

(2016) 03 GUJ CK 0065
In the Gujarat High Court

Case No : Criminal Appeal Nos. 2658 and 2659 of 2008

Santoshsingh Narendrasinh Chouhan	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 162, Section 313
Penal Code, 1860 (IPC) — Section 300, Section 302, Section 34, Section 364, Section 376
Prevention of Corruption Act, 1988 — Section 13

Citation : (2016) 03 GUJ CK 0065

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Y.S. Lakhani, Sr. Advocate and Vaibhav A. Vyas, Advocate, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Disposed Off

Judgement

K.S. Jhaveri, J.—1. Present appeals assail the judgment and order dated 05/09/2008, passed by the learned Additional City Sessions Judge, Court No. 4, Ahmedabad in Sessions Case Nos. 65 and 66 of 2005, whereby, all the accused came to be convicted for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code, 1860 (for brevity, "the IPC") and sentenced to undergo life imprisonment and a fine of Rs. 20,000/- each and in default of payment of fine, to undergo further simple imprisonment for one year. The accused were further directed to pay the compensation in the sum of Rs. 50,000/- each to the children of the deceased with default clause to attach the property of the accused to recover such amount, if failed to pay. Accordingly, present appeals have been filed by the original accused in both the Sessions Cases viz. Sessions Case Nos. 65 and 66 of 2005, against conviction.

2. Since both these appeals arise out from the common judgment and order in Sessions Case Nos. 65 and 66 of 2005, they are heard and being decided together.

3. Filtering the unnecessary details, the facts of the prosecution case are that on 16/09/2000, at about 10:00 p.m. when deceased Ramsevak @ Kalio Musaisinh Rajput, resident of Shrinathnagar, Bhilwada, Amraiwadi, Nr. Ghanti Bus-stand, was sitting in an open place near his house, at about 10:30 p.m., accused namely Ranvirsinh, Jagdish Kaluji and Santoshsingh allegedly came there possessing with them the deadly weapons like gupti and wooden sticks; they caught hold the deceased and dragged him to Mashruara Chali; threatened the people gathered there of bitter consequences; meanwhile, the other accused also reached there; the accused then assaulted the deceased with the weapons they possessed due to which, the deceased sustained severe injuries and ultimately, succumbed to the injuries and thereby, they committed the offence alleged against them, for which a complaint came to be lodged.

3.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the City Sessions Court, Ahmedabad.

3.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

3.3 In order to bring home the charge against the accused, the prosecution has examined following witnesses and also produced several documentary evidence, as under:

3.4 At the end of the trial, Further Statements of the accused under Section 313 of Code of Criminal Procedure, 1973 (for brevity, the Code") were recorded in which, they pleaded not guilty and stated that they have been falsely implicated in the crime. Thus, after recording above-referred Further Statements and hearing the arguments on behalf of prosecution and the defence, the learned Sessions Judge convicted the accused, as aforesaid, by impugned judgment and order.

3.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellants - original accused have preferred the present appeals against conviction.

4. We have heard Mr. Y.S. Lakhani, learned senior advocate, assisted by Mr. Vaibhav A. Vyas, learned advocate for the appellants - original accused and Ms. C.M. Shah, learned Additional Public Prosecutor for the State, in both these appeals.

4.1 Mr. Lakhani, learned senior advocate for the appellants -accused, submitted that the trial Court has committed a grave error in convicting the accused. It was contended by him that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led before it and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole ingredients of the offence

