IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 804 of 2012
With
R/CRIMINAL APPEAL NO. 1182 of 2011
With
R/CRIMINAL APPEAL NO. 1183 of 2011

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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SUNIL @ KALIYO BHARATBHAI
Versus
STATE OF GUJARAT

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Appearance:
CRIMINAL APPEAL NO. 804 OF 2012
MR BHARAT B. NAIK, SENIOR ADVOCATE With MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1
CRIMINAL APPEAL NOS. 1182 AND 1183 OF 2014
MR MOUSAM R YAGNIK(3689) for the Appellant(s) No. 1
MR BHARGAV PANDYA, 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 : 13/01/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Being aggrieved and dissatisfied with the judgment and order dated 30.04.2012 passed by the learned Additional Sessions Judge, Court No.5, City Civil and learned Sessions Court, Ahmedabad in Sessions Case No.199/2011, whereby the appellant-accused came to be convicted for the offences punishable under Section 302 of the Indian Penal Code and Section 135(1) of the Bombay Police Act, the appellant – accused has

preferred Criminal Appeal No.804 of 2012 under Section 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. Whereas, the judgment and order of acquittal dated 20.04.2011 passed by the learned Additional Sessions Judge, Court No.7, City Civil and learned Sessions Court, Ahmedabad in Sessions Case No.255/2010 with Sessions Case No.256/2010 has been assailed, whereby the respondent-accused came to be acquitted for the offences punishable under Sections 302, 452, 323, 504, 506(2) and 120-B of the Indian Penal Code read with Section 135(1) of the Bombay Police Act, the appellant – complainant has preferred Criminal Appeal No.1182 of 2011 and Criminal Appeal No.1183 of 2011 under Section 372 of the Code.

3. Since all the three appeals arise out of the same incident and involve connected accused persons, they have been heard together and are being disposed of by this common judgment.

4. The brief facts leading to the filing of the present appeals are as under:

4.1. The complainant - Devendrakumar Shankarlal Oswal, a resident of Ahmedabad, was running a business in a rented shop situated at Nirant Complex, CTM Road, from the landlord, viz. Mansingh Tilakdhari Thakur. There was a dispute regarding vacation of the premises, leading to prior threats and complaints. On a previous occasion, the landlord and his associates had allegedly broken into the premises and removed goods, resulting in a police complaint and arrest of some accused, who were later released on bail. The complainant had shifted residence but continued the business at the shop. The landlord and his associates continued to issue threats to vacate the shop.

4.2. On 20.03.2006, some of the accused in the acquittal cases allegedly threatened the complainant not to open the shop. On 21.03.2006, further threats were issued to the complainant and a nearby vendor. On 22.03.2006, at about 13:30 hours, while the complainant was at the shop and had stepped out briefly to get change for a customer who had come to sell scrap, the appellant-accused in Criminal Appeal No.804 of 2012 along with two others (who are absconding) arrived on a motorcycle, entered the shop, and inflicted multiple stab wounds on the customer with a sharp-edged weapon, causing his death. The complainant witnessed the incident upon returning and informed the police. The deceased was taken to L.G. Hospital, where he was declared dead at about 14:40 hours.

4.3. A complaint was lodged at GIDC Vatva Police Station for offences under Sections 302, 452, 212, 323, 504, 506(2), 120-B of the Indian Penal Code and Section 135(1) of the Bombay Police Act, registered as C.R. No.I-58/2006. Investigation ensued, including recovery of the weapon, clothes, blood samples, and forensic analysis. Some accused were arrested immediately, while others later or remain absconding. Charge sheets were filed separately due to staggered arrests. The case against the appellant-accused in Criminal Appeal No.804 of 2012 was committed to the learned Sessions Court and registered as Sessions Case No.199/2011. The cases against the respondent-accused in Criminal Appeal Nos.1182 of 2011 and 1183 of 2011 were committed and registered as Sessions Case No.255/2010 and Sessions Case No.256/2010, which were tried together.

4.4. In Sessions Case No.199/2011, upon conclusion of evidence, the learned Sessions Court convicted the accused under Section 302 of the Indian Penal Code (life imprisonment with fine of Rs.500/-, in default

one month simple imprisonment) and Section 135(1) of the Bombay Police Act (one month rigorous imprisonment with fine of Rs.100/-, in default seven days simple imprisonment), sentences to run concurrently. In Sessions Case No.255/2010 with Sessions Case No.256/2010, the learned Sessions Court acquitted the accused of all charges.

5. We have heard the learned advocates for the respective parties and carefully examined the oral and documentary evidence adduced before the learned Sessions Court. During the course of the trials, the prosecution examined witnesses and produced documents as detailed below for each case:

CRIMINAL APPEAL NO.804 OF 2012

~:: Oral Evidence ::~

Sr. No.	Particular	Exh.
1.	Devendrakumar Shankarlal Oswal – Complainant PW-1	8
2.	Rehanabanu Majidkhan Pathan – PW-2	12
3.	Shankarlal Bhagwandas Oswal – PW-3	13
4.	Rasikbhai Kantibhai Thakkar – PW-4	16
5.	Mahendrabhai Manilal Gilat – PW-5	18
6.	Manoj Ambalal Makwana – PW-6	20
7.	Harishbhai Tolaji Chaudhary – PW-7	21
8.	Gautam Nathalal Prajapati – PW-8	22
9.	Lokesh Shivcharan Gupta – PW-9	23
10.	Indraprakash Janakprakash Mishra – PW-10	25
11.	Dr. Bhargav Becharbhai Zaveri – PW-11	26

Sr. No.	Particular	Exh.
12.	Abhimanyu Dineshkumar Singh – PW-12	28
13.	Vasantaben P.K. Swami Yadav – PW-13	29
14.	Mukeshkumar Abhirajbhai Chaudhary – PW-14	30
15.	Umang Ashwinbhai Shah – PW-15	32
16.	Jyotindra Amrutlal Upadhyay – PW-16	34
17.	Nathubhai Parmabhai Parmar – PW-17	50

~:: Documentary Evidence ::~

Sr. No.	Particular	Exh.
1.	Complaint	9
2.	Panchnama of physical condition of accused	17
3.	Panchnama of seizure of accused's clothes and weapon	19
4.	Copy of post-mortem note	27
5.	Copy of complaint	31
6.	Copy of SIM card bill	33
7.	Report of charge officer	35
8.	Panchnama of scene of offence	36
9.	Panchnama of seizure of motorcycle and mobile phone	37
10.	Panchnama of seizure of accused's blood sample	38
11.	Yadi from L.G. Hospital	39
12.	Post-mortem form	40
13.	Notification regarding prohibition of arms	41

Sr. No.	Particular	Exh.
14.	Certificate regarding treatment of deceased	42
15.	Dispatch note for muddamal to FSL	43
16.	Letter regarding receipt of muddamal at FSL	44
17.	Acknowledgment of return of muddamal from FSL	45
18.	FSL report	46
19.	Serological report	47
20.	Physics report	48
21.	Certified copy of FIR	51

CRIMINAL APPEAL NOS. 1182 AND 1183 OF 2012

~:: Oral Evidence ::~

Sr. No.	Particular	Exh.
1.	Devendrakumar Shankarlal Oswal Jain	18
2.	Gautambhai Somabhai Patel	20
3.	Sunil alias Sushil Ishwardas Khatvani	22
4.	Sengal Rajendra Ramanlal	23
5.	Rasikbhai Kantibhai Thakkar	24
6.	Sanjaybhai Mohanlal Solanki	26
7.	Alpesh Ramanbhai Patel	27
8.	Radheshyam Amarnath	29
9.	Dr. Bhargav Becharbhai Zaveri	35
10.	Kishor Shantilal Rajput	38

Sr. No.	Particular	Exh.
11.	Nileshbhai Maheshbhai Koshti	42
12.	Mahendrabhai Manibhai Gilatar	44
13.	Manojkumar Ambalal Makwana	46
14.	Mavjibhai Jetaji Thakor	47
15.	Mayurbhai Bharatbhai Kapadiya	49
16.	Laxmanbhai Hemrajbhai Rabari	50
17.	Gautambhai Nathabhai Prajapati	51
18.	Shankarlal Bhagwanji Oswal Jain	52
19.	Lokesh Shivcharan Gupta	53
20.	Indraprasad Janakprasad Mishra	54
21.	Harishbhai Tolaji Chaudhary	55
22.	Raghuvir Jivandas Bava	56
23.	Mahendrasinh Jasvantsinh Sisodia	59
24.	Nathubhai Parmabhai Parmar	62
25.	Manilal Kohyabhai Maliwala	64
26.	Rehanabanu Majidkhan Pathan	67
27.	Jyotindra Amrutlal Upadhyay	68
28.	Rajen Mahendrabhai Desai	84

~:: Documentary Evidence ::~

Sr. No.	Particular	Exh.
1	Original complaint	19
2	Panchnama of seizure of clothes from deceased's body and blood sample after PM	21

Sr. No.	Particular	Exh.
3	Panchnama of physical condition of accused Jaiveer and Sunil	25
4	Panchnama of seizure of mobile from accused Jaiveer	28
5	Panchnama of scene of offence	30
6	Post-mortem note	36
7	Police yadi for post-mortem/post-mortem form	37
8	Panchnama of search of accused Atul and Ravi and seizure of Bajaj Discover motorcycle, Panasonic mobile and Nokia mobile	43
9	Panchnama of seizure of clothes and weapon from accused Sunil	45
10	Panchnama of seizure of helmet from accused Jaiveer	48
11	Yadi from Vatva Police to Executive Magistrate for identification parade (exhibit given for signature only)	57
12	Panchnama of identification parade of accused Vishal alias Bhikhu	58
13	Copy of notification by City Police Commissioner regarding prohibition of arms	60
14	Complaint presented by witness Nathubhai Parmabhai Parmar	63
15	Certified copy of complaint given by witness Shankarlal Bhagwanji Oswal Jain to witness Manilal Kohyabhai Maliwala	64
16	Report under Section 157 of the Code	69
17	Inquest panchnama	71
18	Panchnama of seizure of blood sample from accused	72

Sr. No.	Particular	Exh.
	Sunil	
19	Panchnama of seizure of mobile from accused Hitesh Barot	73
20	Yadi from L.G. Hospital	74
21	Dispatch note for muddamal to FSL	75
22	FSL acknowledgment	76
23	Letter regarding receipt of muddamal at FSL	77
24	FSL report	78
25	FSL serological report	79
26	FSL physics report	80
27	FSL scene examination report	82

6. Mr. Bharat B. Naik, learned Senior Advocate for the appellant in Criminal Appeal No.804 of 2012 submitted that the impugned judgment of conviction does call for interference as the same is based solely on the testimony of the complainant, who is an interested witness having deep-rooted enmity with the landlord and his associates, providing a strong motive for false implication. It was contended that the complainant's version suffers from material inconsistencies regarding the description of the motorcycle, the number and nature of injuries inflicted, and the sequence of events, particularly his brief absence to fetch change and immediate sighting of the entire assault upon return, which appears improbable. The learned Senior Advocate further submitted that no independent witness corroborated the presence or act of the accused, and the nearby shopkeeper referred to in the deposition was not examined by the prosecution. Emphasis was laid on the fact that several panch witnesses turned hostile and denied knowledge of the recoveries,

rendering the panchnamas of the weapon, clothes, and blood samples wholly unreliable and inadmissible. It was argued that the forensic reports, even if accepted, suffer from a broken chain of custody due to delayed recoveries and lack of corroboration, and do not conclusively link the muddamal to the accused beyond reasonable doubt. The learned Senior Advocate vehemently contended that in the absence of motive against the deceased (an unrelated customer), absence of test identification parade, and failure to recover the motorcycle described by the complainant, the chain of circumstantial evidence remains incomplete. It was further submitted that the medical evidence does not rule out alternative possibilities, and the conviction under Section 135(1) of the Bombay Police Act is unsustainable as possession and public carrying of the weapon stand unproven. Relying on settled principles that conviction cannot be based on uncorroborated testimony of an interested witness and that every reasonable doubt must ensure to the benefit of the accused, the learned advocate urged that the prosecution has failed to prove its case beyond reasonable doubt, warranting acquittal by setting aside the impugned judgment.

6.1 Mr. Naik, learned Senior Advocate appearing for the appellant, however, confined his arguments to the issue of sentence. It is submitted that the learned Sessions Court erred in imposing a sentence of life imprisonment, as the facts and circumstances of the case indicate that the offence committed by the appellant does not amount to murder. It is further submitted that, the act would at the highest fall within the category of culpable homicide not amounting to murder, punishable under Section 304 Part I or Part II of the Indian Penal Code. In view of the above submissions, Mr. Naik prayed that the appeal deserves to be allowed to the limited extent of modification of sentence, and that the judgment of conviction and the order of sentence passed by the learned Sessions Court be suitably altered in accordance with law.

7. The learned advocate for the appellant in Criminal Appeal Nos.1182 of 2011 and 1183 of 2011 submitted that the impugned judgments of acquittal require interference, primarily relying upon the deposition of the complainant, which establishes prior threats, conspiracy, and involvement of the accused in the offence. The medical evidence confirms fatal injuries, and the chain of circumstances points to their guilt. It was contended that the learned Sessions Court erred in acquitting the accused despite sufficient evidence.

8. The learned advocate for the appellant in Criminal Appeal No.804 of 2012 submitted that the impugned judgment requires interference as the testimony of the complainant is unreliable, there are contradictions in medical evidence, no independent corroboration, and the recovery of weapon is doubtful. It was contended that the learned Sessions Court erred in convicting the accused solely on the basis of interested testimony without sufficient proof beyond reasonable doubt.

8.1 The learned APP appearing for the respondent-State submitted that the conviction is well-founded on the eye-witness account, corroborated by medical, forensic, and recovery evidence, warranting no interference.

9. Having heard the learned advocates for both sides and perused the depositions of the witnesses, documentary evidence, and the judgments of the learned Sessions Court, it appears that the testimony of the complainant, who is the key eye-witness, is credible regarding the direct act of stabbing by the convicted accused but insufficient to establish conspiracy against the acquitted accused.

10. The prosecution has produced the panchnama for seizure of the accused-appellant’s clothes and weapon at Ex. 19, which, as per the

prosecution, was prepared on the basis of information given by the accused-appellant. According to the prosecution, acting on this information, the police recovered the clothes allegedly worn by the accused-appellant at the time of the offence and the weapon allegedly used in the offence, and the panchnama has been exhibited.

11. The panch witnesses Mahendrabhai Manilal Gilat (PW-5, Ex. 18) and Manoj Ambalal Makwana (PW-6, Ex. 20) did not support the prosecution case and turned hostile, but they admitted that the signatures on the panchnama are theirs. The prosecution case is that the investigating officer prepared the panchnama on the basis of voluntary information given by the accused-appellant stating that he had given the offence time clothes and the muddamal weapon to Vasantaben. The police then went there and recovered the said articles in the presence of panchas. The prosecution states that the truthfulness of this recovery and panchnama is proved by the oath testimony of the investigating officer Jyotindra Amrutlal Upadhyay (PW-16, Ex. 34). The prosecution further relies upon Vasantaben P.K. Swami Yadav (PW-13, Ex. 29), who stated that in 2006 the police came to her house, searched the premises, and took her signature on a paper. On this basis, the prosecution asserts that the police searched Vasantaben's house, drew the panchnama at Ex. 19, and lawfully recovered and seized the accused-appellant's clothes and the muddamal weapon. The investigating officer thereafter forwarded the seized articles, marked as J (accused's shirt), K (accused's pant), and L (muddamal chopper), to the FSL under dispatch note Ex. 43.

12. During investigation, the prosecution obtained the serological report (Ex. 47) and the Physics Department report (Ex. 48) from the FSL. As per Ex. 47, human blood of "AB" group was found on Sample A (blood-stained soil from the scene), Sample C (blood-stained plastic piece

from the scene), Sample I (deceased's shirt), Sample F (deceased's pant), Sample G (deceased's underwear), and Sample H (deceased's blood sample). The same "AB" group human blood was also found on Sample J (accused's shirt), Sample K (accused's pant), and Sample L (muddamal chopper), i.e., the articles recovered based on the accused-appellant's information. The prosecution contends that this forms scientific evidence connecting the accused-appellant with the offence.

13. As per Ex. 48, the FSL Physics Department opined that the cut marks on Sample I (shirt) and Sample F (pant) could have been caused by Sample L (chopper). The prosecution therefore contends that the cut marks on the deceased's clothes match the muddamal chopper recovered pursuant to the accused-appellant's disclosure from Vasantaben's house, and that the presence of the deceased's "AB" group blood on the chopper and on the accused-appellant's clothes further strengthens the link between the accused-appellant and the offence.

14. It is stated that there is no inquest panchnama at Ex. 14 in the exhibited documentary record, and that the prosecution has tendered the panchnama of the scene of offence at Ex. 36, while the condition of the body is otherwise described in the post-mortem documents. The deceased was identified as Majidkhan Munir Khan Pathan, and the description of the body and clothing is stated to be consistent with the post-mortem examination, namely that the deceased was wearing a cream-coloured checkered shirt and a chocolate-coloured pant, both blood-soaked and bearing sharp weapon cut marks, and that injuries were present on the left upper arm and the back of the left thigh. On this basis, it is asserted that the deceased, aged 24, resident of Khanwadi, Ramol Road, suffered sharp weapon injuries on the left upper arm and left thigh causing corresponding cut marks on the shirt and pant, and that, as per Ex. 48,

these cut marks were caused by the muddamal chopper Sample L recovered pursuant to the accused-appellant's disclosure from Vasantaben's house, thereby supporting the case that the injuries were inflicted by the accused-appellant using that chopper.

15. The prosecution relies upon the oath testimony of the post-mortem doctor Dr. Bhargav Becharbhai Zaveri (PW-11, Ex. 26) and the post-mortem note Ex. 27. The doctor stated that on 23.03.2006 the body was brought vide yadi and that the deceased was a 24-year-old male. The doctor described the clothes on the body, including a blood-stained long-sleeved shirt with a 4 x 3 cm "L"-shaped cut on the upper left sleeve, a blood-stained and mud-soiled brown pant with 2 large cut marks on the left side below the waistband (one 28 cm below and the other 34 cm below), and blood-stained brown underwear. He noted rigor mortis, post-mortem lividity on the back, and swelling of the left scrotal area. The doctor noted external injuries including (1) a 3.5 x 1.5 cm incised wound up to the muscle on the back of the left upper arm, and (2) 2 gaping incised wounds on the upper outer left thigh separated by about 5 cm, one measuring 1.5 x 0.5 cm and about 1 cm deep, and another similar injury below. He stated that these injuries were ante-mortem and sufficient in the ordinary course of nature to cause death. He also described internal findings, including pale organs, stomach contents of about 200 ml, swelling of the left testicle, and that about 50 ml blood sample was collected, sealed, and handed over to the police. He opined that death was due to haemorrhagic shock from the injuries and that the injuries described in Column 17 were sufficient to cause death in the ordinary course of nature. On being shown the muddamal chopper (Article 27), he stated that the Column 17 injuries and the cut marks on clothing could have been caused by it.

16. In cross-examination, the doctor stated that no weapon was shown to him earlier for opinion, that incised wounds and stab wounds are different, that he cannot certify with certainty that the injuries were caused by the muddamal weapon, that death occurred about 12 hours prior to the post-mortem, that he had no treatment details, that the injuries in Column 17 were not on a vital part, and that with timely and adequate treatment the deceased could have survived. The defence therefore contends that the doctor cannot definately say the muddamal caused the injuries, that the injuries were not on vital parts, and that death may not have resulted from them and could have been prevented with treatment. It is stated that this defence contention deserves acceptance because the corresponding cut marks on the deceased's clothes are supported by the FSL Physics report as being caused by the muddamal chopper, but the claim regarding possible survival with timely treatment is not speculative and can be treated as evidence showing lack of intention to cause death. It is further stated that the doctor has still clearly opined that the Column 17 injuries were ante-mortem and sufficient to cause death in the ordinary course of nature. On an overall reading of PW-11 (Ex. 26), Ex. 27, Ex. 47, and Ex. 48, it is asserted that the death occurred in the ordinary course of nature due to the injuries described in Column 17 caused by the muddamal chopper, but that the accused-appellant's role is supported by the scientific evidence showing the deceased's "AB" group blood on the scene samples, the deceased's clothes, the accused-appellant's clothes, and the muddamal chopper recovered pursuant to the accused-appellant's disclosure, yet without proving intent to murder.

17. The prosecution case further states that the sole eyewitness is the complainant Devendrakumar Shankarlal Oswal (PW-1, Ex. 8), but that on overall consideration his testimony is not wholly true, reliable, or fully credible on all material particulars, though it cannot be rejected entirely,

and therefore it requires corroboration by independent evidence as per settled law. It is stated that the accused-appellant is implicated and the use of the muddamal weapon is supported by the scientific and medical evidence, and therefore the complainant's testimony can be accepted only to the extent it is corroborated.

18. The complainant stated that he lives at Ramol and runs a scrap shop at Nirant Park Society, C.T.M., that the shop was taken on rent from Mansingh Tilakdhari Thakur on deposit of Rs. 1,15,000/- and monthly rent of Rs. 3,000/-, and that there were earlier disputes, threats, and complaints connected with the shop. It is stated that on scrutiny of this part of the complainant's testimony, there is no specific role attributed to the present accused-appellant, and that regarding other accused, there is no evidence proving the alleged threats beyond reasonable doubt, including lack of corroboration by the cart-puller and lack of supporting complaint leading to arrest, and that civil litigation and cross-complaints show enmity over shop possession but do not by themselves prove criminal conspiracy with the present accused.

19. As regards the incident, the complainant stated that at about 13:30 Majidkhan Pathan came with scrap worth Rs. 30/-, that the complainant went to Jayeshbhai's shop for change, and that at that time Sunil Kaliya and 2 associates came on a black Pulsar motorcycle, assaulted Majidkhan with a sharp chopper, beat him, took his cart, and fled. He stated that he called on 100, police came quickly, he went to L.G. Hospital, the doctor declared Majidkhan dead, and thereafter he lodged the complaint at Ex. 9 and showed the scene to the police. The prosecution states that the fact that the deceased had gone to sell scrap is supported by the deceased's wife Rehanabanu Majidkhan Pathan (PW-2, Ex. 12), who stated that the deceased left with plastic scrap around 11-12 noon, that around 14:00

they received news of assault, and that he was taken to L.G. Hospital and declared brought dead, and she admitted in cross-examination that up to the point of going from the scene to the hospital and back home she did not know how the incident happened.

20. Based on this, the defence argues that if the complainant truly witnessed the incident and went to the hospital where the deceased's wife and relatives also came, he would naturally have disclosed who assaulted the deceased and what happened. Since the deceased's wife admitted that she had no knowledge of how the incident occurred up to that point, the defence claims this indicates there was no such disclosure, and therefore, considering prior enmity, the complainant may have fabricated facts and deposed falsehoods. It is stated that this defence argument cannot be brushed aside, because the absence of any natural disclosure at the hospital gives grounds to doubt whether the complaint version is wholly true, and it is suggested that even if the present accused injured the deceased in a scuffle using a sharp weapon, the complainant may have added false details to implicate co-accused, making his testimony unreliable except to the extent supported by other evidence.

21. It is therefore stated that the complainant's evidence should be accepted only to the limited extent that the present accused-appellant Sunil @ Kaliya Bharatbhai Gupta inflicted grievous injuries on the deceased on the upper left arm and inner thigh with a muddamal chopper-like weapon, causing corresponding cut marks on the deceased's shirt sleeve and pant, and that the deceased's blood was found on the muddamal chopper and on the clothes worn by the accused-appellant, and these articles were recovered from Vasantaben's house pursuant to the disclosure panchnama supported by Vasantaben's testimony. Beyond this limited extent, it is stated that the remaining facts in the complaint and

testimony are not supported by corroborative evidence and are not acceptable even beyond reasonable doubt. It is also stated that, as per the certified copy, the complainant avoided answering certain unfavourable questions, and therefore it is argued that he answers only favourable questions and evades unfavourable ones, which further creates doubt about his reliability.

22. We have carefully examined how the learned Sessions Judge evaluated the evidence. While doing so, the Judge divided the evidence into two parts one relating to the complainant's direct testimony and the other relating to the remaining evidence. Such a method, even when considered in light of the principle falsus in uno, falsus in omnibus, does not weaken the conviction. On an independent reading of the complainant's testimony, along with the well-reasoned findings of the trial court, it is evident that the inconsistencies pointed out relate only to minor and peripheral details. These do not amount to material contradictions and do not affect the basic version of the assault or the manner in which the incident occurred. The learned Sessions Judge correctly separated the reliable part of the testimony, for which sound reasons are recorded and supported by the evidence on record, from the portions that were found to be unreliable or exaggerated. It is well settled that if a witness is not fully trustworthy, the court is not required to reject the entire testimony. The court may accept the truthful and reliable part and discard the rest. In the present case, this exercise has been carried out properly, without any arbitrariness or legal error, and the appreciation of evidence does not suffer from any defect that would weaken the prosecution case. At this stage, it is appropriate to refer to the principles laid down by the Supreme Court in the following decisions.

23. In ***Saheb, S/o Maroti Bhumre Etc. v. State of Maharashtra***

[Criminal Appeal Nos. 313 of 2012 and 314 of 2012] reported in ***2024 (0) AIJEL-SC 74038***, the Hon'ble Supreme Court, held that maxim falsus in uno, falsus in omnibus is only a rule of caution and has not assumed status of a rule of law in Indian context, an attempt must be made to separate truth from falsehood and where such separation is impossible, there cannot be a conviction. The Hon'ble Supreme Court while evaluating the credibility of the sole eyewitness (the widow of the deceased) in a case involving offences under Sections 148, 149 and 302 of the Indian Penal Code, 1860, held that although the maxim falsus in uno, falsus in omnibus is only a rule of caution and not a rule of law in the Indian context, a sincere effort must be made to separate truth from falsehood. However, where such separation is rendered impossible owing to pervasive inconsistencies such as contradictory statements regarding the sequence of assault, absence of adequate moonlight for clear identification, embellishments in court deposition vis-à-vis the initial complaint, and inexplicable omission to attribute any role to certain accused despite their alleged prominent entry the entirety of the testimony falls into the realm of uncertainty. In such circumstances, no conviction can be sustained on the solitary testimony, and the accused are entitled to the benefit of doubt, resulting in their acquittal notwithstanding prior incarceration.

24. In ***Rama Devi v. State of Bihar and Others*** [Criminal Appeal Nos. 2623 of 2014, 2631 of 2014, 2632 of 2014 and 2640 of 2014] reported in ***2024 (0) AIJEL-SC 74101***, the Supreme Court, interpreting Section 3 of the Indian Evidence Act, 1872, reiterated that the maxim falsus in uno, falsus in omnibus does not occupy the status of a rule of law and is merely a rule of caution which guides the court in weighing evidence in the given circumstances. Where a witness is found to have given unreliable evidence in part, it becomes the duty of the court to diligently

scrutinise the remaining evidence, sifting the grain from the chaff. Reliable portions may still be acted upon, particularly when the substratum of the prosecution case remains intact. The entire body of evidence should be discarded only in exceptional cases where truth and falsehood are so inextricably intertwined as to be indistinguishable. This approach ensures that partial infirmities do not automatically vitiate the prosecution case unless the core is irreparably damaged.

25. As an alternative argument, the learned Senior Advocate for the appellant-accused submitted that even if the prosecution case is accepted as true and the evidence of the main eyewitnesses, who claims to have seen the incident, is taken at face value, a close examination of his testimony shows important contradictions about how the offence actually occurred. Although the learned Sessions Judge noticed these contradictions, they were completely ignored, and reliance was placed only on those parts of the testimony that supported the prosecution, while the remaining parts were disregarded. It was further argued that the accused had no intention to cause harm to the deceased, who was admittedly a stranger to him, and that the prosecution has neither proved nor even alleged any motive. Therefore, even assuming that the incident occurred as claimed, and considering only the nature and manner of the injuries, the act attributed to the appellant does not satisfy the legal requirements of the offence of murder under Section 302 of the IPC.

26. It is settled position of law that, while determining the issue of culpable homicide or murder, the courts have to keep in focus the key words used in Sections 299 and 300 of the IPC. The difference between murder and culpable homicide has been succinctly explained in the case of State of ***A.P. vs. Rayavarapu Punnayya (1976) 4 SCC 382***. The Hon’ble Supreme Court has held that in the scheme of the IPC, culpable

homicide is the genus and murder its species; all murders are culpable homicides, but not vice versa. The IPC recognizes three degrees of culpable homicide for proportionate punishment: the gravest form (murder under Section 300, punishable under Section 302 IPC), culpable homicide of the second degree (punishable under the first part of Section 304 IPC), and the lowest type (punishable under Section 304 Part II IPC). Section 300 specifies when culpable homicide amounts to murder and when, under the exceptions, it is culpable homicide not amounting to murder under Section 304 IPC.

27. After referring to the aforesaid decision, the difference between the two terms was further elucidated in ***Rampal vs. State of U.P. (2012) 8 SCC 289***. The Hon'ble Supreme Court has observed that the safest approach to interpreting and applying Sections 299 and 300 IPC is to focus on the key words in their clauses, and that courts should consider the issue in three stages: first, whether the accused's act caused the death; second, whether it amounts to culpable homicide under Section 299; and third, if it does, whether it falls under any Exception to Section 300, making it culpable homicide not amounting to murder punishable under Section 304 IPC (or under Part II if intention is absent but knowledge is present). The Court further clarified that Section 304 divides the offence into cases of intentional causing of death (Part I) and unintentional but knowing causing of death (Part II), with the latter attracting optional imprisonment up to 10 years.

28. Recently, in the case of ***Chunni Bai Vs. State of Chhattisgarh (AIR 2025 Supreme Court 2370)***, the Supreme Court, after referring to the observations in Rayavarapu Punnayya and Rampal (supra), has held that one of the key criteria to determine whether the act amounts to murder or culpable homicide not amounting to murder is the presence or

absence of intention of the offender. If intention to cause death or such bodily injury as is likely to cause death, or clear knowledge that the act is imminently dangerous and likely to cause death (without excuse), is established, it falls under Section 300 IPC attracting Section 302. On the other hand, if the intention is not so clear, the case falls under the less stringent category of culpable homicide not amounting to murder punishable under Section 304 IPC.

29. Having regard to the peculiar facts and circumstances of the present case and on appreciation of the evidence on record (including oral evidence of PW-1 to PW-17 and documentary evidence Exhs. 9 to 51), none of the clauses of Section 300 IPC are attracted. Accordingly, we set aside the conviction of the appellant under Section 302 IPC and the sentence of life imprisonment, and instead convict the appellant under Section 304 Part II IPC In these circumstances, the ends of justice would be met by sentencing the accused to the sentence already undergone i.e. around 7 years (6 years and 10 months as per the jail remarks on record).

30. As discussed, though the maxim falsus in uno, falsus in omnibus is a rule of caution and not a rule of law in India, the Court must separate truth from falsehood. Here, the sole eyewitness (complainant PW-1, Exh. 8) is not wholly reliable, showing material contradictions and improvements regarding the role of co-accused, sequence of events, and details not initially disclosed (including lack of natural disclosure to the deceased's wife at the hospital). These, coupled with prior enmity, raise doubts about aspects like premeditation or multiple assailants. Where truth and falsehood are interwoven on crucial issues, conviction for murder under Section 302 IPC cannot be based solely on such testimony.

31. However, the core prosecution case – that the accused-appellant

inflicted grievous injuries with the muddamal weapon – is corroborated by scientific evidence (Serological report Exh. 47, Physics report Exh. 48), recovery panchnamas (Exh. 19), post-mortem (Exh. 27), and medical evidence indicating grievous but non-vital injuries with possibility of survival if treated timely. This sustains culpability with knowledge, entitling the benefit of doubt on intent for murder, altering the conviction to Section 304 Part II IPC.

32. The maxim *falsus in uno, falsus in omnibus* is merely a rule of caution. Where a witness (PW-1) is unreliable on particulars (e.g., associates' involvement), the Court must scrutinise the rest, acting on reliable corroborated portions. Here, exaggerations on conspiracy/multiple assailants are rejected, but the substratum – grievous injury by sharp weapon, corroborated by FSL/reports, medical evidence, and recovery – sustains conviction without proving intent (non-vital parts, no repeated blows). Thus, Section 302 IPC conviction is converted to Section 304 Part II IPC.

33. For the reasons aforementioned, Criminal Appeal No. 804 of 2012 filed by the appellant Sunil @ Kaliya Bharatbhai Gupta is partly allowed. He is convicted under Section 304 Part II IPC and sentenced to the rigorous imprisonment (already undergone) i.e. around 7 years (6 years and 10 months as per the jail remarks on record). The conviction under Section 302 IPC is set aside, and the appellant is convicted and sentenced as above.

34. Regarding appeals by the original complainant (PW-1), no ground exists to interfere with the learned Sessions Court's acquittal of original accused nos. 2 and 3. The role of accused no. 2 (pipe injury on complainant's leg) was not mentioned in the complaint, no visible injury

on complainant, and over-implication suspected for accused no. 3 (absence of expected blood stains). The acquittal view is plausible and based on record; no exceptional grounds to interfere.

35. In result, Criminal Appeal Nos. 1182 and 1183 of 2011, preferred by the original complainant are dismissed. Criminal Appeal No. 804 of 2012 preferred by the appellant-accused is partly allowed in above terms. Bail bonds shall stand canceled and the sureties discharged. The records be transmitted to the learned Sessions Court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP