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**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 2921 of 2008****FOR APPROVAL AND SIGNATURE:**

<b>HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA</b>	Sd/-
<b>HONOURABLE MR.JUSTICE J.B.PARDIWALA</b>	Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?`	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
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 ?	No
5	Whether it is to be circulated to the civil judge ?	No

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SADHU (BAWA) ANGATPURI SOMVAPURI

Versus

STATE OF GUJARAT

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Appearance:

MR PRATIK B BAROT, ADVOCATE for the Appellant.

MS CHETNA M SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent.

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CORAM: **HONOURABLE THE CHIEF JUSTICE  
MR. BHASKAR BHATTACHARYA**  
and

**HONOURABLE MR.JUSTICE J.B.PARDIWALA****Date : 09/05/2014****CAV JUDGMENT  
(PER : HONOURABLE THE CHIEF JUSTICE  
MR. BHASKAR BHATTACHARYA)**

1. This appeal is at the instance of a convict in a proceeding under section 302 of the Indian Penal Code read with section 135 of the Bombay Police Act and is directed against an order of conviction and the consequent sentence dated 13<sup>th</sup> March 2008 passed by the learned Additional Sessions Judge, Fast Track Court, Palanpur, District Banaskantha in Sessions Case No. 78 of 2008 thereby awarding punishment of life imprisonment and a fine of Rs.5000/-, with a stipulation that in default of payment of fine, the convict will undergo imprisonment for a further period of 1 year.

2. The translated version of the charge framed against the appellant is quoted below:

*“On 18/2/08, at about 15:30 hrs, you, the accused inflicted the blow of iron pincers on the head of the deceased Ramaji Punaji Thakor on the way in the area no.8, going from eight number to Gabbar at Ambaji and by causing him grievous injuries and by committing his murder, you have committed an offence punishable u/s – 302 of IPC within the jurisdiction of this Court.*

*Though the notification of prohibition to keep arms of*

*Additional District Magistrate, Banaskantha was in force at the aforesaid date, place and time, you, the accused, were equipped with iron pincer, and thus, you have committed an offence punishable u/s 135 of B.P.Act in the jurisdiction of this Court.*

*I hereby pass an order to conduct the trial of an offence against you for the offence of the said case in this Court."*

3. The accused denied the charges and claimed to be tried.
4. The case made out by the prosecution may be summed up thus:

4.1 One Prakashchandra Brahmanand, a resident of Ambaji, lodged a complaint before Ambaji Police Station that on 18<sup>th</sup> February 2008, at about half past three in the afternoon, when he was at his home. many persons were running on the road near his house raising hue and cry and hence, he came out of his house. At that time, one Paruben told him that Ramaji Punaji Thakor, a resident of Ambaji has been beaten by a monk near the bore of Gram Panchayat and the said Ramaji Thakor was lying in a bleeding condition near the bore. As the said Ramaji Thakor was known to him, he went immediately to the place where he was lying in an unconscious condition. At that time, one Thakor Senaji Lubaji, a resident of Ambaji, met him and he told him that there was an altercation between Ramaji Thakor and a

monk named Angatpuri Somvapuri for some reason, and the monk had given a blow of pincers to Ramaji Thakor on head and thereafter, the said monk ran away. Thereafter, the complainant went to the place where the victim was lying unconscious in a bleeding condition, and many other persons also gathered there. They brought Ramaji Punaji Thakor to Ambaji Cottage Hospital for treatment and the treatment was going on.

4.2 However, the injured victim later on succumbed to the injuries.

4.3 The police made investigation, drew panchnamas of the relevant place, recorded statements of relevant witnesses and as enough evidence was found against the accused, a charge sheet was filed against the accused for offence punishable under section 302 of the Indian Penal Code and section 135 of the Bombay Police Act in the Court of Judicial Magistrate, First Class, Danta which was registered as Criminal Case No. 523 of 2008. However, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court in terms of section 209 of the Code of Criminal Procedure.

4.4 At the time of hearing, the prosecution examined the following witnesses in support of the prosecution case:

Sl	Name of Witness	PW.	Exh.
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No.		No.	No.
1	Mevabhai Haribhai Dabhi (Panch]	PW. 1	Exh.7
2	Kanuji Lumbaji Begadiya (Pancha)	PW. 2	Exh.9
3	Jasvantbhai Hamirbhai Thakor (Pancha – Hostile)	PW. 3	Exh.11
4	Hareshbhai Kachraji Thakor (Pancha – Hostile)	PW. 4	Exh.13
5	Dr. Pinkiben Jitubhai Patel (Doctor)	PW. 5	Exh.14
6	Prakashchandra Brahmanand Thakor (Complainant)	PW. 6	Exh.19
7	Paruben w/o Maganbhai Thakor (hostile)	PW. 7	Exh.21
8	Divaben w/o Punmaji Thakor (Witness)	PW. 8	Exh.22
9	Kokilaben w/o Babulal Bubadiya	PW. 9	Exh.23
10	Shakrabhai Kalabhai (Pancha)	PW. 10	Exh.24
11	Sursingji Aemtaji (P.S.O)	PW. 11	Exh.27
12	Narpatdan Sumerdan (U. H. C)	PW. 12	Exh.29
13	Ravjibhai Fulabhai (A. S. I)	PW. 13	Exh.32
14	Dr. Rakeshkumar Mafatlal Patel (Doctor)	PW. 14	Exh.34
15	A. S. Menat (P. I.)	PW. 15	Exh.39

4.5 The prosecution also adduced the following pieces of documentary evidence:

Sl.No.	Details of documents	Exh.
1	Panchnama of physical condition of injured	Exh.8
2	Panchnama of place of offence	Exh.10
3	Inquest Panchnama	Exh.12
4	Police Yadi	Exh.15
5	Post-death investigation report	Exh.16
6	Post-mortem Report	Exh.17
7	X-ray and papers of treatment given to the patient.	Exh.18
8	Complaint of the complainant	Exh.20

9	Panchnama of muddamal recovery	Exh.25
10	Muddamal slip having signatures of panchas	Exh.26
11	Index	Exh.28
12	Yadi made to the Executive Magistrate	Exh.30
13	Yadi made by the Medical Officer to P.S.O	Exh.31
14	Case papers and refer slip	Exh.36
15	Medical Certificate (Ambaji)	Exh.37
16	Dispatch Note	Exh.40
17	Receipt of F.S.L	Exh.41
18	Serological report of F.S.L	Exh.43

4.6 The accused, in his statement recorded under section 313 of the Code of Criminal Procedure, denied the allegations levelled against him and stated that he was innocent and a wrong complaint has been filed against him.

4.7 The learned trial Judge, as indicated earlier, by the order impugned herein, has convicted the appellant and passed the sentence as mentioned earlier.

4.8 Being dissatisfied, the convicted person has come up with the present appeal.

5. Mr. Pratik Barot, the learned advocate appearing on behalf of the appellant, strenuously contended before us that the learned Sessions Judge committed error of both facts and law in holding that his client was guilty of murder. Mr. Barot contends that no motive for

murder has been proved, and, at the same time, there was inconsistency in the evidence given on behalf of the prosecution. Mr. Barot further contended that even if it is assumed for the sake of arguments that his client was really involved in the altercation, it was a fit case for acquittal on the ground of exercising private defence as the appellant was also injured. At any rate, according to Mr. Barot, the case may be one for exercise of excess force in private defence, and, thus, the conviction should be converted to one for offence punishable under section 304 Part I of the Indian Penal Code. Mr. Barot, thus, prays for setting aside the order passed by the learned Sessions Judge.

6. Ms. Chetana Shah, the learned Additional Public Prosecutor appearing on behalf of the prosecution, has, on the other hand, supported the order impugned and has contended that on the face of the version of the eyewitnesses as well as the evidence given by other witnesses who had seen the appellant running with the weapon in his hands, the learned Sessions Judge was quite justified in passing the impugned order of conviction and the sentence. Ms. Shah further contends that in this case, the victim was arrested virtually on the spot with the weapon in his hands which contained human blood of 'B' Group which was the blood group of the deceased. Ms. Shah, therefore, prays for dismissal of the appeal.

7. Before we proceed to enter into the respective submissions

made by the learned advocates for the parties, we propose to deal with the evidence given by the witnesses in detail. In this case, PW. No. 3, Jasvantbhai Hamirbhai Thakor, and PW. No.4, Hareshbhai Kachraji Thakor, both the panchas for inquest panchnama, have turned hostile. Likewise, PW. No. 7, Paruben w/o Maganbhai Thakor, who was running a flour mill, also turned hostile. Hence the evidence of those witnesses are not discussed and the depositions given by the remaining witnesses are discussed below in detail.

8. Prosecution Witness No.1, Mevabhai Haribhai Dabhi, in his examination-in-chief has stated that before four months from the date of giving deposition, as his jeep met with an accident, he went to Civil Hospital. He sustained minor injuries in this incident and he was admitted there. The other person who sustained injury in a scuffle taken place at Ambaji had been admitted there. Ambaji Police came in that regard. Bandage was tied to the patient sleeping on the bed beside him and the bottle of saline was administered on his hand. Police took his signature in the panchanama regarding that. He has proved the panchanama and identified his signature thereon.

8.1 In the cross-examination of this witness by the learned advocate for the accused, this witness has stated that he knew Kantibhai Virabhai Raval as he lived in a village next to his village. He has admitted that police took his signature on a written panchanama. He has further admitted that he has not dictated the panchanama. He



has further admitted that police did not read over the panchanama to him.

9. Prosecution Witness No.2, Kanuji Lumbaji Begadia, in his examination-in-chief has stated that before about four months of the date of giving deposition when he was at home, the police came in the eight number area and called him to be a pancha. Somaji was the second pancha along with him. Police seized the blood stained soil from that place. At this time, one person was present there and he was shown this place and the name of that person was Prakash. He did not know whether the said person might have said anything. There is a residential house nearby this place and this house is of his own. His and Somaji's thumb impression were taken in the panchanama regarding this. This witness has proved the panchnama and has identified his thumb impression.

9.1 In the cross-examination, this witness has denied that when he was called as a pancha, many persons gathered there. This witness has admitted that he did not dictate the panchnama and the panchnama was dictated by Saheb. This witness has admitted that police did not read over the panchanama to him. This witness has denied that no soil has been seized in his presence from the alleged place of incident.

10. Dr. Pinkyben Jitubhai Patel, PW. No.5, in her examination-in-chief has stated that on 20<sup>th</sup> February 2008, when she was performing her duty as Medical Officer at Palanpur Civil Hospital, the Head Constable Narpatdan B.N. 1420 of Palanpur City brought the dead body of the deceased Ramji Punamaji Thakor for post-mortem along with inquest panchanama and yadi. She started the post-mortem at 9.10 hrs in the morning and completed at 10.45 hrs. The dead body was of a Hindu male aged about thirty five years. Red coloured baniyan, Gray coloured pant and cream coloured underwear were found on the said dead body. The scalp of the said dead body was shaven. (Hair of the scalp were shaven). His body was cold and his physique was well built. Rigor Mortis was present all over the body. P.M. lividity was seen on back of the body. His eyes were closed. His right eye was black and closed and his left eye was semi-open. His mouth was semi-open. His tongue was within his mouth. No ENT discharge was found. During the external examination of the said dead body, the following injuries were found.

1. S.W. Over right fronted eminence which was 3 cm in length.
2. S.W. just above medical of right eyebrow which was 2 cm in length.
3. S.W. Just above left eyebrow which was 3 cm in length.
4. S.W. Over left parietal region which was 5 cm in length.
5. S.W. Over right parietal bone, just 1 cm from midline which was 4 cm in length

6. S.W. Over right parietal bone which was stitched in shape 'V'.
7. S.W. Over right temporal region which was 7 cm in length.
8. Abrasion over right forearm – lateral aspect which was 2 x 1 cm.

10.1 All these aforesaid injuries were ante-mortal.

10.2 On making internal examination of the dead body, the following injuries were found.

1. Head:- There was subcutaneous haematoma. There was fracture of left parietal bone extending to right parietal bone. Subcutaneous haematoma was found except the injury no.8 from all the injuries of column no.17 and Subdural haemorrhage and intracranial haemorrhage were also found. Pleura, right lung, left lung, liver, spleen and kidneys were found congested. Secretions and gases were found in a stomach. Semi-digested food material and gases were found in small intestine. Faecal matter and gases were found in big intestine.

10.3 According to this witness, the cause of death was haemorrhage due to head injury.

10.4 While conducting his post-mortem examination, the injuries of column No.17 were of grievous type and all the injuries

except injury No.8 were sufficient to cause a death of a person in routine course of nature.

10.5 This witness has proved the yadi and the report sent to Civil surgeon along with the dead body for post-mortem examination, and the the original post-mortem report.

10.6 According to this witness, the aforesaid Ramaji Punamaji was brought for treatment along with refer note and she treated this patient. Looking to the patient, he was in unconscious state and stitches were taken at different places and the wound was found. This patient was admitted as indoor patient and she gave him treatment. As the condition of the patient was found serious during treatment, the civil surgeon of their hospital suggested to refer this patient at Ahmedabad Civil Hospital for CT scan and further treatment. The relatives of the patient were present, but they did not go to Ahmedabad for his further treatment. The patient was brought for treatment from Ambaji on 18<sup>th</sup> February 2009 at 6-15 hrs and the said patient expired on 19<sup>th</sup> February 2009 at 10-40 hrs at night.

10.7 She had brought all case papers of treatment given to the patient and X-ray along with her, which were produced jointly.

10.8 In the cross examination of this witness by the learned advocate for the accused, this witness has admitted that when the

patient was brought to her for treatment, there were stitch wounds on the injuries and she has not treated him after opening all these stitches. This witness has admitted that Divaben Punaji Thakor, the mother of the patient was present along with the patient. This witness has admitted that this patient was treated up to seven and a half hrs that means for about one hour. Out of the case papers at Exhibit-18, the letter on the front part of first page of P.M. at 7-30 hrs is of ward sister.

10.9 A question was put to this witness whether his death could be avoided, had the patient obtained treatment at Ahmedabad Civil Hospital and this witness has stated that she could not state exactly, and he might or might not have lived.

10.10 This witness has admitted that the purpose behind giving suggestion was to indicate that the patient could obtain latest treatment. This witness has admitted that as the C.T. scan treatment was not available at their hospital, suggestion was given to send him at Ahmedabad. This witness has admitted that in general circumstances, the patient requiring C.T. scan was suggested to do C.T. Scan in private hospital. The witness states that if the patient or his relatives could afford the expense of C.T.-scan at private hospital, the same is suggested. This witness has admitted that the patient expired and the treatment was not given after opening the stitch-wound. The witness states that in general circumstances, the stitch

wound once taken is never reopened. The witness states that as the injuries sustained by the patient can be treated by specialist doctor only, specialist doctor can take decision to open stitched wound. In this case, only C.T. scan specialist can take decision in this regard. This witness has denied that this patient was given tetanus and painkiller injections or treatment during his treatment at hospital. This witness has stated that she could not state that this patient has expired due to the lack of C.T. scan and further treatment in that regard. The witness states that only civil surgeon can take decision in this regard. This witness has admitted that the injuries of injury no.1 to 7 of column no. 17 were concomitant to internal injuries of column no.19. In normal circumstances, rigor mortis starts after two hours of the death of any person and spreads all over the body within twelve hours and its effect is found all over the body for twelve hours and thereafter, its process starts to disappear and it disappears at about thirty six hours. This witness has denied that the death of this patient was caused due to not getting complete treatment at their hospital or for not given the same.

11. Prosecution Witness No.6, Prakashchandra Brahmanand Brahman, is a witness who knows Hindi language and he can speak Gujarati language a bit and he can understand Gujarati language very well. As the witness intended to answer the questions asked by APP both in Gujarati and Hindi, the statement is recorded in Gujarati language. In his examination-in-chief, he has stated that he is a

resident of Ambaji. On the day of the incident, he was at his home at about three hours. On the day of incident, the repairing work of toilet – bathroom was going on at his house. At that time, he heard shouts outside that one *bavo* [monk] has run away after committing a murder, and therefore, he came out of his house. When he came out of his house, by pointing out to the accused who was present in the court, this witness has stated that the *bavo* was running ahead and people were running behind him shouting that this *bavo* has come after committing a murder. Thereafter, Paruben also told him shouting to catch the *bava*, as he was running after committing a murder. At this time, the *bavo* was running to the farm opposite to his house and he caught him by going in the farm and he brought him on the road before his house. At this time, many persons gathered there and the *bava* was surrounded. Thereafter, he went to Ambaji Police Station and P.I. was present there. When he was coming along with him in a jeep talking regarding the incident, a telephone call received on his phone on the way that the *bavo* had run away. Therefore, he told to the driver to drive fast otherwise the *bavo* would run away. Thereafter, they came and stood near Rationing shop of Natubhai. People stood there surrounding the *bavo* at the distance of twenty to twenty five feet at the shop of Natubhai. Therefore, police went and arrested the *bavo*. He was made to sit in a vehicle of police. Thereafter, they all went in the vehicle to the place where the person was lying and saw that one person was lying upside down and blood was lying around. On making him supine and seeing, he came to

know that the person was Ramlo of their village. When he made this Ramla supine, there was a wound on his head and blood was oozing from therein. Thereafter, the policeman called a rickshaw and took Ramla to Ambaji Civil Hospital. He went to Ambaji Police Station along with the policeman. When he had seen Ramla at the place of incident, he was lying in an unconscious state as if he was dead. At this time, the persons gathered were talking and he came to know from thereon that Bava has inflicted the blow of pincers.

11.1 This witness has stated that he knew Ramla and he was living beside his house. He filed the complaint regarding this in police station and he has proved the complaint and identified his signature thereon.

11.2 This witness has further stated that the police again interrogated him in this regard. When he was in police station, Ramla was taken to Ambaji Hospital and thereafter, he came to know that he is taken to Palanpur Hospital. Thereafter, he came to know on the third day that Ramla had died. This witness has identified the accused in the Court. He came to know the name of this bava thereafter, but he did not remember at that time. If he was reminded his name, he could state it and thereafter this witness has admitted that the name of this monk was Sangatpura Sompuri.

11.3 In the cross-examination by the learned advocate for the



accused, this witness has admitted that he did not know the name of the monk till he caught the monk and he was taken to police station. This witness has admitted that he came to know the name of the monk after four to five days. This witness has admitted that when he filed the complaint before the police, he did not state the name of the monk.

11.4 This witness has denied that he has not dictated in his complaint before police and in his statement that, "Such shouting was there that catch this monk as he has committed murder and therefore, he came out and caught this monk at his farm after running after him." He was taken to the place where a person was lying in police jeep and from there, he went to police station."

11.5 This witness has denied that Paruben told him such that one sadhu (monk) has beaten Ramaji Punaji Thakor, residing at Ambaji near the bore of Gram Panchayat and Ramaji Thakor was lying near the bore in a profusely bleeding condition. As he knew this Ramaji Thakor, he immediately went to the place where Ramaji Thakor was lying in an unconscious state. At that time, one Thakor Sonaji Lumbaji, residing at Ambaji, no. eight met him and he told him that there was a quarrel between this Ramaji Thakor and sadhu bava named Angatpuri Sompuri due to some reason, and this monk inflicted a blow of pincers on the head of Ramaji Thakor and he ran away thereafter.

11.6 This witness has admitted that he did not know any fact except the fact stated in his examination-in-chief. This witness has denied that he ran after him and caught him from his farm as he stated in his examination-in-chief. This witness has denied that he did not go to the place along with the accused and policeman at the place where Ramaji was lying. This witness has denied that they all have not gone to police station together from this place. This witness has denied that no incident had taken place as per the fact that he stated in examination-in-chief and that he has not given any complaint in that regard.

12. P. W. No. 8, Divaben w/o. Punaji Thakor is mother of the deceased. In her examination-in-chief, she has stated that her husband had expired. She had two sons. The name of the elder son was Virchand and the name of the younger son was Ramaji. His elder son was doing labour-work at the place of his in-laws. The younger son was doing casual labour in Ambaji. His younger son Ramaji has expired. He died before about five months from the date of giving deposition. He went out for labour-work at the time of the incident. Some persons had come there to call her, whose name she did not remember. She was told that her son has been taken to hospital. On being told so, she came home. Her son was taken to Palanpur Hospital from Ambaji Hospital. Hence, she went to Palanpur Hospital. His son was lying on a bed. A bandage was wrapped on the head of

his son. She came to know that a monk had hit his son with a pincers. She knew Prakashbhai of their village. Prakashbhai had given a complaint in police station. She did not know the monk and she has also not seen him. Police had conducted inquiries from her.

12.1 In her cross-examination, this witness has admitted that in Palanpur Hospital, the doctor had advised to take her son to Ahmedabad but she had not taken him. The witness states that she was alone in the hospital and no other persons were there with her, hence, she had not taken him.

13. Kokilaben w/o. Babulal Bubadiya, PW. No. 9, in her examination-in-chief has stated that her husband expired before about fourteen years from the date of giving deposition. She does casual labour work. She has a son named Rakesh. He used to go to learn the work of light-fitting. The incident occurred before about four months from the date of giving deposition. On the day of the incident, she was going to her house after doing labour-work. At this time, a monk had hit a person with a pincers near the road of Gabbar, and she had seen that the person had fallen down. As this monk was going after hitting a pincers, she shouted abruptly and saw the man who was lying from the place where she was standing. Thereafter, all the persons were running and the monk was running ahead. This monk had worn white-like clothes and there was a bag and a pincers in his hand. Someone called police and the vehicle of police arrived.

The monk was caught and brought. The person who had fallen on the ground was taken to hospital in a rickshaw. Thereafter, from there, he was taken to Palanpur Hospital. Thereafter, that person died. She knew the deceased and the deceased person was residing at a distance of about one or one and a half km. from her house. She knew him because there was a road near his house by which she used to come and go. This person was a Thakor. The name of this person was Ramu. Police had conducted inquiry from her. This witness has stated that she knew the monk by face, who had hit with a pincers. The witness has identified accused in the Court on seeing.

13.1 In her cross-examination, she has stated that the place of the incident was located at a distance of about two hundred feet from her house. This witness has denied that the place of the incident comes after a turn from her house. This witness has admitted that her house and the place of the incident are situated on the road leading to Gabbar from Ambaji and this road has an ascending path. This witness has stated that there were no house situated between his house and the place of the incident. The witness states that there were houses in the front side of her house and on the opposite side. Houses are situated at the distance of about three hundred to four hundred feet from her house. There are houses at the distance of one hundred and fifty to two hundred feet. These houses are of Adtheivasis. This witness has denied that the place of the incident cannot be seen from her house. The assailant and the crowd had run

towards Ambaji. This witness has admitted that she did not know who was the assailant. The witness states that she had not said that she did not know the assailant by face. This witness has admitted that generally, she used to go for labour-work at about eight hours in the morning and return at eight at night. The witness states that after doing household work, she returned at about three o'clock in the afternoon and used to go again in the evening. This witness has denied that she used to come home at three o'clock in the afternoon. This witness has admitted that she had not eye-witnessed this incident. This witness has denied that she did not know the deceased Ramaji Thakor. This witness has stated that she used to see him since the time of his marriage. This witness has admitted that she did not have such a relation with Ramaji Thakor that they visit the house of one another. This witness has denied that as she knew Ramaji Thakor, despite being on visiting terms with him, she was giving a false deposition by saying that she did not have it [visiting terms]. This witness has denied that she had not shouted at the time of the incident and she had not told police. This witness has denied that she came to know later on that Ramaji expired and someone had hit him. This witness has denied that though she has not eye-witnessed the incident, she was giving false deposition to help his family.

14. P. W. No. 10, Shakrabhai Kalabhai, has stated in his examination-in-chief that Ambaji Police called him as a pancha at Police Station on 19<sup>th</sup> February 2008. At that time, Bhurabhai

Kalabhai was the second pancha along with him. Police gave them understanding regarding the panchanama at that time. At that time, one monk was present there. He did not know his name. He produced pincers used in this offence and police seized the same. Write up was made in this regard and his thumb impression as well as of Bhura were taken. He has identified the panchanama and his thumb impression as first pancha and the thumb impression of Bhura as second pancha.

14.1 On showing the slip of the muddamal pincers before Court, he stated that there was his thumb impression as first pancha and there was thumb impression of Bhura as second pancha, which he identified. On showing muddamal, he stated that one person was produced at police station and he has identified the accused present in the court as the same person.

14.2 In his cross-examination, he has stated that it is not true that the papers were kept ready after write up and he signed thereon. The witness states that police wrote their names after asking them. This witness has admitted that the pincers was lying on the table. This witness has denied that he often remain as a pancha in police station. The witness states that he went as a pancha for the first time. This witness has denied that the accused did not produce the pincers in his presence. This witness has denied that the panchanama at Exhibit-25 was not drawn in his presence.

15. P. W. No. 11, Sursingji Amtaji, is Assistant Sub Inspector. In his examination-in-chief he has stated that on 18<sup>th</sup> February 2008, he was present as PSO at Ambaji Police Station. At that time, one Prakashchandra Brahmanandwala, the complainant of this case, came and declared the fact before him and he wrote the complaint as dictated by him and read over the same to him. He signed regarding the complaint being true and this witness signed as 'before me'. This witness has proved the complaint and identified the signature that the complainant made before him and his sign as 'before me'. Thereafter, an offence was registered in police station diary for the said complaint and ASI Mr. Ravjibhai was handed over the complaint and other papers for the further procedure. As the person sustained injury in the complaint of the case expired on 20<sup>th</sup> February 2008, he gave an application in the Court of JMFC to add section-302 of IPC in the case of Ambaji Police Station Outward No. 514/08. Suchipatra was prepared in this regard and he has proved the same.

15.1 This witness was not cross-examined by the learned advocate for the accused.

16. P. W. No. 12, Narpatdan Sumerdan, is an armed Head Constable. In his examination-in-chief he has stated that on 20<sup>th</sup> February 2008, he was on duty as Investigation Head Constable at Palanpur City Police Station, after making Informatory entry No. 11/08

as per Palanpur City Station Diary No. 2/08 at 0/45 hrs on 20/20/08 from PSO, the further investigation was handed over to him. Thereafter, he went to Palanpur Civil Hospital in the morning on 20<sup>th</sup> February 2008 and the inquest panchanama was prepared in the presence of panchas as stated by panchas and the signatures of both panchas were taken and he signed as 'before me'. He has proved the panchanama and identified the signatures of both the panchas and his signature as 'before me'. This witness has stated that these papers were sent to Ambaji Police Station. This witness has proved the Yadi produced by PSO from Palanpur City Police Station to Executive Magistrate the yadi made by medical officer to PSO.

16.1 In his cross-examination, this witness has denied that he prepared the panchanama at Exhibit-12 himself and took only the signatures of panchas therein.

17. Another police witness, P. W. No. 13, Ravjibhai Fulabhai, in his examination-in-chief has stated that on 18<sup>th</sup> February 2008, he was performing his duty as PSI at Ambaji Police Station. At that time, as he received the investigation of the case of the offence vide Ambaji- He Cr. Reg. No. -10/08, he took charge of that investigation. In the investigation of this offence, by drawing the panchanama of the place of offence in the presence of two panchas and taking signatures of both panchas, he signed as 'before me'. He has proved the panchanama and identified the signatures of both the panchas



and his signature as 'before me'. Thereafter, after preparing the recovery panchanama in the presence of two panchas and after taking thumb impression of both panchas thereon, he signed as 'before me' and he has identified the same. Thereafter, preparing the panchanama of the physical condition of the injured person in the presence of two panchas, taking signatures of both panchas therein, he signed as 'before me'. He has proved that panchanama and has identified the signatures of both the panchas and his signature as 'before me'. The accused was arrested in the offence of this case. He has identified the muddamal weapon pincers and the accused before Court. Thereafter, the further investigation of this case was handed over to PSI Mr. Menat along with all the papers.

17.1 In the cross-examination of this witness by the learned advocate for the accused, this witness has admitted that he drew the panchanama of the physical condition of the injured. No verification was made by keeping the doctor along with him or through a doctor to see as to how is the mental and physical condition of the injured previously.

17.2 A question was put to this witness whether he made the yadi to Executive Magistrate to take D.D, and he has replied that the injured person was immediately sent from Ambaji Civil Hospital to Palanpur Civil Hospital, and, therefore he has not made any yadi.

17.3 This witness has admitted that in the offence of this case, the panchanama that he has drawn were prepared by him and the signatures and thumb impression of panchas were taken thereafter. This witness has denied that though the muddamal of this case was not seized, it is falsely shown seized as per the detail of panchanama.

18. PW. No. 14, Dr. Rakeshkumar Mafatlal Patel, is the Doctor who initially treated the victim. In his examination-in-chief he has stated that when he was performing duty as a Medical Officer in Ambaji Cottage hospital on date 18<sup>th</sup> February 2008, Ramaji Punaji Thakor was brought for treatment by the police constable – B. No. 992. The constable stated that assault has been committed by unknown people. The patient was in semi-conscious condition and on examining the patient, he was grumbling. Following injuries were found on examining the patient.

Injury No. 1 :- There was cut, crushed wound of 5 x 0.5 x 0.5 found at left part of forehead in head and blood was oozing out from this wound.

Injury No. 2 :- There was cut, crushed wound of 5 x 1 x 0.5 c.m. at the right part of forehead and blood was oozing out from it.

Injury No. 3 :- There was cut, crushed wound of 7 x 1 x 0.5 c.m. found at right side of head in parietal region. Blood was oozing out from it.

Injury No. 4 :- There was cut, crushed wound of 3 x 1 x 0.5 c.m. at

the back part of right side ear. Blood was oozing out from it.

Injury No. 5 :- There was cut, crushed wound of 1 x 1 x 0.5 c.m. at the back part of right side ear. Blood was oozing out from it.

Injury No. 6 :- There was abrasion of 15 x 5 c.m. at right side elbow and lower part of it. Blood was oozing out from it.

18.1 Looking to the above injuries of head of the patient, it seemed that the patient was grumbling in an unconscious condition. As there was necessity to make C.T Scan of patient and necessity of further treatment, he was referred to Palanpur Civil hospital. These injuries were of serious type and the same can be caused with hard and blunt substance. The injuries sustained by the patient can be caused by pincers with monks. After seeing the muddamal pincers this witness has stated that the injuries sustained by the patient can be caused by muddamal pincers. It can be said that the injuries of head out of the injuries sustained by the patient were sufficient to cause death of a person in ordinary course of nature.

18.2 This witness has stated that he gave primary treatment to the patient and administered injections and stitches. On the date of giving deposition, he had brought case papers of treatment and refer slip of patient with him and were produced on the record. Besides, the certificate of treatment given to the patient was prepared in his handwriting and signature was made of his designation after making stamp. He had also brought that certificate with him and produced

the same on record.

18.3 In the cross-examination of this witness by the learned advocate for the accused, this witness has admitted that there may be many reasons for any person to grumble. This witness has admitted that he made such inference only that the patient may be grumbling due to injury sustained in head. This witness has admitted that he had not made any examination of internal injury of the patient. This witness has admitted that he did not find any conclusion that fracture was caused in any injury out of the injuries sustained to the patient. This witness has denied that the injuries sustained on head of the patient do not fall in definition of serious type of injuries. This witness has denied that the patient was semi-conscious, therefore, it is his say that the patient sustained serious type of injuries. This witness has admitted that no note had been made as to the injuries sustained by the patient were sustained before how much time.

18.4 A question was put to this witness that he had not shown the colour of the injuries sustained by the patient and this witness has stated that as it was bleeding in the injuries sustained by the patient, presumption of any colour cannot be made. The witness states that if blood clots after oozing out from any wound, alteration takes place in colour of such blood. Colour of such blood becomes dark red after clotting and thereafter, becomes partly blackish.

18.5 This witness has denied that the injuries nos. 3 to 5 sustained by the patient were related injuries. This witness has admitted that if any person slips from mountainous area and dashes with hard blunt substance, the injuries sustained by the patient can be caused. This witness has denied that the injuries sustained to the patient cannot be caused by muddamal pincers.

19. Another police witness, PW. No.15, Amrutbhai Singaji Menat, in his examination-in-chief has stated that he was performing duty as a P. I. in Ambaji police station on 21<sup>st</sup> February 2008. At that time, the offence under section 324 of the I.P.C and section 135 of the B. P. Act was registered vide Ambaji police station First C. R. No. 10/2008 on 18<sup>th</sup> February 2008. A.S.I Ravjibhai was conducting its investigation. The injured person, Thakor Ramaji Dhanaji, of that case was sent to Palanpur hospital. He died during treatment. Hence, as the message of death and inquest was received from Palanpur City police station, he took over this investigation from A.S.I on 21<sup>st</sup> February 2008. After taking over the investigation, he recorded further statement of the complainant Prakashchandra. Besides, the statements of the witnesses were recorded. Thereafter, He sent muddamal seized in the case of investigation to F.S.L. The post-mortem note of the deceased was kept in the case of investigation and as sufficient evidence against the accused was found, charge-sheet was filed in the Court.

19.1 This witness has stated that he recorded the statement of one Paruben on 24<sup>th</sup> February 2008. Besides, A.S.I Mr. Ravjibhai Fulabhai has recorded the statement of Paruben on 19<sup>th</sup> February 2008. Paruben has dictated such before A.S.I. Ravjibhai that on the date of the incident, she was present at her flour mill at about half past three in evening. At that time, some persons were running in front side of flour-mill and were making loud noises, and therefore, she knew that one monk has beaten one Ramaji Thakor, and she did not know why the monk had beaten this Ramaji Thakor and for what reason.

19.2 This witness has further stated that the said Paruben has dictated before him on 24<sup>th</sup> February 2008 that she knew well Ramaji Thakor. She has further stated that a scuffle took place between the monk and Ramaji Thakor in Ambaji Eight Number on that day, and she was sitting at her shop at that time. She has further stated that she knew that this Rama Thakor was sent to Palanpur Civil hospital from Ambaji hospital only on the same day. Thereafter, Rama Thakor remained in hospital for two days and died in Palanpur civil hospital during treatment. This witness has proved the dispatch-note about sending muddamal to F.S.L., receipt about muddamal was by F.S.L.

19.3 For production of the F.S.L. Report, the examination-in-chief was adjourned on 29<sup>th</sup> August 2008 and it resumed on 30<sup>th</sup>

August 2008. On that date, he brought the FSL report with him. This witness has stated that this report was received earlier and was sent into Danta Court. As this report was received later on after preparing all the papers relating to this offence, this report was sent to Danta Court later on. The said report was also produced on the record of the case.

19.4 In the cross-examination of this witness by the learned advocate for the accused, this witness has stated that he had verified all the papers received by him in the investigation and he recorded further statements of witnesses as per necessity. This witness has admitted that an altercation or quarrel took place between the accused and the deceased, but it did not come out during investigation as to for which reason the quarrel took place between the accused and the deceased. This witness has admitted that he did not make any contrivance to prepare map in the case of this offence. As he deemed necessary to prepare map of the place of offence in this offence, He made yadi. After making yadi, after getting the map prepared, he did not make any demand to obtain it. He was shown the office copy of the yadi of map is shown to him from police papers and this witness has stated that he made it and he has identified the same. As it was produced by learned advocate for defence side, the same was produced on the record of the case. This witness has admitted that Kanuji Lumbaji out of two panchas of the place of offence resides near the place of offence. Kodarvi Mirkhan also

resides near the place of offence. This witness has admitted that these both witnesses reside near the place of offence, however, he did not record their statements. This witness has admitted that Prakashchandra did not dictate such in the complaint and statement that "Catch the monk, he has committed murder. He was shouting such and He ran behind the saint after coming outside and He caught him by going to his farm. Police took him to the place in jeep where the person was lying and from there, He went to police station. This witness has denied that he has falsely got up Kokilaben Rajubhai Bumbadiya as eyewitness in this case. This witness has denied that he himself recorded the statements of witnesses in consistent with the complaint to involve the accused falsely. This witness has denied that though, there was no evidence against the accused, false charge-sheet has been filed in the court. This witness has denied that such fact has emerged in his investigation that the deceased had died due to falling from mountain and due to sustaining injuries.

20. After hearing the learned counsel for the parties and after going through the aforesaid deposition, we find that although one of the eyewitness, viz. Paruben, PW. No.7, became hostile, the complainant Prakashchandra PW. No.6 has stated that after hearing the hue and cry, he came out of his house and Paruben having told him that the monk, after causing grievous injuries to the deceased, was running away, he chased him. Kokilaben, PW. No.9, another eyewitness, has also said the same thing that the accused was



running away with a pincers in his hand and ultimately, he was caught by the local people. There is, thus, no dispute that the accused was immediately arrested by the police with the pincers in his hand which was smeared with blood as would appear from the fact that in the FSL report, it has come out that the pincers was smeared with human blood of the group matching with the blood group of the deceased.

21. Thus, from the evidence given by at least two eyewitnesses, it has been established that the victim was caught with the blood-smeared pincers which was used for causing grievous injuries to the deceased person. To those eyewitnesses, no suggestion has even been given alleging any animosity towards the said monk. We find that the learned Sessions Judge, who had an occasion to see the demeanor of the eyewitnesses, has believed their version and found that after an altercation between the deceased and the accused, the accused had hit the deceased with the pincers on his head. From the medical evidence adduced by the prosecution, we find that the Doctor has specifically opined that the injuries caused to the victim can be caused by the pincers. We are not impressed by the submission of Mr. Barot, the learned advocate appearing on behalf of the accused-appellant, that a suggestion was also given that such type of injuries can also be caused if a person falls from the slip of a hilly area.

22. Having regard to the nature of the injuries caused coupled with the fact that the deceased was arrested with the very pincers which was smeared with blood matching with the blood group of the deceased, we have no doubt in our mind that it was the accused who has actually caused the injuries to the deceased.

23. Mr. Barot, in this connection, tried to convince us that once the fact of altercation between the victim and the deceased is proved, we should convert the offence to one punishable under section 304 Part I inasmuch as, according to him, it was, at the most, a case of excess force in private defence by the accused.

24. It appears from the evidence on record that no injuries on the body of the accused have been established by the evidence on record. Having regard to the number of injuries caused to the victim, we are not impressed by the submission of Mr. Barot that it is a case of excess in private defence in the absence of any injuries on the body of the accused person.

25. Mr. Barot also tried to impress upon us that there was negligence in the medical treatment by the deceased as a result, he died, and if proper treatment was given, the injuries would not have caused his death.

26. We find from the evidence on record that the Doctor, no

doubt, suggested that the victim should be taken to Ahmedabad as there was no facility for doing C.T. Scan in the District hospital, but the mother of the victim has stated that as she was alone, she did not take the risk of taking her son to Ahmedabad.

27. After all, the deceased was treated in a District Hospital [Civil Hospital, Palanpur] and it has also come in the evidence that the nature of the injuries caused to the victim was such that practically there was no chance of saving him. We have found that the victim died two days after he was injured. Therefore, we are not impressed by the above argument of Mr. Barot that it was a case of negligence of the Doctor which resulted in the death of the victim.

28. On overall consideration of the evidence on record, we find that persons of the locality having no personal interest who knew both the accused and the deceased, had given evidence and those are quite believable. From the cross-examination of the witnesses, we have not found any inconsistency so as not to treat the witnesses as wholly reliable witnesses.

29. We, thus, find that there is no merit in this appeal, and the learned Sessions Judge, in the facts of the present case, has rightly held the appellant guilty of murder and passed the sentence. The appeal is thus, devoid of merit, and is dismissed.

Sd/-

**(BHASKAR BHATTACHARYA, CJ.)**

Sd/-

**(J.B.PARDIWALA, J.)**

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