against the accused. He also took this Court through the oral as well as the entire documentary evidence and contended that virtually, there was no eye-witness to the incident in question and the so-called eyewitnesses viz. PW-2 - Jalamsinh Musaisinh Rajput, exh. 18 and PW-4 - Ajay Ramsevak Thakur, exh. 33 are the relatives and interested witnesses. Besides there appears serious contradictions and improvements in their version. So far as other eye-witness namely PW-3 - Ramsinh Ramsevak Rajput is concerned, the trial Court itself has not believed the said witness and only believed the aforesaid two witnesses viz. PW-2 and PW-4. The learned senior advocate for the appellants - accused further contended that upon close examination of the evidence of these witnesses, though it is revealed that the accused No. 1 was possessing gupti, however, from the medical evidence, it transpires that there was no injury on the dead body of the deceased that can be caused by such a weapon. Moreover, he submitted that none of the prosecution witnesses have referred about the specific role played by each of the accused. Moreover, in the so-called Vardhi at exh. 53, given to the police control room at the instance of PW-2 - Ajay Ramsevak Thakur, the names of all the accused persons were not given nor any witness has been examined qua said Vardhi, exh. 53. Moreover, the Investigating Officer has also admitted that he has not done any enquiry qua the Vardhi, exh. 53. He submitted that even the panchnama of the place where the deceased was sitting prior to the incident in question had occurred, is not drawn. Further, the learned senior advocate for the accused vehemently submitted that when the trial Court has not believed the offence punishable under Section 364 of the IPC and acquitted the accused of the said charge, the subsequent act, alleged to have been done by the appellants - accused could not have been believed. Moreover, he submitted that though the place of incident is surrounded by locals and though independent witnesses were available, the prosecution has not examine any independent witness for the reason best known to them. The learned senior advocate for the appellants - accused submitted that there are serious contradictions and improvements in the versions of the prosecution witnesses only with a view to fill in the lacuna of delay and though there was nothing on record to establish that the accused were involved in the crime or to link the accused with the crime, the trial Court, by misreading and misinterpreting the evidence on record, has come to such a conclusion, which requires to be upturned.

4.2 The learned senior advocate for the appellants - accused submitted that assuming for the sake of argument without admitting anything, in any case, there is no case against the original accused Nos. 3 and 4 of Sessions Case No. 65 of 2005 and the sole accused of Sessions Case No. 66 of 2005 and only because they were closely associated with the original accused No. 1 (of Sessions Case No. 65 of 2005), they were falsely implicated in the crime in question. The learned senior advocate for the accused, further drawing our attention to the FSL Report, submitted that except two items, which were recovered at the instance of accused No. 2, the same cannot be admissible against all the accused.

4.3 Thus, in aforesaid view of the matter, the learned senior advocate for the

appellants - accused submitted that the trial Court has committed a serious error in convicting the accused and requested that they may be given benefit of doubt and may be acquitted in view of lack of evidence and/or material contradictions and improvements in the same.

5. Whereas, Ms. Shah, the learned Additional Public Prosecutor, for the State while supporting the judgment and order impugned in the present appeals, contended that when the offence is already proved by the prosecution against the accused beyond reasonable doubt and the guilt of the accused has clearly been established, this Court may not interfere in the appeal. She also took us through the oral as well as the documentary evidence on record and contended that the crucial witnesses viz. PW-2 and PW-4 were under tremendous pressure and the accused No. 1 is also a headstrong person besides, the both the parties have cross cases pending against each other, though not related to this offence and accordingly, for some minor contradictions and/or omissions, the whole case of prosecution cannot be discarded, which is other wise proved beyond reasonable doubt. She further, drawing our attention to the evidence of PW-9 - Sukhdevsinh Sardarsinh Chudasama, the Investigating Officer, exh. 47, contended that this witnesses has stated that, "on 17/09/2000, the complainant was brought to him after 12:00 a.m. and he had registered his complaint at about 1:15 a.m.". He has further stated that, "the information about the Vardhi at exh. 53 was not brought to him before registering the complaint". She further submitted that the trial Court, while appreciating and evaluating the evidence forthcoming on record, has dealt with each and every aspect of the matter minutely leaving no stone unturned and then only has come to such a conclusion and accordingly, no interference at the hands of this Court is warranted. In support of her submissions, she has relied upon following decisions of the Hon"ble Apex Court:

"i) In *Somabhai v. State of Gujarat*, reported in , AIR 1975 SC 1453, more particularly, para 18, which reads as under:

