IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 950 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAGHA @ RAJU PRATAP BHAIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 950 of 1995

MR Maganbhai Barot for Petitioner No. 1

MR GIRISH PATEL for Petitioner No. 1,2-5

MR BC DAVE for Petitioner No. 2-5

Mr I M Pandya, APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE D.P.BUCH

Date of decision: 29/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The appellants abovenamed, have preferred this appeal under section 374 of the Code of Criminal Procedure, 1973, (for short, 'the Code') in order to challenge the judgment and conviction order dated 9.8.1995 recorded by the learned Addl.Sessions Judge at Bharuch in Sessions Case No.238/94, under which the learned trial Judge convicted the present appellants for offences punishable under section 302 read with section 149 of IPC and sentenced them to suffer R.I. for life. The learned trial Judge also directed the appellants to pay fine of Rs.500/-. In default of payment of fine, they were required to undergo further R.I. for one year. For an offence punishable under section 143 of IPC, the appellants were directed to suffer R.I. for three years and to pay a fine of Rs. 100/-. In default of payment of fine, they were required to undergo further R.I. for one month.

2. For an offence punishable under section 147 of IPC, the appellants were directed to undergo R.I. for six months and they were required to pay a fine of Rs.200/-. In default of payment of fine, they were required to further undergo R.I. for three months. For an offence punishable under section 148 of IPC, the appellants were directed to undergo R.I. for one year and they were directed to pay fine of Rs.200/-. In default of payment of fine, they were required to undergo R.I. for three months.

3. The trial court also directed that the substantive sentence be run concurrently and the appellants be given benefit of set-off in accordance with the provisions made in Section 428 of the Code of Criminal Procedure, 1973.

4. The facts of the case of the prosecution before the trial court may be briefly stated as follows:

The FIR was filed by one Bharatbhai Nagjibhai Patel, brother of the deceased which has been produced on record before the trial court. According to the FIR, there is a fishing pond in village Sajod in Bharuch district. It seems that some part of it was with the deceased and the deceased was exclusively using the said fishing pond for fishing purpose. According to the case of the prosecution, about two months before the date of the offence, appellants No.2 to 4 had gone to the said

fishing pond for fishing purpose unauthorisedly and illegally. Therefore, the deceased had rebuked them and with regard to the said incident, no information was given to the police.

5. It is also the case of the prosecution that the deceased had an agricultural land at village Old Haripura in Bharuch District and there is a banana tree plantation in the said land. PW 14, Parshottambhai Gomanbhai at Exh.30 has been entrusted with the work of the supervision of the said land.

6. As per the case of the prosecution, on 28.8.1994, informant Bharatbhai Nagjibhai Patel and his deceased brother Mansukhbhai, both had gone to the said village-Old Haripura at the place of Parshottambhai Gomanbhai - Exh.30 for the purpose of payment of labour charges to Parshottambhai. It was about 1.30 p.m. when they reached the house of Parshottambhai. Parshottambhai and deceased had some negotiation outside the house of Parshottambhai and at that point of time, the five appellants arrived at the said place. Out of them, appellant no.1 had a tabbal with him which is said to be an instrument like an axe. Appellant No.2-Ravjibhai Thakorebhai Vasava had a sword with him whereas the remaining appellants had knives with them. Out of them, the first appellant enquired as to where the deceased was. He also referred to an incident which had taken place two days prior to the date of offence. Thereafter, the first appellant dealt tabbal blow on the head of the deceased. Informant Bharatbhai Patel tried to intervene and at that time, the first appellant hit with the back portion of the tabbal on the hand of the informant which struck on the elbow. Thereafter, the second appellant dealt blow of sword on the head of the deceased whereas the other three appellants dealt knives blows on the abdomen of the deceased. The deceased fell down on the ground and in the mean time, the appellants ran away. Even the witnesses including the informant also ran away from the spot. It seems that the informant and other witnesses were frightened on account of the aforesaid incident and, therefore, they ran way and had hidden themselves at some distance from the place of the offence. They all returned after about an hour. There they found that the deceased had already died. Thereafter, the incident was conveyed to the relatives and FIR was filed before Ankleshwar police station. After filing the FIR, investigation was undertaken, statements of witnesses were recorded, dead body of the deceased was sent for post mortem purpose to the Medical Officer, inquest panchnama was drawn and other panchnamas

were also drawn. After receiving of the FSL report and after completing the investigation, charge sheet was filed before the learned Judicial Magistrate First Class at Ankleshwar.

