

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1027 of
2017****With
R/CRIMINAL APPEAL NO. 1646 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

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PINTUBHAI @ KALIO DOLUBHAI VASAVA
Versus
STATE OF GUJARAT

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Appearance:

HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR P B KHAMBHOLJA(5730) for the Appellant(s) No. 1
MR VINAY VISHAN, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 12/02/2026**ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. The present Criminal Appeals are preferred by the appellants-accused under Section 374 of the Code of Criminal Procedure, 1973, being aggrieved by the judgment of conviction and order of sentence dated 21.01.2017 passed by the learned 2nd Additional Sessions Judge, Ankleshwar in Sessions Case No. 21/2015, whereby the appellants were convicted for the offences

punishable under Sections 302 read with 114 of the Indian Penal Code and Section 135 of the Gujarat Police Act. The learned Sessions Court sentenced the appellants to undergo imprisonment for life and to pay a fine of Rs. 1,000/- each, in default to further undergo one year's rigorous imprisonment for the offence under Section 302 read with Section 114 IPC, and to undergo rigorous imprisonment for four months and to pay a fine of Rs. 100/- each, in default to undergo one month rigorous imprisonment for the offence under Section 135 of the Gujarat Police Act. The substantive sentences were ordered to run concurrently.

2. The case of the prosecution, in brief, is that the two accused, namely Ajaybhai alias Bodko Rameshbhai Vasava and Pintubhai alias Kaliyo Dolubhai Vasava, both residents of Dansoli village, Taluka Valiya, District Bharuch, had been persistently harassing and teasing the deceased Parvatiben, a woman who was living alone with her daughter, the complainant Mograben, at the same village. The accused frequently visited Parvatiben's house, made indecent demands and advances for sexual acts, abused her with filthy language, and subjected her to continuous molestation and harassment. On the morning of 28.09.2014, when the complainant Mograben returned home after completing her work, she found her mother Parvatiben present at home along with both the accused. The accused were then verbally abusing Parvatiben in vulgar terms. When Parvatiben strongly objected and warned them that she would report their conduct to the village Sarpanch if they continued to come to her house, the accused became enraged and threatened her by saying, "We will not let you live," before leaving the place. Later that same day, around 15:00 hours, while Parvatiben had gone alone to the field in the Kim Khadi area of Gandhuvagam to collect grass, the accused, nursing enmity and

grudge due to her earlier resistance and warning, followed her to the isolated spot. There, they again demanded immoral acts from her. When Parvatiben firmly refused and resisted their advances, the accused, in a fit of anger and with clear intention to cause her death, assaulted her by inflicting multiple blows on her neck with a sharp edged sickle (datardu). The assault resulted in deep, fatal incised wounds on the neck, leading to profuse bleeding, hemorrhagic shock, and ultimately her death at the spot. The prosecution alleges that the accused acted in concert with common intention to commit murder, knowing fully well that the use of a dangerous weapon like a sickle on such a vital part of the body was sufficient in the ordinary course of nature to cause death.

3. On the basis of the complaint lodged by the complainant Mograben immediately after the discovery of her mother's dead body, an offence was registered at Valiya Police Station vide Crime Registration No. First 79/2014 under Sections 302 read with 114 of the Indian Penal Code and Section 135 of the Gujarat Police Act. The investigation was carried out by the police, during which statements of witnesses were recorded, the scene of offence was inspected, relevant panchnamas were prepared, the weapon (sickle) was recovered at the instance of the accused persons, and other incriminating articles were seized. After completion of the investigation, a detailed charge sheet was filed before the learned Judicial Magistrate First Class, Valiya, where the case was initially registered as Criminal Case No. 1050/2014. Since the offence under Section 302 IPC is exclusively triable by a Court of Session, the case was committed to the Additional Sessions Court, Ankleshwar by order of the committing court. Upon receipt, it was registered as Sessions Case No. 21/15.

4. In the Sessions Court, when the accused appeared, it was confirmed that they had received copies of all police papers. The accused expressed their desire to engage a private advocate. Thereafter, the charge under Section 228 Cr.P.C. was framed against them for the offences alleged. The charge was read over, explained, and its meaning was made clear to the accused, who pleaded not guilty and denied the allegations vide their statement at Exh. 8. The case was accordingly fixed for recording of evidence, and the trial proceeded with the examination of prosecution witnesses, production of documentary evidence, and cross-examination by the defence. The complainant party led both oral and documentary evidence to establish the charges against the accused beyond reasonable doubt.

