

(2003) 08 GUJ CK 0046
In the Gujarat High Court
Case No : Criminal Appeal No. 378 of 1998

Shakrabhai Valabhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 235(1), 235(2), 313, 374(2)
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 323, 325, 34, 504

Citation : (2003) 08 GUJ CK 0046

Hon'ble Judges : Sharad D. Dave, J; H.H. Mehta, J

Bench : Division Bench

Advocate : T.S. Nanavati, for Petitioner Nos. 1-3, for the Appellant; P.R. Abichandani, APP, for the Respondent

Final Decision : Dismissed

Judgement

H.H. Mehta, J.—The appellants who were original accused Nos. 1, 2, and 3 in Sessions Case No. 255 of 1996, have, by preferring this Criminal Appeal under Sec. 374(2) of the Criminal Procedure Code, 1973 (for short "Cr.P.C."), challenged the correctness, legality and validity of Judgment Ex. 63 dated 27th February, 1998 rendered by the learned Additional Sessions Judge, Panch Mahals at Godhra (who will be referred to hereafter as "the learned Judge of the trial Court") in Sessions Case No. 255 of 1996 by which all the appellants were convicted under Sec. 235(2) of Cr.P.C. for the offences punishable under Sec. 302 read with Sec. 34 of the Indian Penal Code (for short "I.P.C."), Sec. 325 read with Sec. 34 I.P.C. and Sec. 323 read with Sec. 34 I.P.C. and each of them is sentenced to undergo life imprisonment and to pay a fine of Rs. 5, 000/- and in default, to undergo further Rigorous Imprisonment for six months for offences punishable under Sec. 302 read with Sec. 34 I.P.C. and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 2, 000/- and in default, to undergo further Rigorous Imprisonment for three months for offences punishable under Sec. 325 read with Sec. 34 I.P.C. and also to further undergo Rigorous

Imprisonment for two months and to pay a fine of Rs. 500/- and in default, to undergo further Rigorous Imprisonment for 15 days for offences punishable under Sec. 323 read with Sec. 34 I.P.C. The learned Judge of the trial Judge also directed to undergo aforesaid sentences by each of the accused, concurrently. The learned Judge of the trial Court has, by rendering said judgment, acquitted all the accused under Sec. 235(1) of Cr.P.C. for offence punishable under Sec. 504 of I.P.C.

2. From the evidence led by the prosecution and the case unfolded by the witnesses, the case of the prosecution can be summarized in nutshell as follows:-

2.1 P.W. 6 Gulabsing Bhavanbhai Patel is the complainant in the case. As per his complaint Ex. 31, he is resident of village Sanklianta (Tal. Godhra). He is doing agricultural work. He has three married sons. Eldest son is P.W. 10 Zaversing who has married with Lalitaben. Second son was Kamalsing who sustained injuries in the incident occurred at 4-00 p.m. on 21st June, 1996 and died on the next day on 22nd June 1996. P.W. 7 Rukhaben is the wife of said Kamalsing. Youngest third son is Natwarsing whose wife Savita had shown the place of incident to the Police. All sons and their father were residing jointly. They were doing agricultural work.

2.2 On or about 21st June, 1996, Kamalsing (deceased) and his wife P.W. 7 Rukhaben had gone to purchase seeds of paddy to the shop of one Somabhai Ramabhai. Kamalsing was also entrusted with another work with regard to the tractor. As per the case of the prosecution, P.W. 7 Rukhaben came with the seeds of paddy and Kamalsing engaged himself for talk with regard to hiring of the tractor. As per the case of the prosecution, the incident took place at 4-00 p.m. on 21st June, 1996. At that time, the complainant Gulabsing in company of his son P.W. 10 Zaversing was doing agricultural work with the help of plough in his field. At that time, when Rukhaben was on the way for her return to the house of the complainant, her husband was following her keeping distance of about 25" to 30". Suddenly Rukhaben heard shouts of her husband for his rescue, and therefore, immediately she saw at her back. At that time, she saw that three persons (appellant Nos. 1, 2 and 3) were inflicting blows of sticks on the person of Kamalsing. Therefore, P.W. 7 Rukhaben raised shouts for help to her father-in-law. Rukhaben suddenly took a turn and proceeded towards her husband Kamalsing. Mean while, complainant Gulabsing and P.W. 10 Zaversing came running near Kamalsing. It is the case of the prosecution that these two witnesses i.e. complainant Gulabsing and P.W. 10 Zaversing both have seen three persons inflicting blows with sticks on the person of Kamalsing. It is the case of the prosecution that the appellants were asking Kamalsing as to whether he wanted to have the land and on saying so they were beating Kamalsing.

2.3 It is the case of the prosecution that at that time, P.W. 9 Saburbhai Bapubhai and his wife P.W. 11 Dhoriben both came near the place of incident. P.W. 9 Saburbhai was telling the appellants that as the land was of his ownership, why they were beating Kamalsing. Thereupon, three appellants chased P.W. 9 Sabur

Bapu and his wife P.W. 11 Dhoriben. From the evidence, it reveals that the appellants ran behind these two persons upto the field of Sabur Bapu, and they inflicted stick blows on the persons of Sabur Bapu and Bai Dholi and both sustained serious injuries.

2.4 As per the evidence of complainant Gulabsing, both legs of Kamalsing were broken and there was serious injury on his head from which there was a bleeding. Complainant Gulabsing managed to call for a cot and Kamalsing was shifted by taking him on cot to the residence of the complainant. From the evidence, it also appears that thereafter P.W. 10 Zaversing -brother of Kamalsing went nearby village Chanchelav to call for a Rickshaw, but he could not manage to bring the Rickshaw, as no Rickshawala was ready to come to their village. Therefore, the complainant, Bai Rukha and Zaversing, by taking injured Kamalsing in cot, brought Kamalsing to the Godhra Town Police Station at Godhra. Police advised them first to take injured Kamalsing to the Civil Hospital, Godhra. From the record, it appears that the complainant brought Kamalsing to the General Hospital, Godhra at 6-50 p.m. P.W. 5 Dr. Binaben Kantilal Parikh was on duty as Medical Officer in Civil Hospital, Godhra. Gulabsing gave history to Dr. Binaben Parikh who in turn recorded the history in case papers. As per the case of the prosecution, the complainant gave history about assault with stick at 4-00 p.m. on 21st June, 1996 by Shakrabhai Valabhai (appellant No. 1) and Mahasukhbhai Shakrabhai (appellant No. 2). P.W. 5 Dr. Binaben gave medical treatment to the injured Kamalsing. She noticed as many as five injuries on the person of Kamalsing. Kamalsing was admitted in the hospital and as per medical case papers, during the course of treatment, he died at 8-30 a.m. on 22nd June, 1996 in the hospital.

2.5 As per the evidence of complainant Gulabsing, at about 12-00 midnight, police came in the hospital and asked him to lodge a complaint. Thereupon, the complainant went to the Godhra Taluka Police Station and lodged his complaint against three appellants by giving specific names of the appellants as the accused. That complaint came to be registered at 00-15 hrs. on 22nd June, 1996 as CR. No. I 199/96. P.S.O. of Godhra Taluka Police Station entrusted the police investigation of the said crime bearing CR. No. I 199/96 to P.W. 14 PSI Atmaram Somabhai Solanki. PSI Mr. Solanki went to the place of incident and drew a panchnama of scene of offence in presence of two panchas. The place of offence was shown by Savita wife of Natwarsing. Thereafter PSI Mr. Solanki recorded the statements of Sabur Bapu and Dhoriben. As injured Kamalsing expired in the hospital, P.W. 15 PSI Parvatsing Virsing Baraia made a report to the Learned Chief Judicial Magistrate, Godhra with a request to add offence under Sec. 302 of I.P.C. in First Information Report, copy of which was sent to said learned Chief Judicial Magistrate. Thereafter, PSI Mr. Baraia took over further investigation from PSI Mr. Solanki. PSI Mr. Baraia held inquest of Kamalsing and drew inquest panchnama. Thereafter, PSI Mr. Baraia went to village Sanklianta and recorded the statements of witnesses conversant with the facts of the case. On 22/6/1996, PSI Mr. Baraia sent dead body of Kamalsing along with police Yadi to the Medical

Officer of Civil Hospital, Godhra. P.W. 1 Dr. Narayan Bhurabhai Patel held autopsy on dead body of Kamalsing. On 23rd June, 1996 police arrested the appellants. It is the case of the prosecution that the appellants had shown their willingness to trace out the muddamal sticks which they had concealed, and therefore, at the instance of appellants, muddamal sticks were discovered under Sec. 27 of the Indian Evidence Act for which a panchnama was drawn. Thereafter, PSI Mr. Baria sent incriminating articles, control earth, blood stained earth and the clothes which were worn by deceased Kamalsing at the time of incident under forwarding letter to the Forensic Science Laboratory, Surat (for short "FSL") for examination and analysis. On receipt of reports from the FSL and after obtaining P.M. Notes etc. PSI Mr. Baria filed chargesheet against the appellants in the Court of the learned Chief Judicial Magistrate, Godhra on 20th September, 1996. That chargesheet came to be registered as Criminal Case No. 1743 of 1996. The learned Chief Judicial Magistrate transferred said Criminal Case No. 1743 of 1996 to the learned 8th Joint Civil Judge & J.M.F.C., Godhra. As one of the offences viz. offence punishable under Sec. 302 of I.P.C. is exclusively triable by the Court of Sessions, the said learned J.M.F.C. Godhra to whom Criminal Case No. 1743 of 1996 was assigned, passed a committal order under Sec. 209, Cr.P.C. on 4th October, 1996 and committed the case to the Court of Sessions, Panch Mahals at Godhra.

2.6 Consequent upon the said committal order, the learned Sessions Judge, Panch Mahals, Godhra received case papers on 28th October, 1996 and said case came to be registered as Sessions Case No. 255 of 1996. Thereafter, said Sessions Case No. 255 of 1996 was assigned to the learned Judge of the trial Court.

3. On the basis of material on record, the learned Judge of the trial Court framed Charge Ex. 2 against the appellants on 15th September, 1997. The charge was read over and explained to the appellants. On recording pleas of the accused, the accused pleaded not guilty to the charge and claimed to be tried.

4. In order to prove the case against the appellants as per Charge, the prosecution examined (1) P.W. 1 Dr. Narayanbhai Bhurabhai Patel at Ex. 7; (2) P.W. 2 Dr. Nikitaben B. Shah at Ex. 10; (3) P.W. 3 Rimalbhai Ramjibhai at Ex. 19; (4) P.W. 4 Somabhai Virsingbhai at Ex. 21; (5) P.W. 5 Dr. Binaben Kantilal Parikh at Ex. 23; (6) P.W. 6 Gulabsing Bhavanbhai (complainant) at Ex. 30; (7) P.W. 7 Rukhaben Kamalsing (wife of deceased Kamalsing) at Ex. 32; (8) P.W. 8 Kalaben Aaratsinh at Ex. 33; (9) P.W. 9 Saburbhai Bapubhai at Ex. 34; (10) P.W. 10 Zaversing Gulabsing at Ex. 44; (11) P.W. 11 Dhoriben w/o Saburbhai Bapubhai at Ex. 45; (12) P.W. 12 Jaysingbhai Vechatbhai Patel at Ex. 46; (13) P.W. 13 Virsingbhai Gamabhai at Ex. 51; (14) P.W. 14 PSI Atmaram Shankarbhai Solanki (Investigating Officer) at Ex. 52; and (15) P.W. 15 PSI Parvatsing Virsing Baraia (Second Investigating Officer) at Ex. 55.

5. The prosecution also produced and proved certain documents such as (1) Post Mortem Notes at Ex. 8, (2) Medical Certificate for injury sustained by Saburbhai

Bapubhai at Ex. 11; (3) Medical Certificate for injury sustained by Bai Dholi Saburbhai at Ex. 16; (4) Panchnama of scene of offence at Ex. 20; (5) Medico Legal Certificate with regard to history given by father of injured and injury sustained by Kamalsing at Ex. 25; (6) Complaint at Ex. 31; (7) Inquest Panchnama at Ex. 35; (8) Panchnama of clothes put on by deceased and produced by Police Constable Jitendrakumar Chhotalal at Ex. 36; (9) Death report made by police at Ex. 37; (10) Discovery panchnama under Sec. 27 of the Indian Evidence Act at Ex. 50; (11) Report of FSL at Ex. 57; (12) Report of Serologist at Ex. 58 to prove the case against the appellants. etc.

6. After recording of evidence of prosecution witnesses was over, the circumstances appearing against the appellants were brought to the notice of and explained to the appellants. Whatever replies were given by the appellants were recorded below their respective pleas, as a result of which their further statements came to be recorded under Sec. 313, Cr.P.C. The defence of the appellants is of general denial.

7. Still however, appellant Nos. 1 and 2 filed their written reply over and above their further statements. Along with the written reply, they also produced xerox copies of certain documents. Written reply filed by appellant Nos. 1 and 2 has not been exhibited by the learned Judge of the trial Court. As per the written reply dated 27-01-1998 (Page: 361 in original Record), it is the case of the appellant Nos. 1 and 2 that Valsing Virabhai Patel -father of appellant No. 1 had purchased agricultural land bearing Survey No. 79 Paiki admeasuring 2 Acres from P.W. 9 Sabur Bapu on 8th April, 1994 and on that day, possession of the land was given to the father of appellant No. 1. It is the case of the appellants that since then, they are cultivating the said land. It is the defence of the appellants that deceased Kamalsing Gulabsing and his family members in collusion with P.W. 9 Sabur Bapu wanted to snatch away the possession of the said land from the appellant Nos. 1 and 2 and in that connection, they were quarrelling with the appellant Nos. 1 and 2. Before monsoon of 1996 set in, appellant Nos. 1 and 2 had cultivated the land and sowed seeds for crop of maize. On the date of incident, Sabur Bapu tres-passed in their land with ox and plough. It is a defence of the accused that for the protection of their property, they prevented Sabur Bapu, as a result of which, he got excited and made an assault with stick on the appellant Nos. 1 and 2. It is the defence of the appellant Nos. 1 and 2 that Sabur Bapu was entangled in the wood of plough and fell down, and therefore, he sustained injuries. It is further the defence of the appellant Nos. 1 and 2 that on the date of incident, deceased Kamalsing had come to their house and gave filthy abuses to appellant Nos. 1 and 2. Kamalsing also asked appellant Nos. 1 and 2 as to why they have cultivated the land for crop of maize and immediately thereafter he made an assault on appellant Nos. 1 and 2 with the stick. The appellant Nos. 1 and 2 snatched away the stick. Thereafter, the deceased gave abuses and quarreled with them. It is the defence of the appellant Nos. 1 and 2 that Kamalsing sustained injuries with sticks of the associates of Kamalsing. They have denied that they had beaten the deceased or

his wife. It is their further defence that quarrel took place while they were protecting their property. It is their further defence that in collusion with Sarpanch and Bit Jamadar of village, a complaint was lodged after long delay. It is their further defence that in collusion with Sarpanch and Bit Jamadar, a complaint was prepared and statements were recorded as per their instructions. The prosecution has suppressed true and correct facts of the case. It is also the defence of the appellant Nos. 1 and 2 that some cases were filed in Civil Court as well as Mamlatdar-cum-ALT, Dohad in respect of said land. In support of their defence, appellant Nos. 1 and 2 have produced certain documents.

8. The appellant No. 3 has denied the case of the prosecution and his defence is of general denial. None of the accused has examined himself or any witness in his defence. The appellant No. 3 has not produced any document in his defence.

9. After hearing the arguments of the learned Advocates for both the parties and after making examination and appreciation of the evidence on record of the case, the learned Judge of the trial Court came to a conclusion that deceased Kamalsing Gulabsing died an unnatural death and that he was killed. He has also come to a conclusion that it was a common intention on the part of all the appellants to cause injuries to the deceased Kamalsing by inflicting blows of sticks which were sufficient in the ordinary course of nature to cause death and with that common intention, they, by inflicting blows of sticks, committed murder of Kamalsing. The learned Judge of the trial Court has also come to a conclusion that the appellants caused grievous hurt by inflicting stick blows to witness Saburbhai and they also caused hurt by inflicting blows of sticks to witness Dhoriben. He also came to a conclusion that the prosecution failed to prove its case that the appellants gave filthy abuses with intent to commit breach of peace. On the basis of aforesaid conclusions, the learned Judge of the trial Court held the appellants guilty for an offence of murder of Kamalsing and offences of voluntarily causing grievous hurt and hurt to the witnesses Sabur Bapu and Dhoriben respectively and on the basis of these findings, the learned Judge of the trial Court rendered his Judgment of conviction on 27th February, 1998 and convicted the appellants under Sec. 235(2) of Cr.P.C. and sentenced them for offences to which a reference is made in Para 1 of this Judgment hereinabove. The learned Judge of the trial Court has by rendering said judgment acquitted all the accused under Sec. 235(1) of Cr.P.C. for an offence punishable under Sec. 504 of I.P.C.

10. Being aggrieved against and dissatisfied with the said Judgment of conviction and sentence, the appellants have preferred this present appeal. The State Government has not preferred any appeal against the judgment of acquittal rendered in favour of all the appellants for offence punishable under Sec. 504 of I.P.C.

11. Shri T.S. Nanavati, learned Advocate for the appellants and Shri P.R. Abichandani, learned APP for the respondent -State have taken us through the entire evidence on record. Shri P.R. Abichandani has also taken us through the

impugned judgment.

12. Shri T.S. Nanavati, learned Advocate for the appellants has assailed the impugned judgment mainly on following counts:-

(1) The learned Judge of the trial Court has not considered the defence taken in written reply filed by appellant Nos. 1 and 2.

(2) This is a case of murder by inflicting multiple blows of sticks but prosecution has not made any specific averment against each accused attributing his role for causing particular injury to deceased.

(3) Quarrels were going on with regard to agricultural land and that the appellants were in possession of the land sold by P.W. 9 Saburbhai. As against this case, it is the case of the prosecution that Saburbhai had sold the land to the deceased Kamalsing. Though the said land was in possession of the appellants/accused, the deceased Kamalsing and his family members ploughed the field and sowed the seeds of paddy, and therefore, in retaliation of preserving right of property, the incident took place. Relations between the deceased Kamalsing and his family members on one side and the appellant Nos. 1 and 2 on other side were not at all cordial but strained. He argued that looking to the dispute with regard to agricultural land, due to animosity, relations were inimical, and therefore, the prosecution witnesses are inimical witnesses and they are interested to grab the land by involving the appellant Nos. 1 and 2 falsely in the crime.

(4) The learned Judge of the trial Court has not correctly appreciated the evidence in its proper perspective. He argued that looking to the evidence on record, the alleged eye witnesses are not consistent with the story put forward by the prosecution, and from their own evidence, it appears that in fact they are not eye witnesses in the eye of law, to the incident.

(5) Each alleged witness describes the incident differently and therefore, real facts of the case are not forth-coming on record. The genesis of incident is suppressed by the prosecution.

(6) There is an inordinate delay in lodging the complaint by the father of injured Kamalsing. He has argued that incident took place at 4-00 p.m. and the complaint came to be lodged at 00-15 hrs. on the next day of the incident. Prosecution has not explained such an inordinate delay and, therefore, it casts a doubt about the genuineness of the prosecution case.

(7) He has argued that looking to the evidence on record, the complainant consulted Sarpanch of the village and after due deliberations and taking advice, the complainant lodged his complaint involving the appellants falsely in the crime.

(8) Shri T.S. Nanavati has argued that entire incident took place in quick succession of events and, therefore, the alleged eye witnesses had no opportunity to see the actual incident as to how it happened.

(9) He has further argued that looking to the evidence on record, the prosecution has not proved the case beyond reasonable doubt and, therefore, the learned Judge of the trial Court ought to have given benefit of reasonable doubt by holding that the prosecution failed to prove the case in the manner in which it is submitted to the trial Court.

(10) Lastly he has requested this Court to acquit the appellants by allowing their appeal.

13. Mr. P.R. Abichandani, learned APP for the respondent State has supported the judgment, throughout. He has argued that the complaint is a First Information Report in which the complainant has only to show that some cognizable offence has been committed. He is not required to state each and every minute detail of the incident. He is not required to state the details as to which accused inflicted which blow on which part of the body of the deceased and therefore, the contention of Shri T.S. Nanavati that the prosecution has not stated a specific role attributing each accused independently deserves to be rejected. Mr. Abichandani has further argued that looking to the evidence on record, there is no delay at all. Evidence on record itself explains the delay on the part of the complainant. He has further argued that looking to the animosity in between the appellant Nos. 1 and 2 on one side and deceased Kamalsing and his family on other side, the prosecution has come with a specific case that because of this enmity, the appellants killed Kamalsing and caused injuries to witnesses Sabur and Dholiben. He has argued that dispute arose as Sabur sold the land to the deceased Kamalsing, though it was already sold in 1964 to the father of appellate No. 1. He has further argued that in view of this inimical relations, the prosecution has come out with a specific motive that because of this animosity, the incident took place and therefore, the evidence of eye witnesses should not be discarded merely because they were inimical witnesses.

14. He has further argued that Shri Nanavati has tried to magnify certain variances in the evidence of eye witnesses, but such type of variances are bound to appear because witnesses might have added embroideries to the prosecution story perhaps for fear of being disbelieved and if such addition of embroidery does not go to the root of the prosecution case and if substratum of cause remained intact then the Court should ignore such type of embroidery. He has argued that it is not correct to argue by Shri Nanavati that entire incident took place in one set. He has argued that evidence on record makes it clear that the incident took place in two parts one at the place on unused portion of field of Virsing Gama and another at the field of Sabur Bapu which is at a distance of 10 fields from the field of Virsing. He has argued that incident with regard to Kamalsing took place at aforesaid first place, while incident with regard to beating of Saburbhai and his wife Dholiben took place at the aforesaid second place. With this submission, he has argued that both events took place in quick succession and, therefore, what one eye witness had seen might not have seen by other eye witness and if this type of variances are there on record, it cannot

be said that said witnesses were not the eye witnesses to the incident. In support of his argument, Shri Abichandani has cited a decision in the case of State of U.P. Vs. Anil Singh, . Lastly he submitted that the appeal is devoid of merits and it requires to be dismissed.

15. We have dispassionately considered the submissions of learned Advocates for both the parties. We have minutely and carefully examined, scrutinized and reappraised the evidence on record to come to our own conclusions to decide this appeal. We have also perused the judgment and record and proceedings of the case called for from the trial Court.

16. At the outset of arguments, Shri T.S. Nanavati has made it clear that appellants did not seriously dispute the fact that Kamalsing died homicidal death. Though the learned Judge of the trial Court has discussed and dealt with the evidence consisted of inquest panchnama, Post Mortem Notes and oral evidence of Dr. Narayanbhai Bhurabhai Patel, he did not come to a definite conclusion that Kamalsing died homicidal death. Looking to the points framed for determination at Para 10 and answers given in Para 11 of the Judgment rendered by the learned Judge of the trial Court, it appears that he has come to a conclusion that Kamalsing Gulabsing met an unnatural death and that he was killed. Merely because, the learned Judge of the trial Court has given above finding, it cannot be said that Kamalsing died suicidal death or accidental death. The learned Judge of the trial Court wanted to convey his conclusion rather in different form but meaning of above conclusion is the same in the sense that Kamalsing died homicidal death. Still however, we have examined MLC Certificate Ex. 25 read with evidence of P.W. 5 Dr. Binaben and we come to a conclusion that Kamalsing died homicidal death. Over and above, we have examined Inquest Panchnama Ex. 35 and Post Mortem Notes Ex. 8 read with evidence of P.W. 1 Dr. Patel.

17. As per the evidence of Dr. Patel and Post Mortem Notes, it transpires that after the incident, injured Kamalsing was brought to the Civil Hospital, Godhra wherein he was examined by P.W. 5 Dr. Binaben. As per her evidence and looking to the medical certificate at Ex. 25, Kamalsing had sustained following injuries:

- (1) CLW right parietal region. 3 cm. x 0.5 cm. x scalp deep.
- (2) Fracture on femur (left) lower end.
- (3) Fracture on Tibia Fibula both sides.
- (4) CLW left leg (L/3) (vertical) of size of 2 cm x 0.5 cm x bone deep.
- (5) Bruise (Red) on right side of back (transverse) of size of 10 cm x 1 cm. As per this certificate Ex. 25, Kamalsing expired on 22th June, 1996 at 8-20 a.m.

As per the evidence of P.W. 1 Dr. Patel, when he was on duty as Medical Officer in General Hospital at Godhra, he received dead body of Kamalsing at 1-00 p.m. and he started to perform post mortem at 1-00 p.m. and completed it at 3-30 p.m. As per his evidence read with Post Mortem Notes, he noticed following

external injuries:

- (1) A stitched wound on right parietal region of head 3" above right ear. 3 cm long. blood clots.
- (2) Stitched wound middle left leg at lower part 2 cm long.
- (3) Swelling and contusion on right leg nipper part. Size 3 x 1 cm. red in colour.
- (4) Swelling on left knee junction & lower part of thigh. (5) Fracture of Tibia Fibula.
- (6) Fracture of left femur lower part.

P.W. 1 Dr. Patel also noticed following external injuries :

- (1) Blood clot in sub cultural issue of scalp.
- (2) Depressed fracture of right parietal bone. size, 5 cm. x 2 cm.
- (3) Linear fracture of right parietal bone oblique above right ear.
- (4) There was hemorrhage in subarachnoid & intracerebral region of brain - dark brown in colour.

18. Dr. Patel has deposed that aforesaid all injuries were ante-mortem. He has also deposed in Para 9 of his evidence that injuries on head and thigh co-related were sufficient in ordinary course of nature to cause death. He has given his opinion for death as under:

"From the Post mortem examination, cause of death was shock & internal hemorrhage (cranial) due to head injury & fractures of left humerus and right tibia fibula."

Looking to short cross-examination in one para, evidence of Dr. Patel is not seriously challenged by the defence lawyer. He has denied a suggestion that he has not performed Post Mortem. Considering aforesaid evidence which we have discussed earlier, the prosecution has ably proved important fact that Kamalsing died homicidal death on 22nd February, 1996.

19. It would be proper for us to discuss and deal with the medical evidence with regard to two injured eye witnesses i.e. P.W. 9 Saburbhai and his wife P.W. 7 Dholiben. As per the evidence of Saburbhai at Ex. 34, it is found that during the midnight time, police came to know about the incident and thereafter both were shifted in tractor and brought to the Civil Hospital, Godhra.

20. The prosecution has examined P.W. 2 Dr. Nikitaben who examined two injured witnesses Sabur Bapu and his wife Dholiben in the hospital. P.W. 2 Dr. Nikitaben has deposed in her evidence that on 21st June, 1996 she was on duty as Medical Officer in General Hospital, Godhra and during that time at about 11-30 p.m. Saburbhai Bapubhai Patel and Dholiben Saburbhai both had come to her with police Yadi. As per her evidence, those two persons gave history that at

about 6-00 p.m. on 21st June, 1996, assaults were made on them with the sticks. She examined them one-by-one.

20.1 She found following injuries on the person of Saburbhai Bapubhai Patel for which she issued a medical certificate at Ex. 11:

(1) Defused tenderness swelling over both thighs fracture of lower third - femur shaft.

(2) Puncture wound over right arm. fracture of humerus lower third.

On taking X-ray plates, she found that there was a fracture of femur middle third and lower third AP and on reading both X-ray plates, it was found that there was fracture of lower third femur on both sides. On taking X-ray of humer/AP, middle third + lower third, it was found that there was a fracture of lower third humerus. At the bottom of the certificate, she has opined that aforesaid injuries were grievous in nature and it could be caused by hard and blunt substance and the age of injuries were within 24 hours. As per the certificate, Saburbhai was admitted on 21st June, 1996 and was discharged on 21st August, 1996. Thus, this patient remained as Indoor Patient in the hospital for two months.

20.2 For injuries sustained by Dholiben, she found following injuries which she noted down in medical certificate at Ex. 16:-

(1) CLW over right thigh anteriorally -10 cm x 2 cm. x vertical Skin Deep. Fracture of femur.

(2) DTS right hand (dorsal aspect) Fracture of 5th MT Bone.

(3) Tenderness over right shoulder.

For these injuries, X-ray plates were taken but not a single fracture was detected. As per certificate at Ex. 16, the injuries were simple in nature and were likely to be caused by hard and blunt substance. She has opined that age of injuries was within 24 hours. As per certificate Ex. 16, Dholiben was admitted as Indoor Patient in the hospital on 21st June, 1996 and was discharged on 16th July, 1996. Thus, she remained in the hospital as Indoor Patient for about 25 days. Dr. Nikitaben in her cross-examination at length has specifically opined that injury No. 1 sustained by Saburbhai cannot be possible by fall. In the same manner, she has opined that injury No. 1 sustained by Dholiben could not be possible by fall. She has denied the suggestion that injury No. 1 sustained by Saburbhai was of such a nature that it could be possible by fall. Dr. Nikitaben has produced X-ray plates for injuries sustained by Saburbhai and those X-ray plates are on record at Ex. 12 to Ex. 15.

21. Before we discuss oral evidence of eye witnesses and other witnesses, we would like to place on record certain admitted legal position with regard to appreciation of evidence in criminal matters. As held in case of RAMA NAND AND OTHERS v. THE STATE OF HIMACHAL PRADESH, reported in 1981 (1) S.C.J. 325, the Hon"ble Supreme Court has observed as follows :-

"..... Perfect proof is seldom to be had in this imperfect world and absolute certainty is a myth. That is why u/s 3, Evidence Act a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

In another decision in the case of State of West Bengal Vs. Orilal Jaiswal and another, , the Hon"ble Supreme Court has held as follows :-

....."It should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record".

In the case of Inder Singh and Another Vs. The State (Delhi Administration), , it has been held by Hon"ble Supreme Court as follows :-

"Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes".

Day in and day out, Criminal Court has to appreciate and evaluate oral evidence of witnesses. It happens that witnesses are giving evidence after a long span of about 15 to 20 months looking to the present dumping of criminal cases in the Court. In such a situation, witnesses are bound to give their evidence from their memory and in the evidence, sometimes they are making some additions, alterations or embroidery in the case so that the Court may believe their evidence and they may not look foolish before the Court. In these circumstances, the Hon"ble Supreme Court has given certain guidelines as to what factors should be taken into consideration while appreciating the evidence of witnesses. In case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , the Hon"ble Supreme Court has observed in Paras 5 and 6 as follows:-

Para-5: Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :- (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another. (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. (5) In regard to exact time of an incident, or the time duration of an occurrence,

usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person. (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on. Para-6: Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses."

