IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1597 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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SHAMJI @ SUNIL @ DAKUDO S/O KALUBHAI MER
Versus
STATE OF GUJARAT

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Appearance:
MR P P MAJMUDAR(5284) for the Appellant1
MR RONAK RAVAL APP for the Respondent

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

Date : 20/02/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This conviction appeal is directed against the judgment and order of conviction dated 27.08.2013, passed by the learned Additional Sessions Judge, Jetpur at Rajkot, in connection with Sessions Case No. 64 of 2011, by which, the sole accused Samji @ Sunil @ Dakudo Kalubhai was convicted under Sections 302 of Indian Penal Code and sentenced to suffer life imprisonment and fine amount of Rs.1000/- and in default in payment of fine, to suffer simple imprisonment of 3 months and also convicted and sentenced

under Section 201 of the Indian Penal Code and is directed to suffer 2 years imprisonment with Rs.300/- fine and in default thereof, to suffer 7 days simple imprisonment.

2. The case of the prosecution, leading to conviction of the appellant accused is as follows:

2.1 This is a case of double murder. The names of deceased are Manish Babubhai Makwana and Kaushal Rasikbhai Parekh. The deceased and the appellant accused are resident of village: Jetpur at Rajkot and before the incident, they were close friends. The incident of murder was being occurred on 15.05.2011 in the noon hours at Jetpur. Before the incident, the appellant accused was having suspicion that his wife had an affair with deceased Manish Babubhai and on that count, there was a quarrel between them. In order to take revenge of the said relationship, the appellant accused invited the deceased Manish Babubhai and Kaushal Rasikbhai for having cold drinks at his home. The invitation was received on the mobile of deceased Kaushal and at that time, the deceased Kaushal Parekh and deceased Manish Makwana along with other two friends namely Paresh Chandubhai @ Hakli and Manish @ Karabhai were assembled near the temple of the village. Both the deceased went to the house of the accused appellant. The appellant accused offered the fruit beer to both the deceased. In the fruit beer, the appellant accused had mixed the poisonous substance (Sodium Nitrite). Both the deceased after drinking the poisonous fruit beer left the house of the appellant accused and came at the temple place. After sometime, both the deceased went into semi unconscious state of mind. The

witness Paresh @ Hakli noticed them and accordingly, they were taken to the private Hospital at Village: Jetpur and before treatment could be administered to them, they passed away.

2.2 On the basis of registration of accidental death, the Jetpur Police sent the dead body for postmortem. The cause of death was due to cardio respiratory failure due to injection of poison, which later on identified as Sodium Nitrite.

2.3 The FIR came to be filed by the brother of the deceased Kaushal Rasikbhai Parikh on 20.05.2011, *inter-alia* alleging that, after the sad demise of his brother, they were in trauma, and thereafter, the friend of deceased Kaushal told and informed that, both the deceased were invited by the appellant accused for taking cold drinks at his home and on account of his repeated request on the mobile phone, both the deceased agreed to go at the home of the appellant and after sometime, both the deceased found in the semi unconscious state of mind, allegedly, lying on the bench of temple. In short, the complainant alleged in the complaint that both the deceased died because of administration of the poison by the appellant in the fruit beer, which they had consumed at the instance of the appellant and the motive behind administration of the poison was to take revenge against the deceased Manish, because he had an affair with the wife of the appellant.

2.4 On registration of the offence, the appellant accused came to be arrested on 21.05.2011 and during his remand period, by way of demonstration and reconstruction panchnama, voluntarily disclosed

that how he managed the poison Sodium Nitrate and administered it in the fruit beer. The IO, during the course of investigation, recorded the statements of witnesses, collected the necessary evidence with regard to purchase of fruit beer and poison Sodium Nitrate to the appellant accused and sent the seized articles to the FSL for chemical analysis and after due investigation, found sufficient evidence against the appellant for the offence of double murder and causing disappearance of the evidence followed by filing of the chargesheet before the Jurisdictional Magistrate, who committed the case to the Court of Sessions at Jetpur. The Trial Court framed the charges, which the appellant accused denied the charges and claimed to be tried.

3. The prosecution, in order to examine the case against the accused, examined as many as 21 witnesses and exhibited 29 documents, as per the below mentioned tabular.

Oral Evidence :

PW 1 – Exh.10	Praveenbhai Jayrambhai Solanki, panch witness
PW 2 – Exh.12	Nareshbhai Ratibhai Chouhan, panch witness
PW 3 – Exh.16	Henasbhai Bhupatbhai Vaghela, panch witness
PW 4 – Exh.18	Kamleshbhai Rameshbhai Bheda, panch witness
PW 5 – Exh.20	Samerbhai Sitarbhai Tarkehsha, panch witness
PW 6 – Exh.21	Manish@ lalo Rasikbhai Parekh, complainant
PW 7 – Exh.24	Sikandarbhai Kadarbhai Vahanvati
PW 8 – Exh.27	Maheshbhai Vitthalbhai Vanjani
PW 9 – Exh.28	Jayanti@ Jitesh Babubhai Makwana
PW 10 – Exh.30	Paresh@ Hakli Chandubhai Gajera
PW 11 – Exh.32	Kasambhai Mamadbhai Shama
PW 12 – Exh.34	Ajitbhai Karimbhai Parmar
PW 13 – Exh.36	Dr. Sanjaykumar Raghunandanprasad Sinha

PW 14 – Exh.39	Bharakumar Mohanbhai Khanpara
PW 15 – Exh.42	Kevalbhai Ashokbhai Jaiswal
PW 16 – Exh.44	Naresh@ Papu Govindbhai Ghangha
PW 17 – Exh.47	Ramjibhai Shamatbhai Bagda
PW 18 – Exh.48	Ashokbhai Gajjananbhai Trivedi
PW 19 – Exh.51	Anirudhsinh Juvansinh Jadeja, IO
PW 20 – Exh.67	Ramagori Purshottambhai Rajguru, PSO
PW 21 – Exh.70	Balwantbhai Prabhatbhai Sonara, IO

Documentary Evidence :

Exh.11	Inquest panchnama of deceased Manishbhai
Exh.13	Inquest panchnama of deceased Kaushalbhai
Exh.17	Panchnama of place of offence
Exh.19	Panchnama of place of offence
Exh.22	Complaint
Exh.23	Arrest panchnama
Exh.25	Demonstration panchnama
Exh.33	Discovery panchnama
Exh.37	Manishbhai PM report
Exh.38	Kaushalbhai PM report
Exh.40	Police yadi for map of place of offence
Exh.41	Map of place of offence
Exh.43	Signed papers by Ketan Ashokbhai Jaiswal
Exh.45	Bill of Sodium Nitrate from Pradeep Chemical
Exh.46	Attendance sheet of workers in factory
Exh.48	Letter by complainant
Exh.50	Yadi for registration of offence
Exh.52	Copy from register of accidental death no. 28/11
Exh.53	Copy from register of accidental death no.29/11
Exh.54-55	Order for handing over investigation to head constable R.S. Bagda
Exh.56	Order for handing over investigation to PI A.V. Jadeja
Exh.57	Letter to Deputy director, Scientific laboratory to inspect mudammal articles
Exh.58	Letter to Deputy director, Scientific laboratory to inspect mudammal articles

Exh.59	Letter to Deputy director, Scientific laboratory to inspect mudammal articles
Exh.60	Receipt of articles by FSL
Exh.61	Forwarding letter
Exh.62	Record of test conducted by investigating mobile van, FSL
Exh.68	Original FIR
Exh.69	Station diary copy

4. After closure of the prosecution evidence, the appellant accused was questioned under Section 313 Cr.P.C., to which, he stated that, he is innocent and his name is not 'Dakudo' and he is not known as 'Dakudo'. He is not working in the factory of processing of printing Sari and he does not know the deceased Manish and Kaushal and at the relevant time, he was not having a mobile phone and he did not have invited both the deceased at his home by calling them on the mobile of Kaushal. The accused lastly denied the allegation of illegal relation of his wife with Manish.

5. Though opportunity was extended, no evidence was tendered from the side of the appellant accused.

Trial Court's finding:

6. The learned Trial Court, after considering the oral and documentary evidence, as well as the submissions made on behalf of the parties, found the appellant guilty under Sections 302 and 201 of the Indian Penal Code and sentenced him, as indicated above. The learned Trial Court, recorded that, the prosecution has proved the chain of circumstances and each circumstance, as relied

by the prosecution, has been conclusively proved pointing towards the guilt of the accused and none else. The learned Trial Court held that the prosecution has successfully proved motive behind the murder and deceased died because of administration of the poisonous substance – Sodium Nitrate and the appellant accused had procured it and administered the same in the fruit beer.

7. Being aggrieved by, and dissatisfied with the judgment of conviction and sentence, the appellant has come up with present appeal.

8. **Evidence adduced by the prosecution**:

We would like to have a cursory look at the evidence adduced by the prosecution through its witnesses:

8.1 **Dr. Sanjay R. Sinha (PW.13)**: This doctor being a Medical Officer, Government Hospital, Jetpur, had conducted postmortem on the body of deceased Manish B. Makwana and Kaushal Rasikbhai Parikh. Both the deceased died due to cardio respiratory failure on account of consummation of poison. During the postmortem, the doctor did not have noticed any external or internal injuries on the body of both the deceased, but there were signs of consummation of poison as the cyanosis present over nail beds of all fingers and toes. The witness had kept pending the final cause of death because the reports of chemical analysis of viscera was awaited and the report of FSL (Exh.16) shows that, the presence of poisonous substance sodium nitrate found in the stomach contents and other pieces of

liver, lung, spleen and kidneys. In nutshell, the medical evidence (P.M. Note - Exh.37 and 38) along with the viscera report (Exh.16) proves that, the cause of death of both the deceased was due to administration of poison.

8.2 **Manish @ Lala Rasik Parekh (PW.6)**: This witness is the brother of deceased Kaushal Parekh. This witness has no personal knowledge about the incident. He was informed by PW.10 – Paresh @ Haklo Chandubhai Gajera. The witness came to know from PW.10 about the serious condition of his brother and deceased who were found on the bench of village temple. This witness had expressed suspicion on the death of his brother and during the investigation of accidental death, his statement was recorded and in his statement, he had disclosed that, his brother is died in mysterious circumstances and he is making inquiry on the death of his brother and due to trauma and mental shock, he could not be in a position to disclose further on this aspect and in future he will disclose the entire facts of the incident and after five days of the incident i.e. on 20.05.2011, he lodged an FIR alleging against the accused that, his brother and deceased Manish were called upon by the appellant-accused at his home and made them to drink a fruit bear mixed with the poisonous substance because the appellant-accused was having suspicion that, the deceased Manish had an affair with his wife. The basis of the FIR was the information given by PW.10 – Paresh @ Haklo who happened to be friend of both the deceased and he had seen that both the deceased went to the house of the appellant-accused. In the cross-examination, defense has tried to establish that, the appellant-accused was not known as “Dakudo @ Sunil”.

However, the testimony of the witness on the identification of the accused has not been shaken. The defense has tried to establish that, after delay of five days, the appellant has been wrongly implicated in the offence. In the cross-examination, the witness has explained that, at the relevant time, he was in shock and trauma which would be the reason for delay in lodging the FIR.

8.3 **Jitesh Babulal Makwana (PW.9):** This witness is the brother of deceased Manish Babubhai Makwana and according to prosecution case, the deceased by his oral statement disclosed before the witness that, "he drunk cold drink at the house of Dakuda". The witness was informed by someone about the incident and he immediately rushed at the place where both the deceased were lying on the bench of village temple. Both the deceased were being taken in the goods rickshaw for the treatment at the private clinic and while on the way to hospital, the head of the deceased Manish was in the lap of this witness and in the semi state of mind, the deceased Manish disclosed that, he drunk cold drink at the house of Dakuda.

8.4 **Paresh @ Haklo Chandubhai Gajera (PW.10)**: This witness was the close friend of both the deceased and at relevant time, he was in the company of both the deceased. This witness has stated in the chief-examination that, on 15.05.2011 at about 12 o' clock in noon, he along with two deceased and one another friend, Manish @ Karo were assembled at the village temple and at that time, deceased Kaushal received a phone call on his mobile. The mobile was dialed by appellant-accused to call upon deceased Kaushal and Manish at his home for taking cold drinks. The deceased Kaushal had shared

this information with all the friends. The witness and other friends cautioned the deceased Manish and Kaushal that, please do not go to the house of the appellant as on earlier occasion, the appellant had a quarrel on the suspected affair of his wife with Manish. The witness has further stated that, during the discussion, the appellant again rang up and asked the deceased Kaushal and Manish to come to his house and also informed that, he is going to purchase cold drinks and he will give a miss call. The witness has further stated that, the deceased Kaushal had informed him that, there was a miss call on his mobile phone from the appellant. The witness has further stated that, on account of insistence of the appellant, both the deceased agreed to visit the house of the appellant. The witness has further stated that, the appellant had only invited both the deceased and requested not to come with other friends. The witness has further stated that, due to earlier dispute, he and other friends, accompanied to both the deceased up to the house of the appellant and they had seen that, both the deceased went into the house of the appellant and he stayed outside the house of the appellant for some time so that, in emergency, he could help both the deceased. The witness has further stated that, after some time, when he did not find any unusual things, he along with other friends, left the place and after some time, when he was at the pan shop nearby the temple, he noticed that, both the deceased lying on the bench of temple and they were in the semi unconscious state of mind. The witness has further stated that, with the help of pan shop owner and others, both the deceased immediately taken to the private hospital and meanwhile, he had informed the brother of the deceased Manish. The witness has

further stated that, both the deceased were declared dead and at the hospital, he made conversation with the brother of the deceased Kaushal about the party hosted by the appellant-accused at his house.

In the cross-examination, the defense has tried to establish that the appellant-accused was not known as "Dakuda @ Sunil" and there were other persons known as Dakuda in Jetpur village. However, the testimony of the witness on this aspect is not shaken and he stood firm on the identification of the accused. The defense has tried to establish that, there is unexplained delay in recording his statement during the investigation which would render his evidence unreliable. However, in the cross-examination, the witness has stated that, due to fear of police, he did not have disclosed at the earliest about the party hosted by the accused at his home.

8.5 **Keval Jaiswal (PW.15)**: This witness is the pan shop owner doing his business in the name of "Jignesh Pan & Riddhi Siddhi Pan". This witness in his chief-examination, has stated that, on 15.05.2011, in the noon hours, the appellant came to his shop for purchasing cold fruit bears which he had packed as parcel and sold it to the appellant. He also identified the accused in the court further stating that, he who had come to his shop for purchasing the fridge fruit bear. In the cross-examination, defense has tried to establish that, due to rush hours in the entire day, it would not be possible for him to remember each and every customer who usually come to his shop for purchasing pan or cold drinks. However, the witness stood firm on the issue of purchasing fruit bear by the appellant from his shop.

8.6 **Naresh @ Pappu Govind Dhandha (PW.16)**: This witness is doing his printing business in the name of " Shakti Bandhej" in Jetpur town. The work of the factory is mainly to give different colours to the Bandhani Saris and for preparing the different colours, the contents of Sodium Nitrate is being used for printing saris. The witness for chemical purpose, purchased the sodium nitrate in bulk from the local trader namely Pradip Chemicals and one parcel of jute bag weighing 50 kgs. being sold by the trader. In order to process of colouring, the man power is required for further processing of colouring. The appellant accused from 03.05.2011 to 08.05.2011 was employed as a master for doing laboring work. The copy of the relevant page of muster showing the name of the appellant as labourer was produced by the witness along with the purchase bills of sodium nitrate were being produced at Exh. 45 and 46 by the witness. This witness has stated in chief examination that, the appellant was employed by him and the muster was having been prepared and maintained by him manually. It is the case of the prosecution that, while the appellant was under employment of the witness, he secretly obtained the some portion of poisonous substance Sodium Nitrate from the 50 Kg. bag and then he mixed it with the fruit beer allegedly drunk by both the deceased. The witness has identified the accused in the Court and reconfirmed that, during the period as referred, the appellant accused worked with him as a master in his factory. In the cross-examination, the defense has tried to establish that, the Exh. 45 – abstract of the muster, is being concocted to create evidence against the accused, however, the

witness stood in the cross-examination on this aspect and did not agree with the suggestion that, the appellant had never work in his factory and the name Sunil is not in any manner connected with the appellant herein.

8.7. **Ramjibhai Bagda (PW-17)** : This witness on the day of incident i.e. on 15.07.2011, was on duty as a Police Head Constable with Jetpur City Police Station and after registration of the accidental death, he came into charge of the inquiry. During the inquiry, after preparing the inquest, the dead body of both the deceased were being sent by him for post mortum at the Jetpur Government Hospital and also recorded the statement of the brother of the deceased namely Manish @ Lala Rasik Parekh and same is produced at Exh. 48. In the cross-examination, the witness has admitted that, neither the complainant Manishbhai nor the witness PW-10 of anyone, had disclosed before him that both the deceased were being called by the appellant accused at his home and made him to drink a poisonous substance mixed in a fruit beer.

8.8 **Ashokkumar Gajanan Trivedi (PW-18)** : This witness had served as PSI with Jetpur City Police Station and on 20.05.2011, when he was on duty, he recorded the FIR allegedly disclosed by complainant Manish Parekh, which he has produced at Exh. 22. Except recording the FIR, he did nothing so far investigation is concerned. In the cross-examination, it is stated by the witness that, he had an opportunity to examine the case papers of accidental death and had noticed that, two persons died in a mysterious circumstances. It is further stated in the chief-examination that, at the time of recording

the FIR, he himself noted down the contents of the FIR, and on that basis the typed FIR came to be prepared. It is denied by the witness that, the FIR being prepared by the advocate of the complainant. It is further stated that, there is a delay of 5 days in lodging the FIR and the reason for delay as explained by the complainant, is mental shock and trauma.

8.9 **Anirudhsinh Jadeja (PW.19):** This witness being a Police Inspector of City Police Station, Jetpur, had been entrusted with the investigation of the case. The witness in his chief-examination has stated that, during the investigation of the cease, he had recorded the statements of the witnesses, drew the panchnama of scene of occurrence, arrested the appellant-accused and during his remand period, at the disclosure statement of the accused, seized and recovered the necessary articles from the place of incident and sent the seized articles to FSL for chemical analysis. In the cross-examination, the I.O. has admitted that, before 20.05.2011, for disclosing relevant facts of the incident, the witnesses had never come before him. It is also admitted by the witness that, the witness Paresh @ Hakli, in his police statement, has not stated the full name of the accused. He has also admitted that, for the identification of the accused, he did not have hold the identification parade through Executive Magistrate. It is denied by the witness that, there are three to four persons, residents of Jetpur village whose names are "Dakudo". It is admitted by the witness that, the witness Paresh @ Hakli has not shown the place of incident. It is also admitted by the witness that, during the inquiry of A.D. Case, the panchnama of

place of occurrence was being drawn by the concerned officer. It is also admitted by the I.O. that, there is no provision in the law for drawing the demonstration and/or reconstruction panchnama. The witness has denied to the suggestion that, the name of the appellant Shamji @ Sunil @ Dakudo as mentioned in the case records, is being falsely mentioned to implicate him in the serious case of murder. It is admitted by the witness that, the person named as "Shamji @ Sunil @ Dakudo" is not working in the factory named as " Shakti Bandhej" in Jetpur, however, the witness has voluntarily clarified that, the person known as Sunil was working in the factory and the same person had worked from 03.05.2011 to 08.05.2011. The witness has also admitted that, in the Jetpur Town, so many factories are using sodium nitrate for preparing colour, to be used for printing saris. The witness has admitted that, during the investigation, it was not revealed that, deceased Manish was having illicit relations with anyone. Lastly, it has been denied by the witness that, the accused in the name of Dakudo is being falsely implicated in the offence by him.

8.10 **Balwantbhai Sonara (PW.21)**: This witness being a P.S.I. of City Police Station, Jetpur, took the charge of the investigation from the P.S.I. Jadeja and except filing of the chargesheet, he has not investigated the case.

9. We have heard learned counsel Mr. P.P. Majmudar appearing for and on behalf of the appellant-accused and Mr. Ronak Raval, learned Additional Public Prosecutor for the respondent-State.

Submissions:

10. Mr. Majmudar, learned counsel while assailing the impugned judgment of conviction and order of sentence, has urged that:

(a) Learned trial court grossly erred while convicting the accused-appellant without appreciating the evidence in the right prospective;

(b) The case of prosecution rests on circumstantial evidence and the circumstances as relied by the prosecution have not been conclusively proved and established, pointing only to guilt of the accused and the main link in the chain of circumstances like the procurement of the poison sodium nitrate by the accused and administering the same in the fruit bear and made both the deceased to drink on 11.05.2011, have not been proved and established. In this regard, it was contended that:

(i) The recovery panchas of the sample sodium nitrate from the factory have not supported to the case of prosecution, nor the I.O. has proved the contents of panchnama and therefore, the inference of stealing the sodium nitrate by the accused from the factory of PW.6 was possessed and used by the accused for the purpose of administering the same to the deceased could not be raised and no reliance can be placed on this circumstance to prove that, the deceased died of poison said to have been administered by the accused.

(ii) That, the purchase of cold drinks by the accused has also not been proved as it is humanly impossible for the vendor to remember the purchase made by each and every customer.

(iii) The factum of employment of the appellant-accused with the " Shakti Bandhej" factory owned by PW.6 is not proved and established as except name Sunil, nothing being mentioned in the extract of muster (Exh.45). In the facts of the case, the accused being implicated as Shamji @ Sunil @ Dakudo, son of Kalubhai Mer and the prosecution miserably failed to prove that, the accused was known as Sunil.

(iv) In the facts of the case, the incident of administering the poison took place on 15.05.2011 between 12:45 to 13:15 and the FIR by the brother of deceased Manish was being filed on 21.05.2011. The star witness PW.10 – Paresh @ Haklo Gajera had knowledge that both the deceased were invited for taking cold drinks by the appellant-accused and he had seen that, both the deceased took their entry inside the house of the appellant. Before the deceased would take their entry inside the house of the appellant, the mobile call was being dialed by the accused on the mobile of deceased Kaushal. Despite of this, during the investigation, no CDR details of the mobile phone of the accused and deceased persons were collected by the I.O. to prove that, the appellant-accused had called the deceased Kaushal and invited him at his house for drinking cold drinks. The star witness (PW.10) was throughout with the family of both the deceased. However, for a period of five days, despite the presence of

the police, the complainant or the star witness (PW.10) though having opportunity to disclose the true facts about drinking cold drinks by both the deceased at the house of appellant, none has reported the true facts to the police. Even, the complainant whose statement prior to the FIR came to be recorded by the Head Constable Bagda, no any facts of taking cold drinks at the house of the appellant being disclosed by him. Even, none of the witnesses have seen both the deceased persons coming out from the house of the appellant. In such circumstances, unexplained long delay in lodging the FIR and recording the statements of material witnesses, during the investigation would render the evidence of such witnesses unreliable and no reliance can be placed to prove and establish that on the day of incident, both the deceased were invited by the appellant-accused at his home and made them to drink the poisonous substance sodium nitrate allegedly mixed in the fruit beer and after drinking it, the deceased had left the house of the appellant and took their seat at the bench of village temple.

(v) In the facts of the case, the motive was the illicit relationship with the wife of the appellant-accused. In the case of circumstantial evidence, the motive assumes considerable importance and nothing on record to show that, prior to the incident, there was a quarrel between the appellant and the deceased Manish on the issue of illicit relationship and therefore, when the motive is not proved and established, the charge cannot be said to have been proved beyond reasonable doubt against the accused.

(vi) Lastly, the material evidence to connect the accused in the crime has not been obtained and collected by the I.O. The CDR details of the mobile phone of the accused and deceased persons were not collected to prove that the appellant had called the deceased Manish at his house on the day of incident.

11. In such circumstances as referred above, it was submitted that, the entire conviction rendered by the trial court is based on conjectures, surmises and suspicion and suspicion howsoever strong cannot take place of proof and it is settled position of law that, the burden lies on the prosecution to prove the allegations beyond reasonable doubt and in the facts of the present case, the chain of events as referred above, have not been proved and established and none of the circumstances relied by the prosecution have been proved beyond reasonable doubt and those circumstances either cumulatively or individually are insufficient to establish the guilt of the accused and therefore, it is prayed that, there being merits in this appeal and same may be allowed and the judgment of conviction and order of sentence may be set aside and the appellant may be acquitted of all charges.

12. Mr. Ronak Raval, learned Additional Public Prosecutor for the respondent-State vehemently opposed the appeal and contended that the Trial court has not committed any error in holding the appellant-accused guilty of the offence and further contended that the prosecution in this case, has proved beyond reasonable doubt the charge against the appellant accused. The identity of the accused is proved and established as at the time of arrest, the name Shamji @

Sunil @ Dakudo being referred and the arrest panchnama has been admitted by the defense and therefore, when the witnesses were knowing the appellant-accused prior to the incident, the question of his identity does not arise and there was no need for the I.O. to hold the T.I. Parade. The witness (PW.10) being a close friend of both the deceased, had witnessed that the appellant had invited both the deceased at his home and after some conversation, both the deceased in the presence of the witness, had gone to the house of the appellant and on this aspect, the evidence of PW.10 is acceptable, trustworthy and nothing being brought on record to substantiate his creditworthiness and therefore, in absence of CDR details, the evidence of PW.10 is sufficient to prove and establish that, the deceased were invited by the accused at his home for drinking cold drinks and after accepting the invitation, they had gone to the house of the accused. The sample of sodium nitrate being taken at the house of the accused and as per the FSL Report, it was poison sodium nitrate and same being procured by the accused from the factory of PW.6 and by purchasing the fruit beer from the shop of PW.15, the deceased were offered to drink the fruit beer mixed with poison. In such circumstances, the evidence of witnesses on the circumstances as referred above, are consistent and there is no material contradiction and so far delay in lodging the FIR and delayed examination of the witnesses is concerned, there is sufficient explanation offered by the witnesses which further proves that the version of PW.10 and other witnesses are convincing and reliable and delay has been sufficiently explained.

13. In such circumstances, as referred above, learned Additional Public Prosecutor submitted that the incriminating circumstances, relied by the prosecution, are conclusively proved and established and the same is formed complete chain pointing towards the guilt of the accused and there is no gap left in the chain of evidence and therefore, there being no merits in the appeal and the same may be dismissed.

14. The prosecution case rests on the circumstantial evidence. The law with regard to the conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court in the case of **Harishchandra Ladaku Thange Vs. State of Maharashtra** reported in **AIR 2007 Supreme Court 2957**. It will be useful to reproduce the relevant paras:-

> *"8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan (AIR 1977 SC 1063), Eradu v. State of Hyderabad (AIR 1956 SC 316), Earabhadrappa v. State of Karnataka (AIR 1983 SC 446), State of U.P. v. Sukhbasi & Ors. (AIR 1985 SC 1224), Balwinder Singh alias Dalbir Singh v. State of Punjab (AIR 1987 SC 350) and Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621) it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.*

9. We may also make a reference to a decision of this Court in C. Chenga Reddy & Ors. v. State of A.P. (1996 (10) SCC 193), wherein it has been observed thus : "21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

10. In Padala Veera Reddy v. State of A.P. (AIR 1990 SC 79) it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

11. In State of U.P. v. Ashok Kumar Srivastava (1992 Crl. LJ 1104) it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book `Wills' Circumstantial Evidence' (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on

the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

14. In Hanumant Govind Nargundkar and another v. State of M.P. (AIR 1952 SC 343) it was observed thus: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

15. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are : (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable

on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

15. In the facts of the present case, the accused is facing the charge of committing murder of two persons by administrating them the poison Sodium Nitrate. The law on this aspect is well settled. The Supreme Court in the case of **Anant Chintaman Lagu Vs. State of Bombay (AIR 1960 Page-500)** held that three elements are necessary to be proved to establish a case of poisoning; (i) that death took place by poisoning; (ii) that the accused had the poison in his possession; (iii) that the accused had an opportunity to administer the poison to the deceased. The Supreme Court further observed that discovery of poison may not always be possible as administration of poison is done in secrecy. The Supreme Court in the said judgment further observed that *"A case of murder by administration of poison is almost always one of secrecy. The poisoner seldom takes another into his confidence, and his preparations to the commission of the offence are also secrete. He watches his opportunity and administers the poison in a manner calculated to avoid its detection. The greater his knowledge of poison, the greater the secrecy, and consequently, the greater the difficulty of proving the case against him."* Recently, the Supreme Court in the case of **Hariprasad @ Kishan Sahu Vs. State of Chhattisgarh (2023 Live Law Supreme Court 968)**, referring the landmark case of **Sharad Birdhi**

Chandsadha Vs. State of Maharashtra (1984 (4) SCC 116), reiterate the circumstances to be proved in cases of murder by poison viz. (a) clear motive for the accused to give poison; (b) death due to poison; (c) accused should have the poison with him; (d) opportunity to administer poison.

16. The facts of this case are to be considered on the touchstone of the law which has been laid down by the Supreme Court.

17. In the case on hand, the prosecution has relied upon the following circumstances to establish its case:

(i) On 15.05.2011, between 12:45 to 13:15 hours, at the Jetpur Town, Dist.: Rajkot, the appellant accused called upon the deceased Manish Babubhai Makwana and Kaushal Rashik Parekh at his home for drinking cold-drinks fruit beer.

(ii) When the deceased were called upon by the appellant accused, they were assembled at the temple area of the town, accompanied by their two friends viz. Paresh @ Haklo Gajera (PW:10) and Manish @ Kara.

(iii) The appellant accused was having suspicion that the deceased Manish had an affair with his wife and that is why they were called upon at his house.

(iv) The appellant accused before both the deceased could reach at his house, he managed to get to parcels of cold-drinks nearby the pan-

shop owned by PW:15 Keval Jaiswal.

(v) The appellant accused before the incident had worked with the factory named Shakti Bandhesh, run and owned by PW:16 Naresh @ Pappu Govind Dhandha and during his employment, secretly he had managed to get poisonous substance Sodium Nitrate allegedly lying in the factory area.

(vi) On account of the invitation given by the appellant accused, both the deceased went to the house of the appellant and made them to drink glass of fruit beer mixed with poison Sodium Nitrate.

(vii) After drinking the fruit beer mixed with the poison, both the accused left the house of the appellant accused and come to temple area of the town and sit on the bench of the temple and due to administration of the poison, they went into semi unconscious state of mind and they were noticed by the PW:10 and others and immediately, taken to the nearby hospital where they declared dead and the chemical analysis report would indicate the poison Sodium Nitrate found in the viscera and matched with the sample taken from the factory.

18. In the aforesaid facts and circumstances, the question that arises for our consideration is whether the aforesaid circumstances – (i) to (vii) forms a chain pointing only to the guilt of the accused and the facts are capable of giving rise to inference of the guilt of the accused appellant ?

19. Admittedly, the prosecution case rests only on the circumstantial evidence. After careful examination of the evidence on record, the material witness is PW:10 Paresh @ Haklo Chandubhai Gajera as on 15.05.2011, he along with other friend Mr.Manish @ Karo were present at the time of taking decision by the deceased whether the invitation given by the appellant accused for drinking cold drinks at his home would be accepted or not ? It is admitted facts that the witness PW:10 did not have disclosed at the earliest before the police that the deceased were invited by the appellant accused at his home for taking cold drinks and on that ground, the defence has attacked that the witness is got up witness and his presence as claimed is doubtful and in absence of any sufficient explanation for not disclosing the true facts at the earliest creates a doubt on the story of the prosecution. Upon close scrutiny of the testimony of PW:10, we found that due to the untimely death of his two friends, he was in shock and he was in apprehensive state of mind that the police would might be booked in the incident. It is true that the witness PW:10 in his deposition stated that from the date of the incident to the registration of the offence, he has not stated to anyone that the deceased were called upon by the appellant at his house. On the other hand, the complainant PW:6 Manish Parikh who is brother of the deceased Kaushal admitted that on the day of incident he came to know from PW:10 that the appellant had called upon his brother at his home. We are conscious about the settled legal position that prompt interrogation of witness under Section 161 Cr.P.C. lends assurance to the Court about the credibility of the witnesses. However, it is equally settled that mere a delay

examination of the witnesses is not sufficient to discard the reliable evidence, when he made a reasonable explanation for not disclosing the facts of occurrence. In the facts of the present case, the PW:10 being a labourer and belongs to a lower strata of the society, not disclosing the facts of the investigation soon after the incident would be justified as he was under apprehension that police might be arrested him in the offence. In such circumstances, the delayed examination of the witness for a period of five days would not a reason to discard his evidence on the aspect of invitation of the appellant and other things. The witness was the friend of the appellant as well as the deceased and he was knowing the past of the appellant as well as deceased Manish and he had clarified that the appellant was having suspicion in his mind that the deceased Manish might have relations with his wife and before the incident, there was a quarrel between them and that is why, the PW:10 cautioned both the deceased that under the pretext of giving cold drinks, the appellant may take revenge and beat them, but the repeated calls in the presence of PW:10 made to deceased Manish by the appellant would be the reason for agreeing and accepting the invitation of the appellant. It is further required to be noted that the PW:10 after both the deceased went inside the house of the appellant, kept a watch outside the house of the appellant so that in any case, if something has happened in the house, he would come to rescue of both the deceased and after some time, the witness felt that nothing would be happened in the house and therefore, he along with other friend Manish @ Kara left the place. In such circumstances, on careful examination of the evidence of PW:10, his presence at the time of

incident at the place with both the deceased is proved and established and we have no any doubt about it and he has passed the test that he is telling truth and he is not deposing against the accused because of his relation with both the deceased. In such circumstances, the first, second and third circumstance, as relied by the prosecution are being proved and established. In other words, on the basis of evidence of PW-10, the circumstance of meeting of the accused with the two deceased persons at his home on 15.05.2011 in the noon hours, is being proved and established and they had been offered to drink the cold drink by the appellant and it is further proved that, the relation of the appellant and deceased Manish was not cordial because the appellant was having suspicion in his mind that, there was an affair with his wife by the deceased Manish and said facts were in the knowledge of PW-6 and other friends Manish @ Kara and none else. The prosecution has dropped the witness Manish @ Kara as the necessary facts already been unfolded by the material witness PW-10 and to avoid the repetition, the prosecution did not have examined the witness Manish @ Kara. On non-examination of material witness, the Supreme Court in its various judgments, held and observed that, the Court is required first to assess the trustworthiness of the evidence available on record and if the court finds the evidence worthy of being relied on, then the testimony has to be accepted and acted upon though there may be other witnesses available who could also have been examined, but were not examined. In **Takhaji Hiraji Vs. Thakore Kubersinh (2001) 6 SCC 145**, on the issue of non-examination of other witnesses, the Supreme Court laid down the ratio that, if the

witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the facts of the present case, as discussed above, the evidence of PW-10 Manish @ Kara has been examined carefully and after reading his evidence as a whole, we find a ring of truth in his version and his conduct also found natural.

20. The defense has raised the doubt on the prosecution case on the ground that, there was a delay in giving the FIR by the brother of the deceased and there is a material contradiction in the evidence of complainant and PW-10, who was lastly seen in the company of deceased. It is true that, the FIR came to be lodged for the incident dated 15.05.2011 on 21.05.2011. The evidence on record shows that the complainant PW-6 had received the information from the PW-10 that both the deceased were lastly in his company and had gone to the house of the appellant because of the invitation given by the appellant for taking cold drinks. In this regard, PW-10 has stated that, during 5 days, he did not have disclosed the said facts to any one. So far as delay in lodging the FIR is concerned, the complainant had clarified that they were in process of getting necessary inputs and due to untimely death of his brother, he was in trauma and shock. It is relevant to note that, the statement of the complainant during the inquiry of accidental death came to be recorded by PW-17 Ramji Bagda, Head Constable. The copy of the statement duly signed by the complainant is on record at Exh. 48. In the last para of the statement, the complainant had stated that *"there*

is no enemy of his brother and there was no any financial liability on him and therefore, he having reasonable suspicion on his death and he is making inquiry on the aspect of the incident and later on he will disclose in detail because, at this stage, they are in trauma and shock and therefore, he does not want to disclose anything more." We have carefully read the statement of the complainant Exh. 48. The delay of 5 days in lodging the FIR is satisfactorily explained by the complainant as the reporting of incident was under further inquiry and due to sudden death of his brother that too without any reason, he could not be in a position to disclose the entire facts on the day of incident or thereafter. We are conscious abut the settled position of law that the First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of trial. The object of insisting of prompt lodging of report to the police of commission of offence, is to obtain early information regarding the circumstances, in which the crime was committed, names of actual culprits and the part played by them as names of the eye-witnesses present at the scene of occurrence. The FIR cannot be treated as substantive piece of evidence and it can only be used to corroborate or contradict the informant's evidence and undue or unreasonable delay in lodging the FIR may give rise to suspicion which put the court on guard to look of the possible motive and explanation for the delay and consider its effect on the trustworthiness or otherwise on the prosecution version. Ofcourse, delay in lodging the FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the

prosecution case nor could it be treated as fatal to the case of the prosecution. The Court has to ascertain the causes for delay, having regard to the facts and circumstances of each case and the if the causes are not attributable to any effort to concoct a version, mere a delay by itself could not be a fatal to the prosecution case. (**Hari Prasad Kishan Sahu Vs. State of Chhatisgarh, (2024) 2 SCC 557**). In the present case, as discussed above, the complainant who was under shock and trauma, as without any reason, his brother died due to administration of poison and he does not want to disclose the facts received from PW-10 without further inquiry and his satisfaction and that is why, when his statement was recorded (Exh. 48), he reserved his right to disclose the true facts at the later stage and also disclosed that why he is not disclosing the entire facts. Therefore, the explanation offered by the complainant PW-6 for lodging delayed FIR for about 5 days, are convincing and in the present case, the delay of 5 days would not be fatal to the prosecution case and it would not be a ground to draw an adverse inference against the prosecution case.

21. The defense has raised the issue that the IO failed to obtain a call details of the appellant accused and deceased Manish, as in order to prove the act of the appellant, calling upon the deceased at his house and to support the version of PW-10, the call details evidence is vital and utmost important and in absence of this evidence, the version of PW-10 cannot be accepted. In the preceding paras we have discussed at length about the reliability and trustworthiness of evidence of PW-6. It is no doubt true that the CDR evidence having

not been collected by the IO. The evidence of CDR is not the substantial evidence but it is a corroborative piece of evidence. In the present case the evidence of PW-6 on the aspect of calling upon deceased Manish by the appellant accused on his mobile call, found reliable and trustworthy as in his presence, the appellant called the deceased Kaushal and later on deceased Kaushal had discussed with the PW-10 about the invitation received. In such circumstances, the non-production of evidence of CDR would not in any manner fatal to the prosecution nor it creates a doubt about the version of the PW-10.

22. In view of the aforementioned reasons, it is proved and established that on 15.05.2011 in the noon hours, the deceased were called upon by the appellant accused at his home for drinking cold drink and at that time, the accused was having suspicion in his mind that the deceased Manish had an affair with his wife.

23. In the facts of the present case, there is no dispute on the aspect of death occurred due to poison – Sodium Nitrate, as the report of chemical analyzer clearly proves the contents of poison Sodium Nitrate found in stomach contents and in the other parts of the body of the deceased. Thus, therefore, we have no hesitation to held that both the deceased died due to poison Sodium Nitrate.

24. It is the obligation on the part of the prosecution to prove that at relevant time, accused had the poison with him and by calling both the deceased at his home, he had mixed the poison Sodium Nitrate in

the fruit beer – cold drink and made both the accused to drink it.

25. Reverting back to the facts of the present case, PW-10 is the material witness and he had seen that both the deceased went into the house of the appellant – accused. The witness was present near by the house for sometime and in absence of any untoward incident, he left the place and within short span of time, he went to the pan shop situated near the temple of the town and after taking pan, he noticed that, both the deceased lying on the bench of the temple and they were in the semi conscious state of mind. So far as arranging and purchasing fruit beer by the appellant is concerned, the evidence of PW-15 Keval Jaiswal shows that, in the noon hours, the appellant had come to his shop and purchased two parcel of cold drink – fruit beer and he received Rs.10/- from the accused. It was argued that, the witness is got up witness and it is prudently not believable that, the pan shop owner was having memory in his mind that, the appellant had come to his shop, because, during the day time, there were at least 100 or more customers usually come to the shop. In our opinion, Jetpur town is a small town and the appellant being regular customer, it could be possible for the seller to keep a good rapport with him and naturally there is no difficulty for him to remember the name of the customer and what things he has purchased. Therefore, on 15.05.2011 in the noon hours the appellant visited the shop of PW-15 and purchased a cold drink – fruit beer.

26. It is the case of the prosecution that the appellant accused was employed on daily wages by PW-16 Naresh @ Pappu Govind Dhandha and as per the extract of muster, he had worked from

03.05.2011 to 08.05.2011 and the copy of the same is produced at Exh. 46. We have carefully examined the evidence of PW-16. The witness is running the factory in the name of 'Shakti Bandhej' in Jetpur and his main work is to printing sarees (bandhani) and in order to give different colours to the sarees, the use of Sodium Nitrate is necessary for making colour and for that, he had purchased 50Kgs bag of Sodium Nitrate from Dipak Chemicals and invoice thereof is produced at Exh. 45. The abstract of muster, as per the witness's version, being maintained in the handwriting of appellant – accused and according to say of the witness, he being a master, was managing the labour affairs. In such circumstances, the version of PW-16 is reliable and acceptable and there is no any reason for him to depose against the appellant. Therefore, this evidence of PW-16 proves that, before the incident, the appellant accused was employed in the factory owned by PW-16 and he was knowing that, for preparing the colour, Sodium Nitrate chemical is being used.

26. Now the question is whether the accused after stealing some portion of Sodium Nitrate from the factory of PW-16, had kept the said poison with him and on 15.05.2011, by inviting both the deceased at his home, made them to drink the said poison mixed in the fruit beer? After careful examination of the evidence on record, it proves that on 15.05.2011 in the noon hours i.e. at 12-00, both the deceased were called upon by the appellant accused and thereafter, the appellant accused purchased fruit beer from the shop of PW-15 and gave a missed call, which was the final call and then both the deceased went to the house of the appellant accused which is nearby

the temple of the town. The offence period as shown was between 12-45 to 13-15. On this aspect, the evidence of PW-10 further clarifies that within 20 to 25 minutes, he again came at the pan shop situated near the temple and after purchasing pan, he noticed the presence of the accused at the bench of temple. In such circumstances, the proved circumstances, as referred above, rise to legitimate inference that the accused was an opportunity to steal the Sodium Nitrate poison and same was kept by him in his possession, and on the day of incident, he had specifically invited only two persons and after purchasing fruit beer, he prepared the drink mixed with the poison and offered the deceased to drink it as if it was a fruit beer i.e. cold drink. The period was so short that no other possibility of administering the poison by someone can be presumed or inferred and the distance of the appellant's house and town temple, was also too short and that is why both the deceased who used to assemble at the temple of the town had come on the bench of the temple and due to administration of the poison they went into semi unconscious state of mind. The defense has raised the issue that no one has seen both the deceased while taking exist from the house of the appellant. In our opinion, there is no need to further establish that the deceased had left the appellant's house. The time period was so short that there was no possibility for the deceased to take visit of another place and drink the cold drink etc. In such circumstances, when the appellant was alone at his house and as a pre-planned, the manner in which, he procured the poison and then called upon the deceased at his house, would certainly proves that the accused had an opportunity to administer the poison to the

deceased and as held by the Supreme Court in the case of Anant Lagu (supra), in a case of murder, by administration of poison is always in secrecy and that is why, he had destroyed the evidence like steel container and glasses allegedly used in the commission of the crime.

27. For the reasons recorded and having regard to the facts, evidence, the incriminating circumstances, as referred in para- 17 of this judgment, stand firmly established and chain of events conclusively suggest and lead only to the irresistible conclusion that the appellant accused alone is the purported of the crime alleged. As a result, the prosecution has succeed in proving the charge of double murder by adducing cogent, acceptable and credible evidence against the appellant – accused.

28. In the result, we do not find any merits in the appeal and same deserves to be dismissed and accordingly, it is dismissed. The appellant is on bail. He is directed to surrender before the jail authority to serve remaining part of sentence within 8 weeks. His bail bond stands cancelled and surety is discharged. Registry is directed to R&P to the trial Court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI