a position to record the history about the so-called incident as well as injury. Learned APP further submitted that from the deposition of the said witnesses, it would be found that the injured has sustained injury on the vital part of the body and it is the specific case of the prosecution that the appellant had gone to the field of the injured victim and told him to remove the motor-pump from the canal and the victim had denied the same and therefore, the quarrel took place between them and the appellant had inflicted stick blow on the head of the injured victim and due to which, immediately, the victim had fallen down and after hearing shouting of the victim, the labourer working in the vicinity of area of field reached to the place of incident. He categorically stated that he has seen entire incident and at the time of incident, he was standing at certain distance place and heard altercation took place between the appellant and injured victim. The appellant had inflicted stick blow and blood had started coming out from the injury and therefore, immediately, the victim was taken to the hospital. Therefore, the evidence of the said witness, the prosecution has successfully proved the charge of guilt levelled upon appellant – accused. Learned APP has further submitted that it is true that at the time of leading evidence, there are certain minor discrepancies, improvements, omissions and contradictions can be found out in the depositions of prosecution witnesses, but if those contradictions, improvements and discrepancies does not affect the core issue of the matter, in that event, those set of evidences are required to be ignored at the time of considering and appreciating the evidence available on record. Those type of mistakes are bound to be happened at the time of leading evidence as the capacity to understand the entire sequence of events of incident

in exactitude manner is practically not possible and it is well within knowledge of one and all that to describe incident in a graphical manner. Therefore, it cannot be assumed that the depositions of all the witnesses are 100% required to be corroborated with each-other. He further submits that at the time of delivering the impugned judgment and order of conviction, the learned Judge has properly appreciated and evaluated and based on the material available on record, the learned Judge has recorded conviction, which does not require interference from the hands of this Hon'ble Court. Learned APP has placed reliance upon the decision of the Hon'ble Apex Court in the case of Birbal Nath Vs. State of Rajasthan & Ors. reported in 2023 (15) Scale 1 and in the case of Sadakat Kotwar Vs. Staet of Jharkhand reported in 2021 (13) Scale 447. Learned APP submitted that therefore considering the totality of the facts available on record, the judgment and order passed by the learned Judge is just, fair, reasoned and based upon sound principle of law and it does not require any interference at the hands of this Hon'ble Court at this stage and same is required to be confirmed dismissing the present appeals.

12. Mr. Jay Mehta, learned advocate further submits that the appellant was working as a Supervisor in the Irrigation Department and the victim was fetching the water from canal by illegal mode and the appellant had gone to stop the victim to fetch the water by doing illegal activities and due to which, some scuffle took place between them. But to substantiate the said claim, the appellant has not produced any documents, which would show and suggest that he was an employee of Irrigation department.

13. Mr. Jay Mehta, learned APP further submitted that one of the argument canvassed by the appellant that there was no intention on the part of the appellant to commit the said crime, but the act of the appellant itself shows the gravity of offence, he has inflicted the stick blow on the vital part of the body. The impact of injury was so severe that due to which, the injured victim could not be able to speak for more than 15 days and instantaneously become unconscious state of mind. Even his statement is recorded by the Investigating Officer after a lapse of 15 days from the date of incident, which clearly goes to show the effect of injury sustained by the injured. Considering the law laid down by the Hon'ble Apex Court, in the above stated decisions, the order of conviction is not required to be interfered.

14. Having heard learned advocates appearing for the parties and having considered the submissions made on behalf of the parties, it is found out that the appellant-accused has been prosecuted by the learned Judge for the offences punishable under Sections 307 of the IPC and convicted by the impugned judgment and order, which led to filing of the aforesaid appeal challenging the said order.

15. At this juncture, now I would like to consider the depositions of the prosecution witnesses examined by the prosecution during the course of trial.

1. PW No.5, Girdharbhai Devrajbhai, who has been examined at Exh.16, is the complainant in the present case. He has narrated the entire incident in detailed as to how the accused had come there and inflicted blow upon the victim. He stated that his brother was fetching water from the canal through motor-pump from his field, at that time, the appellant came there and asked him to stop the motor-pump, the brother of the complainant did not pay heed to his say therefore he got enraged and due to which, scuffle took place between them and the appellant had inflicted stick blow on the head of the brother of the complainant and then-after, the accused fled away from the place of occurrence. Then the injured was taken to hospital for the purpose of getting treatment. He has deposed that at the time of incident, he was not in the field, therefore, could not see the incident through his bare eyes but immediately after occurrence of incident his brother was brought before him and as he had sustained serious injury on head therefore, he was taken to the hospital for treatment and he came to know about the incident.

2. PW No.7 viz., Vallabhbhai Devraj, who has been examined at Exh.21 i.e. injured victim. He has deposed and described entire sequence of events of incident in a very graphical manner how the incident has occurred and who had inflicted the blow to him and in which situation. He deposed that at the time of incident he and his labourer were in the field and he was fetching water from the canal through water-pump. He has deposed that he was not aware that the accused was working as supervisor in the Government Water Works Department. He deposed that the stick, which was shown to him in the court are generally found in the hands of villagers. He deposed that his land and the accused's land are adjacent land. This witness has given story of whole incident.

3. For the purpose of proving the charge against the appellant, the prosecution has examined the wife of victim-P.W.8 viz. Kantaben Vallabhbhai at Exh.22. She deposed in a very categorically mannered that at the time of incident, she was not available at the farm and she has not seen the incident through her bare eyes, but after occurrence of the incident, immediately her husband was coming back towards home in injured condition and at that time, she inquired from labourer about how he sustained injury, who had accompanied with her husband and she came to know that the appellant – accused had inflicted stick blow on the vital part of body (head of the victim).

4. P.W.10 viz.Satabhai Ranchchodbhai, who has been examined at Exh.27. The said witness was working as a labourer in the field of injured victim on the date of incident. He deposed that on the fateful day of incident, the vallabhbhai was fetching water from the canal through water pump. At that time, the machine get damaged and he had gone there to repair the handle of machine and at that time, the appellant came there. He deposed that the appellant had told the injured victim to stop the machine, but the victim refused to stop the machine and therefore, the verbal altercation took place between the vallabhbhai and appellant, which ultimately converted into quarrel and the appellant had inflicted

stick blow on the head of the injured. He deposed that he was not aware about the fact that the appellant-accused was supervisor in the irrigation department.

5. To prove the guilt of appellant-accused, the prosecution has examined Dr. Kirit Rasiklal Shukal, P.W.9 at Exh.23. He deposed that on 14.10.1996 the injured was taken before him and he treated him. He also deposed that initially, the injured was taken to Dr. Jogi's hospital at Gondal for the purpose of taking primary treatment and then-after, considering the seriousness of injury, the injured was shifted to his hospital, where, injured was treated as an indoor patient. He deposed that the injured was unconscious state of mind and he had sustained severe injury on temporal parietal region on right side of head, except that, no visible injury is found out upon his body. Considering the seriousness of the injury, he was operated on 14.10.1996 and discharged from the hospital on 28.10.1996. At the time of discharge, the injured was in conscious state of mind. The injured had sustained injury due to hard and blunt weapon inflicted on a vital part of the body i.e. head. The injured has sustained very serious injury and if proper treatment is not given timely, in that event, there are all possible chances that serious complication would be created, which ultimately leads to serious consequences also. The said witness deposed in a very categorically manner and describe the injury and also given definite opinion that the said injury would have been happened as per the case of the prosecution, the injured has sustained injury through stick blow, which would fall under the category of hard and blunt substance.

6. To prove the guilt of appellant-accused, the prosecution has examined P.W.11, Dr. Navneet Narandas Jogi, Jogi Surgical Hospital, Gondal, at Exh.30. He deposed in a very categorically manner that when the injured victim was brought to his hospital, at that time, he was unconscious state of mind and therefore, the history was not recorded. The documents available on record and deposition of the said witness, which clearly goes on to show that the injured has sustained very serious and grave injury.

7. PW No.6 viz., Sarad Dinkarrai, who has been examined at Exh.18 is the Deputy Mamlatdar and having power of Executive Magistrate, who had recorded the deposition of injured on 28.10.1996 after following procedure. This witness deposed that at the relevant point of time, the injured had given the history about the incident, which had taken place before 15 days. Except above facts, nothing incriminating material was found from the evidence of this witness.

8. PW No.12 viz., Kanubha Natubha Jadeja has been examined at Exh.32. This witness was discharging his duty at Rajkot 'A' Division Police Station and on the day of incident i.e. on 14.10.1996, he received yadi from Government Hospital and, hence, he reached there and recorded the complaint and, thereafter, sent yadi to Executive Magistrate for recording his declaration and, thereafter, he sent all the papers Police Officer of Kotdasangani Police Station, where, further investigation was carried out by Police Officer of Kotdasangani Police Station. From his deposition, nothing fruitful has come on record.

9. PW No.14 viz., Manchharam Babubhai Vadile has been examined at Exh.36. This witness discharged his duty as Police Sub Inspector at the relevant point of time and on receipt of information, he carried out investigation including drawing of panchnama, recorded of statements of the witnesses including injured witnesses etc. From his deposition, nothing fruitful has come on record.

10. PW No.1 viz., Nagjibhai Kadvabhai, Exh.9, PW No.2 viz., Pravin Bhikhabhai Exh.11, PW No.3 viz., Maganlal Bhikhabhai, Exh.13, PW No.4 viz., Arvind Chhganbhai, Exh.15, are the panch witnesses, who have not supported the case of the prosecution and have been declared hostile witnesses.

16. After going through the evidence available on record, it is found out that the prosecution has successfully proved the charge of guilt levelled against the accused. All the witnesses have consistently supported the case of the prosecution and deposed in a very categorically manner exactly what had happened at the time of commission of crime and after commission of crime, how the injured was taken to the hospital for getting treatment. The prosecution has successfully proved the charge against the accused by leading cogent, convincing and reliable evidence. The injured victim has deposed in a categorically manner how the incident occurred and accused has inflicted the stick blow on his head and at that relevant point of time, his labour was very much available at the place of occurrence in the field as there was some fault in the machine and labourer was trying to repair the machine and at that relevant point time, the said dispute cropped up between the parties and the accused had inflicted stick blow upon the head of the victim. Deposition of the the prosecution witnesses are consistent in nature and proves the guilt of accused and nothing contrary could be found out and therefore, on the strength of material available on record, it can be said that the prosecution has successfully proved the charge of guilt against the accused and the reasons and findings assigned by the learned Sessions Judge are just, fair, reasonable and based upon the sound principle of law and there is no infirmity shown in the judgment and order of conviction.

17. Having gone through the record and proceedings as well as evidences available on record, it is found out that the injured victim had disclosed the entire sequence of events in a grave detail. The said witness had been cross-examined by the defence in a very exhaustively manner, but nothing adverse could be elicited from the evidence of the said witness, on the basis of which, the benefit can be extended in favour of the appellant - accused. Same way, the presence of the labourer of the injured witness with him at the time of incident found at the place of occurrence is also found as a natural one and he has also deposed in a very categorically manner that at the time of commission of crime, he was available at the place of occurrence and he had seen the incident through his bare eyes. He described the occurrence of incident in a very graphical manner. The said witness had disclosed the sequence of events of incident in a very detailed, but nothing fruitful elicited from the defence in the cross-examination, on the basis of which, the evidence of the said witness can be

brushed aside. The other witnesses have also supported the case of the prosecution. The totality of the evidences available on record, which clearly goes on to show that the prosecution has successfully proved the charge of guilt levelled against the accused by leading cogent, convenience and reliable evidence. Therefore, the judgment and order of learned court below is just, fair and reasonable and based upon sound principle of law, and therefore, there is no infirmity shown in the judgment and order of conviction.

18. In the case of Raju Vs. State of Uttarakhand reported in 2024 (0) AIJEL – SC 73978, the Hon'ble Apex Court has held as under:-

“13. Usually in matters involving criminality, discrepancies are bound to be there in the account given by a witness, especially when there is conspicuous disparity between the date of the incident and the time of deposition. However, if the discrepancies are such that they create serious doubt on the veracity of a witness, then the Court may deduce and decline to rely on such evidence. This is especially true when there are variations in the evidence tendered by prosecution witnesses regarding the sequence of events as they have occurred. Courts must exercise all the more care and conscientiousness when such oral evidence may lean towards falsely implicating innocent persons.

14. Undoubtedly, there are glaring interludes which severely enfeeble the case that the prosecution sought to present. The prosecution story has been demolished by the oral testimonies of the witnesses, including the medical experts, coupled with the contents of the FIR registered by a hearsay witness. It goes without saying that the chain of evidence proffered by the prosecution has to be as complete as is humanly possible and it does not leave any reasonable ground for a conclusion consistent with the innocence of the accused and must instead, indicate that the act had indeed been singularly committed by the accused only.”

19. In the case of Rammi Vs. State of M.P. reported in (1999) 8 SCC 649, the Hon'ble Apex Court had held as under:

“24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non- discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.” In the same case, how far a contradiction in the two statements can be used to discredit a witness has also been discussed.

“25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination.

Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

"155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him— (1)-(2)\*\*\* (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness."

20. Now, only one question remains and that is the quantum of sentence to be awarded to the appellant-accused for the offence under Section 307 I.P.C.

21. In the case of Panchram vs. State of Chattisgarh & Another reported in AIR 2023 SC 1801, the Hon'ble Apex has considered as under:-

"In his statement, the injured appearing as PW-1 submitted that when Munna (PW 6) shouted for help, Kantilal (PW 8) and Radheyshyam (PW 9) came there and seeing them the accused ran away. However, Kantilal (PW 8) was declared hostile. The prosecution had produced another witness Radhey Shyam (PW7). He was also declared hostile and did not support the prosecution version. Even the scissors which was seized by the police is small scissors which is used by tailors.

With the aforesaid evidence on record and the kind of weapon used, in our view the offence will not fall within Section 307 I.P.C. From the reasons for fight as are emerging on record, it doesn't seem to be pre-planned act. It, at the most, can fall within the four corners of Section 326 IPC as a sharp-edged weapon was used. The injuries were not caused with an intention to cause death and were not sufficient to cause death. Hence, in our view the conviction of the appellant with respect Section 307 IPC cannot be sustained however the offence under Section 326 IPC is made out."

22. Further, in the case of Mukesh S/o Jam Singh Damor vs. State of M.P. & Others reported in 2022 Law Suit (MP) 165 ; The High Court of M.P. Bench has observed as under:-

"9. It is well settled that an act which is sufficient in the ordinary course to cause

death of the person, but the intention on the part of the accused is lacking, the act would not constitute an offence under Section 307 of IPC. The medical evidence has to be taken for determining the intention of the accused. The intention and knowledge of the act being one of the major factor i.e. used to decide conviction under Section 307 of IPC. Before it is held that the act committed by the accused amounts to attempt to murder, it should be satisfied that the act was committed with such intention or knowledge under such circumstances that if it had caused death, it would have amounted to murder."

23. So far as the issue of sentence is concerned, learned advocate for the appellant has exhaustively submitted that if at all the Honble Court would jump to the conclusion that the prosecution has proved the charge levelled against the accused, in that event, alternatively he would like to submit that considering the pendency of proceedings, date of occurrence of incident and decisions rendered by the Hon'ble Apex Court as well as co-ordinate bench of this Court, the order of sentence is required to be reduced. He would like to put reliance upon certain case laws and submitted that it is the case of the prosecution that the incident is occurred at the spur of moment and there was no any premeditation on the part of the appellant at the time of commission of crime. It is the specific case of the prosecution that altercation took place between the parties, which ultimately, escalated and at that point of time, the appellant lost his control upon his mind and inflicted blow upon the victim. Therefore, as per the prosecution, the appellant -accused had inflicted single blow on the head of the injured. It is submitted that the said incident occurred in the year 1996 and admittedly, at the time of incident, the appellant - accused was young and now, the appellant has crossed the age of 50 years and after a lapse of more than 26 years, he cannot be sent behind the bar for such a longer period. Considering the above-stated mitigating circumstance, the sentence imposed by the learned trial Court may be reduced upto 02 years. He has put reliance in case of Bashirkhan @ Babukhan Mohammadkhan Pathan Vs. State of Gujarat reported in 1997 (1) GLH 827 and submitted that the view adopted by the Hon'ble Apex Court in the case of Bashirkhan (Supra), the appellant - accused may be granted the benefit of the provisions of the Probation of Offenders Act by imposing condition upon the appellant to pay some amount towards compensation under section 357 of Cr.P.C., and the sentence imposed upon the appellant – accused is required to be reduced for the charges levelled against him as well as considering the period of incarceration spent by the appellant – accused.

24. I have considered the arguments canvassed by learned advocate for the parties. Mr. Nanavaty, learned advocate has put reliance upon the case laws viz. Ali Mohmad Siddique Baloch (supra); Panchram (supra) and Raju (supra) and submitted that as per the principle of law laid down by the Hon'ble Apex Court as well as co-ordinate bench of this Court, after a lapse of period of 28 years, some leniency may be shown in favour of the appellant – accused. He submits that at the time of commission of crime, the appellant-accused is aged about 26 years and now he has already attained the age of 54 years.

25. Considering the facts aspects of the matter, I am of the opinion, the so-called incident had occurred in the year 1996 and the injured had sustained only one solitary blow; and after a lapse of period of 28 years as well as considering the age of the appellant -accused, the sentence imposed upon the appellant – accused requires to be reduced.

26. In the result, the present appeal is partly allowed. The impugned judgment and order of conviction dated 26.07.2004 passed by the learned 2nd Fast Track Judge, Gondal, District Rajkot in Sessions Case No.4 of 1997 is hereby modified. The sentence imposed upon the appellant to undergo five years rigorous imprisonment is reduced to the extent that the appellant shall undergo two years rigorous imprisonment and rest of the sentence is as it is.

The appellant - accused shall surrender himself before the Court concerned within four weeks from today, from where, he shall be sent to prison to serve the remaining sentence, failing which, the learned Sessions Judge concerned is at liberty to issue warrant to secure the custody of the appellant – accused.

The period of sentence already undergone by the accused shall be adjusted from the sentences presently awarded.

Bail bonds, if any, shall stand discharged. Record & Proceedings be sent back to the concerned court forthwith.

Registry to make available a copy of this judgment to the learned advocate for the appellant – accused and the learned APP as well as to send to the learned Court below, forthwith. A copy be also sent to the Superintendent of Police, Rajkot and the District Court, Rajkot.