22. In this case, witnesses are from village Sankalianta of Godhra Taluka. They are rustic and illiterate villagers. The rustic people have no sense of time and they at the most give approximate time, which can be with an error of an hour or two on either side. Discrepancies in their testimony regarding time and distance are not to be attached undue weight. Person react to situations in different ways. It cannot always be expected that the villagers have the civic sense to report all matters that come to their notice. The villagers are not expected to voluntarily get themselves involved in matters of sensation. Their evidence cannot be discarded for the omission to openly declare what they have seen, before they were traced and interrogated by the police. They cannot be treated as casual or chance witnesses. They are probable witnesses by standards of rural life. While making an appreciation of evidence of rustic witnesses, the Court cannot judge the evidence by same standard as that of urban witnesses.

23. We have come across a decision in the case of Munshi Prasad and Others Vs. State of Bihar, , wherein the Hon"ble Supreme Court has held as under:

"While appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstance the appellate Court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of."

24. In this case, the appellant Nos. 1 and 2 have advanced their specific defence in their written reply in the statement recorded under Sec. 313 of Cr.P.C. To substantiate their defence, they have produced certain documents but they are not proved, and therefore, the learned Judge of the trial Court has not taken into consideration those documents. Shri Nanavati, learned Advocate for the appellants has argued that the defence lawyer in the trial Court has put certain suggestions in the cross-examination of the witnesses and these suggestions do establish the defence of the appellants.

25. This Gujarat High Court, in the case of SHRI KHIMJI KURJIBHAI v. THE STATE OF GUJARAT, reported in 1982 Cri.L.R. (Guj.) 381, has held as follows :-

"Suggestions in cross-examination are no evidence. This proposition of law is good both in the case of the prosecution and the defence. Mere hurling of some such suggestions, which are denied, can hardly take the place of proof or evidence. The law of evidence is alike both for the prosecution and for the defence. If the accused wants to establish a certain fact, he has to lead evidence on that score. Such suggestions cannot have any place in the realm of appreciation of evidence. We reiterate that a suggestion denied by a witness remains only a suggestion and has no evidentiary value at all."

26. Shri Nanavati has, by showing some minor discrepancies and variances in the depositions of the witnesses canvassed his case that there is a doubt about the genesis of the case, and therefore, benefit of doubt should be given to the appellants.

27. In case of *Krishnan and another v. State, Represented by Inspector of Police WITH O. Ayyar Thavar and another*, reported in 2003 SCW 3688, the Hon'ble Supreme Court has held as follows:

" A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained institutions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

28. Keeping in mind aforesaid legal position with regard to appreciation of evidence, now we would like to discuss the oral evidence as to whether the prosecution has proved the case against the accused beyond reasonable doubt or not. In order to prove the case against the appellants, the prosecution has placed reliance on following seven eye witnesses, out of them two witnesses were the injured witnesses in the incident:-

- (1) P.W. 7 Rukhaben Kamalsing (wife of deceased Kamalsing) at Ex. 32;
- (2) P.W. 8 Kalaben Aaratsinh at Ex. 33;
- (3) P.W. 13 Virsingbhai Gamabhai at Ex. 51;
- (4) P.W. 9 Saburbhai Bapubhai at Ex. 34; (Injured witness);
- (5) P.W. 11 Dhoriben w/o Saburbhai Bapubhai at Ex. 45; (Injured witness);
- (6) P.W. 6 Gulabsing Bhavanbhai (complainant) at Ex. 30;
- (7) P.W. 10 Zaversing Gulabsing at Ex. 44;

28.1 P.W. 7 Rukhaben (Ex. 32) is the wife of deceased Kamalsing. she has deposed that she and her husband both were staying in joint family consisting of her parents-in-law, elder brother-in-law and younger brother-in-law with their children. As per her say, on the day of incident in the evening time, she and her husband Kamalsing both had gone to shop of Soma Rama to purchase seeds of paddy. Seeds of paddy were not available from that shop and therefore her husband asked her to return to their house. He also told her that he would be coming back after attending the work of getting tractor hired. Therefore, she was proceeding towards her house and as her husband could not finalise the matter with regard to hiring of the tractor, he was also following her. Mean while, she heard the shouts of her husband for his rescue, and therefore, she turned back and saw that Shakra Vala Patel, Mahasukh Shakra and Shana Mathur all were inflicting stick-blows on the person of her husband. She therefore shouted for help of her father-in-law. Mean while, her father-in-law Gulabsing and her elder brother-in-law Zaversing rushed running to the place. As per her evidence, the incident took place in an unused land beside the agricultural land of Virsing Gama. She has further deposed that Sabur Bapu and Dholiben both had come to the place and Sabur Bapu asked the appellants as to why they were beating Kamalsing because the land was of his (Sabur Bapu's) ownership. She has further deposed that before the family members of Kamalsing came at the place of incident, the accused fled away from the place. She has then deposed that her husband sustained injuries by blows of sticks on his head, hands, legs, chest and abdomen and there was bleeding from his head. She has also deposed that her husband fell down because he sustained said injuries. She has further deposed that thereafter her husband was shifted in cot first to their house and thereafter her elder brother-in-law went to village Chanchelav to call Rickshaw but as he could not fetch Rickshaw, he came back without Rickshaw to the house. As per her evidence, thereafter her husband Kamalsing was shifted in cot first to Chanchelav-via-Ladpur and thereafter her husband was shifted in Rickshaw from Chanchelav to Civil Hospital, Godhra. She has further deposed that first her husband was taken to the Police Station but they were asked first to take the injured person to the hospital, and therefore, they immediately went to the Civil Hospital, Godhra. As per her evidence, her husband expired in the hospital in the morning on the next day. With regard to motive part, she has deposed that the

appellant No. 1 Shakra Vala wanted to purchase the land from Sabur Bapu but Sabur Bapu sold that land to her husband, and therefore, the appellants killed her husband. For injuries sustained by Sabur Bapu and his wife Dholiben, she has deposed that she saw them in the Civil Hospital, Godhra and at that time she came to know that both had sustained injuries. She has further deposed that her statement was recorded by police on the next day of the incident. She identified all the three appellants before the trial Court as the appellants belong to her village.

28.2 In cross-examination, she has deposed that it was true that the houses of the appellants are situated in between the shop of Soma Rama and their own house. She has also deposed that her husband and she took a time of half an hour to reach the shop of Soma Rama after leaving their house. She has further deposed that when they left their house for shop of Soma Rama, her husband had taken his bicycle with him. She has further deposed that 10 minutes after she left the shop of Soma Rama for her return to her house, she heard the shouts of her husband. She has also explained that they are referring road as street. She has denied a suggestion that her husband was lying in the Kyarda (a plot of farm land with raised border for storing water). She has also made it clear that the field of Virsing Rama is adjacent to the field of her father-in-law. She has also made it clear that unused land in which her husband was lying is at a distance of about one field from the field of her father-in-law. She has also deposed that when she heard the shouts of her husband Kamalsing, he was at a distance of 25" to 30" behind her and on returning back when she saw that the appellants were beating her husband, she requested the appellants not to beat her husband. She has denied the suggestion that on seeing the appellants, she did not move further. According to her, she ran towards her husband and reached near her husband. She has admitted that when she reached near her husband, her husband had fallen down on the ground. She inquired from her husband as to at which parts of his body he sustained injuries but her husband was not speaking anything because he became unconscious. A pertinent question was asked by the defence as to whether she shouted for help of her father-in-law and elder brother-in-law when she inquired from her husband and she has specifically deposed that they all had reached to him at the place. She has also deposed that her in-laws had reached at the place of incident within a minute. She has also denied a suggestion that first her father-in-law and elder brother-in-law came at the place from where she shouted for help and thereafter they all proceeded towards her husband. She has deposed that while her husband was being shifted in Rickshaw, she and her elder brother-in-law had taken their seats in back side of Rickshaw and Kamalsing was made to lie and the head portion of her husband was in her lap. She has also deposed that it was true that she remained present in the hospital throughout till her husband expired in the hospital. She has deposed in Para 17 of her deposition that it was true that Sabur Bapu and Dhuliben were brought by police in the hospital and police personnel asked her father-in-law to lodge a complaint. A suggestion was denied that her father-in-

law replied that they have sent a person to call a Sarpanch and he would lodge the complaint after arrival of the Sarpanch.

28.3 Another eye witness P.W. 8 Kalaben at Ex. 33 is an independent witness. She is neither related to any members of the family of the deceased, nor has she any inimical relation with the appellants. She has deposed that they have got their agricultural lands in village Sankalianta, and that the incident took place before about one and half years. She was alone in the house. Her parents-in-law had gone to the field for agricultural operations. With regard to the incident, she has deposed that at about 4-00 p.m. in the evening, she was present in the Osari of her house and at that time, she heard shouts of Kamalsing for help and therefore, she came out of the house and from Otta, she saw that Sakra Vala, Mahasukh Shakra and Shana Mathur i.e. present appellants were beating Kamalsing with sticks. She identified the assailants before the trial Court saying that she knew all the appellants. She has further deposed that Bai Rukha, Zaversing, Gulabsing Bhavan, Sabur Bapu and Bai Dholi had reached the said place of incident. She has deposed that Sabur Bapu and Bai Dholi passed through from the place near her house and then they both went behind her house and thereafter they both went to the house of Sabur Bapu. She has specifically deposed that three appellants chased Sabur Bapu and Bai Dholi and after some little time, she heard the shouts of Sabur Bapu. She has deposed that on the next day, she came to know that Sabur Bapu was also beaten. She also came to know that Kamalsing expired in the hospital. Her statement was recorded. On the point of motive, she has deposed that Sakra Vala i.e. the appellant No. 1 was intending to purchase the land of Sabur Bapu, but Sabur Bapu sold that land to Kamalsing and therefore, a quarrel took place as Shakra Vala could not succeed in purchasing the land of Sabur Bapu. In cross-examination, she has deposed that the field which was sold by Sabur Bapu to Kamalsing was adjacent to their own field. She has also deposed that the field of the appellants is situated towards east adjoining to field in question which is sold to Kamalsing. She has also admitted that dispute was going on for this land in between Sabur Bapu and Shakra Vala. She has not deposed that the dispute was going on in between the deceased and the appellants. She has expressed her ignorance that some case with regard to this land in between Sabur Bapu and Shakra Vala was lodged in Mamlatdar Court. She has also deposed that Sabur Bapu was refusing to give his land to Shakra Vala. She has denied all the suggestions of the appellants with regard to their defence which are reflected in their written reply. She has admitted that it was true that two days before the incident, the appellants had cultivated said land of Sabur Bapu and therefore, a quarrel had taken place. She had denied a suggestion that it was not liked by Kamalsing. She has deposed that in the evening of that day, Kamalsing, his brother and his father all had gone to the field and had seen that seeds were sown in the field. Certain questions with regard to omissions are put which are tried to be proved through the evidence of the Investigating Officer but these contradictions and omissions are of minor or trifle in nature which do not go to

the root of the case. She has deposed that in her police statement, she only stated that family members of Kamalsing had come at the place and she did not state the names of Rukha, Zaver and Gulabsing in her statement. This makes no difference if names are not stated because she has stated that family members of Kamalsing had gone to the spot. She has also deposed that there is a distance of two fields and two Kyardas (two plots of farmed land with raised border for storing water) in between her house and the house of Kamalsing. She has deposed that she had not actually gone to the place of incident but she saw that incident from her house. From her cross-examination in Para 14, it appears that she stated before police that she saw the incident from her house and she only missed the word "Otta" of the house. This makes no difference because house includes Otta. She has denied a suggestion that she has given a false evidence at the instance of Sarpanch and Gulabsing. This witness is an independent witness. She has no reason to have an axe to grind against the appellants. No suggestion is put in her cross-examination as to why she deposed against the appellants. Her house is situated in near vicinity of the place of incident. Looking to time of the incident, her presence was probable in her house. Her presence in the house is not doubted by the appellants. In view of this, this is a witness who gave natural and straight-forward evidence in her deposition. We do not find any reason to doubt for the evidence of this witness Kalaben.

28.4 The prosecution has also placed reliance on third eye witness P.W. 13 Virsing Gamabhai who is examined at Ex. 51. This is a witness near whose field, the incident took place. He has deposed that there is a way leading to the house of Gulabsing and it passes through his field. He has deposed that incident took place before one and half years and at that time he was doing agricultural operation of ploughing in his field. He has further deposed that at that time, Kamalsing was, by riding on his bicycle, coming from a shop and his wife was coming ahead of Kamalsing to his field. He saw that Shakra Vala, Mahasukh Shakra and Shana Mathur had caught hold of Kamalsing and they were severely beating Kamalsing by inflicting blows of sticks and thereafter the appellants had run away. He has further deposed that family members of Kamalsing rushed to the place and shifted Kamalsing from that place to their house and he helped them for taking Kamalsing to their house. He has further deposed that Kamalsing was shifted to hospital and on the next day, he came to know that Kamalsing expired. He has further deposed that he knew the appellants as they belonged to his village. This is a witness who could throw light with regard to motive in the case. The prosecution has put a question with regard to transaction of sale of land, in the evidence of this witness. He has deposed that Kamalsing had purchased the land in question of Saburbhai Bapubhai and he had put thumb impression as a witness in the Sale Deed and the Sale Deed was written by one Arate. He has further deposed that Babu Chhagan and Parassing had attested that Sale Deed. He has deposed that other persons had also signed as witnesses but he could not remember names of those persons. It has come in the evidence of P.W. 6 Gulabsing -the complainant that the incident took place three days after

purchase of the land by Kamalsing, and therefore, it was a fresh memory in the mind of Virsing that Kamalsing had purchased the agricultural land of Sabur Bapu. In the cross-examination, he has admitted that it was true that Sarpanch had told him that he would be a witness as incident which took place in his field. A case has been denied that after funeral ceremony of Kamalsing was over, he in company of Sarpanch came to Taluka Police Station. He has admitted that police had come to the Kyardi to draw a panchnama of scene of offence and at that time, Sarpanch Rumlalbai Ramajibhai had given his name as witness to the police. He has further deposed that thereafter police had asked his name and thereafter, police had not come again to interrogate him. He has further deposed that one footpath passes through his field and it leads upto the shop of one Master and this footpath passes nearby the houses of the accused. He has admitted that there were quarrels in between the accused, Sabur Bapu and Kamalsing with regard to the land which was purchased by Kamalsing. He has deposed that Kamalsing was telling that as the land had been purchased by him, he would not allow the appellants to cultivate the land. He has further deposed that it was true that the appellants were also telling to Kamalsing that as they have purchased the land, they would not allow Kamalsing to cultivate the land. He has shown his ignorance with respect to the fact that because of this quarrel, Kamalsing got excited against the appellant. He has also shown his ignorance that Kamalsing and his brother both had gone to the appellants' house to reprimand them. A suggestion was denied by this witness that three appellants on one side and Kamalsing and his brother on the other side, came near his field while quarrelling with each other. This suggestion clearly establishes the presence of the appellants near the field of this witness. He has deposed that Kyardi in which the incident took place is at a distance of 500 paces away from the field which he was ploughing.

This witness is also an independent and natural witness. The incident took place near his field. Looking to the time of incident, his presence in his field is probable and possible. According to him, he was interrogated on the day on which panchnama of scene of offence was drawn. It be noted that panchnama of scene of offence was drawn in between 7-30 a.m. and 8-30 a.m. on 22nd June, 1996 and Kamalsing died at 8-00 a.m. on 22nd June, 1996, and therefore, some delay was caused by police in recording of his statement. This witness is not related to Kamalsing and his family members. There is nothing on record to show as to why this witness has deposed against the appellant. Under the circumstances, this witness was found to be truthful witness by the trial Court.

28.5 The prosecution has placed reliance on the evidence of an independent witness P.W. No. 9 Saburbhai Bapubhai (Ex. 34) who sustained injuries in the incident. This is a witness of whose land created problem for the parties. He has deposed that he has got agricultural land at village Sanklianta and he resides with his wife Dholiben. Incident took place before about one and half years. He has deposed that at about 4-00 p.m. he was present in the field and at that time, his wife Dholiben was also there with him in the field. He has specifically deposed

that he had seen from his field that the incident was taking place in the field of Gama Bhura father of Virsing. He saw that Shakra Vala, Shana Mathur and Mahasukh Shakra were beating Kamalsing with sticks. He therefore proceeded towards the said place and by keeping some distance, he shouted as to why they were beating Kamalsing and informed the appellants that he had given the land to Kamalsing. He has further deposed that thereafter all three appellants rushed towards him and inflicted blows by sticks on his hands and legs and had broken his hands and legs. He fell down on the field. He has deposed that the appellants had beaten his wife Dholiben with sticks and she was also made to fall. He has further deposed that in the night hours, police came to know about the incident and thereafter he and his wife both were taken in the tractor and thereafter both were brought to the Civil Hospital, Godhra. He has further deposed that he knows the appellants. He identified each of the accused giving his name before the trial Court. He identified muddamal sticks also. This witness is a proper person to explain the prosecution case with regard to motive or cause for beating deceased Kamalsing. In Para 3 of his deposition, he has deposed that he had sold his land to Kamalsing and the appellants wanted to purchase this land from him (Saburbhai). He has further deposed that one year before the incident, these very appellants had made assault on him for which he lodged a complaint in Godhra Taluka Police Station. He has further deposed that in connection with that case, police had got executed bonds from the appellants. He has further deposed that police had recorded his statement. During his cross-examination, he withstood in his cross -examination but no material has come out from his evidence which would be helpful to the appellants. The defence lawyer has put a case on behalf of the appellants which has been pleaded in the written reply in Para 8 of his deposition. He has denied all the suggestions. Again with regard to injuries sustained by him, a suggestion is put to the effect that on the date of incident, he and his family members armed with the sticks had gone to Survey No. 79 to beat the appellants and that therefore, he sustained injuries by blows of sticks inflicted by one of his own family members. At this stage, it is required to note that quite different case of the appellants is pleaded in the written reply in respect of injuries sustained by this witness Sabur Bapu.

29. The appellant Nos. 1 and 2 have stated in their written reply that on the date of incident, Sabur Bapu trespassed into their field with bullock and plough and they prevented him in order to protect their property and therefore, Sabur Bapu got excited and when Sabur Bapu was about to inflict the stick blow, he was entangled in the wood of the plough, and therefore, he sustained injuries. So, the case put in the cross-examination in Para 9 of this witness is not reflected in the written reply filed by the appellant Nos. 1 and 2 and what is pleaded in the written reply filed by appellant Nos. 1 and 2 is not reflected in the cross-examination of this witness Saburbhai, and therefore, the appellants are not certain about their defence. Their version is quite contradictory with each other. This witness has denied that in collusion with Sarpanch, father of Kamalsing had filed a false case against the appellants. A suggestion has also been denied that

he has not seen the appellants beating Kamalsing.

Looking to the nature of cross-examination of this witness and the defence taken by the appellant Nos. 1 and 2 in their written reply, presence of this witness Sabur Bapu in his field is not doubted. There is no cross-examination with regard to the presence of Bai Dholiben in the field. The appellants have failed to explain the injuries sustained by Dholiben. This witness is also not related to any of the family members of Kamalsing. The relation of Sabur Bapu with the deceased Kamalsing was that of Seller and Purchaser because he sold his land to Kamalsing. It does not lead any further. The learned Judge of the trial Court has also found this witness Saburbhai as truthful and reliable witness.

30. The prosecution has also examined P.W. 11 Dholiben at Ex. 45. She also sustained injuries in the incident. She has deposed that she and her husband both are staying in Sanklianta and they have their own land in that village. She has deposed that the incident took place before about two years from the date of incident. She and her husband both were present in the field. She heard the shouts coming from the side of field of Virsing, and therefore, she and Sabur Bapu both rushed towards that place and they saw that Shakra Vala, Shana Mathur and Mahasukh Shakra were beating Kamalsing with the sticks. She has further deposed that the appellants came towards them, and therefore, they turned and went towards their own field. She has further deposed that after reaching to their field, the appellants had come in their field and started to beat them with the sticks. She has further deposed that her husband Sabur Bapu was made to fall by beating him with the sticks. She has also deposed that she was also beaten by the appellants with the sticks and she had become as good as unconscious. She has further deposed that at about 8-00 p.m., or 9-00 p.m. or 10-00 p.m. police vehicles arrived to take them to the hospital, and thereafter they went to the hospital. She identified the appellants before the trial Court. She is cross-examined at length and certain omissions and contradictions were sought to be proved in her cross-examination. The nature of these omissions and contradiction are of trivial nature and they do not affect the core of the prosecution case. In cross-examination, she has admitted that a shout was raised when her husband was doing agricultural operation of ploughing in the field. She has also admitted that on hearing shouts, she and her husband rushed to that place. A suggestion was put to her that at the time of running, she fell down and sustained injuries. It be noted that Dr. Nikitaben has denied the suggestion that injury No. 1 sustained by Dholiben could be possible by fall. Evidence with regard to these injuries sustained by Dholiben has remained unchallenged by the appellants.

