IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 117 of 2007
With
CRIMINAL APPEAL No. 2274 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SADDIK @ LALO GULAM HUSSEIN SHAIKH - Appellant
Versus
THE STATE OF GUJARAT & 1 - Opponents

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Appearance in Criminal Appeal No.117 of 2007 :
MR BC DAVE WITH MR KUNAL B DAVE for the Appellants.
MR AJ DESAI, APP for the Opponent.
Appearance in Criminal Appeal No.2274 of 2006 :
MR VIJAY PATEL WITH MRS. C.M.SHAH FOR M/S.H.L. PATEL ADVOCATES for the Appellant.
MR AJ DESAI, APP for the Opponent.

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE DN PATEL

Date : 24/10/2008

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE DN PATEL)

1. The aforesaid two Appeals have been preferred by the accused persons against the judgement and order of conviction and sentence dated 16th November,2006, passed by learned Additional Sessions Judge,Surat, whereby the present appellants have been convicted mainly for an offence punishable under Section 302 of the Indian Penal Code read with Sections 143, 147, 148, 323 of the Indian Penal Code, for life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo further simple imprisonment of six months, and they were acquitted for the offence punishable under Section 504 of the Indian Penal Code and for the offence under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act,1989 Criminal Appeal No.2274 of 2006 has been preferred by accused No.5 whereas Criminal Appeal No.117 of 2007 has been preferred by accused Nos.1 to 4.

2. If the facts of the prosecution are unfolded, they are summarised in short, as under.

3. An Offence of murder of Rajubhai Ramubhai Vasava has taken place on 4th March,2005 at Village: Amboli, District: Surat at about 20-21 hours. A complainant i.e. Rajubhai Jesingbhai Vasava along with P.W.Nos.2 and 3 and

with his other friends had gone to Village: Amboli on 4th March,2005 at about 8.00 p.m. for eating biriyani. They ordered four plates of biriyani, but, accused No.1 gave only three plates of biriyani and insisted money for four plates of biriyani. This is how the complainant and witnesses had exchange of hot altercation with accused No.1 i.e. Saddikbhai @ Lallo Gulam Hussein Shaikh. Thereafter, they had to pay money for four plates of biriyani. Accused No.1 was abusing complainant and the prosecution witnesses and had also shown a knife. P.W.No.3 intervened and they separated complainant, other prosecution witnesses and accused No.1. Thereafter, when complainant and prosecution witnesses were travelling to Village: Kholwad on two motorcycles, they met uncle of the complainant i.e. Kishorbhai Kantibhai Dholia (P.W.No.5) and the whole incident had been narrated before P.W.No.5, who assured that he knew accused No.1 and he will settle their dispute. Thereafter, P.W.No.5 had gone to take petrol in his motor cycle. Complainant and other prosecution witnesses waited for P.W.No.5 to come back, at Bus-stand of village: Kholwad. At that time, accused persons came in two separate rickshaws. Accused Nos.1, 2 and 3 had knives, whereas, other accused persons had sticks in their hands. It is stated by P.W.No.1 in FIR that these accused persons started beating. Accused Nos.1, 2 and 3 caused knife injuries to Rajubhai Ramubhai Vasava and other accused persons

started beating with sticks to complainant and other prosecution eye-witnesses. Thereafter, complainant i.e. P.W.No.1, P.W.No.2 and P.W.No.3 had run away to save themselves. They had gone to the house of P.W.No.1 and talked to his father Jesingbhai Chhaganbhai Vasava (P.W.No.14) about the whole incident. This Jesingbhai Vasava (P.W.No.14) took a car of one Shri Aminbhai and came at the place of scene of offence. There, he saw that Rajubhai's condition was critical, therefore, he was taken to Dinbandhu Hospital. As his condition was deteriorating and critical, he was shifted to Mahavir Hospital, where, he expired. All the accused persons were named in the FIR and in the depositions of eye-witnesses, who are P.W.Nos.1,2 and 3 they have clearly narrated the role played by the accused persons. Weapons have also been narrated. P.W.No.1 injured eye-witness, was examined by Dr.Mukundkumar (P.W.No.12). P.W.No.1 was sent to Dr.Mukundbhai (P.W.No.12) with police yadi and injury certificate is at Exh-63. Incident had taken place on 4th March,2005 at about 20-21 hours. FIR was filed on the same date i.e. on 4th March,2005 at 23-55 hours before Kamrej Police Station, which was registered as C.R.No.I-30 of 2005. Postmortem of the deceased Rajubhai Vasava was performed by Dr.Pranav Vinodchandra Prajapati (P.W.No.15). Looking to the postmortem note at Exh-67, there were injuries on chest, stomach and intestine by knives. Knives and sticks were also recovered during the