"18. Before closing the case, we might advert to two important circumstances noticed by the High Court. In the first place the High Court was of the opinion that the F.I.R. lodged by Ratilal Deva was inadmissible in evidence because the telephonic call booked by the P.S.I. Patel to Surat by which he conveyed the information that the appellant had killed two persons by firing at them would constitute the first information within the meaning of Section 154 of the Code of Criminal Procedure and the statement made by the complainant before the police subsequent to that would be hit by Section 162 of the Code of criminal Procedure. We are, however, unable to agree with the view taken by the High Court on this point. It is true that under S, 154 of the Code the first information is the earliest report made to the police officer with a view to his taking action in the matter. In the instant case, the complainant had made the report regarding the occurrence having taken place to the P.S.I. Patel, who however, before reducing it into writing, by way of abundant caution, tried to seek further

instructions from the main Police Station at Surat and that is why he had booked a call to Surat. The message given to the Surat Police Station was too cryptic to constitute a first information report within the meaning of Sec, 154 of the Code and was meant to be only for the purpose of getting further instructions. Furthermore, the facts narrated to the P.S.I. Patel which were reduced into writing a few minutes later undoubtedly constituted the first information report in point of time made to the police in which necessary facts were given. In these circumstances, therefore, we are clearly of the opinion that the telephonic message to the Police Station at Surat cannot constitute the F.I.R. and the High Court was in error in treating the F.I.R. lodged in the present case as inadmissible in evidence."

ii) In *Ravinder Kumar and another v. State of Punjab*, reported in , AIR 2001 SC 3570, more particularly, para 14 and 15, which read as under:

"14. When there is criticism on the ground that FIR in a case was delayed the Court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information them -selves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhausting catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the Criminal Courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the Court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. [Vide *Zahoor v. State of U. P.*, , 1991 Suppl (1) SCC 372; *Tara Singh v. State of Punjab*, , 1991 Suppl (1) SCC 536; *Jamna v. State of U.P.*, , 1994 (1) SCC 185 :]. In *Tara Singh* (supra), the Court made the following observations (Para 4 of AIR, Cri. L.J.):

"It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in

giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

iii) In *Kanaiya Lal and Ors. v. State of Rajasthan and allied matters*, reported in , AIR 2013 SC 1940, more particularly, para 15, which reads as under:

"15. Thus, whether the delay creates a dent in the prosecution story and ushers in suspicion has to be gathered by scrutinizing the explanation offered for the delay in the light of the totality of the facts and circumstances. Greater degree of care and caution is required on the part of the court to appreciate the evidence to satisfy itself relating to the explanation of the factum of delay. In *Kilakkatha Parambath Sasi and others v. State of Kerala*, it has been observed that when an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened."

iv) In *Kuria and Anr. v. State of Rajasthan*, reported in , AIR 2013 SC 1085, more particularly, para 16, which reads as under:

"16. In light of the above principles, we may revert to the evidence in the present case. A large number of persons had attacked one person. These witnesses cannot be expected to explain the role in the inflicting of injuries by each one of them individually and the weapons used. Such conduct would be opposed to the normal conduct of a human being. The fear for his own life and anxiety to save the victim would be so high and bothersome to the witness that it will not only be unfair but also unfortunate to expect such a witness to speak with precision with regard to injuries inflicted on the body of the deceased and the role attributable to each of the accused individually. In the present case, the result of the blunt injuries is evident from the report of the post mortem (Exhibit P/11), the ribs of the deceased were broken and they had punctured the lungs. The pleural cavities were full of blood and his body was dragged causing injuries on his back. In these circumstances, some blood would but naturally ooze out of the body of the deceased and his clothes would be blood stained. The post mortem report (Exhibit P/11), the inquest report, the statements of PW2, PW3, PW4, PW7 and P.W. 15 are in line with each other and there is no noticeable conflict between them. The injuries on the body of the deceased were so severe that they alone could be the cause of death and the statement of PW6 in relation to cause of death is definite and certain. Thus, we see no merit in this contention raised on behalf of the accused."

v) In *Mayur Panabhai Shah v. State of Gujarat*, reported in , 1982 CRI.L.J. 1972, more particularly, para 2, which reads as under:

"2. This is an appeal by special leave directed against the judgment passed by a single Judge of the Gujarat High Court summarily dismissing an appeal preferred

by the appellant against an order passed by the Additional Sessions Judge No. 11 Ahmedabad convicting the appellant of the offence under Section 376 of the Indian penal Code and sentencing him to imprisonment for a period of one year. We think that this is not a case which should have been summarily rejected by the learned single Judge and moreover we do not think the learned Judge was right in observing that "our courts have always taken the doctors as witness of truth." Even where a doctor has deposed in court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth. We would therefore allow the appeal, set aside the judgment of the single Judge and remand the appeal to the High Court with a direction that the appeal may be admitted and after issuing notice to the State it may be disposed of on merits. It would be preferable if the appeal is heard by a Judge other than the learned Judge who heard the appeal at the stage of admission."

vi) In *State of UP v. Naresh and Ors.*, reported in , 2011 CRI.L.J. 2162, more particularly, para 24 and 25, which read as under:

"24. The High Court disbelieved both the witnesses Subedar (PW-1) and Balak Ram (PW-5) as being closely related to the deceased and for not examining any independent witnesses. In a case like this, it may be difficult for the prosecution to procure an independent witness, wherein the accused had killed one person at the spot and seriously injured the other. The independent witness may not muster the courage to come forward and depose against such accused. A mere relationship cannot be a factor to affect credibility of a witness. Evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives" evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the Court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. [Vide *Jarnail Singh* (, AIR 2010 SC 3699) (supra), *Vishnu and Ors. v. State of Rajasthan*, (2009) 10 SCC 477 : (2009 AIR SCW 6363); and *Balraje @ Trimbak* (, 2010 AIR SCW 3707) (supra)].

25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence

brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/ materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

[Vide: State Represented by Inspector of Police v. Saravanan and Anr., , AIR 2009 SC 152; Arumugam v. State, , AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, , (2009) 11 SCC 334 : (2009 AIR SCW 2849); and Dr. Sunil Kumar Sambhudayal Gupta and Ors. v. State of Maharashtra, , JT 2010 (12) SC 287] : (2011 Cri LJ 705 (SC))."

vii) In Jitender Kumar v. State of Haryana, reported in (2012) 6 SCC 204, more particularly, para 18, which reads as under:

"The court has also to consider the fact that the main purpose of the FIR is to satisfy the police officer as to the commission of a cognizable offence for him to conduct further investigation in accordance with law. The primary object is to set the criminal law into motion and it may not be possible to give every minute detail with unmistakable precision in the FIR. The FIR itself is not the proof of a case, but is a piece of evidence which could be used for corroborating the case of the prosecution. The FIR need not be an encyclopaedia of all the facts and circumstances on which the prosecution relies. It only has to state the basic case. The attending circumstances of each case would further have considerable bearing on application of such principles to a given situation. Reference in this regard can be made to State of U.P. V. Krishna Master and Ranjit Singh V. State of M. P."

5.1 Besides, the learned Additional Public Prosecutor also drawn our attention and relied upon para 35 and 36 of the impugned judgment and order, which read as under:

"35. Every criminal trial is found to be having infirmities, contradictions and exaggeration. P.W. 4 is not author of ex. 53. The Police Officers are author of ex. 53 and it is official communication which has been preserved by the police in performing its duty in ordinary course of business. It is not created subsequently and hence it is admissible in evidence. A close scrutiny of ex. 53 it reveals that it discloses the cognizable offence. It further reveals that P.W. 4 Ajay had been to Amraiwadi Police Station but he was not responded. It was lacksity on the part of Police Officer of Amraiwadi Police Station. They have failed to perform their legal obligation in recording the FIR promptly when P.W. 4 had been to Amraiwadi Police Station. This Court is of the opinion that it was paramount and obligatory duty of P.W. 9 Mr. Chudasama to treat ex. 53 as FIR and he ought to have started investigation in the case.