31. The witness Sabur Bapu and Dholiben are injured witnesses who sustained injuries in the incident. Their presence is not doubted. On the contrary, the appellants have admitted the fact of presence of Sabur Bapu saying that Sabur Bapu had come to their field. Both had an opportunity to see the incident. Under the circumstances, when the injured witnesses who were present at the time of

incident had seen the incident, unbuilt guarantee of truth is there in their evidence. Their evidence cannot be discarded mechanically. Their evidence is corroborated by the medical evidence, and therefore, their evidence is rightly believed and relied on by the learned Judge of the trial Court.

32. Over and above the aforesaid independent witnesses, the prosecution has examined two relatives of the deceased. One of them is P.W. 6 Gulabsing Bhavan who is examined at Ex. 30. He is a father of the deceased Kamalsing. He has deposed that on the date of incident at about 4-00 p.m., he in company of his elder son Zaversing was doing agricultural operation of ploughing in the field. He has further deposed that he had sent Kamalsing and his wife Rukhaben to the shop of Somabhai Ramabhai to purchase the seeds. He had also asked Kamalsing to inquire about the tractor. He has deposed that he did not know as to whether seeds could be available to Kamalsing or not, but while Rukhaben was returning to his house, Kamalsing was also following to her after completion of work regarding hiring of the tractor. He has further deposed that Kamalsing and Bai Rukha both shouted for help and on hearing that shouts, he and Zaversing both rushed to the field of Virsing and saw that all these three appellants were beating Kamalsing with the sticks. The appellants had broken both the legs of Kamalsing and had caused injuries on his head and there was bleeding from the head portion. He has further deposed that they tried to shift Kamalsing from the place by actually lifting him but Kamalsing was not able to walk. Thereafter he sent Zaversing to bring cot from the house. Thereafter Kamalsing was made to lie in the cot and was shifted to his house. Thereafter, he sent Zaversing to bring Rickshaw and for that he was sent to village Chanchelav which is at a distance of three and half Kms. away from his village. Zaversing went to Chanchelav on foot. As reported by Zaversing, no Rickshawala was ready to come to village, and therefore, Zaversing came without bringing with him the Rickshaw. Thereafter Kamalsing was made to lie in the cot and by taking that cot they came to village Chanchelav on foot and from Chanchelav, they could hire the Rickshaw and in that Rickshaw they took Kamalsing first to the Police Station. Police persons who were present in the Police Station advised them to first take Kamalsing to the hospital and therefore, they took Kamalsing to the hospital.

33. At this stage, evidence of P.W. 5 Dr. Binaben is required to be considered along with the evidence of this witness Gulabsing. As per the evidence of P.W. 5 Binaben, Kamalsing Gulabsing was brought to her at 6-50 p.m. on 21/6/1996. She has deposed that the history was given by his father Gulabsing at 6:50 p.m. As per her deposition, the history was given to the effect that on 21st June, 1996 at 4-00 p.m., Shakra Vala and Mahasukh Shakra had made an assault on Kamalsing with the sticks. Dr. Binaben had noted down the said history in the case papers and on the basis of the case papers, she has issued a medical certificate at Ex. 25, wherein it is stated as follows:-

"Alleged H/o assault with lakadi at 4-00 p.m. on 21/6/96 by Shakarabhai Valabhai & Masuk Shakarabhai. History given by pt's father- Gulabsing Patel."

34. Dr. Binaben Parikh is a Government officer. She being independent witness has no reason to favour the complainant or make false entry in the case papers against the appellants. Immediately after the incident, Kamalsing was brought to the Civil Hospital, Godhra and Gulabsing gave aforesaid history. Before this, he had no chance to consult any person. It was argued by Mr. Nanavati that the complainant consulted the Sarpanch and as per his advice and instructions, the complainant lodged a false complaint. It be noted in this case that said Sarpanch Rumalbhai Ramajibhai is examined at Ex. 19. He has not given any evidence pertaining to the incident but he has given evidence as panch witness in respect of a panchnama of scene of offence Ex. 20. The defence lawyer was fully acquainted with the belief of the appellants, and therefore, he could have put such question in cross-examination of this witness Rimal Ramaji but not a single question with regard to pre-consultation or prompting or tutoring is put in cross-examination of this panch witness. On the contrary, the appellants have put a case in the deposition of Zaversing that Zaversing was sent to village Sanklianta to call the Sarpanch after Kamalsing died in the hospital. Of course, this suggestion is denied but it is the case of the accused that Sarpanch was called after Kamalsing died. He has also denied a suggestion that at about 12-00 midnight, his father and Sarpanch both had gone to the police station to lodge the complaint. This witness has made it clear that his father alone had gone to lodge the complaint.

35. Under the circumstances and in view of aforesaid evidence, the complainant at the earliest point of time disclosed the names of the appellant Nos. 1 and 2 to P.W. 5 Dr. Binaben who immediately took down the history given by the complainant on the case papers and from that case papers, medical certificate is produced at Ex. 25. The complainant Gulabsing has deposed in his cross-examination that his house is situated in Survey No. 226. He has denied the suggestion that from his house, the houses of the accused cannot be seen. He has further deposed that the incident took place within three days after Kamalsing purchased the land from Sabur Bapu. He has further deposed that he had cultivated the land purchased by his son in the previous year. In cross-examination, he has also deposed that the accused ran towards their house and Sabur Bapu also ran in the same direction. He has further deposed that he had seen the appellants beating his son and running away from the place and at that time there was a distance of about 4 to 5 fields between him and the appellants. He has deposed in cross-examination that he lodged the complaint in the police station at 12-00 hrs. midnight. He has further deposed that he had informed Sarpanch. He has also deposed in cross-examination that he reached Taluka Police Station at 6-00 p.m. He has further deposed that it was his first experience to lodge a complaint in the Police Station. He has further deposed that at about 11-30 p.m. police persons had asked him to lodge a complaint. He has also explained that it had not so happened that immediately after getting his son admitted in the hospital, he went to the Police Station to lodge the complaint. In Para 19 of his cross-examination he has deposed that after getting

case papers prepared in the hospital, his son was taken inside the Operation Theatre. He has further deposed that one hour thereafter Kamalsing was shifted to the General Ward. He has also admitted that Doctor has asked him to call for two bottles of blood. He has denied the suggestion that he has not seen the incident. He has also denied the suggestion that village persons had brought his son in the cot to his house.

36. The prosecution has also placed reliance on the evidence of near relative P.W. 1 Zaversing Gulabsing at Ex. 44. This witness is an elder brother of the deceased Kamalsing. He has deposed that he has got his agricultural land in village Sanklianta and that he is residing with his parents and brothers in the joint family. He has further deposed that deceased Kamalsing was his brother and his youngest brother is Natversing. As regards incident, he has deposed that incident has taken place before about one and half years. On the date of incident, at about 4-00 p.m. he and his father were ploughing the field and meanwhile, they heard the shouts of Kamalsing and Bai Rukha. They also felt that those shouts were of Kamalsing and Bai Rukhaben which were coming from the direction of the field of Virsing Gama. He has further deposed that shouts for help were coming from unused field of Virsing. He has further deposed that on hearing the shouts, he and his father both rushed towards the field of Virsing Gama and at that time, Bai Rukha was running ahead of them and all were running to the place. He has further deposed that he saw that at that time Shakra Vala and Mahasukh Shakra and Shana Mathur were beating Kamalsing with the sticks. He shouted asking not to beat Kamalsing. He has further deposed that at that time Sabur Bapu and Bai Dholi both came running from their field. He has made it clear that both were at a distance from Kamalsing. Sabur Bapu asked the appellants as to why they were beating Kamalsing, because the land was of his ownership and he had sold it to Kamalsing. He has further deposed that because Kamalsing was beaten with sticks, he fell down and thereafter the appellants chased Sabur Bapu and Dholiben. He kept himself busy in taking care of his brother. He has also deposed that hands and legs of Kamalsing were broken and, therefore, he went to his house to bring cot. Kamalsing was made to lie on the cot and with the help of his father, Kalu Suka and Virsing Gama, Kamalsing was brought at the house. He has deposed that thereafter he reached village Chanchelav via Ladpur to bring Rickshaw, but Rickshawwala refused to go to village Sanklianta, and therefore, he came back to village Sanklianta. He has further deposed that thereafter Kamalsing was taken in cot and he was brought to Chanchelav via Ladpur. Thereafter Rickshaw was available at Chanchelav and therefore, he, his father and Rukhaben brought Kamalsing in that Rickshaw at Godhra Taluka Police Station. He has further deposed that they first went to Police Station where they were advised first to go to the hospital. He has further deposed that treatment was given in the hospital. Police persons who were present in the hospital asked to go to the Police Station to lodge a complaint. He has further deposed that his father Gulabsing went to Godhra Taluka Police Station to lodged his complaint. He has further deposed that Kamalsing expired

in the hospital during the treatment. He has further deposed that he came to know that Sabur Bapu and Bai Dhuli both were also beaten when both came to the hospital.

37. He is cross-examined at length by the defence lawyer and he was confronted with his previous police statement. Certain omissions and contradictions have been proved through the evidence of the Investigating Officer. We have found that these contradictions and omissions are of trivial and minor nature and they do not affect the substratum of the case of the prosecution. In cross-examination, he has deposed that it had not so happened that assailants had run away before they reached his brother. He has deposed that it had not so happened that Sabur and Dholiben had not come closely to Kamalsing. He has denied a suggestion that he had not seen the accused beating Kamalsing. He has also denied that he has been posed as a witness, subsequently. He has also denied a suggestion that they had mounted and assaulted on assailants to snatch away the land. He has also denied the suggestion that Kamalsing and Sabur Bapu both sustained injuries by their own sticks.