course of investigation. Upon completion of investigation, charge-sheet was filed and Special Atrocity Case No.6 of 2005 was registered against the appellants-accused and upon recording evidence of the prosecution witnesses, accused have been convicted mainly for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code for life imprisonment and to pay a fine of Rs.1,000/-, in case of default, further simple imprisonment of six months. Against this order of conviction passed by the Trial Court, accused No.5 has preferred Criminal Appeal No.2274 of 2006 and Criminal Appeal No.117 of 2007 has been preferred by original accused Nos.1 to 4, 6 and 7.

4. We have heard learned counsel appearing for the appellants, who has mainly submitted that there are number of omissions and contradictions in the depositions of the prosecution witnesses, which have not been appreciated by the Trial Court and, hence, the order of conviction passed by the Trial Court deserves to be quashed and set aside. Learned counsel for the appellants further submitted that so called eye-witnesses have given evidences. In fact, P.W.Nos.1, 2 and 3 are not eye-witnesses of the incident and they are not reliable and trustworthy witnesses. It has been submitted by learned counsel for the appellants that the manner, in which, the whole incident has been narrated by the so called eye-

witnesses is practically impossible. Except accused No.1, no other accused persons were present at the time of first incident i.e. at the place of lari of Saddikbhai (accused No.1), where the complainant and other prosecution witnesses had gone for dinner. They were not sharing any common object and, therefore, conviction and awarded by the Trial Court under Section 302 read with Section 149 of the Indian Penal Code deserves to be quashed and set aside.

5. Learned counsel for the appellant (accused No.5) submitted that weapon was not discovered or recovered from the possession of appellant of Criminal Appeal No.2274 of 2006 (appeal preferred by accused No.5). It is also submitted that there is no evidence to the effect that except accused No.1, anybody has beaten the deceased. The whole incident had taken place suddenly and because of hot altercations. This aspect of the matter has not been properly appreciated by the Trial Court and, therefore, conviction awarded mainly under Section 302 read with Section 149 of the Indian Penal Code, deserves to be quashed and set aside.

6. Learned Additional Public Prosecutor appearing for the opponents submitted that the whole case is proved by prosecution witnesses beyond reasonable doubt. After the incident had taken place on 4th March,2005, at about 20-21 hours, FIR has been registered immediately on 4th

March,2005 at 23-55 hours (Exh-23). P.W.No.1 is injured eye-witness, whose injury certificate is at Exh-63, examined with police yadi by the Doctor- P.W.No.12. This witness is a witness of first incident i.e. near lari of accused No.1, where complainant and other prosecution witnesses had gone to eat biriyani. There was hot altercation with accused No.1. Accused No.1 had shown knife at this place and, thereafter, when complainant and other prosecution witnesses were returning to their houses, accused No.1 and other accused persons come in two rickshaws with weapons like knives and sticks at Village: Kholwad. They assaulted the deceased, P.W.No.1 and other witnesses by knives and sticks. Thus, second part of the whole incident had taken place near Bus stop of Village: Kholwad. First part of the incident is of hot altercation at lary of accused No.1. All accused persons came with weapons in their hands with a common object to cause injury to the deceased and other prosecution witnesses. As per postmortem note, there were sufficient injuries, in ordinary course of nature, to cause death of the deceased and, therefore, the case falls under Clause third of Section 300 of the Indian Penal Code and, therefore, they are rightly convicted for an offence punishable under Section 302 read with Section 149 of the Indian Penal Code. P.W.No.1 has also sustained injury by stick. There are other eye-witnesses like P.W.Nos.2 and 3 and supporting witnesses like P.W.Nos.13 and 14, who are

uncle of P.W.No.1 and father respectively, of the deceased, who went at the scene of offence immediately. Looking to the other evidence like Doctor and police witnesses, F.S.L. Report and Serologist's Report, offence has been proved beyond reasonable doubt. Knife was also recovered and human blood of “A” group was found out. In view of this clear evidence given by prosecution witnesses, Trial Court has correctly appreciated the evidence and convicted the accused and, therefore, appeals may not be entertained by this Court.

7. Having heard the learned counsel for both the sides and looking to the evidence on record, it appears that the offence had taken place on 4th March,2005 at about 20-21 hours, Near Bus-stand of Village: Kholwad. Prosecution Witness No.1 is Rajubhai Jesingbhai Vasava, who is examined at Exh-22, has narrated that on the date of incident, deceased Rajubhai Ramubhai Vasava and he himself and P.W.No.2 and P.W.No.3, all four persons had gone on two motorcycles at cross-road of Village: Amboli for eating biriyani. They had gone to the lari of accused No.1. They ordered for four plates of biriyani, but, accused no.1 gave only three plates of biriyani and demanded money for four plates of biriyani, therefore, hot altercation for payment of four plates of biriyani. The complainant was ready for payment of three plates of biriyani and accused No.1 insisted for payment of four

plates of biriyani. This is how hot altercation had taken place at the lari of accused No.1. There was shouting and accused No.1 had also shown knife to the deceased and other prosecution witnesses. P.W.No.3 intervened and settled the whole dispute. They made payment of four plates of biriyani and returned to Village: Kholwad. While returning, they met uncle of P.W.No.1 i.e. Kishorbhai Chhaganbhai Vasava. They had narrated the whole incident, which had taken place at lari of accused No.1. Thus, Kishorbhai Chhaganbhai Vasava was knew accused No.1 and, therefore, he assured P.W.Nos.1,2 and 3 that he will settle their dispute with accused No.1 Saddikbhai. This Kishorbhai Vasava (P.W.No.13) told them that after taking petrol in his motorcycle, he was returning and, therefore, they were waiting for Kishorbhai. Kishorbhai had gone to take petrol, the deceased, P.W.Nos.1, 2 and 3 were waiting for this P.W.No.13- Kishorbhai Chhaganbhai Vasava (uncle of P.W.No.1). Meanwhile, two rickshaws came there. Saddikbhai - accused No.1 and other accused persons alighted from two rickshaws with knives and sticks and immediately assaulted the deceased. It is stated by P.W.No.1, who is injured eye-witness that accused Nos.1, 2 and 3 were having knives in their hands and caused injuries to Rajubhai Ramubhai Vasava. P.W.No.1 tried to intervene to save Rajubhai Vasava, but, other accused also beat P.W.No.1 by sticks. The whole incident had

taken place hurriedly and P.W.Nos.1,2 and 3 had run away from this place and gone at the house of P.W.No.1, where they met father of P.W.No.1 namely Jesingbhai Chhaganbhai Vasava (P.W.No.14). They informed him that the accused have caused injuries to Rajubhai Ramubhai Vasava. Immediately Jesingbhai Chhaganbhai Vasava had gone near Bus-stand of Village: Kholwad, in car of one Shri Aminbhai. Rajubhai was lying there. He was taken to Dinbandhu Hospital and as his condition was critical, he was shifted to Mahavir Hospital and, thereafter, Rajubhai Ramubhai had expired. This P.W.No.1 has filed F.I.R. on 4th March,2005 at Kamrej Police Station, which was registered as C.R.No.I-30 of 2005. F.I.R. is proved by this witness, which is at Exh-23. Accused persons were known to this witness as they were belonged to nearby village. Accused were also identified by this witness, who were present in the Court. Accused persons were also named in the FIR, which was filed immediately after the incident. Looking to the cross-examination, nothing is coming out in favour of the appellants. On the contrary, looking to Para-5 of the deposition of this witness, he has informed that three accused caused injuries by knives and other accused have caused injuries by sticks. Nothing is taken away or shaken in cross-examination in favour of the accused. From what he has stated in examination-in-chief, looking to the evidence of this witness and other evidence, having enough corroboration to the version of