36. After having close scrutiny of the entire record this Court is guided by the judgment reported in SCC (Criminal) 2003 page 1305 in case of SP, CBI v. Tapankumar Singh wherein the Hon"ble Apex Court of India has ruled in para 18 as under:

18. The information so recorded does not make a categoric assertion that the respondent has accepted a sum of rupees one lakh by way of illegal gratification and that he was carrying the said amount with him while going to Nagpur by Gitanjali Express on that day. If these assertions are accepted on their face value clearly an offence of criminal misconduct u/s. 13 of Prevention of Corruption Act, 1988 is made out. It cannot be disputed that such offence of criminal misconduct is a cognizable offence having regard to the second item of last part of Schedule 1 of the Code of Criminal Procedure under the head "TI-Classification of Offences Against Other Laws".

The Hon"ble Apex Court of India has ruled that entry in GD discloses cognizable offence can be treated as FIR then there was no difficulty for P.W. 9 Mr. Chudasama in treating ex. 53 as FIR. This Court is of the considered opinion that ex. 53 is treated as FIR of this case instead of ex. 20 and thereafter ex. 20 would amount to the statement which can only be used to contradict the witness."

6. We have heard the learned advocates for the parties, examined the matter carefully and gone through the evidence on record. We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon"ble Apex Court.

6.1 Before proceeding with the matter, it will not be out of place to mention that the accused No. 1 and the deceased had long drawn enmity. It has come on record that several cross cases, of earlier point of time, have been pending between them, where, the deceased was one of the accused and taking into account the said aspect, we have proceeded with the matter.

6.2 We have gone through the evidence of PW-1 - Dr. Harishchandra Gemarbhajadav, the Medical Officer, exh. 12, who had conducted the post mortem of the deceased. Following injuries were found on the dead body of the deceased:

"i) CLW at left upper arm at postero-lateral aspect 1 inch above the (Lt) elbow joint, irregular margin, Edge everted & dry blood stained. CLW size: 1 cm length x 0.5 cm depth x 0.5 cm width. Internal injury: No deep injury seen wound covered with sand material inner part.

ii) Scratches seen at (Rt) side neck at lateral part 5.5 cm from midline of middle part & neck scratches Brownish scab formation occur before 3 to 5 days from 17/9/00.

iii) Abrasion at (Rt) lower end of neck at Sterno-clavicular joint 1 cm x 0.5 cm, superficial abrasion transverse Brown scab formation it is occur before 3 to 5 days from 17/9/00.

iv) Injury at below (Lt) knee joint, Broken left leg at upper part fracture tibia/fibula seen Internally Broken bone tibia/Fibula seen muscles tissue Blood coagulated Haematoma seen.

v) Contusion at (Lt) popliteal region at near bade of (Rt) knee joint tranverse 5cm x 3cm only intradermis bruises seen.

vi) Contusion at (Lt) popliteal region, 10 below the (Lt) knee post Aspect 5 cm x 3 cm up to muscles bruises seen at tissue & muscles.

vii) Contusion at (Lt) thigh at Ant part lower part 2cm above (Lt) knee joint, tranverse intradermis only.

viii) Contusion at (Rt) forearm, Post. Aspect upper 1/3rd part, oblique 4cm x 3 cm intra dermis only.

ix) Contusion at (Rt) shoulder girdle upper lateral aspect 3 cm x 2 cm up to issue only.

x) Contusion at (Lt) upper arm, lateral part at deltoid end 4 cm x 2 cm transverse bruises skin tissue muscles.

xi) Contusion at (Rt) bade part at (Rt) shoulder region, lower part of scapular region, transverse intradermis only.

xii) Contusion at bade it thoracic No. 17 vertebra midline from (Lt) side to (rt) side upwards oblique 4 cm x 3 cm intradermis only.

xiii) Contusion at (Lt) side chest, upper part from nipple (Lt) to 2 cm above nipple & medical size up to sternum, bruises 5 cm x 5 cm deep to skin tissue muscles.

Internally - 3rd intercostal cartilage goes inwards in thoracic cavity cause (Lt) side Haemothorax 500 blood in thoracic cavity."

6.3 Further perusal of the Post Mortem Note revealed the cause of death, "Death due to shock & cardio respiratory failure due to multiple trauma". Thus, taking into account the injuries, which are 13 in number together with the cause of death, as referred herein above, in our view, the death of the deceased was homicidal and it is a culpable homicide amounting to murder and hence, cannot fall under the exceptions enshrined in Section 300 of the IPC.