38. Considering the facts and circumstances of the case, and the evidence on record, it transpires that the above is the direct evidence to connect the accused with the crime.

39. One of the contentions of Shri Nanavati, learned Advocate for the appellants is that there is no specific evidence as to which of the accused inflicted which of the injuries, and therefore, principle of minimum liability will be applicable to this case.

40. In case of State of Haryana Vs. Tek Singh and Others, , it has been held that in this type of incident, it would be difficult for any witness to state exactly which accused inflicted how many blows on the deceased. The learned Judge of the trial Court has convicted all the appellants with aid of Sec. 34 of I.P.C. All the eye witnesses have categorically stated that three appellants were beating Kamalsing with the sticks. One of the injuries which he sustained on his head is of a serious nature. P.W. 1 Dr. Patel who performed Post Mortem has deposed that first injury was a stitch wound on right parietal region of head 3" above the right ear. This injury No. 1 is corresponding to first injury noticed by P.W. 5 Dr. Binaben. According to the evidence of Dr. Binaben read with the medical certificate Ex. 24, this first injury was C.L.W. on right parietal region 3 cm x 0.5 cm x scalp deep. P.W. 1 Dr. Patel has deposed in Para 7 of his deposition that as per his opinion, deceased died due to shock and intra haemorrhage (cranial) due to head injury and fracture of left femure lower part and right tibia fibula. He has also opined that head injury and other related injuries were sufficient in ordinary course of nature to cause death. He was shown muddamal sticks and has deposed that he was unable to state whether injuries noticed by him could be possible by said sticks because he had noticed stitched wounds. P.W. 5 Binaben who had occasion to see injuries at the earliest point of time, was shown the muddamal sticks and she has deposed that similar injuries sustained by Kamalsing could be possible

by sticks. Under the circumstances, looking to the medical evidence, deceased Kamalsing died as a result of head injury which was caused by stick blows inflicted by the appellants. It is not possible for any of the witnesses to state as to which of the accused had caused head injury. As per the evidence of Dr. Patel, Kamalsing died as result of injuries which he noticed and noted down in the Post Mortem Notes. Under the circumstances, the principle of minimum liability cannot be applied to the facts of the present case. The learned Judge of the trial Court has, therefore, rightly convicted the appellants for an offence of murder with the aid of Sec. 34 of the Indian Penal Code.

41. Shri Nanavati, learned Advocate for the appellants has taken a contention with regard to delay in lodging the complaint. As we have noticed earlier, village persons are not so accurate in stating time or distance. Generally they give their evidence on their imagination and guess work. Example of Dhuliben on this line is very much before us. She has deposed that at about 8-00 p.m., 9-00 p.m. and 10-00 p.m. police vehicle came and they were shifted to hospital. As per the evidence of Rukhaben Ex. 32, in the evening she and her husband had gone to purchase seeds of paddy. She has not given any time as to when they left their house to go to the shop of Soma Rama to purchase paddy seeds. She has tried to explain time by saying "evening". In cross-examination, she has deposed that at about 4-00 p.m. they had gone to the shop of Somabhai Ramabhai who is a shop-keeper to purchase paddy seeds. She has deposed in her cross-examination that it took time of half an hour to reach the shop of Soma Rama. They waited some time at the shop Soma Rama. As the paddy seeds were not available at that shop, they were returning to their house. Her husband asked her to go little earlier and said that he would be returning after making inquiry about the tractor. If they had taken half an hour to reach the shop of Soma Rama, then atleast one and half hours would have taken to return back at the house of the complainant. While she was returning to her house and when she was on the way, the incident took place, and therefore, from the evidence of Rukhaben, it can be said hat the incident might have taken place in between 5-00 p.m. and 5-30 p.m. Immediately after the incident, her father-in-law and elder brother-in-law tried to lift Kamalsing but they could not succeed as Kamalsing was not in a position to walk. Thereafter, Zaversing was sent to the house to bring the cot. Zaversing went to the house to bring the cot. Thereafter Kamalsing was taken in that cot and first he was brought to the house and thereafter the complainant asked Zaversing to go to Chanchelav and bring the Rickshaw. Chanchelav is at a distance of three and half Kilometers. Zaversing went to Chanchelav on foot. He inquired about Rickshaw at Chanchelav but he could not succeed to bring Rickshaw because no Rickshawwala was ready to go to village Sanklianta, and therefore, he returned back to the house without bringing the Rickshaw and therefore, Kamalsing was taken in cot and they brought Kamalsing by proceeding on foot. First they reached Chanchelav and from Chanchelav, they could secure services of Rickshawwala and they brought Kamalsing by rickshaw to the hospital. So during this time, it was not possible for

them to reach Godhra City Police Station at the earliest. From record, it is clear that they could reach Godhra Taluka Police Station at 6-45 p.m. and police advised them to go to the hospital first, so that medical treatment can be made available to Kamalsing. As we know that in Civil Hospital, first of all, Outdoor Case Papers are required to be prepared, and then on admission of patient, indoor case papers are prepared and then a patient will be examined by the Casualty Medical Officer who is in charge of the Emergency Ward of the said hospital and thereafter, as per requirement, the patient will be shifted to a particular cot allotted to him either in the Emergency Ward or in the General Ward of the hospital.

42. Here in this case, Gulabsing has deposed that Doctor had advised him to bring two bottles of blood. Thereafter Kamalsing was taken inside the Operation Theatre. By guess work, Gulabsing has deposed that one hour thereafter Kamalsing was brought from Operation Theatre to the General Ward. Thereafter, at 11-30 p.m. police asked him to go to the Police Station to lodge a complaint.

43. Looking to this chain of circumstances and events, it was not possible for the complainant to lodge his complaint at the earliest point of time. He was under mental stress, agony and tension. He was under great grief having sufferings, because his younger son was seriously injured in the attack by sticks and naturally, first father would see that his son is survived. Considering the facts and the circumstances of the case, we are of the view that the complaint which was lodged at 0-15 hrs in Godhra Taluka Police Station, was lodged within a reasonable time. It cannot be said that there was an inordinate delay in lodging the complaint, and therefore, the arguments of Shri Nanavati that there is an inordinate delay in lodging the complaint and this delay casts a doubt about the genesis of the case, and till then the complainant decided to implicate the appellants falsely in the crime, cannot be accepted and are rejected.

44. The third argument of Shri Nanavati is to the effect that the complainant has admitted in his evidence that he had sent his son to call Sarpanch from the village. He has denied the suggestion and he has deposed that there was no discussion in between himself, his son and Rukhaben as to how the complaint should be lodged. He has admitted that it was true that he had decided to lodge the complaint after arrival of the Sarpanch. Shri Nanavati has argued that this complaint has been lodged after due deliberations and discussions with the Sarpanch to the effect that anyhow a false complaint is to be lodged against the appellants.

45. It be noted that in this case the prosecution examined Sarpanch Rumalbhai Ramjibhai at Ex. 19. P.W. 14 PSI Mr. Atmaram Shankarbhai Solanki (Ex. 52) has deposed that it was true that he had taken Rumalbhai to act as panch. From record, it appears that Rumalbhai is a panch for panchnama of scene of offence at Ex. 20. Sufficient opportunity was given to the defence lawyer to put his case with regard to prior deliberations, discussions and tutoring in cross-examination of Sarpanch. Not a single question was asked to this witness Rumalsing and

therefore, whatever argument is advanced by Mr. Nanavati on the point that Sarpanch had taken interest in lodging the complaint as per his choice, is devoid of merits and it is rejected.

46. It was argued by Shri Nanavati that Rukhaben, Gulabsing and Zaversing are closely related witnesses to the deceased, and therefore, they are interested witnesses and their evidence should not have been accepted by the learned Judge of the trial Court and therefore, he requested this Court that their evidence should be scrutinized with due care and caution by this Court.

47. In case of Kartik Malhar Vs. State of Bihar, , the Hon''ble Supreme Court has in Para 15 held as under:

" Moreover, a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason."

The Hon''ble Supreme Court has in Para 18 has further held on the above point as under:

" The ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance."

48. In the case of Dalip Singh and Others Vs. State of Punjab, , the Hon''ble Supreme Court has observed as follows :-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause" for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

Ordinarily, a close relation would be the last person to screen the real culprit and falsely implicate an innocent person".

49. In view of the above, we are of the view that merely because these three witnesses are closely related to the deceased, they cannot be branded as "interested" witnesses, and therefore, the argument of Shri Nanavati that the evidence of these three witnesses i.e. Rukhaben, Gulabsing and Zaversing who are closely related to the deceased Kamalsing, should not have been accepted by the learned Judge of the trial Court, has no substance and the same is rejected.

50. Shri Nanavati has further argued that in this case, from the evidence, it appears that there was inimical relations between the appellants and Sabur

Bapu. From the evidence, it also appears that it is the case of the accused that they wanted to purchase the land from Sabur Bapu but Sabur Bapu instead of selling the land to appellant Nos. 1 and 2, sold the land to deceased Kamalsing, and therefore, the relations were not cordial, but strained. He has further argued that in view of this, these three witnesses -the father, brother and wife are inimical witnesses.

In the case of ANIL RAI v. STATE OF BIHAR, reported in : (2001) 7 S.C.C. 318, the Hon"ble Supreme Court has given guidelines as to how the evidence of inimical witnesses to the accused person should be appreciated by holding as follows :-

"The contention that as the witnesses relied upon by the courts were inimical towards the accused persons, their testimony could not be relied upon without corroboration in material particulars cannot be accepted. Enmity is a double-edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity, held to be a double-edged weapon, may be instrumental in false involvement or in the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eyewitnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eyewitnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime, cannot be made a basis for discarding or rejecting the testimony of the eyewitnesses, the deposition of whom is otherwise consistent and convincing."

51. Applying aforesaid legal position with regard to inimical witnesses and motive based on previous dispute to the present case, the only facts come on record that there was a dispute with regard to the land between the appellant Nos. 1 and 2 and Sabur Bapu. Only three days before the incident, Kamalsing had purchased the land from Sabur Bapu, and therefore, two days before the incident, there was no dispute with regard to the land in between Kamalsing and the appellant Nos. 1 and 2. For the first time, Kamalsing came in picture two days before the incident when he purchased the land from Sabur Bapu, and

therefore, the argument that these three witnesses are inimical witnesses and their evidence should be discarded, cannot be accepted.

52. Shri Nanavati has drawn our attention to minor omissions, contradiction and variances from the deposition of eye witnesses. We are not impressed upon by these minor variances because they are bound to appear in the evidence of eye witnesses when they are examined about 18 months after the date of incident. In this case, incident took place on 21st June, 1996 and the prosecution started to lead evidence from 5th November, 1997, and therefore, after lapse of time, witnesses may commit certain mistakes here and there but we have found that they are consistent with regard to first incident that the accused inflicted stick blows on the person of Kamalsing as a result of which he sustained serious bodily injuries and due to those injuries, ultimately he died, and therefore, no importance can be given to this type of variances. What the Court has to judge is substratum of the case and in doing so, grain has to be separated from chaff and it is also our experience that some minor discrepancy in the evidence do not destroy the prosecution case. In view of this, no importance can be given to omissions, embellishments and embroidery made by the witnesses while giving their evidence after 18 months.

53. Shri T.S. Nanavati has argued that looking to the evidence on record, the prosecution has suppressed correct facts with regard to genesis of the case. He has argued that from record, it appears that the police came to know about the incident when the complainant lodged his complaint at 0-15 hrs on 22nd June, 1996, while from the evidence of P.W. 11 Dholiben, it is disclosed by her that at about 8-00 p.m., 9-00 p.m. and 10-00 p.m. police vehicle came to her village to shift the injured Saburbhai and herself to the hospital and thereafter they, by travelling in that police vehicle, reached the Civil Hospital, Godhra. Shri Nanavati has drawn our attention to medical certificate Ex. 11 with regard to injuries sustained by Saburbhai and as per this certificate, Saburbhai Bapubhai Patel was brought to the hospital with police Yadi at 11-30 p.m. In view of this evidence, the police had already come to know about the incident much prior to 11-30 p.m. because Saburbhai went to the Civil Hospital with Police Yadi at 11-30 p.m. He has argued that no evidence is forth coming to show as to how police came to know about the incident that Saburbhai and Dholiben have sustained injuries in the incident and this fact shows that the prosecution has suppressed genesis of the case. The learned Judge of the trial Court has discussed the evidence with regard to this contention in Para 41 of his judgment. From the record, it appears that the complainant Gulabsing in company of his son Zaverbhai and daughter-in-law Rukhaben, brought his injured son in the Civil Hospital at Godhra at 6-50 p.m. It is in the evidence that the police asked them first to go to Civil Hospital so as to see that Kamalsing gets urgent medical treatment, and therefore, he, without wasting for a minute, brought his injured son Kamalsing to the Civil Hospital at Godhra at 6-50 p.m. which is reflected in the Medical Certificate at Ex. 24. From this evidence, some reasonable inference can be drawn. When the complainant went to the Police Station along with his injured son, naturally he

would have said that they belonged to Sanklianta and that at about 4-00 p.m. incident had taken place in the village and on getting this little information, Police might have sent some police personnel to village Sanklianta to keep law and order situation under control, and therefore, the Police might have gone to village Sanklianta for police Bandobast, and therefore, Bai Dholi has rightly deposed that at about 8-00 p.m., 9-00 p.m. and 10-00 p.m. police came to their village and when the police came to the village, they must have come to know that in the incident, Sabur Bapu and Dholiben were also injured and therefore, the police took a right decision to shift them by police vehicle to the Civil Hospital, Godhra. From the record, it appears that Saburbhai reported to the Medical Officer of the Civil Hospital, Godhra at 11-30 p.m. If these events are taken together, the police has taken a right decision without having any further information. Under the circumstances, police cannot be blamed that the prosecution has withheld real true facts of the case, and therefore, the contention of Shri Nanavati that the prosecution has suppressed correct facts with regard to genesis of the case is liable to be rejected and accordingly it is rejected.

54. Shri T.S. Nanavati has further argued that looking to the evidence on record, it is the case of the prosecution that the incident with regard to injuries sustained by Kamalsing and injuries sustained by Sabur Bapu and his wife Dholiben took place at the scene of offence and such events took place in quick succession, and therefore the eye witnesses Rukhaben, Zaversing and Gulabsing and other eye witnesses must have seen a part of incident with regard to beating Saburbhai Bapubhai and his wife Dholiben and as they have not seen that part of the incident, it seems that they are not the eye witnesses to the incident and therefore, they are got up witnesses and their evidence should not have been believed by the trial Court.

55. It be noted that the point raised by Shri Nanavati is made clear if we read the panchnama of scene of offence Ex. 20. It appears from the panchnama that the place with regard to first part of incident with respect to Kamalsing was shown by Savitaben wife of Natwarsing Gulabsing -daughter-in-law of the complainant. This place with regard to first part of incident is on unused field of Virsing Gama and from that place, blood stained earth was taken as a sample for analysis. This panchnama Ex. 20 further speaks that at a distance of 10 fields in south-west corner from place of first part of incident, the field of Sabur Bapu is situated. The second part of incident was shown by Rajaliben wife of Budha Nanabhai who happens to be a daughter of injured Sabur Bapu and as per this place shown by Rajaliben, second part of the incident took place in the field of Sabur Bapu and from there, blood stained earth was also taken as sample for analysis. Thus, looking to this panchnama and evidence of P.W. 8 Kalaben, Saburbhai Bapubhai and Dholiben had come towards the place where incident with respect to Kamalsing took place and by keeping them at some reasonable distance, Saburbhai Bapubhai asked the accused as to why they were beating Kamalsing because the land was of his ownership and after causing injuries to

Kamalsing, the appellants chased Saburbhai Bapubhai and Dholiben. Saburbhai Bapubhai and Bai Dholiben took a turn and went towards their field. As per the panchnama Ex. 20, they were beaten in their field which was at a distance of 10 fields from the field of Virsing Gama.

56. Shri Nanavati has argued that distance of 10 fields cannot be said to be a short distance, and therefore, Sabur Bapu and Dholiben could not have seen actual occurrence of incident with respect to Kamalsing. It is not the case of the prosecution that these two witnesses saw actual incident with regard to Kamalsing from their field. It is their say that they heard the shouts and therefore, they both came towards the place from where the shouts were raised, and therefore, while coming towards the field of Virsing Gama, they could have seen the first part of the incident. The incident took place at about 4-00 p.m. to 5-00 p.m. It is a month of June, and therefore, they had full opportunity to see the assailants who inflicted the blows with the sticks on the person of Kamalsing. The appellants are belonging to the same village. It is the case of the accused that quarrel was going on in between them and Sabur Bapu for the land in question, and therefore, the evidence of Sabur Bapu and Bai Dholiben cannot be doubted. They are real eye witnesses to the incident. Their evidence inspire confidence, and therefore, the contention taken by Shri Nanavati that distance of 10 fields cannot be said to be a short distance, and therefore, Sabur Bapu and Dholiben could not have seen actual occurrence of incident with respect to Kamalsing, is rejected.

57. Shri P.R. Abichandani, learned APP has drawn our attention to the defence taken by the appellants. By reading written reply, he has argued that it is the case of the appellants that on the date of incident, deceased Kamalsing had gone to the house of the appellants and had given abuses and mounted assault on them by stick blows. Shri Abichandani has argued that if this type of assault was made, then certainly any of the appellants must have sustained at least a small injury. Here in this case, none of the accused had received even a slightest scratch on his body. He has further argued that the appellants have advanced defence that in the year 1994, the father of appellant No. 1 had purchased the land in question and since then, they are in possession of the land. In support of this defence, the appellant Nos. 1 and 2 have produced certain documents. These documents are xerox copies. These documents are not exhibited by the trial Court. The appellants have not taken any care to examine the witness to prove these documents. Out of the documents produced by the appellants, one is simple copy of the plaint of Regular Civil Suit No. 103 of 1997 and another is also a simple copy of an application for interim injunction. These copies do not bear any signature of any party, and they are nothing but scrap of papers. In eye of law, it has no evidentiary value. When the accused wants to plead a case, then he is not required to prove the case as if prosecution proves its case but he is expected to establish his case on the principle of preponderance of probability. Merely because he has produced certain documents, it does not mean that he has established his case. As argued by Shri Abichandani, a false defence has

been taken by the appellants. As discussed earlier, the defence taken by the appellants in their written reply is not reflected in the cross-examination of any of the witnesses and in the same way, the defence tried to be taken by the appellants in the cross-examination of the witnesses is not reflected in the written reply. Therefore, the appellants themselves are not sure and certain as to what is their defence. In view of this, this Court is of the view that the appellants have tried to advance a false plea before the Court.

58. In the case of Tanviben Pankaj Kumar Divetia Vs. State of Gujarat, , the Hon"ble Supreme Court held that the law is well-settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea may be considered as an additional circumstance if other circumstances proved and established point out the guilt of the accused. Under the circumstances, the prosecution has proved its case with the help of eye witnesses and other medical evidence against the accused and in view of this, when the appellants have taken a false defence in their written reply, then false defence should be considered as additional circumstances which can be used against the appellants.

59. No other contention is seriously pressed by Shri T.S. Nanavati, the learned Advocate for the appellants.

60. We have minutely and carefully examined and reappreciated the evidence on record and have found that the evidence of eye witnesses gets full corroboration from the medical evidence. The evidence of the complainant gets sufficient corroboration from his own complaint. Considering the evidence of all the eye witnesses which we have discussed hereinabove, we find no reason to discard their evidence mechanically. The learned Judge of the trial Court has assigned cogent and convincing reasons to arrive at his own findings. We are in complete agreement with the said reasons. There is no material on record to dislodge those reasons, and therefore, we find that this appeal is devoid of merits and is liable to be dismissed.

61. For the foregoing reasons, this appeal is devoid of merits and the same deserves to be dismissed. Accordingly it is dismissed. The Judgment Ex. 63 dated 27th February, 1998 rendered by the learned Additional Sessions Judge, Panch Mahals at Godhra in Sessions Case No. 255 of 1996 convicting and sentencing the appellant Nos. 1 to 3 is hereby confirmed. The Muddamal articles be disposed of as per directions given by the learned Judge of the trial Court in the operative part of the impugned Judgment.