P.W.No.1. He is a trustworthy witness, who was also present at the scene of offence and he has also sustained injury, as per deposition of P.W.No.12 i.e. Doctor with police yadi, injury certificate is at Exh-63. Looking to the injury certificate of P.W.No.1, these injuries are possible by sticks. This P.W.No.1 was injured eye-witness, who has clearly narrated the fact that initially there was hot altercation with accused No.1 and, thereafter, all the accused came in two rickshaws with weapons. They assaulted the deceased, P.W.Nos.1, 2 and 3, whereby, Rajubhai Ramubhai Vasava sustained injuries by knives and P.W.No.1 sustained injuries by sticks. Thus, accused No.1 called other accused with weapons in two separate rickshaws. Thus, presence of all the accused was found at the scene of offence with weapons and there were also participation and they were sharing common object and caused injuries to the deceased, P.W.Nos.1, 2 and 3.

8. P.W.No.2, Rakeshkumar Manharbhai Tailor, who is examined at Exh-32 is also eye-witness of the incident. He has narrated the whole incident like P.W.No.1. He had also accompanied the deceased, P.W.Nos.1 and 3, when they had gone for eating biriyani at the lari of accused No.1 on 4th March,2005. He has also narrated the first incident of hot altercation, which has taken place at lari of accused No.1. He has also stated that thereafter, when

they were returning to their Village, all accused came in two rickshaws. Three accused persons alighted from rickshaws with knives and other accused persons were having sticks in their hands. They assaulted prosecution witnesses and Rajubhai Ramubhai Vasava, who sustained knives injuries at chest and stomach and succumbed to injuries, whereas P.W.No.1 was also injured by sticks. Thereafter, P.W.Nos.1, 2 and 3 ran away and met P.W.No.14 i.e. Jesingbhai Chhaganbhai, who is father of P.W.No.1, he came at the scene of offence in car of one Shri Aminbhai. Rajubhai Ramubhai Vasava was lying at Bus-stand of Village: Kholwad, who was taken at Dinbandhu Hospital and, thereafter, at Mahavir Hospital. Thereafter, Rajubhai Ramubhai Vasava had expired. Looking to the deposition of this witness, he has narrated the whole incident accurately. He has corroborated the evidence given by P.W.No.1. Looking to his cross-examination also, nothing is coming out in favour of the accused. There are no major omissions and contradictions in his deposition. This witness has gets corroboration with P.W.Nos. 3 and other evidence like Postmortem Note, recovery of weapons, etc. He is a trustworthy witness. He has seen the incident. Thus, as per this witness also, after initial hot altercation at lari of accused No.1, accused No.1 had called other accused, who came in rickshaws with weapons knives and sticks. This is indicative of the evidence that all accused were having common object of causing

injuries to the deceased and other prosecution witnesses. Looking to the injury to the deceased, as per Doctor's evidence, they were sufficient in ordinary course of nature, to cause death of the deceased and, therefore, this case falls under clause Third of Section 300 read with Section 149 of the Indian Penal Code.

9. Similar is evidence of P.W.No.3, who is Prajeshkumar Ishwarbhai Patel, examined at Exh-35, who is also eye-witness of the incident and had also accompanied the deceased, P.W.Nos.1 and 2 for eating biriyani at lari of accused No.1. He was also assaulted by all the accused, who came at nearby bus-stand of Village: Kholwad in two rickshaws, with knives and sticks and caused fatal injuries to Rajubhai on chest and stomach. P.W.No.1 has also sustained injuries by sticks, who was examined by P.W.No.12 and his injury certificate is at Exh-63. This witness was also present at the scene of offence. He is also corroborating other prosecution witnesses i.e. P.W.Nos. 1 and 2. He is a trustworthy witness. Looking to the deposition of these three witnesses, initially, there was hot altercation with accused No.1. Thereafter, accused No.1 called other accused persons, they came in rickshaws with knives and sticks and assaulted deceased, P.W.Nos.1, 2 and 3; caused fatal injuries to Rajubhai Ramubhai Vasava and had also caused injury to P.W.No.1. All were sharing common object and present at the scene

of offence and all the accused participated in causing injuries to deceased and P.W.No.1.