6.4 So far as evidence of two so-called eye-witnesses viz. PW-2 and PW-4 is concerned, Mr. Lakhani, the learned senior advocate for the accused took us through the evidence of these witnesses in detail and emphasized the contradictions and improvements in the same, however, it appears from the evidence on record that both the witnesses were present and they have described the facts in nutshell. Moreover, it is undoubted that while their statements were recorded, looking to the overall facts and circumstances of the case, they might not have precisely stated due to shock and depression, however, taking into consideration their versions, the presence of at least original accused Nos. 1 and 2 at the spot can be believed, however, though the aforesaid

witnesses have stated that the other accused were also present when the alleged offence had occurred, but looking to the other oral as well as documentary evidence on record, it appears that the prosecution has not successfully proved the presence of other accused at the spot beyond reasonable doubt, except the accused Nos. 1 and 2, inasmuch as they are inducted subsequently and even in recovery, no blood was found from their clothes. Further, it appears that accused - Santoshsingh is implicated in the crime in question only due to he is related to accused No. 1. Besides, it is also a fact that the accused and the deceased had a long drawn enmity. In aforesaid view of the matter, when the presence of other accused, than the original accused Nos. 1 and 2, is not proved beyond reasonable doubt which is substantiated by the versions of PW-2 and PW-4, it is difficult for this Court to uphold the conviction imposed upon them. Moreover, it appears that PW-3 - Ramsinh Ramsevak Rajput, exh. 29 has supported the case versions of PW-2 and PW-4, however, the learned trial Court has not believed the version of the said witness. Accordingly, when the presence of original accused Nos. 1 and 2 is proved beyond reasonable doubt and as aforesaid, the death of the deceased appears to be the culpable homicide amounting to murder, in our opinion, the ends of justice would meet if the accused Nos. 3 and 4 of Sessions Case No. 65 of 2005 and the sole accused of Sessions Case No. 66 of 2005 are given benefit of doubt and acquitted of the charges levelled against and the impugned judgment and order is modified accordingly. However, it is clarified that we are not exonerating them fully, but only given them the benefit of doubt.

7. In view of the aforesaid discussion, Criminal Appeal No. 2658 of 2008, filed by appellant - Santoshsingh Narendrasinh Chouhan -original accused in Sessions Case No. 66 of 2005, succeeds, whereas, Criminal Appeal No. 2659 of 2008, filed by the appellants - original accused in Sessions Case No. 65 of 2005, succeeds in part i.e. qua appellant Nos. 3 and 4 - original accused Nos. 3 and 4 namely Ramvakilsingh Brijpalsingh Rathod and Rajusingh Rameshsingh Chouhan, respectively. The impugned judgment and order dated 05/09/2008, passed by the learned Additional City Sessions Judge, Court No. 4, Ahmedabad in Sessions Case Nos. 65 and 66 of 2005, is modified to the aforesaid extent and appellant of Criminal Appeal No. 2658 of 2008 - Santoshsingh Narendrasinh Chouhan - original accused in Sessions Case No. 66 of 2005 and the appellant Nos. 3 and 4 of Criminal Appeal No. 2659 of 2008 - Ramvakilsingh Brijpalsingh Rathod and Rajusingh Rameshsingh Chouhan - original accused Nos. 3 and 4 respectively, in Session Case No. 65 of 2005, are acquitted of all the charges levelled against them. The accused are reported to have been on bail and accordingly, their bail bonds shall stand cancelled. The original accused Nos. 1 and 2 of Session Case No. 65 of 2005 are directed to surrender to custody within 12 (twelve) weeks from today to undergo the sentence imposed upon them, failing which, the concerned investigating agency shall be at liberty to take appropriate actions, in accordance with law. They may be given set off of the period they have already undergone. The other accused, since acquitted as aforesaid, need not to surrender to custody except they are required in any other case. The rest of the

judgment and order shall remain unaltered. Registry to return the R&P to the trial Court forthwith.