IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 511 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-
and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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VIHABHAI PANCHABHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR PRASHANT MANKAD(2189) for the Appellant(s) No. 1
MR RONAK RAVAL, 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 : 29/01/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. This conviction appeal is filed by the appellant sole accused-Vihabhai Panchabhai Patel, against the judgment of conviction and order of sentence dated 14.10.2015, passed by learned Additional Sessions Judge, Diyodar, in Sessions Case No.80 of 2015, whereby the appellant came to be convicted for the offences, as mentioned below:-

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
302 of IPC	Life Imprisonment	Rs.10,000/-	3 month SI
392 of IPC	3 years RI	Rs.1,000/-	1 month SI
397 of IPC	3 years RI	Rs.1,000/-	1 month SI
449 of IPC	3 years RI	Rs.1,000/-	1 month SI

2. Brief facts which are necessary to dispose of the present appeal are in nutshell as under:-

3. On 11.1.2012, with an intention to commit robbery, the appellant-accused entered the house of the deceased. It is alleged that the appellant was armed with sharp weapon and with an intention to commit loot, he had killed Devsibhai Bhavabhai Patel and Demaben Devsibhai Patel and looted gold and silver ornaments of Demaben worth Rs.50,000/-. With such allegations, FIR came to be lodged with Tharad Police Station. After completion of inquiry, the police filed charge-sheet against the appellant before the Court of learned Judicial Magistrate, First Class, Tharad. Since the case was triable by the sessions Court, it was committed to the Sessions Court, Banaskantha.

4. After framing of the charge and upon the accused pleaded not guilty, the trial commenced before the Additional Sessions Judge, Diyodar.

5. In order to prove the charge, the prosecution has examined as many as seven witnesses and relied upon the following exhibited documents.

Oral evidence:-

PW 1 – Exh.9	Complainant Hemrajbhai Bhavabhai Patel
PW 2 – Exh.18	Dr.Mahadevbhai Khemrajbhai, Medical Officer
PW 3 – Exh.29	Karsanbhai Ramsinhbhai, Panch witness
PW 4 – Exh.32	Rupabhai Jesangbhai.
PW 5 – Exh.36	Amratlal Maghjibhai.
PW 6 – Exh.38	Lagdhirbhai Rupsibhai, Panch witness.
PW 7 – Exh.42	Harsangbhai Raymalbhai, Panch witness.
PW-8 – Exh.61	Sursangji Hemtaji, PSO.
PW-9 – Exh.67	Andabhai Narsangbhai, Panch witness.
PW-10 – Exh.74	PI-Narsinhbhai Devjibhai, IO.

Documentary evidence:-

Exh.10	Compalint
Exh.19	Yadi for postmortem.
Exh.20	P.M.Note of Devabhai.
Exh.22	P.M.Note of deceased Demaben.
Exh.23	Medical Certificate of Demaben.
Exh.30	Panchnama of clothes of the deceased.
Exh.34	Report of FSL officer.
Exh.39	Panchnama of physical condition of the accused.
Exh.43	Panchnama of place of offence.
Exh.62	Yadi to register the offence.
Exh.63	Suchipatra.
Exh.64	Yadi of FSL.
Exh.65	Special report of serious offence.
Exh.66	Yadi of inquest panchnama.
Exh.68	Discovery panchnama.
Exh.76, 77	Receipt of handing over dead body.
Exh.78	Report of dog squad.
Exh.79	Yadi to add Section.
Exh.80	Medical Yadi of the accused.
Exh.81	Yadi to prepare the map.
Exh.82	Muddamal dispatch note.

Exh.83	Map of the place of offence.
Exh.84	FSL Receipt of muddamal.
Exh.85	FSL Report
Exh.86	Serological report.

6. After closure of the prosecution evidence, the appellant accused was questioned under Section 313 of Criminal Procedure Code, in which he stated that he was innocent and being falsely implicated in the offence.

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

8. The learned Sessions Judge, after hearing the parties and upon appreciation of evidence held that on 11.1.20212, with an intention to commit robbery, the appellant-accused armed with sharp weapon and with an intention to commit loot, entered the house of the deceased, and he had killed Devsibhai Bhavabhai Patel and Demaben Devsibhai Patel and looted gold and silver ornaments of Demaben worth Rs.50,000/-.

9. Being dissatisfied with the judgment of conviction and order of sentence, the appellant-accused has come up before this Court with the present appeal.

10. We have heard Mr.Prashant Mankad, learned counsel appearing for and on behalf of the appellant-accused and Mr.Ronak Raval, learned Additional Public Prosecutor for the State.

11. Mr.Prashant Mankad, learned counsel, took us through the record of the case, including the evidence of the prosecution witnesses and contended that the impugned judgment of conviction and order of sentence cannot be sustained. He submitted that the case of the prosecution is based on circumstantial evidence, and there is no eye witness to the incident. He submitted that even the complainant has not seen the incident in question. He further submitted that though this is a case based on circumstantial evidence, the prosecution has failed to prove the chain of events to prove its case. He further submitted that witness Rupabhai Jesungbhai, Exh.32 has stated that he saw the accused and the deceased sitting together on the day of the incident, however, there is no other circumstance to prove that it is the accused and only the accused, who has committed the offence in question, therefore, the chain of circumstance is not complete and the prosecution has miserably failed to prove its case against the appellant. He further submitted that no independent witness have been examined in support of the case of the prosecution and, because of previous enmity, the appellant has been wrongly framed in the present case. He also submitted that only because the ornaments are recovered at the instance of the accused does not prove that the accused has committed the loot and killed the deceased persons. In view of these submissions, he submitted that conviction and sentence imposed by the learned Sessions Court cannot be sustained and by allowing this appeal, the same may be set aside.

12. Opposing the contention, learned Additional Public Prosecutor, Mr.Ronak Raval, contended that the appellant was seen lastly with the deceased as per the say of the complainant. He further submitted that the ornaments of the deceased were also recovered at the instance of the accused-appellant. He further submitted that not only that there were blood stains of the deceased, found on the clothes of the accused, therefore, the prosecution has successfully established the chain of circumstances. In view of all these, he submitted that the prosecution has successfully proved its case before the learned Sessions Court and the learned Sessions Court has rightly convicted the accused-appellant.

13. In such circumstances, referred to above, learned APP prays that there being no merits in the appeal, same may be dismissed.

14. In the instant case, the key circumstances on basis whereof the prosecution seeks to bring home the charge against the accused are that the offence was committed within the four corners of the house and there is no eye witness to the incident, however, the complainant has stated in his evidence that when he reached the house of the deceased, deceased Devsibhai and Demaben were lying in dead condition and there were no ornaments on the body of Demaben. When the complainant was shown the ornaments of the deceased, he has identified the same. It has come in evidence of panch witness that these ornaments were recovered at the instance of the present accused, from a field in presence of the panchas

and the police has recovered the ornaments. It has also come in the evidence of witness-Rupabhai Jesangbhai, Exh.32, that on the day of the incident, when he was returning from the temple, he met the accused and deceased and thereafter, he went away. At that time, the accused was with the deceased. Thereafter, when police came this witness came to know that Devsibhai and Demaben have been killed. Therefore, the learned Sessions Court has believed that the accused was lastly seen with the deceased and since the ornaments are recovered at the instance of the accused, he is found guilty of murder of the deceased. As per the FSL report also, there were blood stains of the deceased on the clothes of the accused and the accused has failed to prove as to how his clothes got blood stains. Considering all these circumstances, the learned Sessions Court has convicted the accused.

15. Before adverting to appreciate the contention, we would like to have a cursory look at the evidence adduced by the prosecution through its witnesses.

(i) Hemrajbhai Bhavabhai Patel, Complainant, PW-1:-

This witness is the brother of the deceased. He has stated in his evidence that he was in his field, when this incident happened. Upon receiving information, when he reached the place of incident, his brother Devsibhai was attacked with sharp weapon on his throat and throat of Demaben, wife of Devsibhai, was also slit. He informed the police. He stated that there were no ornaments on

the dead body of Demaben. When he was shown muddamal ornaments, he has identified the same to be of Demaben.

In the cross-examination, this witness has admitted that he does not have any personal knowledge about the incident in question and he was in his field at the time of commission of the offence. This admission directly contradicts his earlier version and shows that his testimony is based on hearsay. It is also clear from his evidence that he does not know who informed the police, and who committed the offence, and he did not see the assailant.

In the examination-in-chief, the witness identifies certain ornaments and states that the deceased was wearing them at the time of the incident. However, in cross-examination he clearly admits that there is no mention of any ornaments in the original complaint. It clearly shows that there is material omission in the FIR and it indicates that there is an improvement in his version.

(ii) Karshanbhai Ramsibhai Patel, PW-3:-

In his examination-in-chief, the witness states that the clothes removed from the dead bodies were handed over by the doctor, packed in plastic bags in his presence, sealed by the police and that his signatures were taken on the slips. However, in cross-examination, he clearly admits that the police merely told him that these were

the clothes and asked him to sign, and accordingly he signed. This admission directly contradicts his earlier version and shows that he did not independently verify the muddamal articles, thereby destroying his status as an independent panch witness.

There is also inconsistency in the witness's version regarding the sealing of the clothes. While the defence suggested that no clothes were sealed or signed in his presence, the witness gives a vague explanation that the doctor handed over the clothes, they gave them to the police and the police sealed them in their presence. This explanation lacks clarity and consistency and appears to be an afterthought to support the prosecution case.

(iii) Rupabhai Jesungbhai Patel, PW-4:-

This witness has stated in his evidence that the deceased was his nephew. He stated that he regularly goes to the temple for darshan and on the day of the incident also, he went to the temple and when he came back, he had seen the accused and the deceased sitting together. Thereafter, he came to know that Devsibhai and Demaben have been killed. In his cross-examination, he has stated that on the previous day to the incident also, he went to the house of Devshibhai and stayed there for half an hour.

The deposition of this witness seems to be eye-catching, which otherwise touches the root of the case. This witness has stated that while sitting beside the

temple, he found the accused-Viha Pancha, who is the nephew of this witness, approached there and after sitting for sometime, he left. However, suddenly and promptly he changed the version stating that the deceased and Viha Pancha stayed there and this witness left from the place. This aspect do not seem to have been duly appreciated.

Though this witness claims that he visits the Kuldevi temple daily, he admits in cross-examination that he does not even know the name of the Kuldevi.

(iv) Kanubhai Virjibhai Damor, PW-5:-

The testimony of this witness, who was examined as a Scientific Officer of the Mobile FSL, suffers from certain inconsistencies and weaknesses which affect its evidentiary value. In his examination-in-chief, the witness states that upon receiving information from the police control room, he visited the scene of offence on 12.01.2012 between 12:30 and 15:00 hours, carried out the scene-of-offence inspection, prepared a primary report on his own, and gave necessary instructions to the investigating officer. He projects his report as an independent scientific assessment prepared on the basis of his personal inspection.

However, in cross-examination, the witness admits that when he carried out the scene inspection, PSI N.D.

Chaudhary was present at the spot. This admission raises doubt about the independence of his inspection, especially in view of his categorical denial that he prepared the report at the instance of the said PSI. The simultaneous presence of the investigating officer at the scene, coupled with the witness's defensive denial, creates a contradiction between the claim of independent scientific analysis and the practical circumstances under which the report was prepared.

Although the witness asserts that he has been serving in Banaskantha since 29.11.2010 and implies familiarity with procedures, he does not explain why no independent scientific samples or corroborative material are specifically referred to in his deposition. His bare denial that the report was prepared at the instance of PSI N.D. Chaudhary, without supporting explanation, appears to be inconsistent with the circumstances admitted by him.

In view of the above contradictions and omissions, the evidence of PW-5 does not conclusively establish that the scene-of-offence inspection and primary report were conducted in a completely independent and unbiased manner.

(v) Amratlal Mathaji Darji, PW-6:-

In his examination-in-chief, the witness stated that at about 5 a.m. he heard screams of "don't beat and

save", came out of his house, raised shouts, and thereafter called Pravinbhai Jaydevbhai Darji as well as Amrabhai and Mehbhai, after which all four of them went together to the place of incident.

However, in his cross-examination, he categorically denied that he raised any shouts and called Pravinbhai. He has also denied that he went near the gate to call Amrabhai. This is a direct contradiction on the core issue of how the witness became involved and how other persons gathered at the spot, striking at the root of his credibility.

There is also inconsistency regarding the presence of neighbours and surrounding houses. In chief-examination, this witness suggested that people were called and came to the spot soon after the incident. However, in cross-examination, he stated that between his house and Devshibhai's house nobody resides and that except him and Pravinbhai, no one lives nearby. These contradictions go to the root of the prosecution case.

(vi) Lagdhirbhai Rupshibhai, PW-7:-

In his examination-in-chief, the witness states that when he was called to the police station, the accused Vihabhai was present and that the accused himself produced a blood-stained white shirt, which was then seized, packed, sealed and signed in his presence. This version gives an

impression that the recovery was voluntary, transparent and properly witnessed. However, in cross-examination, the witness admits that when he reached the police station, the clothes were already lying on the table. This admission contradicts his chief examination, where he stated that the accused produced the clothes in their presence. If the clothes were already kept on the table before the panchas arrived, the alleged recovery at the instance of the accused becomes doubtful and loses its evidentiary value.

(vii) Harsangbhai Shivmalbhai, PW-8:-

In his examination-in-chief, the witness gives an extremely detailed and elaborate description of the scene of offence, including the structure of the house, number of rooms, flooring materials, numerous seized articles, bloodstains at several places, samples collected from different locations, and even bloodstains allegedly extending up to the petrol pump at Malupur Patiya. However, in the same breath, he states that “except this, I do not remember anything else,” which is inherently contradictory. A witness who claims to remember minute details of more than fifteen seized articles and their sealing cannot simultaneously claim lack of memory about other aspects of the incident.

Further, the witness states in chief that the police called him to the place of offence and that he merely acted as a panch. However, he later claims that “this place was

shown by me," which contradicts his role as an independent panch witness. A panch witness is expected to observe and verify the actions of the police, not to identify or show the place of offence himself. This statement creates serious doubt about whether the witness was acting independently or was actively assisting the police investigation.

(viii) Narsinhbhai Devjibhai Chaudhary, PSI, PW-11:-

In his cross-examination this witness states that he himself recorded the FIR as well as carried out the entire investigation. This dual role of complainant and investigating officer creates a clear apprehension of bias and lack of impartiality, thereby vitiating the fairness of the investigation. An investigation conducted by the same person who initiated the prosecution cannot be said to be independent or free from prejudice. He also claims to have examined several witnesses and prepared multiple panchnamas, there is a clear contradiction regarding independent witnesses. The witness merely denies the suggestion that independent or neutral witnesses were not examined, but fails to explain why no nearby residents or independent persons from the locality were cited as prosecution witnesses, despite the alleged incident having occurred in an inhabited area.

There is also inconsistency in the application of penal sections. PW-11 admits that initially certain sections were applied and later additional sections such

as 392, 397 and 449 of IPC were added, while some sections were altered or reduced. Such frequent changes in the sections of law indicate uncertainty and lack of clarity in the prosecution case, suggesting that the investigation proceeded in a mechanical manner rather than on the basis of concrete evidence.

Regarding the alleged recovery under Section 27 of the Evidence Act, PW-11 claims that recoveries were made in the presence of panch witnesses. However, the panch witnesses appear to be police-oriented and not independent or neutral persons. Recoveries effected only in the presence of interested panchas and police personnel raise serious doubt about the authenticity and voluntariness of such recoveries.

Although PW-11 produced various medical documents such as post-mortem notes, cause of death certificates and injury certificates, he fails to correlate the medical evidence with the prosecution version. He does not explain how the injuries found on the deceased correspond with the alleged weapons recovered, thereby creating a gap between medical evidence and investigative findings. PW-11 also refers to injuries found on suspect Vihabhai Panchabhai, but does not clarify how these injuries are connected with the alleged incident, the time of occurrence, or the role attributed to the accused. This omission creates uncertainty and leaves material aspects of the investigation unexplained.

16. Before we proceed further, it would be apposite to remind ourselves that this is a case where there is no eyewitness account of the murder. Prosecution seeks to bring home the charge levelled on the accused by relying on certain circumstances. The law is well settled as to when on strength of evidence circumstantial in nature conviction can be lawfully sustained-the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established; these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; the circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; the circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and they must exclude every possible hypothesis except the one to be proved. Further, the circumstances from which the conclusion of guilt is to be drawn should be fully established meaning thereby that they 'must' or 'should' and not 'may be' established **(See: Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116)**.

17. In addition to the above, while dealing with a criminal trial, a Court must not be oblivious of the most fundamental principle of criminal jurisprudence, which is, that the accused 'must be' and not merely 'may be' guilty before the Court proceeds to convict him. In **Shivaji Sahabrao Bobade & Another v. State of Maharashtra (1973) 2 SCC 793**, Supreme Court, elaborating upon the above principle,

observed that the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

18. Adding on to the aforesaid legal principles, in **Devi Lal v. State of Rajasthan (2019) 19 SCC 447**, a three-judge Bench of Supreme Court held that in a case based on circumstantial evidence where two views are possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favourable to him. The relevant portion of the judgment is extracted below:-

> *"18. ... Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.*
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> *19. ... in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him."*

19. Bearing in mind the aforesaid legal principles, we would have to examine-(i) whether the circumstances relied by the prosecution have been proved beyond reasonable doubt; (ii) whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused; (iii) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from the conclusion

that within all human probability the crime was committed by the accused; (iv) whether they are consistent only with the hypothesis of the accused being guilty; and (v) whether they exclude every possible hypothesis except the one to be proved.

20. In a case of circumstantial evidence, the chain is required to be completed as mandated under the law so as to indicate the guilt of the accused while discarding any other theory of the crime. If one of the link goes missing and not proved, in view of the settled law on the point, the conviction is required to be interfered with. At this stage, with profit, we may refer to the decision in case of ***Laxman Prasad Alias Laxman (supra)*** where the Hon'ble Apex Court after referring to ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]*** and ***Shailendra Rajdev Pasvan vs. State of Gujarat [(2020) 14 SCC 750]*** has quashed the conviction by making observations in paragraph 2 to 4 as under:-

> *"2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.*

> *3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:*
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> *(i) Sharad Birdhichand Sarda v. State of Maharashtra,*
> *(ii) Shailendra Rajdev Pasvan v. State of Gujarat.*
>
> *4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."*

21. Thus, in view of the settled law that one must look for a complete chain of circumstances and not the scattered links which do not make a complete sequence. 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; in the present case, the chain is not completed.

22. In the present case, there is no eye witness to the incident in question. The complainant has stated in his evidence that he had seen the accused along with the deceased lastly, however, he had seen them when he was returning from a temple and at that time they were sitting together, therefore, the theory of last seen together do not lead to a definite conclusion that it is the accused only, who has committed the offence in question. The prosecution has also failed to prove as to what was the motive behind the murder of the deceased. The prosecution has only linked the recovery of the ornaments with the murder of the deceased,

however, it is not sufficient to prove that it is the accused and only the accused, who has committed the offence in question. Not only that the learned Sessions Court has also recorded in its judgment that there are contradictions in the evidence of prosecution witness, inspite of that the learned Sessions Court proceeded to believe the case of the prosecution and convict the accused. In the present case, there is no direct or substantial evidence connecting the accused with the offence and the evidence relied upon by the learned Sessions Court can be said to be corroborative evidence and on such evidence, conviction cannot be recorded. Not only that in view of decision of the Supreme Court in **Devi Lal (supra),** wherein held that in a case based on circumstantial evidence where two views are possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favourable to him.

23. In the case of **Govind v. State of Haryana, 2025 SCC OnLine SC 2456**, the apex Court, while determining the scope of Section 27 of the Evidence Act, 1872 that deals with how much of the information as received from the accused, in Police custody may be proved, interpreted the phrase ‘fact thereby discovered’ and held that only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase ‘facts discovered’. While deciding the aforesaid case, the Apex Court has observed as under:-

> *“15. As per Section 25 of the Evidence Act, the confession given in the Police custody, cannot be proved against a person accused of an offence unless it is given in the immediate*

presence of the Magistrate. However, Section 27 deals with how much of the information as received from the accused, in Police custody may be proved. The said Section is relevant, therefore, reproduced below:

> *"27. How much of information received from accused may be proved. - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

On a glance of the language of the said section, which starts with the expression "provided that", it is apparent that this Section is an exception to the preceding Sections 25 and 26. The language further indicates that when any fact is deposed to as discovered in consequence of information received from a person who is in custody of the Police in connection of an offence, it must relate distinctly to the fact so discovered. For relevancy, the "facts thereby discovered" is preceded with the words "so much of such information, whether it amounts to confession or not as relates distinctly". Special emphasis must be given to the word 'distinctly'. The word "distinctly" has its own importance which is a derivative of the word 'distinct'. As per Concise Oxford English Dictionary it means recognizable, different in nature, individual or separate, readily distinguishable by the senses. As per Advance Law Lexicon, "distinctly" means clearly, explicitly, definitely, precisely, unmistakably, in a distinct manner. Therefore, "distinctly", as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to include everything which may relate to that information. The said word "distinctly" indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable information. Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase 'facts discovered'.

23.1 In nutshell, all the statements made with regard to the confession of committing the crime would not be admissible in evidence. Only such information, which distinctly relates to the discovery of facts will be admissible under Section 27 of the Evidence Act, 1872.

24. In view of the decision, mere discovery of ornaments at the instance of the accused cannot be the sole ground to link the accused with the alleged incident. As per the case of the prosecution, discovery of the ornaments is at the instance of the accused, however, only discovery at the instance of the accused is not sufficient as the prosecution has to prove the same by leading the evidence to show that necessary prescribed procedure has been followed, while carrying out panchnama. In the present case, it is an admitted fact that the accused was in custody at the relevant time and the panchas have not supported the version of the prosecution, as discussed herein above. Simply because there is recovery, said fact cannot be said to have been proved beyond reasonable doubt so as to convict of the accused on the basis of such recovery. Not only that in the present case, the alleged recovery was made from a place accessible to all, hence, the extent to which such recovery can be relied upon to establish the appellant's guilt requires careful scrutiny and as per the decision, referred to herein above, when such recovery was from a place accessible to others and also from place of public use, no reliance could be placed on such recovery as such recovery alone is not sufficient and it becomes suspicious.

25. So far as blood stains on the clothes of the accused are concerned, PW-7 has stated in his evidence that when he was called to the police station, the accused Vihabhai was present and that the accused himself produced a blood-stained white shirt, which was then seized, packed, sealed and signed in his presence. However, in cross-examination, the witness admits that when he reached the police station, the clothes were already lying on the table. This admission contradicts his chief examination, where he stated that the accused produced the clothes in their presence. If the clothes were already kept on the table before the panchas arrived, the alleged recovery at the instance of the accused becomes doubtful and loses its evidentiary value. Therefore, when the panchas have not supported the case of the prosecution, it cannot be believed there were blood stains on the clothes of the accused. Not only that from the evidence of PW-5, it is clear that upon receiving information from the police control room, he visited the scene of offence on 12.01.2012 between 12:30 and 15:00 hours, carried out the scene-of-offence inspection, prepared a primary report on his own, and gave necessary instructions to the investigating officer. He projects his report as an independent scientific assessment prepared on the basis of his personal inspection, however, in cross-examination, the witness admits that when he carried out the scene inspection, PSI N.D. Chaudhary was present at the spot. This admission raises doubt about the independence of his inspection, especially in view of his categorical denial that he prepared the report at the instance of the said PSI. In view of the detailed discussion pertaining to Section 27 of the Evidence Act, mere recovery

and discovery is not sufficient, which otherwise required to be proved by substantial evidence, which in the case on hand seems to be lacking.

26. PW-3, Karshanbhai Ramsibhai Patel, has stated that the clothes removed from the dead bodies were handed over by the doctor, packed in plastic bags in his presence, sealed by the police and that his signatures were taken on the slips. However, in cross-examination, he clearly admits that the police merely told him that these were the clothes and asked him to sign, and accordingly he signed. This admission directly contradicts his earlier version and shows that he did not independently verify the muddamal articles, thereby destroying his status as an independent panch witness. There is also inconsistency in the witness's version regarding the sealing of the clothes. While the defence suggested that no clothes were sealed or signed in his presence, the witness gives a vague explanation that the doctor handed over the clothes, they gave them to the police and the police sealed them in their presence. The witness admits that the deceased Devshibhai Bhavabhai was his relative and that they belong to the same family. Thus, the witness is an interested witness and not an independent panch. Evidence of such a witness cannot be relied upon without strong corroboration, which is absent in the present case.

27. In view of above contradictions in the evidence laid by the prosecution and considering the ratio of the decision of the

Apex Court, we find that the prosecution has failed to prove its case beyond reasonable doubt against the accused and learned Sessions Court has committed an error in convicting the accused person for the offences alleged against him. Hence, we are of the opinion that this Criminal Appeal is required to be allowed.

28. For the foregoing reasons, this appeal is allowed. The impugned judgment and order dated 14.10.2015, passed by learned Additional Sessions Judge, Diyodar, in Sessions Case No.80 of 2015 is quashed and set aside. The accused is acquitted of all the charges levelled against him. Bail bond, if any, stands cancelled. The appellant-accused is ordered to be released forthwith, if not required in any other case. Record and Proceedings, if lying here, be sent back to the concerned Sessions Court forthwith.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

R.S. MALEK