10. It is contented by learned counsel for the appellants that only accused No.1 has caused injuries to the deceased. Even if, the case of the prosecution is taken at its highest pitch, other accused have not caused any injury to the deceased and, they were not sharing common object and, therefore, they ought not to have been punished for the offence punishable under Section 300 read with Section 149 of the Indian Penal Code. This contention is not accepted by this Court mainly for the reason that looking to the evidence given by P.W.No.1 and other eye-witnesses i.e. P.W.Nos.2 and 3, it appears that initially, there was a hot altercation with accused No.1 at lari of accused No.1 for eating biriyani and for payment of biriyani. Accused No.1 called other accused, who came in rickshaws with weapons like knives and sticks. There is also recovery of more than one weapon. As stated by the witnesses, they all came together. They assaulted the deceased and other prosecution witnesses. Thus, they were sharing common object of causing injuries to the deceased and the prosecution witnesses. It has been held by Hon'ble Supreme Court **in the case of State of U.P. V/s. Virendra Prasad, reported in AIR 2004 SC 1517,** that intention to cause death is not an essential requirement of clause (2), but, intention of causing the

bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause of Section 300. It has also been held in this judgement that as per Clause Third of Section 300 of the Indian Penal Code, if the injury is sufficient, in ordinary course of nature to cause death and if the accused are having common object to cause only injury, then also, it will fall under Section 300 of Indian Penal Code. Thus, intention to cause death is nothing, but, as per clause third of Section 300 of the Indian Penal Code, if the accused were having common object of causing only bodily injury, which were found sufficient in ordinary course of nature, to cause death, such killing will fall within the ambit of this clause third of Section 300 of Indian Penal Code. It has been held by **Hon'ble Supreme Court in the case of State of U.P. V/s. Virendra Prasad, reported in AIR 2004 SC 1517,** especially para nos.7, 8, 9, 13 and 14, read as under:

> *"**7.** The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences :*

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done-	*Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done?*
	INTENTION
(a) with the intention of causing death; or *(b) with the intention of causing such bodily injury as is likely to cause death; or*	*(1) with the intention of causing death; or* *(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or* *(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or*
	KNOWLEDGE
(c) with the knowledge that the act is likely to cause death.	*(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death,and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.*

8. *Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in*

normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

9. *Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a first-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury..... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.*

13. *The learned Judge explained the third ingredient in the following words (at page 468) :*

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

14. *These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300, IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted."*

(Emphasis supplied)

Looking to the deposition of supporting witness, who is P.W.No.13 - Kishorbhai Chhaganbhai Vasava, who is examined at Exh-65, is the uncle of P.W.No.1 and looking to the deposition of P.W.No.14 – Jesingbhai Chhaganbhai Vasava, who is examined at Exh-66, who is father of

P.W.No.1, it appears that they have corroborated what is stated by injured eye-witness i.e. P.W.No.1 and evidence given by other eye-witnesses i.e. P.W.Nos.2 and 3. Kishorbhai, a supporting witness has stated in his deposition that the deceased, P.W.Nos.1, 2 and 3 met him and narrated the hot altercation which took place at lari of accused No.1 because of insistence of accused no.1 for payment of four plates of biriyani. He assured the deceased, P.W.Nos.1,2 and 3 that as he knew accused No.1, he will settle the dispute with accused No.1, but, he has to go to petrol pump to take petrol and when he came back from petrol pump, he saw a crowd of several persons and he saw Rajubhai Ramubhai lying on the side of the Road. He saw that P.W.No.14 was taking him to Dinbandhu Hospital. P.W.No.13 also accompanied him to Dinbandhu Hospital. He has also stated that he asked Rajubhai, as to who caused injuries to him and the deceased Rajubhai told him that Saddikbhai, his brothers and friends caused injuries. Thereafter, Rajubhai Vasava was taken to Mahavir Hospital, Surat, where, he expired.

11. Looking to the deposition of P.W.No.14, he has also narrated that he got information about the injuries caused to Rajubhai Vasava and P.W.No.1. He immediately rushed to the scene of offence, from where, he had gone to Dinbandhu Hospital and from Dinbandhu Hospital to Mahavir Hospital. Thus, these two witnesses are

supporting witnesses. Though they are not eye-witnesses, they have supported the prosecution witnesses to a material extent.

12. Looking to the deposition of P.W.No.12 Dr.Mukundkumar, who is examined at Exh-61, it is proved that he has examined P.W.No.1. P.W.no.1 was brought to him with police yadi at Exh-62. This witness examined P.W.No.1, who sustained two injuries, which were possible by sticks. Injury Certificate given by this Doctor is at Exh-63. Looking to the cross-examination of this witness, he has also stated that injuries were fresh and can be caused by sticks. Thus, this witness has provided enough corroboration to the deposition given by injured eye-witness i.e. P.W.No.1 and other eye-witnesses P.W.Nos.2 and 3. There was assault by knives and sticks, as per injured eye-witness and other prosecution witnesses.

13. Dr.Pranav Vinodchandra Prajapati – P.W.No.15, is examined at Exh-63. This witness had performed postmortem of the deceased. Postmortem note is at Exh-67. It has been stated by this witness that when he was performing his duty at Forensic Laboratory, dead body of Rajubhai Ramubhai Vasava was brought with police yadi for postmortem, which is at Exh-64. He performed postmortem of the deceased and he had observed several injuries upon

the deceased. Injuries were stab injuries on the chest, stomach and at intestine Internal injuries were corresponding to external injuries. Heart was also penetrated and similarly intestine was also penetrated. It has been stated by this Doctor that injury was sufficient in ordinary course of nature to cause death. They were anti mortem. Thus, looking to postmortem note at Exh-67 and looking to the deposition of P.W.No.15 at Exh-63 given by Dr.Pranav Prajapati, it provides enough corroborations to the deposition of the injured eye-witness P.W.No.1 and deposition of other eye-witnesses i.e. P.W.Nos.2 and 3.

14. Looking to the deposition given by police witness Shri Surendrasingh Gambhirsingh - P.W.No.17, who is examined at Exh-72, who is Dy.S.P., CID Crime, Gandhinagar, who has drawn scene of offence panchnama, Inquest panchnama, arrest panchnama, etc. with the help of another police witnesses P.W.No.16 - Chandubhai Titabhai, who has recorded FIR. They have proved the panchnama of discovery of weapons, scene of offence panchnama, Inquest panchnama, etc. F.S.L. Report at Exh-76 and Serologist Report at Exh-78. On knife, there was human blood of group “A”.

15. Looking to the deposition of the prosecution witnesses, offence of murder of Rajubhai Ramubhai Vasava

has been proved beyond reasonable doubt against the accused. As stated herein above, initially there was hot altercation with accused No.1. Thereafter, accused No.1 called his brothers and other friends with knives and sticks. They assaulted the deceased, P.W.Nos.1, 2 and 3 with knives and sticks. Rajubhai Ramubhai expired having three stab injuries, as per postmortem note (Exh-67) and as per deposition given by P.W.No.15 Dr.Pranav Prajapati. Looking to the evidence, it appears that P.W.No.1 is an injured eye-witness, who is examined by P.W.No.12 Dr.Mukundkumar. Injury Certificate also reveals the fact that there were two injuries, which could be caused by sticks. There is also recovery of weapon. Knife was found human blood sustained of blood group “A”. This is indicative of the fact that knives and sticks both were used. All accused came together, especially after first part of incident of hot altercation with accused No.1. Thus, all accused were having common object of causing injuries to the deceased, P.W.Nos.1,2 and 3. As stated herein above, with the help of deposition of P.W.No.15, injuries caused upon Rajubhai were stab injuries on chest and stomach, is sufficient in ordinary course of nature, to cause death of the deceased. Thus, looking to the evidence on record, no error has been committed by the Trial Court in convicting the accused for an offence punishable under Section 302 read with Section 149 of the Indian Penal Code as well as Section 143, 147, 323 read

with Section 149 of the Indian Penal Code.

16. It is vehemently contended by learned counsel for the appellants that accused Nos.2 to 7 were not sharing common object, which is described under Section 141 of the Indian Penal Code and they ought not to have been punished for an offence punishable under Sections 143 and 147, 302 read with Section 149 of the Indian Penal Code. This contention is not accepted by this Court mainly for the reasons that :

(a) Looking to the evidence, it appears that initially there was hot altercation between the deceased and P.W.Nos.1, 2 and 3 with accused No.1 at lari of accused No.1 for payment of four plates of biriyani. Accused No.1 pointed a knife to to the deceased.

(b) Accused No.1 thereafter had gone and called his brothers and friends.

(C) They all came in two rickshaws with knives and sticks.

(d) Thus, all the accused were going for a particular purpose, they were going with knives and sticks, their object was common.

(e) the common object is also revealed by their assault. No sooner did, they saw the deceased, P.W.Nos.1, 2 and 3, they alighted from the rickshaws, assaulted them with knives and sticks.

(f) Rajubhai Vasava sustained three stab injuries, as per medical evidence and postmortem note, which corroborate the evidence given by injured eye-witness P.W.No.1 and evidence given by other eye-witnesses P.W.no.2 and 3.

(g) P.W.No.1 has also sustained two injuries by sticks, who is examined by Doctor i.e. P.W.No.12, who has stated that P.W.No.1 was brought with police yadi (Exh-62), who has examined P.W.No.1 and issued Injury Certificate at Exh-63. Looking to his deposition and cross-examination, injuries by sticks were fresh. Thus, both knives as well as sticks were used.

17. As a cumulative effect of this evidence, accused were sharing common object to cause injuries to the deceased and other prosecution witnesses and looking to evidence given by P.W.No.15 (Exh-63), who has performed postmortem of the deceased (postmortem note at Exh-67), there were three stab injuries on the chest, stomach and intestine which were sufficient in ordinary course of nature, to cause death of the deceased. Thus, Trial Court

has rightly convicted the accused for an offence punishable under Section 143 and 147 of the Indian Penal Code as well as for the offence punishable under Section 302 read with 149 of the Indian Penal Code. It has been held by Hon'ble Supreme Court in the case of **Rachamreddi Chenna Reddy and others V/s. State of A.P. reported in 1999(3) SCC 97**, especially in para-7, as under:

> *"Coming to the second submission of the learned counsel for the appellants we also do not find any substance in the matter particularly when the sequence of events narrated by the three eyewitnesses is taken into account. The question whether the group of persons can be made liable for having caused murder of one or two persons by virtue of Section 149 IPC depends upon the facts and circumstances under which the murder took place. Whether the members of an unlawful assembly really had the common object to cause the murder of the deceased has to be decided on the basis of the nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the settings and surroundings under which the occurrence took place."*
>
> *(Emphasis supplied)*

Thus, in the facts of the present case also, all the accused, after deliberation with accused No.1, after hot altercation with the deceased, P.W.Nos.1,2 and 3, they all came in two rickshaws with knives and sticks. This reveals the common object. Thereafter, weapons were also used as stated herein above. Knife has been used to cause injury to the injured eye-witness. It has been held by Hon'ble Supreme Court in the case of **Yunis alias Kariya V/s. State of Madhya Pradesh reported in 2003**

CRI.L.J. 817, especially in para-9, as under:

> *"9. The learned counsel appearing for the appellant – Liyaquat argued that no overt act is imputed to his client and he was being implicated only on the basis of Section 149, IPC. This argument, in our view, has no merit. Even if no overt act is imputed to a particular person, when the charge is under Section 149, IPC, the presence of the accused as part of unlawful assembly is sufficient for conviction. The fact that Liyaquat was a member of the unlawful assembly is sufficient to hold him guilty. The presence of Liyaquat has not been disputed."*
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> *(Emphasis supplied)*

Thus, even if no overt act is imputed to a particular person when the charge is punishable under Section 149 of the Indian Penal Code, and even the presence of the accused as part of unlawful assembly is established, it is sufficient for conviction.

18. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the Trial Court, in appreciating the evidence and convicting the accused persons, for an offence punishable under Section 143, 147, 148 and 323 read with Section 149 of the Indian Penal Code and for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. There is no perversity in the order passed by the Trial Court. Thus, the judgement and order of conviction and sentence passed

by the Trial Court is hereby upheld. There is no substance in these two Criminal Appeals. Hence, the same are hereby dismissed.

(R.P.DHOLAKIA,J)

(D.N.PATEL,J)

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