7. Since an offence punishable under section 302 was registered against the appellants and since the said offence was exclusively triable by the Court of Sessions, at Bharuch, the learned Magistrate committed the case against the appellants to the Court of Sessions under section 209 of the said Code. There, the case was registered as Sessions Case No.238/94.

8. The learned trial Judge supplied copies of the police investigation papers to the appellants. Charge was prepared and framed against the appellants at Exh.2. It was read over and explained to the appellants. They pleaded not guilty to the said charge and, therefore, evidence was recorded. After conclusion of the evidence, the learned trial Judge recorded further statements of the appellants under section 313 of the Code. Thereafter, arguments were heard and the learned trial Judge recorded a judgment of conviction and thereafter the learned trial Judge again heard the appellants on the point of quantum of punishment and thereafter the learned trial Judge inflicted the aforesaid punishment on the appellants. Feeling aggrieved by the aforesaid judgment and conviction order of the trial court, the appellants have preferred this appeal before this Court. It has been contended here that on the one hand, the first appellant had no link with the rest of the appellants with respect to the incident which took place about 2 months back, therefore, the trial court has committed serious error in holding that there was unlawful assembly and the appellants were members thereof. That the trial court has also committed error in holding that the appellants had a common object as members of the said unlawful assembly to commit the murder of the deceased. That at the best the trial court ought to have considered individual liability of the appellants and, therefore, none of the appellants could have been convicted for an offence punishable under section 302 of IPC. In the alternative, it has been claimed that at the best the appellants could be convicted on the basis of individual liability for offence punishable under section 304 Part II of IPC. That the trial court has committed error in accepting the testimonies of the witnesses. That the trial court has also committed serious error in appreciation of evidence of the witnesses. That on the whole, the judgment and the conviction order are illegal and erroneous and deserve to be set aside. That

therefore, the present appeal be allowed and the judgment and conviction order may be set aside and the appellants be held not guilty for the offence in question. In the alternative, a prayer has been made that the appellants may be convicted on their individual liability.

9. On receipt of the aforesaid appeal, it was admitted. However, the appellants were not granted bail. It appears from the record that after filing the present appeal as a common appeal by all the appellants, they all filed individual separate appeals through jail being Criminal Appeals No.1046, 1047, 1048, 1049 and 1050 of 1995. However, this Court found that as common appeal had already been filed and registered and admitted, the said five appeals were ordered to be disposed of. That is how we are having the present appeal being Criminal Appeal No.950/95 on the record of the court.

10. At the final hearing when the appeal was heard, Mr Maganbhai Barot, learned Sr.Advocate argued on behalf of the first appellant whereas the arguments were advanced on behalf of the remaining appellants by Mr B C Dave, learned Advocate. It may be incidentally noted that out of these five appellants, appellant no.3 Ashokbhai Chhaganbhai Vasava was enlarged on temporary bail by order dated 8.11.2000 and thereafter he has not returned to the custody and he is found to be absconding. Learned Advocate for appellants no.2 to 5 represented that appellant also. Therefore, we dispose of the entire appeal including the appeal of absconding appellant-Ashokbhai Chhaganbhai Vasava.

11. During the course of arguments, learned Advocate for the appellants have taken us through the entire evidence both oral and documentary on record. They have also taken us through the important observations of the trial court made during the course of the judgment. On the other hand, Mr I M Pandya, learned APP appearing for the State has supported the judgment and has argued that the trial court has properly appreciated the evidence on record and there was sufficient material on record of the trial court and it rightly convicted the appellants for the offence in question. He has, therefore, argued that there is no merit in the appeal and, therefore, it may be dismissed.

12. On going through the record, we find that the prosecution has mainly depended upon four witnesses who are shown to be eye witnesses. Out of them, PW 8 Bharatbhai Nagjibhai Patel - Exh.36 is an eye witness and he is the informant also. Next is PW 9, Bharatsingh

Bhagawanbhai Patel Exh.38. Third is PW 14, Parshottambhai Gomanbhai - Exh.30 and the fourth is PW 5, Kashiben Parshottambhai Gomanbhai - Exh.31. These are the four witnesses who have been cited as eye witnesses by the prosecution and have been examined as such before the trial court. It may be incidentally noted here that the trial court has made observations during the course of its judgment that so far as PW 8, Bharatbhai Nagjibhai Patel - Exh.36 and PW 9, Bharatsingh Bhagawanbhai Patel Exh.38 are concerned, their presence is doubtful though the informant is an injured eye witness. However, the trial court has substantially relied upon the evidence of Parshottambhai Gomanbhai at Exh.30 and his wife Kashiben. It is required to be considered here that so far as Parshottambhai Gomanbhai is concerned, he is a witness on whose ota, the incident is alleged to have taken place. All the four eye witnesses have consistently stated during the course of their oral testimony that the incident took place on the ota of this witness Parshottambhai Gomanbhai at Exh.30. Even during the course of argument, this fact could not be seriously disputed even by the learned Advocate for the parties. In that view of the matter, Parshottambhai is a natural eye witness. On the one hand, the incident had taken place on the ota of his house and he was the witness who used to look after the banana tree plantation of the deceased and the deceased had come to his place for making payment of labour charges payable to him. Looking to the evidence on record and looking to the above fact situation, one has to agree with the case of the prosecution that the incident had taken place on the ota of the residence of this witness. Therefore, it is quite natural that this witness was a natural eye witness with respect to the occurrence in question.

13. This witness has deposed before the trial court at Exh.30 that on 28.8.1994 at about 1.30 p.m. he was sitting on his ota and at that time, Bharatbhai Nagjibhai Patel and the deceased both had come to his residence on a two wheeler for the purpose of making payment of his labour charges. That while they were talking, the first appellant arrived there and enquired about the deceased. That the first appellant had tabbal in his hand and he dealt tabbal blow on the head of the deceased. That the informant Bharatbhai Nagjibhai Patel enquired as to why he was beating the deceased at which the first appellant dealt a tabbal blow on the left elbow of the informant. That thereafter, appellant no.2 arrived there and dealt blow with sword on the head of the deceased. That thereafter other three appellants arrived there and dealt with knife blows on the abdomen of the deceased. This

witness says that thereafter the deceased fell on the ground and, therefore, he (the witness) ran away along with his wife, children and Bharatbhai Nagjibhai Patel.

14. Almost similar is the evidence tendered by the wife of the said witness Kashiben at Exh.31. She has also stated that the incident took place at her ota. she has further deposed that the first appellant enquired about the deceased and then dealt tabbal blow on the head of the deceased. She has also stated that appellant no.2 dealt a blow with sword on the head of the deceased and other three appellants dealt knife blows on the abdomen of the deceased and thereafter, they ran away. She has further stated that she, her husband and children all had run away. She has further stated that they all were frightened and, therefore, they had run away. This shows that these two witnesses have given consistent version of the actual happening of the incident in question.

15. An attempt was made to argue that according to the evidence of Parshottambhai at Exh.30, the appellants did not come together but they arrived on the spot one by one. This aspect of argument stands negatived by the evidence of Parshottambhai at Exh.30. In para 11 he has positively stated during the cross-examination that all the appellants had come together and it is not true that they had come one by one. It is required to be considered that this is not a new development during the course of trial before the trial court. Even in FIR Exh.37, it has been positively stated that the appellants had come together. It is also a matter of record and evidence on record that all the appellants had left the place together. This clearly shows that the appellants had come together and left the place together. In above view of the evidence on record, it is not possible for us to agree with the arguments advanced by the learned Advocates for the appellants that the appellants had not come together.

16. It has then been argued that so far as the earlier incident is concerned, the first incident took place about two months before the incident in question and the second incident appears to have taken place just two days before the occurrence in question. Here we have to consider that so far as the incident which took place about two months before the date of incident in question is concerned, the parties did not appear to have taken the said dispute very seriously. There appears to be no immediate complaint or FIR with respect to the said event. No further incident appears to have followed. This shows that the parties had not taken the said

dispute very seriously. In that view of the matter, the fact that the first appellant was not a party to the said dispute becomes immaterial.

17. So far as the second incident is concerned, it seems to have taken place just two days before the incident in question. It appears that the eye witnesses to the last incident may not be witnesses to the said event and, therefore, the witnesses have not been able to give any version about the said incident which might have taken place just two days before the incident in question. However, all the four eye witnesses have consistently referred that the first appellant started quarrelling with the deceased with specific reference to the said incident which appears to have taken place just two days before the incident in question. Since the witnesses were not the witnesses of the said incident, they could not describe the same but the way in which the incident has been put in the mouth of the first appellant with reference to the deceased, it appears that there was some serious dispute between the first appellant and the deceased just two days before the incident in question. This shows that the first appellant was positively involved and was positively concerned with the incident dated 28.8.1994. In that view of the matter, it cannot be said that the first appellant had no axe to grind against the deceased and he had no reason to cause injury to or cause murder of the deceased. Sometimes, it so happens that an incident may have taken place between the accused and the deceased only. There may not be any other person present at the time of happening of the said event. In that view of the matter, it would not be possible for the prosecution to bring any material on record with respect to the said incident. In the present case, the deceased had already died. Therefore, he could not give any description of that incident. On the other hand, the accused are entitled to keep mum with respect to their involvement in any particular event. Therefore, there may not be any possibility of any evidence to come up on record with respect thereto. However, the way in which the said incident has been described by all the four witnesses consistently and considering the fact that even at the stage of FIR, the said event has come on record, it has to be accepted that there was some serious dispute between the first appellant and the deceased and, therefore, it has to be accepted that the first appellant was not a stranger to the incident of 28.8.1994.

18. An attempt has also been made to argue that the first appellant belongs to village old Haripura whereas the other four appellants belong to a different village

situated at a distance of 4 k.m. from Old Haripura. It may be that before coming to village Old Haripura, the other four appellants may not have any direct contact with the first appellant. It may be that the appellants had no idea that the deceased would be coming to village Old Haripura on 28.8.1994. Nevertheless, it appears from the record that the five appellants knew about the arrival of the deceased at village Old Haripura, at least on his arrival there and, therefore, they gathered together at the place of Parshottambhai and stared quarrelling with the deceased and as soon as the quarrel and exchange of words started, it was immediately followed by hitting and beating. As said above, Parshottambhai has positively deposed before the trial court that all the appellants had come together at the spot in question. The said fact is supported by FIR which seems to have been filed without any loss of time. Simply because the witness said that one injury was given by one appellant and thereafter another injury was given by another appellant, it does not mean that there was no link between the five appellants. It is required to be considered that the eye witnesses have left the place of incident during the course of hitting and beating and, therefore, they might not be able to describe all the injuries sustained by the deceased. It is also required to be considered that when the five persons started hitting and beating, then also it may not be possible for the eye witnesses to give description as to each and every injury sustained by the deceased. It would also not be possible for them to describe as to which injury was attributable to whom.

19. It is required to be considered that the prosecution witnesses have been further supported by medical evidence. The prosecution has examined the Medical Officer in order to prove the injuries in question. So far as the injuries to the deceased are concerned, we can find the evidence of the Medical Officer supported by post mortem note. Here we can refer to the evidence of PW 6 at Exh.32, Dr.Vilasben Patel. If we go through the evidence of this witness, we find that she had noticed 22 injuries on the person of the deceased. Most of the injuries were sustained on the head of the deceased and there were multiple fractures of the bone of the head of the deceased. Out of them, we find that certain injuries were caused by sharp cutting instrument. So far as the first injury is concerned, it is shown to be an incised wound of 5 cm x 2 cm on the middle of the head and had resulted in fracture of the bone of the head. Second wound is of 8 cm x 2 cm again on the middle of the head. Then there are other incised

wounds on the head and other parts of the body of the deceased. There are also CLWs on the head and other parts of the body. This shows that in all there were 22 injuries on the person of the deceased and all the injuries were described in column 17 of the post mortem note which has been produced and proved at Exh.33. A common argument has been advanced by the learned Advocate for the appellants that each appellant may be treated to have caused only one injury to the deceased. At the best even if the evidence of the witness is accepted to be true, it is not possible to accept the said argument advanced by the learned Advocate for the appellants. The reason is that the witnesses did not continue to stand at the place of incident till the incident was over. It seems that they had run away as they have frightened as per their evidence. It is true that the witness has deposed that the deceased had fallen down. This does not mean that all the injuries were caused to the deceased and thereafter he had fallen down on the ground. So, on the one hand they appear to have run away from the place of the incident and on the other hand, they could not give description of all the injuries caused to the deceased. On the other hand, five persons had attacked the deceased with different weapons. It would not be possible for them to describe all those injuries sustained by the deceased. The trial court has found that all the injuries were caused by the appellants. For the said purpose, the trial court has relied upon evidence of Parshottambhai at Exh.30 and his wife Kashiben at Exh. 31. Looking to the nature of the evidence given by these two witnesses and looking to the fact that these two witnesses have been cross examined at length and yet their evidence has not been shaken to any extent and considering the fact that all the witnesses have stood the test of cross examination, we find that the trial court was justified in depending upon the evidence of these two witnesses.

20. It is required to be considered that so far as the first appellant is concerned, he and the two eye witnesses belong to the same village. However, there is nothing on record to show that these two witnesses i.e. Parshottambhai and his wife Kashiben had any axe to grind against the appellants, though they belong to the same village. So far as the remaining witnesses are concerned, they belong to a village situated at a distance of 4 kms from the place of incident. There appears to be no enmity between Parshottambhai, Kashiben and the appellants. On the other hand, these two witnesses have no reason to give false evidence against those five appellants. They also belong to labour class

and simply because Parshottambhai was a paid servant of the deceased, there was no reason for Parshottambhai to give a false version and falsely involving the five appellants in a serious case like murder.

21. So far as Parshottambhai is concerned, his name stands disclosed right from the FIR stage itself which has been filed without any loss of time. It seems that the informant first approached the relatives and thereafter he went to Ankleshwar to file FIR at the said police station at Ankleshwar. Here it has been argued by the learned Advocate for the appellants that the name of Kashiben has not been disclosed in the FIR and, therefore, Kashiben may not be treated to be an eye witness to the event in question. For this purpose, we can turn to the evidence of Kashiben. She has positively deposed before the trial court that she was inside the house and she had witnessed the entire incident from the house itself. This means that she might not have come out of the house in the beginning. In that event, the informant might not have noticed the presence of Kashiben at the time of the offence in question. After all, it appears that all the four eye witnesses were frightened since five persons had attacked the deceased with deadly weapons. Therefore, on the one hand on account of the said fear the informant might not have given full details of the presence of Kashiben in his FIR and on the other hand, he may not have noticed the presence of Kashiben since she was inside the house at the time when the offence was committed. In that view of the matter, non-disclosure of the name of Kashiben in the FIR by the informant cannot be viewed seriously. Therefore, it cannot be said that Kashiben was not an eye witness to the incident in question.

22. It is also required to be considered that the evidence of all the four eye witnesses has been amply supported by medical evidence. If the witnesses who are cited as eye witnesses were not really the eye witnesses, then in that event, they would not have been able to give the version as to with what weapon the injuries were caused. After all the witnesses appear to be rustic villagers. They would not be able to judge from the injuries as to with what weapon the injuries have been caused. Even then their evidence has been amply supported by medical evidence including evidence of Medical Officer and post mortem report. This clearly shows that they were genuine eye witnesses to the event in question. Even considering the fact that the incident had taken place at 1.30 p.m., the presence of Kashiben at her residence is quite natural.

23. The trial court has given detailed reasons for accepting the evidence of Parshottambhai and his wife Kashiben. The trial court has also found that so far as the informant is concerned, he had not taken part in the incident in question and instead, he had run away from the spot without making any effort to protect his brother. Any way, even if we take it that the two witnesses were not genuine eye witnesses, then also the evidence of Parshottambhai and Kashiben is quite sufficient in order to hold that all the five appellants had joined hands in forming a common object of killing the deceased. It is true that the prosecution has to establish that there was a common object of a particular nature or a common object can be inferred from the evidence or from the surrounding circumstances. In the present case we find that all the five appellants have gathered together. They had come together on the spot. They have left the spot together and all of them were armed with deadly weapons. They all have used their weapons for causing serious injuries on the person of the deceased. The injuries have been caused on vital parts of the body and the Medical officer has clearly stated that those injuries were sufficient in ordinary nature to cause the death of the deceased. There were multiple fractures on the head of the deceased. The weapons used are tabbal, sword and knives. Even the injuries caused on the abdomen were also so serious that those injuries caused fracture and grievous hurts. Some injuries were on the head and some on the abdomen. The Medical Officer has recorded opinion that the death of the deceased was caused on account of the multiple grievous hurts and on account of shock which resulted out of haemorrhage. All the injuries were reported anti-mortem. They were sufficient in the ordinary course of nature to cause the death of the deceased. This shows that the appellant had really a common object to cause the death of the deceased. The injuries which were caused on the person of the deceased were intended to be caused by the appellants and the injuries which were intended to be caused were actually caused on the person of the deceased. The injuries were sufficient in the ordinary course of nature to cause the death of the deceased and when they were inflicted on the vital part of the body like head, chest and abdomen and when they were caused with deadly weapons, the trial court was justified in holding that there was a common object of all the five appellants to cause the murder of the deceased. The death has taken place on the spot itself. These are the factors which prove the common object for causing murder of the deceased. It is therefore, clear that all the

appellants formed unlawful assembly having common object to cause murder of the deceased.

24. It is required to be considered that the prosecution will not be required to show that on account of one particular enmity the five accused committed the offence in question The first appellant may have a different cause and the remaining appellants may have a different cause. But the unlawful assembly could be formulated and the common object can also be formed even on the spot itself. It may not be necessary that the five appellants should have met together before commission of offence and they should have come together and thereafter they should should have started hitting and beating together and thereafter they should run away together. Even after commencement of the incident, common object can be formulated and unlawful assembly can also be formulated on the spot itself. Therefore, in the present case, it cannot be said that there is no evidence on record that there was any previous meeting of mind before commencement of the incident in question.

25. In support of their case, learned Advocates for the appellants have relied upon a decision in the case of Bhudeo Mandal v. state of Bihar, reported in AIR 1981 SC 1219. There it has been observed that the court should record clear finding as to common object of assembly and it is a pre condition for convicting the accused persons under sections 141 and 149 read with section 326 of IPC. If we go through the fact of the said case, it can be said that there is no overt act attributed to any of the appellants on the deceased and the mere fact was that the appellants were armed with lathis and the Hon'ble Supreme Court observed that this would not prove that they shared the common object to inflict grievous hurts on the deceased. Another case cited by the learned Advocates for the appellants is the case of Jagpati v. State of M.P., reported in AIR 1993 SC 1360. In para 2 of the said judgment it has been observed that there was a scuffle and a sudden quarrel that preceded the occurrence. It has also been observed there that because of the trivial incident, the subsequent occurrence appears to have taken place. In para 3 of the judgment it has been observed that two weapons used were blunt weapons and one was a ringed stick and another was an ordinary stick. The first Doctor has opined that external injury No.2 and 3 could have been resulted in the fracture. One is attributed to Jagpati and another is attributed to Ramkrishna. The evidence disclosed that Ramkrishna had no immediate motive and even the appellant Jagpati also because of the trivial quarrel that took

place went and beat the deceased.

26. The deceased died on the next day in the said case. Hon'ble the Supreme Court also observed that it was not a case under section 302 read with section 34 of IPC but a case of section 304 Part II IPC read with section 34 of IPC. So the said case was decided on the fact and evidence of the said case itself. In the present case we find that there is a positive evidence on record that all the five appellants had come together and left together. As discussed above all the appellants were armed with deadly weapons and they have actually used the said weapons for beating and hitting. The injuries were caused by deadly weapons on the vital part of the deceased. This shows that the common object of the five appellants was to kill the deceased. The trial court has discussed the evidence at length and has come to the finding that all the appellants had formed unlawful assembly having a common object of killing the deceased. The trial court has not accepted the version of at least two eye witnesses by taking a lenient view in favour of the defence. However, the other two witnesses Parshottambhai and Kashiben are witnesses of truth and they have stood the test of cross examination and their evidence has not been shaken to any extent and, therefore, the trial court was justified in relying upon the evidence of the said two witnesses. On going through the evidence of the said two witnesses, the evidence inspired confidence and there is no reason to discard the evidence given by the said two witnesses. So far as the remaining witnesses are concerned, they are more or less related to the panchnama and other witnesses are related to the investigation in question. There is sufficient material for the purpose of proving the fact as to the role of each appellants during the course of the incident in question. These are the four witnesses whose evidence has been properly appreciated by the trial court. We find no error in appreciation of the evidence of the witnesses and when the appreciation is proper, it is not necessary to give detailed reason for accepting the reasoning and findings of the trial court. We, therefore, confirm the findings of the trial court and hold that the trial court was justified in holding that amongst the appellants, there was common object for committing the murder of the deceased and when there is common object amongst the appellants in forming unlawful assembly and once it is proved that there is unlawful assembly formed by the appellants, then it would not be necessary for the prosecution to prove individual liability and individual act on the part of each and every appellant. Even then the prosecution has given

full version of the role played by each and every appellant, we feel that the trial court was justified in convicting all the appellants for the offence under section 302 read with sections 143, 147, 148 and 149 as well as for offence under section 324 of IPC. We find no reason to interfere with the judgment and conviction order of the trial court and consequently we find no merit the appeal and it deserves to be dismissed.

27. For the foregoing reasons, the present appeal is ordered to be dismissed. The judgment and conviction order passed by the trial court are confirmed.

29.5.2003 [K R Vyas, J.]

[D P Buch, J.]
msp