

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 237 of 2012****With**
CRIMINAL APPEAL NO. 506 of 2012**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

- 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 ?

TEJAJI BABUJI THAKOR & 1....Appellant(s)**Versus****STATE OF GUJARAT....Opponent(s)/Respondent(s)****Appearance:**

LOPA M BHATT, ADVOCATE for the Appellant(s) No. 2

MR.YOGENDRA THAKORE, ADVOCATE for the Appellant(s) No. 1

MS HANSA PUNANI, APP for the Opponent(s)/Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA**Date : 30/09/2013**

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Both appeals arise out of a judgement dated 13.02.2012 rendered by learned Additional Sessions Judge, Mehsana in Sessions Case No. 38 of 2011.
2. Briefly stated the prosecution version was as follows:

Injured Shailesh Shivrambhai Chaudhri was engaged in the business of xeroxing and mobile phones. He had a shop at Unava. Bhavesh Hirabhai Chaudhri was his employee. On 26.11.2010, both of them went to Unjha for collecting payments. They, thereafter, returned to Unava. Soon Shailesh received a call to go back to Unjha for recovery. He instructed Bhavesh to wait for him at the bus stop. Bhavesh received a phone call later from Shailesh informing him that near Reliance Petrol Pump on Unjha highway, he was beaten up by Thakor Mangaji and Thakor Tejaji. He rushed to the spot in an auto rickshaw and found Shailesh there. Shailesh was first shifted to a hospital at Unjha. After brief treatment, he was sent to the referral hospital at Mehsana. He had received multiple injuries. He lost one eye. He was admitted as indoor patient and was discharged on 09.12.2010. Bhavesh lodged a complaint before the police. Both the accused were charged for offences punishable under Sections 307, 326 read with Section 114 of IPC.

3. Learned Additional Sessions Judge, in the impugned judgement, convicted the accused and sentenced them to rigorous imprisonment of five years for the offence under Section 326 read with Section 114 of IPC and five

years for offence under Section 307 read with Section 114 of IPC. Substantive sentences were ordered to run concurrently. The learned Judge also imposed fine of Rs. 10,000/- each for both the offences and provided for default sentence of three months in each case.

4. The original accused have filed Criminal Appeal No. 237 of 2012 challenging the conviction and sentences. The State, believing that the sentences were inadequate, has filed Criminal Appeal No. 506 of 2012 seeking enhancement of the sentence.
5. The evidence is brief. We may refer to the gist of such evidence.
6. P.W. 3, Bhaveshkumar Hirabhai Chaudhry, Exh.13, the first informant deposed that on 26.11.2010, when he was working in the shop of Shailesh (the injured), both of them had gone to Unjha for collecting money from the customer. After the recovery, they returned to Unava. They reached Unava bus stand and waited for an hour. When Shailesh received a phone, he instructed the witness to stay at the bus stop and, he himself went back to Unjha. When Bhavesh was so waiting, he received a call from Shailesh at about 8.30 informing him that he was beaten up by accused Mangaji and Tejaji in a field near the Reliance Petrol Pump on Unjha highway. He thereupon took in an auto rickshaw. Near Reliance Petrol Pump, he found Shailesh covered with blood. He had injuries on the forehead from where he was bleeding. He called the ambulance and shifted him to Unjha Hospital, where the father of the injured also arrived. The injured

was then shifted to Mehsana Hospital for further treatment.

7. Shaileshbhai Sivrambhai Chaudhry, the injured, P.W. 4 was examined at Exh. 16. He deposed that, on the date of the incident in the evening, he and Bhavesh had gone to Unjha on their bike. After finishing the work, they returned to Unava. He had to recover Rs. 500/- from Mangaji. He met Mangaji at the over-bridge near Reliance Petrol Pump. Mangaji sat on the motor cycle and asked him to take the vehicle to the field, where they had heated exchange of words. Tejaji gave a stick blow on his back. Mangaji hit him with the stick on the head. He fell down from the motor cycle. With the blow on the head, he lost consciousness. When he regained the consciousness, he walked up to the road. He stopped a passerby and gave the number of Bhavesh and talked to him on the phone. He again lost consciousness and was shifted to civil hospital.

In the cross examination, he stated that even after he fell down, the accused went on giving stick blows. When he regained his consciousness, both the accused were still standing there and were giving blows. When he came to senses, he was not in a condition to run. He could barely walk. He reached the road crawling by slipping away from the accused. Because of crawling, he had got bruises on the various parts of the body.

8. Dr. Deepakkumar Vitthalbhai Parmar, P.W. 1, Exh 6 had first treated the injured at Unjha Hospital. In the injury

certificate, Exh 7, he had recorded the following injuries:

	Pt. conscious but drowsy T: N, P. 88/min BP: 108/70 min cri.mad PA 5007, Con: conscious but drowsy Lt.eye: closed Rt. Eye: open
LIE :1	CLW of about 9 cm x 0.7 cm x bone deep on the Rt m eyebrow in between two eyebrows. It eyebrow clotted blood present
2	CLW of about 3 cm x 0.5 cm x skin deep on the upper eyelid and Lt black eye unable to open diffuse swelling tenders
3	CLW of about 2 scmx0.5 cmx bone deep on the Lt below left eye. Clotted blood present and DTS on L.
4	CLW of about 7.5 cm x 0.5 cm x bone deep on occipital region oblique clotted blood present.
5	Contusion on the Lt black of abdomen region. Lo part 8.5 cm x 2 cm Red
	Pt was transferred to Civil Hospital, Mehsana further treatment and management surgeon FRM eye surgeon.

In his opinion, such injury could be caused by hard blunt substance. In his opinion, first and second injuries were serious.

9. Dr. Maheshbhai Babubhai Trivedi, P.W 2, Exh 8 had treated the patient at Mehsana Hospital. He found that the patient was drowsy. His left eye ball had ruptured. The blood had clotted. He had advised to remove the eye. He was transferred to another hospital for such purpose, after which, he was shifted back to the hospital. He was discharged on 09.12.2010. The doctor produced the injury certificate and other medical papers at Exhs. 9, 10 and 11.

10. The sticks allegedly used in the commission of offence were discovered under panchnama Exhs. 24 and 26. These discoveries were made at the instance of the respective accused. The panch-witness, Sureshbhai Devjibhai Chaudhry, P.W. 7, Exh 22 supported the prosecution. The witness as well as the panch-witness narrated the manner, in which, the accused had led the panch witness and the police party to the discovery of such articles which were hidden in the field.
11. Tribhovandas Karsanbhai Patel, P.W. 10, Exh 35, the investigating officer gave the detailed account of the steps taken by him during the course of the investigation.
12. This, in the nutshell, is the evidence on record. From such evidence, it can clearly be seen that the involvement of the accused in causing injuries to Shailesh is clearly established. The eyewitness account of Shailesh, P.W.4, the injured himself is unshakable. He owned a mobile shop in Unava. As per his deposition, he had gone to Unjha along with his employee Bhavesh on the date of the incident for recoveries. After finishing the work, they returned to Unava. He got a call from Unjha. He instructed Bhavesh to stay put at the bus stop. He himself went to Unjha again. He met the accused Mangaji near the over bridge. Mangaji sat on his motor cycle and took him to the field, where after a brief quarrel, both the accused Mangaji and Tejaji gave stick blows to the witness.

13. The testimony is corroborated by the evidence of first informant Bhavesh, P.W. 3. He also deposed that on the date of the incident, he and Shailesh had gone to Unjha for recoveries and returned after finishing the task. At the bus stop, Shailesh received a call. He, therefore, went back to Unjha instructing Bhavesh to stay there. At about 8.30, he got a call from Shailesh informing him that he was beaten up by the two accused and he was lying near the Reliance Petrol Pump. He needed help. Bhavesh, thereupon, rushed to the spot. In an ambulance, he shifted the injured to a hospital at Unjha and after brief treatment, then to the hospital at Mehsana.

14. Both the doctors at the said hospitals gave description of the injuries. Deepakkumar Parmar, P.W. 1, Doctor at Unjha and Maheshbhai Babubhai, P.W. 2, Doctor at Mehsana described injuries, which matched with the description given by the injured. Such injuries could be caused by hard blunt substance like a stick. Both the doctors had found the patient conscious but drowsy. The sticks, used in the commission of the offence, were discovered at the instance of the accused.

15. Under the circumstances, we have no hesitation in confirming the view of the trial court that the accused gave repeated stick blows to the injured on his forehead, eyes and in the back causing serious injuries. Their involvement was, thus, writ large on the face of the record.

16. Coming to the question of sentence, we find that the learned Judge committed an error in convicting the

accused for offences under Sections 326 and 307 of IPC. The injured had, in the cross examination, deposed that for a brief while he lost consciousness and when he regained the consciousness, the accused were still standing there continuing to give him blows. He was unable to run but escaped by giving them a slip. He crawled to the main road. In our opinion, there is exaggeration on the part of this witness. If he was unable to even walk properly, and if the accused were still standing there with the intention of causing further serious injuries, when he regained the consciousness, there was no way, he could have given them a slip. His assertion that, he crawled to the main road by giving a slip to the accused simply cannot be accepted. This is significant when we try to ascertain under which provision the accused should be convicted.

17. The incident, thus, happened at an isolated place, where the injured had no other help. In fact, he had to crawl a fair distance to come to the main road before he could make a call to the complainant asking him to come and help him. Therefore, if the accused had any desire of killing the injured, there was nothing stopping them from finishing the task. After causing serious injuries to the witness, they could have easily given him few more hefty blows on the vital parts of the body so that there would be no chance of survival. The fact that they did not do so, must convince us that they did not intend to commit murder. The nature of injuries also is not consistent with the alleged intention of causing death. There conviction under Section 307 of IPC was thus not justified.

18. The fact, that they caused grievous hurt, is not seriously in dispute. The injured lost one eye. The instruments used in the process were, however, sticks usually carried by the agriculturists in their daily routine. When such injuries were caused by hard blunt substance like ordinary sticks, the conviction under Section 326 of IPC was not justified which prescribes punishment for causing grievous hurt by means of any instrument for shooting, stabbing or cutting or any instrument which, used as a weapon of offence, is likely to cause death or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance etc. In the present case, the weapon used do not come within description of any of these instruments. Their conviction, therefore, should suitably be under Section 325 of IPC which prescribes the maximum sentence of seven years.

19. Considering the nature of injuries and the attendant circumstances, in our opinion, sentence of rigorous imprisonment of three years to each of the accused for offence under Section 325 of IPC would be appropriate. They would also be liable to pay fine of Rs. 10,000/- each. In default of payment of fine, they should undergo simple imprisonment of three months. Out of the total fine of Rs. 20,000/-, which both the accused may deposit, a sum of Rs. 12,000/- may be paid over to the injured towards compensation.

20. In the result, both the appeals are disposed of with following directions:

(i) Criminal Appeal No. 237 of 2012 filed by the accused is partially allowed. The conviction and sentence under Sections 326 and 307 read with Section 114 of IPC are set aside. They are, however, convicted for offence under Section 325 of IPC and sentenced to rigorous imprisonment of three years. They are ordered to pay fine of Rs. 10,000/- each, in default of payment of fine, they shall suffer simple imprisonment of three months. Out of the fine so paid, a sum of Rs. 12,000/- be paid over to the injured Shaileshbhai Shivrambhai Chaudhri.

(ii) The State appeal is dismissed. R & P to be transmitted to the Trial Court.

(AKIL KURESHI, J.)

(R.P.DHOLARIA,J.)

Jyoti