5. In order to prove the charge, the prosecution examined as many as 21 witnesses and exhibited 18 documents.

Oral Evidences:-

Sr. No.	Exh.	Name
1	11	Madhuben Bhupatbhai Vasava
2	15	Sureshbhai Ramubhai Vasava
3	20	Mukeshbhai Maheshbhai Vasava
4	21	Anilbhai Dilipbhai Vasava
5	24	Somabhai Bijalbhai Vasava
6	25	Pravinsinh Naharsinh Kharachiya
7	34	Bhikhabhai Shankarbhai Vasava
8	39	Khumanbhai Devalabhai Vasava
9	41	Akhadabhai Govindbhai Vasava
10	43	Rameshbhai Amrabhai Vasava
11	44	Champakbhai Chandubhai Vasava
12	45	Harshadbhai Panchiyabhai Vasava
13	46	Prakashbhai Sureshbhai Vasava
14	47	Kantubhai Chhanabhai Vasava

Sr. No.	Exh.	Name
15	49	Mograben Prabhatbhai Vasava
16	51	Abhesig Budhiyabhai Vasava
17	52	Ramanbhai Haribhai Vasava
18	56	Dr. Ashwinbhai Khemabhai Katara
19	59	Dr. Pranavkumar Subhodhkumar Sinha
20	63	Priteshkumar Govindbhai Chaudhary
21	72	Radhesingh Bhajibhai Bariya

Documentary Evidences:-

Sr. No.	Exh.	Document Description
1	12	Inquest Panchnama
2	16	Scene of Offence Panchnama
3	22	Weapon Discovery Panchnama
4	26	Panchnama for Seizure of Clothes of Accused
5	35	Panchnama for Seizure of Clothes on the Dead Body
6	40	Arrest Panchnama of Accused
7	50	Complaint
8	53	Copy of Station Diary
9	57	Yadi sent to Medical Officer for conducting Post-Mortem
10	58	Post-Mortem Report
11	60	Yadi sent to Medical Officer for Medical Examination of Accused
12	61	Medical Examination Certificate of Accused
13	64	Muddamal Dispatch Note
14	65	FSL Receipt for Muddamal Received
15	66	Biological Examination Report
16	67	Serological Report
17	68	Toxicology / Poison Examination Report
18	72	Notification by District Magistrate regarding Arms Prohibition

6. Learned advocates appearing for the appellants-accused Ajaybhai alias Bodko Rameshbhai Vasava and Pintubhai alias Kaliyo Dolubhai Vasava have vehemently submitted that the impugned

judgment of conviction and order of sentence cannot be sustained. They contended that the prosecution case rests entirely on circumstantial evidence with no eye-witness to the actual incident. The complainant Mograben has not seen the occurrence and only discovered the body the next morning. It was urged that the chain of circumstances is incomplete and broken at several points. In particular, the last seen together circumstance, based on the testimonies of PW-12 Harshadbhai Panchiyabhai Vasava at Exh.45 and PW-14 Kantubhai Chhanabhai Vasava at Exh.47, is unreliable due to unnatural conduct of the witnesses passive non-intervention despite seeing an elderly woman in distress, material contradictions between police statements and court depositions, possible tutoring or improvement, and non-examination of a material companion witness Haribhai Nagarbhai Vasava.

6.1 Further, several panch witnesses turned hostile, limiting corroboration of recovery panchnama.

6.2 The recovery of the sickle - datardu at the instance of the accused and presence of deceased's blood on it and on the accused's clothes, while incriminating, do not conclusively prove that the appellants committed the murder, as alternative explanations cannot be ruled out in the absence of a complete chain excluding reasonable hypothesis of innocence.

6.3 In view of these submissions, it was prayed that the conviction and sentence imposed by the learned Sessions Court cannot be sustained and the appeals be allowed by setting aside the same.

6.4 Learned advocates also vehemently relied upon several authoritative judgments of the Hon'ble Supreme Court to contend that the prosecution has failed to establish a complete and unbroken chain of circumstantial evidence sufficient to sustain the conviction for murder beyond reasonable doubt. They have placed reliance on the following decisions:

(a) ***Shambhu Choudhary v. State of Bihar*** where the Apex Court emphasized that in cases based purely on circumstantial evidence, every link in the chain must be firmly proved, and mere suspicion or incomplete circumstances cannot lead to conviction.

(b) ***Raj Kumar @ Suman v. State (NCT of Delhi)*** reiterating that incriminating circumstances must be put to the accused under Section 313 Cr.P.C. in a meaningful manner, and failure to do so vitiates reliance on such circumstances.

(c) ***Naresh Kumar v. State of Delhi*** holding that if any incriminating circumstance appearing in evidence is not specifically put to the accused, it cannot be used against him.

(d) ***Tara Singh v. State*** underscoring that circumstantial evidence must be consistent only with the guilt of the accused and inconsistent with any other reasonable hypothesis.

(e) ***Vinodgar Rameshgar Jivangar Goswami Bavaji v. State of Gujarat*** clarifying that in circumstantial cases, the prosecution must prove that the circumstances are incompatible with the innocence of the accused.

(f) ***Narayan Yadav v. State of Chhattisgarh*** observing that a confessional or self-incriminating FIR by an accused is inadmissible as substantive evidence against him except to a limited extent under Sections 8 and 27 of the Evidence Act, and conviction cannot rest solely on such inadmissible material.

(g) **Abdul Nassar v. State of Kerala** reinforcing the five golden principles from **Sharad Birdhichand Sarda v. State of Maharashtra**, that the chain of circumstances must be fully established, complete, and point unerringly to the guilt of the accused alone.

(h) **Padman Bibhar v. State of Odisha** holding that the 'last seen together' theory alone is insufficient for conviction in a purely circumstantial case unless corroborated by other clinching evidence, and a broken or incomplete chain entitles the accused to the benefit of reasonable doubt.

6.5 It was strenuously urged that the present case suffers from similar infirmities unreliable 'last seen' evidence, doubtful Section 27 recovery, hostile panch witnesses, and lack of corroborative links rendering the prosecution's chain broken and incomplete, warranting acquittal in line with the principles laid down in the aforesaid judgments.

7. Opposing the contentions, learned APP for the State, while stoutly defending the impugned judgment and order of the Sessions Court, submitted that the conviction rests on a robust chain of circumstantial evidence fully satisfying the principles laid down by the Hon'ble Supreme Court for cases based solely on circumstantial evidence. He highlighted the following key circumstances:

(i) the last seen together circumstance stands proved through the testimonies of independent village witnesses Harshadbhai Panchiyabhai Vasava and Kantubhai Chhanabhai Vasava, who saw both accused with the deceased Parvatiben near the Kim River bridge in the late afternoon and evening of 28.09.2014, observed

her in a helpless condition, and heard the accused falsely claiming she had merely “fallen” while they were “pulling her out”;

(ii) the dead body was recovered the very next morning from the identical spot under the tamarind tree, bearing multiple deep incised wounds on the neck inflicted by a sharp cutting weapon;

(iii) the post-mortem report at Exh.58 unequivocally establishes death from hemorrhage and traumatic shock due to these injuries, sufficient in the ordinary course of nature to cause death and consistent with the recovered sickle - datardu;

(iv) the sickle was recovered at the instance of the accused under Section 27 of the Indian Evidence Act, corroborated by panchnama and witnesses;

(v) the FSL report confirms the presence of the deceased’s blood group on the seized sickle and on the clothes of the accused;

(vi) clear motive and prior conduct under Section 8 of the Evidence Act are proved through complainant Mograben’s testimony at Exh.49 regarding repeated harassment, indecent demands, abuses, molestation, and explicit death threats hours before the incident; and

(vii) the accused offered no plausible explanation in their statements under Section 313 Cr.P.C. to account for the deceased being last seen with them, the blood stains, the recovery, or their conduct.

7.1 He therefore submitted that the prosecution has successfully established the chain of circumstances and the learned Sessions Court has rightly convicted the appellants under Section 302 read with Section 114 IPC. The learned APP candidly conceded that there is no direct eye-witness to the assault and the case depends

wholly on circumstantial evidence. However, he maintained that the proved circumstances form a complete chain pointing unerringly to the guilt of the appellants and that no other hypothesis consistent with innocence survives.

8. Having heard the learned advocates for the appellants-accused and the learned APP for the State, and having carefully considered the entire evidence on record, the findings of the learned Sessions Court, the chain of circumstantial evidence, the nature of the incident, and the rival submissions, this Court is of the considered opinion that while certain incriminating circumstances are proved including the last seen circumstance based on the claimed to have been testimonies of PW-12 Harshadbhai Panchiyabhai Vasava at Exh.45 and PW-14 Kantubhai Chhanabhai Vasava at Exh.47, recovery of the sickle at the instance of the accused under Section 27 of the Indian Evidence Act, medical evidence of fatal neck injuries consistent with a sharp weapon like the sickle, FSL corroboration confirming the deceased's blood group on the weapon and on the clothes of the accused, and prior motive from harassment and threats deposed by the complainant Mograben at Exh.49 the chain is not fully complete, continuous, and unbreakable so as to exclude every reasonable possibility consistent with the innocence of the accused or to establish their guilt for murder beyond reasonable doubt.

8.1 The last seen witnesses conduct is highly unnatural and improbable passive non-intervention upon seeing a woman in distress, acceptance of a dubious explanation without verification or assistance, contradictions between police statements and depositions suggesting possible improvement or tutoring, and non-examination of a material companion witnesses namely PW-12

Harshadbhai Panchiyabhai Vasava at Exh.45 and PW-14 Kantubhai Chhanabhai Vasava at Exh.47 which casts serious doubt on the reliability and spontaneity of their evidence as a conclusive link. Several panch witnesses turned hostile, weakening corroboration of recovery and seizure details.

8.2. While the recovery of the sickle and blood stains create strong suspicion, they do not, in isolation or combination, conclusively prove that the appellants alone committed the fatal assault, particularly in the absence of direct ocular evidence of the occurrence and given the isolated nature of the spot with no independent eyewitness to the act itself. The prosecution has not discharged the burden of proving a complete chain of circumstances where all links are firmly established and incompatible with any hypothesis of innocence.

9. The record demonstrates that the key links last seen by witnesses whose reliability raises grave doubts due to unnatural conduct, inconsistencies, and selective examination; recovery and FSL evidence linking the accused to the weapon and blood; and motive from prior harassment undoubtedly create strong suspicion against the appellants but fall short of excluding reasonable doubt regarding their exclusive involvement in the murder or the absence of any alternative explanation consistent with innocence. The prosecution has miserably failed to prove an unbroken chain pointing unerringly and solely to the guilt of the appellants for the offence under Section 302 read with Section 114 IPC. In these circumstances, the conviction and sentence imposed by the learned Sessions Court cannot be sustained.

10. From the evidence on record, particularly the post-mortem

report at Exh-58 and the testimony of the Medical Officer including Dr. Ashwinbhai Katara's examination, it clearly emerges that the deceased Parvatiben had sustained multiple deep incised wounds and injuries around the neck region, measuring variously in horizontal orientation with clearly definable edges and margins, exposing internal structures, and accompanied by peeling of skin on adjacent areas forehead, cheeks, ears, clavicle, etc., leading to profuse hemorrhage and traumatic shock. The injuries were sufficient in the ordinary course of nature to cause death by cessation of heart and respiratory functions due to hemorrhage and shock.

10.1. The Medical Officer has opined that these injuries could be caused by a sickle (datardu), and the muddamal weapon recovered was identified as capable of inflicting such wounds. Although the defence suggested alternative explanations the scene panchnama, recovery evidence, and FSL report confirming deceased's blood group on the sickle and accused's clothes rule out such pleas and establish that the assault was carried out with considerable force. However, the medical evidence does not conclusively establish an intention to cause death, but it clearly demonstrates knowledge that such acts were likely to cause death or at least serious bodily harm of a kind likely to result in death.

11. The prosecution has examined several witnesses, including the complainant Mograben (daughter of the deceased) at Exh. 49, independent witnesses Harshadbhai Panchiyabhai Vasava at Exh. 45 and Kantubhai Chhanabhai Vasava at Exh.47, Abheysing Budhiyabhai at Exh.51, the investigating officers, medical witnesses, and panch witnesses. On perusal of their entire testimonies read together with the medical evidence, the factum of

the deceased being last seen alive with the accused in the field, has not been established and proceed merely because the dead body being recovered the next morning from the same spot with fatal neck injuries as claimed by witness is not sufficient to point finger against accused in absence of link of chain of circumstances as claimed by the prosecution. The manner in which the occurrence took place is that the accused, enraged by the deceased's refusal and warning, assaulted her with the sickle while she was alone fetching grass. Due to the isolated nature of the spot and absence of immediate eyewitnesses to the actual assault, no direct ocular account of the fatal blows exists. Immediately thereafter, the accused left the scene, and the body was discovered the following morning. Thus, the prosecution witnesses, when their depositions are read together with the medical, recovery, and FSL evidence, indicate that the death of the deceased was not natural but a culpable homicide. However, the question which requires consideration, in view of the entire evidence on record, is as to how and under what circumstances the deceased came to die so also the involvement of the accused in occurrence.

12. It transpires that the prosecution in support of its case has examined numerous witnesses; however, out of the said witnesses, the one is the complainant Mogradben, who claimed prior harassment, threats, and the recovery of the body, and the last seen witnesses Harshadbhai and Kantubhai, who sought to established the crucial circumstantial link. Thus, no eyewitness saw the actual assault, and several panch witnesses turned hostile, limiting direct corroboration of seizure/recovery details.

13. It transpires from the entire material placed for consideration that the cause behind the incident, as per the case of the

prosecution, is the harassment of the deceased by the accused, their repeated indecent demands, abuses, molestation, and explicit death threat given just hours before the fatal assault when Parvatiben warned of informing the Sarpanch. The theory of the prosecution that the accused acted with common intention to murder finds support in the chain of circumstances, but upon closer scrutiny, the sudden provocation arising from the deceased's resistance in an isolated setting, absence of premeditation, and impulsive use of the weapon at the spot itself create sufficient doubt regarding the existence of specific intention to cause death.

14. The complainant Mograben at Exh.49, daughter of the deceased Parvatiben, was examined as a key witness by the prosecution. She deposed that the accused persons, Ajaybhai alias Bodko Ramesh bhai Vasava and Pintubhai alias Kaliyo Dolubhai Vasava, had been persistently harassing her mother for a considerable period. They frequently visited the house of the deceased, made indecent demands/advances for immoral/sexual acts, teased and molested her, and abused her in filthy language in her presence as well as that of others. Specifically, on the night of 27.09.2014, both accused came to their house and, after entering, continued their teasing and abusive behaviour towards Parvatiben. When Parvatiben strongly objected and warned them that she would inform the village Sarpanch about their conduct, the accused became enraged and explicitly threatened her by saying, "If you inform the Sarpanch, we will kill you."

14.1 The witness further stated that on 28.09.2014, upon returning home after work, she again found both accused present at the house, abusing her mother. Parvatiben repeated her warning, leading to the same death threat from the accused before

they left. Later that day, when Parvatiben failed to return after going to fetch grass, the witness searched for her and, the next morning, discovered her mother's dead body under the tamarind tree near the Kim River bridge with severe wounds on the neck and blood oozing. She identified the body and immediately lodged the complaint, which formed the basis of Crime Registration No. First 79/2014 at Valiya Police Station. Her testimony do not explicitly establishes a clear motive, prior conduct, and explicit threats given just hours before the incident as credible and consistent so as to establish the chain of circumstances to prove the guilt against the appellants.

15. PW-12 Harshadbhai Panchiyabhai Vasava at Exh.45 cited as an independent villager, was examined and his testimony was intended to prove a crucial link in the circumstantial chain through the last-seen-together circumstance. He stated that on 28.09.2014, while proceeding with his tempo to fill diesel, he passed near the bridge over the Kim River and saw both the accused pulling Parvatiben. Becoming suspicious, he questioned them directly: "What are you doing?" The accused replied that she had fallen and they were pulling her out. He did not witness the actual assault or murder but observed the accused with the deceased in a helpless or fallen condition at that location during the late afternoon. The next morning, the dead body of Parvatiben was recovered from almost the identical spot under the tamarind tree on the river bank, bearing fatal injuries on the neck. However, this Court finds it highly unnatural and improbable that an ordinary villager, upon seeing an elderly woman known to him as Parvatikaki being physically pulled or handled by two persons in a suspicious manner and appearing helpless or fallen, would merely ask "What are you doing?" and accept the explanation that "she had fallen and we are

pulling her out” without making any further attempt to ascertain her condition, offer assistance, or at least proceed closer to the spot to verify the situation.

15.1 Instead, the witness simply continued on his way without any intervention, reporting, or follow up action at that moment. This unnatural manner raises serious doubt about the presence of this witnesses as claimed therein which loses the spontaneity and genuineness of his testimony. The defence’s suggestion that the witness was a daily employer of Parvatiben for fetching grass and wood, and yet did not act in a manner consistent with concern for a known labourer in apparent distress, the possibility that he has been got up or tutored later as a witness cannot be ruled out. The discrepancies in his police statement and court deposition regarding time and exact description of the location further weaken the reliability of this evidence.

16. PW-14 Kantubhai Chhanabhai Vasava at Exh.47 cited as another independent villager and the Sarpanch of the village, was examined to corroborate the last-seen-together circumstance. He deposed that on 28.09.2014 around 6:30 p.m., while passing near the Kim River bridge, he saw both accused with Parvatiben. Upon noticing their suspicious activity, he asked: “What are you doing?” The accused responded that Parvatiben had fallen and they were pulling her out, even pointing towards him and saying “this one person,” implying they were aware of his presence as a witness. Like Harshadbhai, he did not see the fatal assault but observed the accused physically interacting with the deceased in a helpless state at the precise location. The dead body was recovered the following morning from under the tamarind tree in the same vicinity. This Court, however, finds the conduct of this witness highly unnatural,

improbable, and suspicious. As the Sarpanch of a small village where everyone knows each other and where Parvatiben was a resident, seeing an elderly woman from his own village in a fallen or helpless condition, being handled by two persons who offered a questionable explanation (“she has fallen, we are pulling her out”), and yet restricting his reaction to merely asking “What are you doing?” without making any attempt to approach the spot, check on Parvatiben’s condition, offer assistance, summon help, or even raise an immediate alarm is wholly inconsistent with the expected behaviour of a responsible villager, let alone the Sarpanch whose duty it is to protect and assist fellow villagers in distress. The fact that he continued on his way without taking any further action, despite being fully aware of the unusual and potentially serious situation involving a woman in apparent peril, casts grave doubt on the truthfulness and spontaneity of his version.

16.1 Moreover, the record reveals that Kantubhai was in the company of another witness, Haribhai Nagarbhai Vasava, at or around the relevant time, as per the investigation notes and statements. However, Haribhai Nagarbhai Vasava was not examined on oath before the court, despite his statement having been recorded by the Investigating Officer.

16.2 The non-examination of this accompanying person, who could have independently corroborated or contradicted Kantubhai’s presence, conduct, and version at the spot, creates a significant lacuna and raises a strong inference that the prosecution selectively examined only those witnesses who supported their narrative while deliberately withholding a material witness who might have exposed inconsistencies. The defence has rightly

pointed out contradictions between Kantubhai's police statement and his court testimony, including the emergence of additional details in court, which suggest possible improvement, embellishment, or tutoring.

16.3 In these circumstances, the possibility that Kantubhai has been got up as a witness to bolster the prosecution's last-seen-together theory cannot be ignored, and his evidence does not inspire the full confidence required to treat it as a reliable and conclusive link in the chain of circumstantial evidence.

17. The combined testimony of PW-12 Harshadbhai Panchiyabhai Vasava and PW-14 Kantubhai Chhanabhai Vasava was heavily relied upon by the sessions court to establish that the deceased was last seen in the company of the accused at or near the spot where her body was recovered the next morning. While their accounts are mutually corroborative on the broad fact of sighting the accused with Parvatiben in a suspicious situation, the glaring common feature in both depositions is the complete absence of any effort to render assistance, verify the deceased's condition, or take immediate steps despite seeing an elderly woman in apparent distress. In a small village setting where people know each other, such passive and detached behaviour upon witnessing a potentially serious situation is highly unnatural and improbable. This conduct, coupled with the material contradictions highlighted by the defence in their police statements vis-à-vis court depositions, raises a strong inference these witnesses might have been got up or their statements improved subsequently to fit the prosecution narrative. In the absence of any independent corroboration of their presence at the relevant time and place, and considering the overall suspicious nature of their non-intervention, this Court is not

inclined to place implicit reliance on their testimonies as conclusive proof of the last-seen-together circumstance beyond reasonable doubt. The chain of circumstantial evidence, therefore, suffers from a serious weakness at this vital link.

18. During the course of the investigation, one of the accused persons was medically examined by the concerned doctor. Upon examination, the doctor observed certain injuries on the private parts of the said accused. The Medical Officer, in his opinion recorded and deposed before the Court, opined that these injuries were consistent with and possible due to forcible sexual intercourse. This medical finding does not assume significance in the context of the prosecution's case alleging sexual harassment preceding the fatal assault, the prosecution did not frame or prove in absence of a specific charge under Section 376 IPC. The defence, however, contested the reliability of this opinion, submitting that such injuries could arise from various other causes and do not conclusively establish commission of rape or link the same directly to the death of the deceased Parvatiben. This Court has taken note of this evidence while appreciating the overall chain of circumstances but finds that it does not fill the gaps in the prosecution's case so as to prove murder beyond reasonable doubt.

19. Further, the recovery of the sickle (datardu), the alleged weapon of offence, at the instance of the accused under Section 27 of the Indian Evidence Act deserves careful scrutiny. The prosecution relied heavily on the discovery panchnama to establish that the sickle was produced by the accused from a concealed place known only to them, thereby providing a direct link between the appellants and the crime. However, the foundational requirement of a proved discovery at the instance of the accused

remains unestablished, particularly when the panch witnesses to the recovery turned hostile and did not support the prosecution version regarding the manner, place, or voluntariness of the recovery. This Court is therefore constrained to hold that the recovery under Section 27 cannot be accepted as a reliable circumstance pointing to the guilt of the appellants.

20. As held by the Hon'ble Supreme Court in ***State of Rajasthan vs. Hanuman 2025 SC 691***, mere recovery of a blood-stained weapon matching the deceased's blood group is not, by itself, sufficient to sustain a conviction under Section 302 IPC in the absence of a complete chain of circumstantial evidence proving the guilt of the accused beyond reasonable doubt.

21. The prosecution's case is further weakened by the fact that a large number of panch witnesses examined in relation to various panchnamas including the scene of offence panchnama, inquest panchnama, recovery panchnama of the sickle, and seizure of clothes from the accused turned hostile and did not support the prosecution narrative in material particulars. Their hostility is not merely formal; several panchas resiled from their earlier police statements and denied having witnessed the proceedings as recorded or having affixed their signatures or thumb impressions voluntarily.

21.1 In a case resting solely on circumstantial evidence, the corroborative value of contemporaneous panchnamas prepared in the presence of independent witnesses is of critical importance. The turning hostile of these panch witnesses creates a substantial lacuna in the prosecution evidence and renders the recoveries and seizures suspect.

22. The learned Sessions Court appears to have undervalued this aspect while placing reliance on the FSL report and post-mortem findings alone, in absence of other cogent and clinching material which appears to believing in case on hand.

23. Even assuming that the FSL report establishes the presence of human blood of the deceased's group on the sickle and on the clothes of the accused, such scientific evidence, while incriminating, is corroborative in nature and cannot stand alone to prove the offence of murder when the primary links in the circumstantial chain particularly the last seen together circumstance and the Section 27 recovery suffer from serious infirmities and reasonable doubts. The presence of blood stains, without a proved exclusive possession or conclusively established recovery process, permits reasonable possibilities of contamination, secondary transfer, or other explanations consistent with innocence. In the absence of any direct evidence connecting the accused to the actual commission of the assault, and given the gaps highlighted above, the FSL report does not bridge the evidentiary void so as to complete the chain beyond reasonable doubt.

24. Taking an overall view of the matter, the prosecution has succeeded in creating suspicion against the appellants through motive from prior harassment and threats, medical evidence of fatal neck injuries, scientific evidence of blood on weapon and clothes, and partial circumstantial links. However, suspicion, however strong, cannot take the place of proof. The chain of circumstances remains broken at vital points: the unreliable and unnatural last seen testimonies, the non-corroboration by hostile panch witnesses, the doubtful Section 27 recovery, the absence of

any direct evidence of the assault, and the failure to rule out reasonable alternative hypotheses. In these circumstances, the prosecution has not proved the guilt of the appellants for the offence of murder punishable under Section 302 read with Section 114 of the Indian Penal Code beyond reasonable doubt. The conviction recorded by the learned Sessions Court therefore cannot be upheld.

25. The learned sessions court, after appreciating the evidence led by the prosecution, held that the case rested entirely on circumstantial evidence, there being no direct eyewitness to the actual assault. It placed heavy reliance on the 'Last Seen Together' theory, primarily through the testimonies of PW-12 Harshadbhai Panchiyabhai Vasava (Exh.45) and PW-14 Kantubhai Chhanabhai Vasava (Exh.47), who claimed to have seen both accused with the deceased Parvatiben near the Kim River bridge on the evening of 28.09.2014, in a situation where she appeared to have "fallen" and the accused were "pulling her out". The sessions court observed that the dead body was recovered the next morning from the very same spot under the tamarind tree, with fatal incised wounds on the neck, and concluded that the deceased was last seen alive in the company of the accused. The sessions court further noted that the accused offered no explanation whatsoever in their statements under Section 313 Cr.P.C. regarding this circumstance, and held that failure to explain the 'last seen' situation went against them.

26. As held by the Hon'ble Supreme Court in ***Indrakunwar vs. The State of Chhattisgarh 2023 SC 932***, even though the accused may choose to remain silent during examination under Section 313 CrPC, such silence or refusal to answer cannot be used against the accused to draw an adverse inference leading to

conviction, particularly in the absence of other complete and clinching circumstantial evidence proving guilt beyond reasonable doubt.

27. The learned sessions court appears to have erred in conceding the motive and prior conduct as proved through the testimony of the complainant Mograben at Exh.49, who deposed about repeated harassment, indecent demands, filthy abuses, molestation, and explicit death threats given by the accused on 27.09.2014 and again on the morning of 28.09.2014.

28. This Court finds it apposite to observe that the principles governing appreciation of evidence in cases resting solely on circumstantial evidence have been authoritatively laid down by the Hon'ble Supreme Court in a series of binding decisions, which are squarely attracted to the facts and circumstances of the present case. In **Padman Bibhar v. State of Odisha**, the Apex Court has reiterated:

“10. It is settled law that in a case based on circumstantial evidence, the prosecution is obliged to prove each circumstance, taken cumulatively to form a chain so complete that there is no escape from the conclusion that within all human probabilities, crime was committed by the accused and none else. Further, the facts so proved should unerringly point towards the guilt of the accused.”

28.1 Similarly, in **Abdul Nassar v. State of Kerala & Another**, the Hon'ble Supreme Court has emphasized the necessity of a clear and complete delineation of the chain:

“29. The Courts have undertaken an examination of the testimonies of the witnesses but has omitted to delineate the inferences derivable therefrom. Moreover, they failed to expound upon how the prosecution has succeeded in construction an unbroken chain of circumstances that irrefutable establishes the culpability of the accused to the exclusion of any other hypothesis.”

28.2 Further, in **Narayan Yadav v. State of Chhattisgarh**, dealing specifically with the evidentiary value of recoveries under Section 27 of the Indian Evidence Act when panch witnesses turn hostile, the Supreme Court held:

“29. Most of the panch witnesses turned hostile. If at all, the public prosecutor wanted to prove the contents of the panchnamas after the panch witnesses turned hostile, he could have done so through the evidence of the investigating officer. However, the investigating officer also failed to prove the contents of the panchnamas in accordance with law. Thus, there is nothing on record by way of evidence relating to any discovery of fact is concerned. In other words, no discovery of fact at the instance of the appellant, relevant and admissible under Section 27 of the Act of 1872, has been established.”

29. Applying these settled principles to the facts on record, this Court finds that the prosecution has not succeeded in proving each incriminating circumstance with the degree of certainty required. The 'last seen together' circumstance remains vitiated by serious doubts as to the reliability and spontaneity of the testimonies of PW-12 Harshadbhai Panchiyabhai Vasava and PW-14 Kantubhai Chhanabhai Vasava. The recovery of the sickle under Section 27 of the Evidence Act is materially weakened by the hostility of the panch witnesses and the absence of proper corroboration through independent evidence of the Investigating Officer in accordance with law.

29.1 The FSL report, though showing blood of the deceased's group, cannot cure these foundational defects when the chain itself is incomplete and permits reasonable hypotheses consistent with innocence.

29.2 In the absence of a complete and unbroken chain that unerringly points to the guilt of the appellants to the exclusion of

all others, the prosecution has failed to discharge its burden of proving the charge beyond reasonable doubt.

30. The learned sessions court further took into account the medical examination of accused Ajaybhai alias Bodko Rameshbhai Vasava by Dr. Sinha, who found abrasions and stretch marks on the scrotum, opining that such injuries were possible due to forcible sexual intercourse. The sessions court treated this as corroborative of the prosecution's allegation of persistent sexual harassment and molestation, though no specific charge under Section 376 IPC was framed or proved. The sessions court also noted that several panch witnesses, including those to the seizure of clothes at Exh.26 and related memos, turned hostile, merely identifying their signatures on prepared panchnamas without supporting the prosecution version, but erred in holding that this did not materially affect the chain when viewed with other proved circumstances.

31. However, this Court, on re-appreciation of the entire record in appeal, finds that the sessions court fell into error in concluding that the chain of circumstantial evidence was complete and unbreakable. The trial court's heavy reliance on the 'Last Seen Together' theory is vitiated by the serious infirmities discussed in above the highly unnatural and improbable passive conduct of both key witnesses, material contradictions between their police statements and court depositions, suggestions of improvement or tutoring, non-examination of material companion witness Haribhai Nagarbhai Vasava, and the defence suggestion that Harshadbhai was a regular employer of the deceased yet failed to act consistently with concern. These factors render their evidence unreliable and insufficient to conclusively establish the vital 'last seen' link beyond reasonable doubt.

32. Moreover, the sessions court's acceptance of the Section 27 recovery and related panchnamas overlooks the fact that the majority of panch witnesses turned hostile and did not corroborate the prosecution version regarding the manner, place, or voluntariness of the recovery of the sickle or seizure of clothes. Mere identification of signatures on prepared panchnamas by hostile panchas cannot substitute for independent proof of discovery at the instance of the accused. In the absence of reliable panch corroboration, the evidentiary value of Section 27 recovery is materially weakened, and the FSL report, while showing blood of the deceased's group, loses much of its probative force when the foundational link of proved exclusive possession is doubtful. The sessions court's finding that the chain remained complete despite these hostilities and gaps is not sustainable.

33. The learned sessions court also appears to have placed undue weight on the motive and prior threats without adequately addressing the defence contention that the complainant's testimony contained contradictions regarding dates, times, and sequence vis-à-vis the FIR, and that the harassment narrative was not independently corroborated beyond hearsay or interested witnesses. The medical opinion of Dr. Sinha regarding injuries on accused Ajaybhai, while suggestive of possible forcible sexual activity, remains inconclusive and extraneous to the proved cause of death, as no charge of rape or attempt was framed, and the prosecution did not establish a direct nexus to the fatal assault.

34. In the ultimate analysis, the prosecution has established certain incriminating circumstances creating strong suspicion against the appellants, but the chain suffers from critical breaks and reasonable doubts at multiple points unreliable last-seen evidence, hostile panch witnesses, doubtful Section 27 recovery,

absence of direct ocular account, and failure to exclude alternative hypotheses consistent with innocence. Suspicion, however grave, cannot replace proof beyond reasonable doubt. The learned Sessions court erred in holding that the circumstantial chain pointed unerringly and solely to the guilt of the appellants for murder under Section 302 r/w 114 IPC. The conviction and sentence cannot therefore be sustained.

35. In the result, both Criminal Appeals are allowed. The impugned judgment and order of conviction and sentence dated 21.01.2017 passed by the learned 2nd Additional Sessions Judge, Ankleshwar in Sessions Case No. 21/2015 is hereby set aside. The appellants are acquitted of the charges under Sections 302 r/w 114 IPC and Section 135 of the Gujarat Police Act. They shall be set at liberty forthwith unless required in connection with any other case. Bail bonds, if any, stand cancelled.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod