

(1998) 07 GUJ CK 0019

In the Gujarat High Court

Case No : Criminal Appeal No. 1397 of 1984 and Criminal Revision Application No. 460 of 1984

State of Gujarat

APPELLANT

Vs

Manaji Kaluji Thakor and Others

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209
Penal Code, 1860 (IPC) — Section 114, 302, 34, 384

Citation : (1999) CriLJ 801

Hon'ble Judges : R.K. Abichandani, J; A.L. Dave, J

Bench : Division Bench

Advocate : U.A. Trivedi, app, for the Appellant; K.G. Sheth, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—This appeal arises out of a judgment and order passed by the learned Additional Sessions Judge, Mehsana, in Sessions Case No. 119 of 1983 on 10th August, 1994. The present respondents were charged and tried for the offences under Sections 302 and 324 read with Section 34 of the Indian Penal Code. Considering the evidence led by the prosecution, the learned Additional Sessions Judge came to a conclusion that the prosecution had failed to prove the charges against all the accused persons and, therefore, while holding them not guilty for the offences with which they were charged, acquitted them. The State has, therefore, challenged the judgment and order recording acquittal by the present appeal. Criminal Revision Application No. 460 of 1984 is preferred by the original complainant.

2. The incident occurred on 1st July, 1983, at about 13.30 hours, near Ravalavas at village Kharivavdi of Patan taluka of Mehsana district. At that time, one Ranaji Navalsinh and Laxmanji Jethaji of the same village were passing by the village street. Abutting to the said street was the house of accused No. 2-Sardarji Shankerji Thakor. The three accused were sitting there and chitchatting. They

were equipped with Dharia. When Ranaji and Laxmariji were passing by, they (the accused persons) started abusing them (Ranaji and Laxmanji). The motive, as per the prosecution case, for doing this was that, earlier, in an incident, son of accused No. 1-Manaji was murdered and the accused persons felt that Ranaji Navalsinh and his associates were responsible for the murder. The accused persons asked Ranaji and Laxmanji that why they were passing through the street; when they had murdered the son of accused No. 1-Manaji. In reply, it was stated by Ranaji and Laxmanji that they had not murdered the son of Manaji and, therefore, they should not be abused. If at all the accused wished to abuse, they should abuse the persons who had murdered the son of Manaji. This, ultimately, resulted into an assault upon Ranaji. The three accused were equipped with Dharias and they assaulted Ranaji. The blows were given on head and other parts of the body. Laxmanji intervened and he was also assailed upon and injuries were caused to him. In the incident, shouts were raised and, therefore, people from around rushed to the spot, which included Meruji Paragji and Jethaji Bhaiji, besides other persons. The accused persons fled away from the spot. As Ranaji was badly injured, the persons, who had gathered there, placed him into the tractor along with the injured-Laxmanji and took him to hospital at Patan. Because the injuries on Ranaji's person was serious, he was given primary treatment and was advised to be taken to Ahmedabad for further treatment whereas Laxmanji was given necessary treatment at Patan itself. Some persons left for Ahmedabad for shifting Ranaji to the hospital at Ahmedabad. On the way to Ahmedabad, Ranaji succumbed to the injuries and, therefore, instead of taking him further, the persons, who were taking him to the hospital at Ahmedabad, brought him back to Patan where Dr. Chaudhary, who had initially treated Ranaji, performed the post-mortem. Initially, when Ranaji and Laxmanji were taken to Patan hospital, police was informed by the doctor, police came and recorded the complaint of Laxmanji. Offence was registered and facts were investigated. After the investigation, police found that there was substance in the complaint and, therefore, the accused persons were charge-sheeted. Since the offence was exclusively triable by the Court of Sessions, the learned Magistrate committed the matter to the Sessions Court, Mehsana, who, in turn, transmitted the matter u/s 209 of Code of Criminal Procedure to the learned Additional Sessions Judge.

3. The learned Additional Sessions Judge charged the accused for the offence u/s 302 as well as Section 302 read with Section 34 or Section 114 and Section 324 or Section 324 read with Section 34 or Section 114 of the Indian Penal Code. All the accused persons pleaded not guilty and expressed their desire to face the trial.

4. The prosecution led the evidence and ultimately, the learned Additional Sessions Judge passed the judgment and order of acquittal.

5. We have heard Mr. U. A. Trivedi, learned Additional Public Prosecutor, for the appellant-State and Mr. K. B. Sheth, learned advocate appearing for the

respondents.

6. Mr. Trivedi has assailed the impugned judgment on the ground that the finding recorded by the learned Additional Sessions Judge is palpably erroneous. He submitted that the conclusions arrived at by the learned Additional Sessions Judge are based on erroneous evaluation of evidence and, therefore, this is a case where this Court should interfere and upset the finding of the learned Additional Sessions Judge. Mr. Trivedi also urged that there could have been no other conclusion but conviction of the accused, if the evidence was properly evaluated.

Mr. Trivedi further submitted that the learned Additional Sessions Judge has disbelieved the prosecution case on the ground that the prosecution story of the accused persons having motive for assailing Ranaji is not believable. Although the learned Additional Sessions Judge has observed that motive is not sine qua non for establishing the case against the accused, he has put undue weightage on the same. The utterances made by the accused persons at the time of the incident, as emerging from the evidence of the eye-witnesses, have not been given due weightage. If they are considered, they indicate that the accused persons had strong dislike for Rajputs, the community to which the deceased and the witness-Laxmanji belong. The learned Additional Sessions Judge has not considered that there is cogent ocular evidence of eye-witnesses as against a weak possibility of lack of motive. The lack of motive is believed by the learned Additional Sessions Judge on the ground that neither Ranaji nor Laxmanji was accused in the criminal case in respect of murder of son of accused No. 1 and, therefore, the accused could not have any grudge, grievance or motive against deceased Ranaji or Laxmanji.

Mr. Trivedi submitted that the eye-witnesses are not believed by the learned Additional Sessions Judge because of minor contradictions between the versions of the eye-witnesses and the Medical Officer in respect of seat of injury. In this regard, Mr. Trivedi submitted that the witnesses are rustic villagers and they could not be expected to accurately describe the site of injury as a medical man would do. Likewise, the site of injury could not be exactly seen in such incidents as both the person assailing and the victim would be in motion and, therefore, minor discrepancy in this regard ought to have been overlooked by the learned Additional Sessions Judge.

It is also urged by the learned Additional Public prosecutor that the learned Additional Sessions Judge has given undue importance to the fact that semi-digested food particles were found in the stomach of the deceased to indicate that he had taken food within three hours prior to his death. This was done by the learned Additional Sessions for the reason that the case of the prosecution is that the deceased and witness-Laxmanji had started off from their residence at about 7.30 a.m. for carting fertilizer and, thereafter, they were returning home for lunch, when the incident occurred. If this was so, the stomach of the deceased ought to have been empty and, therefore, the learned Additional

Sessions Judge came to a conclusion, that the prosecution case is not believable. Mr. Trivedi further submitted that, in absence of any concrete evidence, no inference could have been drawn by the learned Additional Sessions that because there is no evidence, the deceased must not have taken any food and his stomach ought to have been empty and for this minor omission of prosecution in not leading evidence about food ought not to have been considered as fatal to the prosecution case, as is, done by the learned Additional Sessions Judge.

Mr. Trivedi further submitted that the learned Additional Sessions Judge has not given due weightage to the ocular evidence of the eyewitnesses on the ground that the complainant is the cousin of the deceased and he is, therefore, an interested witness, although the learned Additional Sessions Judge has observed that his evidence cannot be thrown away only on that count but would call for a close scrutiny.

Mr. Trivedi further submitted that the learned Additional Sessions Judge has observed that there is evidence that neither the accused had seen the deceased-Ranaji and witness-Laxmanji since morning on that day nor the deceased-Ranaji and Laxmanji had seen the accused persons since morning on that day and, therefore, the accused persons could not have been said to be waiting for the arrival of the deceased-Ranaji and witness Laxmanji at the relevant time, as is the prosecution case and, therefore, the theory of the accused persons waiting for the deceased and the witness to come at the place cannot be believed. This observation of the learned Additional Sessions Judge is also erroneous, according to Mr. Trivedi, for the reason that it is not the case of the prosecution that the accused persons were waiting for the deceased, but they were sitting there with Dharja and chit-chatting and when the deceased-Ranaji and witness Laxmanji were passing through the place of incident, they (the accused) started abusing and the incident occurred.

Mr. Trivedi then submitted that the presence of eye witnesses is not believed by the learned Additional Sessions Judge in spite of the fact that the defence has come with a theory of cross case against one of the eye witnesses. Likewise, the learned Additional Sessions Judge has given undue importance to the fact that other independent witnesses are not examined when, in fact, according to Mr. Trivedi, no eye witness was dropped and it was not necessary for the prosecution to have examined all the eye witnesses. Mr. Trivedi then submitted that eye witnesses Meruji and Jethuji were not believed by the learned Additional Sessions Judge on the ground that, according to those witnesses, they had hired the services of labourers from the morning and when the labourers had gone for lunch, they (these witnesses) had instructed them to come for work in the second half also and, therefore, there was no reason for them going to call those labourers and that they have been considered as got up and chance witnesses by the learned Additional Sessions Judge, which is an error on his part.

Mr. Trivedi then submitted that the learned Additional Sessions Judge has not believed the prosecution case on the ground that the prosecution has failed to

explain the injury on person of accused No. 1 whereas, in fact, witness Jethuji has explained the injury on person of accused No. 1. He also argued that the arrest of accused No. 1 was made on the next day and, therefore, it was possible that the accused may have sustained injury in some other incident, which is overlooked by the learned Additional Sessions Judge. Lastly, Mr. Trivedi submitted that the learned Additional Sessions Judge has not taken into consideration the other circumstances pointing at the guilt of the accused. Pointing those circumstances, Mr. Trivedi stated that blood of the deceased was found from the place of incident. Accused No. 1, when arrested, had injury on his person and there is also a discovery of Dharia from him: Eye witness-Laxmanji was not an accused in the cross case and he had no enmity against the accused either. According to Mr. Trivedi, there was no reason to disbelieve Laxmanji. Mr. Trivedi, therefore, considering all these aspects urged for allowing the appeal, setting aside the judgment and order of acquittal and for convicting the respondents accused.

7. Mr. K. G. Sheth, on the other hand, vehemently opposed this appeal. He took us through the evidence threadbare. His first and foremost submission was that the prosecution has not been able to bring on record the correct genesis of the incident. The witnesses have rightly been disbelieved by the learned Additional Sessions Judge. Witnesses-Meruji and Jethuji had no reason to be there, they were only chance witnesses and they had tried to help the prosecution case, but in vain. Other independent witnesses like Karsan Raval, Mohan Raval, etc., though had gathered at the place of the incident, they have not been examined by the prosecution and no explanation therefore is tendered by the prosecution. The F.I.R. given by Laxmanji is silent about the presence of witnesses Meruji and Jethuji. Mr. Sheth submitted that, if these two witnesses were really present, Laxmanji would have stated in his complaint about their arrival and presence at the spot. Mr. Sheth further submitted that injury on person of accused No. 1 is not explained by the prosecution satisfactorily. Witnesses-Meruji and Laxmanji pleaded total ignorance about any such injury and, therefore, their version has not been rightly relied upon by the learned Additional Sessions Judge. Mr. Sheth, therefore, submitted that the acquittal recorded by the learned Additional Sessions Judge may be confirmed. He also brought to our notice the factor that the learned Additional Sessions Judge has placed reliance on the fact that two alternative routes on which the victims could have gone to the home of deceased in the tractor were available and, therefore, they had no reason to pass by the house of accused No. 2. Ordinarily; they would not get down from the tractor and walk down to home, which has been rightly appreciated by the learned Additional Sessions Judge. Mr. Sheth has, then, argued that in an acquittal, the appellate Court may not interfere with the finding of the trial Court, if two views are possible and may not substitute its" view with the view taken by the learned Sessions Judge unless the finding of the trial Court is found to be patently illegal, palpably wrong, manifestly erroneous or demonstrably unsustainable

8. We have given a thoughtful consideration to the arguments advanced by both

the sides. There cannot be any dispute about the proposition that, in an acquittal appeal the appellate Court may not interfere with the order of the lower Court where two views are possible and the lower Court has given benefit to the accused. The Court has to be slow in interfering in such cases and may interfere only where the finding of the lower Court is patently illegal, palpably wrong, manifestly erroneous or demonstrably unsustainable.

9. We have gone through the entire evidence. We find that the learned, Additional Sessions Judge has recorded in his judgment that motive is not a *sine qua non* for establishing the prosecution case. Still however, the learned Additional Sessions Judge has come to a conclusion that the prosecution has not proved the motive part, overlooking the fact that the utterances made by the accused persons at the time of the incident very clearly indicate that they had grievance against the Rajput community as a whole to which the deceased-Ranaji and witness-Laxmanji belong for the reason that son of accused No. 1 was earlier murdered, wherein the accused persons belonged to the same community. It is also evident from the evidence that there were earlier occasions when there were altercations between the deceased and the accused group. Besides this, the prosecution case is supported by cogent ocular evidence of witnesses Laxmanji, Meruji and Jethuji, who have seen the incident. In our opinion, these witnesses have stood the test of cross-examination and there is hardly any reason to disbelieve them and, as such, want of motive could not have affected the merit of the prosecution case, as has been held by the learned Additional Sessions Judge.

10. The learned Additional Sessions Judge has not believed eye witness-Laxmanji on the count that his version about Him and the deceased going to the place of the deceased for taking lunch is not corroborated by medical evidence, which is to the effect that semi-digested food particles were found from the stomach and intestines of the deceased. In absence of any evidence that they had not taken any food after departing from residence in the morning, it cannot be presumed that they had not taken any food since they left the house in the morning. After all, the deceased and witness-Laxmanji belong to, the agriculturist class and hail from a small village, and rustic villagers normally do not make and maintain a schedule in matter of taking food unlike sophisticated and educated people and, therefore, mere presence of semi-digested food in the stomach could not have been taken as a ground for believing that Laxmanji is not telling the truth about him going to the place of deceased along with the deceased for taking lunch. No presumption could have been drawn to the effect that, if they had taken some refreshment, they would not have been going to take lunch, they would have opted to stay back and complete the work of carting fertilizer. All the more it would not have been proper to come to a conclusion that because this story is falsely canvassed by this witness, he is not telling the truth about the incident. It is the duty of the Court to separate the grain from chaff and, therefore, even if it is found that this part of the deposition of the witness was not reliable, the other part of the deposition could not have been thrown away as was done by the

learned Additional Sessions Judge on that count.

Laxmanji is also not believed on the ground that he is a distant cousin of the deceased, he used to work for the deceased and, therefore, he is an interested witness. This is also not proper particularly when the witness has stood the acid test of cross-examination and, therefore, being the cousin or being in touch with the deceased for agricultural work cannot be taken as a disqualification for believing his testimony. We have closely perused the deposition of this witness and find no justification for not believing his testimony.

11. Witnesses-Meruji and Jethuji are also not believed by the learned Additional Sessions Judge on the ground that they were chance witnesses. It is a matter on record that witness-Meruji is an accused in the cross case relating to the same incident and, therefore, his presence at the place of the incident could not have been and should not have been doubted. So far as Jethuji is concerned, he has explained the injury on person of accused No. 1 by admitting that he had given lathi blow to accused No. 1 and, therefore, also, he could not have been disbelieved. Another reason for not believing these witnesses, which is assigned by the learned Additional Sessions Judge, is that these persons had no reason to pass by this area for calling the labourers whom they had already hired in the morning and had instructed to come to work even in the second half of the day. It can be noted that at times, it is difficult to obtain the services of labourers and it is also possible that labourers may not turn up any time when called and they have to be called personally. In fact, Meruji has so stated in his cross-examination that because the labourers who were supposed to come to work at 12.00 noon had not come till 1.00 p.m., he was going to call him. Only on that count, their depositions ought not to have been discarded when they have stood the test of cross-examination firmly. It is also a matter of record that their houses are in near vicinity of the place of incident. These two witnesses are further corroborated by the fact that their clothes were stained with blood of deceased when they lifted him into the tractor.

It is also observed by the learned Additional Sessions Judge that the F.I.R. is silent about the presence of Meruji and Jethuji. It is now a settled proposition that F.I.R. need not always be detailed one nor can it be said to be a Magna Carta. It is also to be borne in mind that Meruji is an accused in cross case and in view of that fact also, mere non-mention of names of those two witnesses in the F.I.R. will not falsify either Laxmanji or will not indicate likelihood of absence of these two witnesses at the place of incident.

12. The depositions of these three witnesses were assailed upon by the defence on the ground that there are contradictory versions emerging from depositions of these three witnesses on the one hand and medical evidence on the other. These witnesses consistently said that two Dharia blows were given on head of the deceased whereas the medical evidence indicates only one head injury, the other injury being near the chin and. therefore, it was urged that this contradiction should be taken to materially hit at the root of the prosecution case. In our

opinion, this contradiction cannot be said to be such as would doubt the veracity of the witnesses. Such incidents take place within moments and it depends on the individual capacity of observation and description, These witnesses are rustic villagers. They may not exactly describe the site of injury as a medical person may. It is also to be considered that in such incidents both the person inflicting the wound and the person sustaining the wound, are moving and, therefore, there may be some difference in description of exact location of the site of injury. If the difference was material, things might have been different. But, here, one injury is on the head and the other is on the chin, the other injuries on deceased and injured are properly described and, therefore, it is not possible to accept the argument advanced on behalf of the respondent accused.

13. As regards non-examination of independent witness, it may be noted that it is found from evidence that Karsan Raval and Mohan Raval had reached the place of incident immediately after the incident and they have not been examined. Presence of these witnesses has been brought on record through, depositions of Meruji and Jethuji and they have not been examined. All the same, mere non-examination of these two witnesses may not affect the veracity of the other eye witnesses who have been examined when they have been found to be otherwise reliable and, therefore, it may not affect the prosecution case. The factum of non-examination of witnesses loses significance the moment the other eye witnesses are found to be otherwise reliable.

14. It was urged that the deceased-Ranaji and witness-Laxmanji had no reason to pass by this route. They could have passed by another route which could have taken them to the home of deceased on the tractor and they would not have been required to park the tractor and go to the home of the deceased on foot. It may be noted that, it is a matter on evidence that this is the shortest route to the home of the accused. It may also be noted that it was probably a general practice of the deceased to pass by this route because it is a matter on record that earlier also there were incidents when the accused and the deceased had altercations on account of the murder of son of accused No. 1 and, therefore, availability of alternative route cannot falsify version of eye-witnesses, who are otherwise found to be reliable.

Trial Court has accepted the argument advanced on behalf of the accused that the accused could not have known about the deceased and the witness-Laxmanji arriving at the place at the relevant time since it is a matter on evidence that neither the accused persons had seen the deceased nor the deceased had seen the accused persons on the day of incident since morning. It is argued by the appellant that the accused persons were sitting with Dharias near the house of accused No. 2 when the deceased and witness-Laxmanji passed from the vicinity. It is not the case of the prosecution that the accused persons were waiting for the victims to come. In fact, when the victims passed by, there was altercation which ultimately led to the incident. Again, in villages, life is not so insulated that routine of a man is not known to cohabitants. The argument loses ground when

the incident has, in fact, occurred and there has been a cross complaint from accused side against deceased Ranaji, witness-Meruji, etc. in respect of the same incident.

15. The depositions of witnesses Laxmanji (Ex.27), Meruji (Ex.37) and Jethuji (Ex. 39), if perused, indicate that the three accused persons had inflicted Dharia blows on person of the deceased as well as witness-Laxmanji. They consistently stated that accused No. 2 gave a Dharia blow on head of deceased-Ranaji, accused No. 1 also gave a blow of Dharia on head of deceased, witness-Laxmanji, therefore, intervened and, therefore, accused No. 3 gave Dharia blow to witness-Laxmanji, which was lifted by witness-Laxmanji on his left wrist. By that time, the deceased had fallen on the ground and then accused No. 3 gave Dharia blow to the deceased on his back. This consistent version has remained unshaken in the cross-examination. Merely because these witnesses are relatives, their testimony cannot be doubted when they have otherwise been found to be reliable.

16. It is argued that the doctor, when he was examined, was not shown the muddamal weapon and no opinion of the doctor was sought as to whether injuries could have been caused with the help of this weapon. In our opinion, when there is direct evidence of eye witnesses and when there is opinion of the doctor that injuries were possible with any sharp cutting instrument, non-asking of opinion of the doctor by showing him the Dharia would not make much difference in presence of other concrete evidence before this Court.

17. Contradictions are bound to creep into the evidence of witnesses, particularly, when depositions are recorded after a lapse of time. The question that is required to be considered is whether the contradictions are material or not and whether such contradictions hit at the root of the prosecution case or not. It is an established proposition that a little fringe of embroidery is bound to be there in evidence of witnesses, Considering the conditions prevailing in our country. At times, witnesses out of fear of being disbelieved or being labelled as false witnesses, exaggerate to certain extent and the evidence is, therefore, to be considered in totality while accepting or rejecting the same.

18. In our view, therefore, the learned Additional Sessions Judge has erred in evaluating the evidence. In light of the evidence on record, no other interpretation or conclusion except the guilt of the accused could have been arrived at. The finding recorded and the conclusions reached to by the trial Court are, therefore, in our view unsustainable.

19. We are, therefore, of the opinion that the judgment and order of acquittal recorded by the learned Additional Sessions Judge, Mehsana, impugned in this appeal calls for interference and the same is, therefore, quashed and set aside. All the three accused persons, namely, Manaji Kaluji Thakor, Sardarji Shankerji Thakor and Hamirji Shankerji Thakor, respondents No. 1 to 3 herein are held to be guilty of offence punishable u/s 302 read with Section 34 of Indian Penal Code

for murder of Ranaji Navalsinh and u/s 384 read with Section 34 of the Indian Penal Code for causing hurt to witness-Laxmanji, and are convicted for the same.

20. The respondents are not present before this Court. They will have to be heard on sentence. Earlier bailable warrants were issued against them. However, still they are not present. Therefore, in the interest of justice, before issuing non-bailable warrants, we direct that bailable warrants in the sum of Rs. 5000/ be issued to secure their presence before this Court on 14th July, 1998.

21. Today, when the matter is called out for hearing the respondents, who have been convicted by our order dated 7-7-1998, have appeared before us. Earlier when the matter was admitted by the Division Bench comprising G. T. Nanavati, J. (as His Lordship then was) and R. J. Shah, J, on 2nd January, 1985, bailable, warrants in the sum of Rs. 3000/- were ordered to issue against each of these accused persons. As per the original file, notices were issued and returned duly served and these accused persons intended to engage an advocate at Government cost since they were poor persons. There is a letter dated 29-1-1985 from the Sessions Court, Mehsana, to the Registrar of the High Court showing that notices were duly served on these three persons as reported by the Judicial Magistrate, First Class, by his letter dated 25-1-1985 and that the accused wanted legal aid at Government cost to defend their case in this Court. It was written in that letter that the accused were too poor to be able to engage a legal practitioner at their own expense. The learned advocate Mr. K. G. Sheth was, therefore, appointed to appear for them on 1-12-1997 and we place on record our appreciation of his effort in conducting this matter. The accused were present. They have been asked on the question of sentence and the learned counsel, Mr. K. G. Sheth, has also been briefed by them and he has made his submissions in the matter. Since these three accused persons had not earlier met their appointed counsel, we gave them an opportunity brief him and they have, before the Court, stated that they went to make their submissions through learned counsel Mr. K. G. Sheth over and above what they have stated.

22. Accused No. 1 states that he has no son. He is aged and has a wife to support. He has married daughters who are staying away and, therefore, mercy may be shown on him.

Accused No. 2 states that he is aged only 42 years. He has seven children to support, out of which four daughters are married and there are three sons to be supported and, therefore, he may be shown mercy.

Accused No. 3 states that he has four minor children and they need to be looked after and, therefore, mercy may be shown.

23. Mr. Trivedi, learned Additional Public Prosecutor appearing for the state has urged that he does not press for capital punishment. The accused persons may be inflicted with life imprisonment prescribed by law.

24. Mr. K.G. Sheth appearing for the accused person states upon instructions

from the accused persons that all of them are agricultural labourers and belong to a lower economic strata of the society and, therefore, minimum punishment may be imposed and mercy may be shown upon them.

25. We have, considered the submissions made in this regard. We also appreciate that accused No. 1 is aged about 70 years. At the same time, they are involved in a murder case and the law prescribes only two punishments, the minimum of which is life imprisonment. Mr. Trivedi has fairly conceded that it is not a case where prosecution may press for capital punishment. We also are of the same view and, therefore, we pass the following order :--

(1) Accused Nos. 1, 2 and 3, namely, Manaji Kaluji Thakor, Sardarji Shankerji Thakor and Hamirji Shankerji Thakor, are ordered to undergo rigorous imprisonment for life for conviction u/s 302 read with Section 34 of Indian Penal Code. Each of the accused is also fined Rs. 1000/- and, in default, to undergo rigorous imprisonment for a period of one month.

(2) Accused Nos. 1 to 3, i.e. Manaji Kaluji Thakor, Sardarji Shankerji Thakor and Hamirji Shankerji Thakor are also ordered to undergo rigorous imprisonment for one year for the offence punishable u/s 324 read with Section 34 of Indian Penal Code. The sentences shall run concurrently.

(3) All the accused persons are ordered to be taken into custody forthwith.

26. The oral request made on behalf of the accused persons by Mr. Sheth for granting time to the accused for surrendering to the custody is rejected.