**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL NO. 108 of 2010**

**With**
**CRIMINAL APPEAL NO. 109 of 2010**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

**and**
**HONOURABLE MR.JUSTICE Z.K.SAIYED**

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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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AMARSINH @ KABHAIBHAI BHAIJIBHAI PARMAR....Appellant(s)
Versus
STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:
MR PB GOSWAMI, ADVOCATE for the Appellant(s) No. 1
MR HL JANI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE JAYANT PATEL**
and
**HONOURABLE MR.JUSTICE Z.K.SAIYED**

**Date : 31/03/2014**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)**

1. As both the appeals arise from the common judgment and order passed by the learned Sessions Judge, they are being considered simultaneously.

2. The short facts of the case are that on 27.12.2008, the complaint was filed (exhibit 16) by the son of the deceased stating that his father Labhubhai Solanki (deceased), was having friendship with accused and the wife of the accused was accepted as sister by the deceased. Whenever he used to go for his business of scrap at Nadiad, he used to stay at the residence of the accused. On 27.07.2008, the deceased had left for the business to Nadiad with Rs.2 Lakhs and he had said that if he goes to Nadiad, he would stay at the residence of the accused, but if he goes to Vadodara, he would stay at guest house. Thereafter, upto 02.08.2008, the deceased had talked with the complainant on mobile, but after 04.08.2008, there was no talk on mobile and somebody else was talking on mobile. Therefore, on 08.08.2008, the reporting was made to the Paddhari police station. Again on 12.08.2008, reporting was made at Nadiad Rural Police Station that the deceased was missing and if found, the complainant be intimated. Nothing was found upto 16.08.2008 and thereafter, the complainant tried but no satisfactory reply was given to him by Amarsinh (A1) or Manjulaben (A2). On 26.12.2008, through Paddhari police station, it was learnt

that the dead body of the deceased was found as hidden from the land of A1 and therefore, complainant and his relative went to the place and found that the dead body of the deceased was hidden/cremated nearby the badam tree and then the place was dug and it was found that a human skeleton of dead body was found. The complainant identified the dead body of the deceased in presence of the Mamlatdar. Thereafter, complaint was filed. The police investigated into the complaint and thereafter, charge-sheet was filed against A1 and A2. The case was committed to the Sessions Court being Sessions Case No.49/09. The learned Sessions Judge framed the charges for the offence under section 302 r/w section 114 of the IPC and for the offence under section 201 r/w section 114 of the IPC. Thereafter, the trial was conducted.

3. The prosecution in order to prove the guilt of the accused examined 22 witnesses and produced documentary evidence of 40 documents, the details of the same are mentioned by the learned Sessions Judge at paras 5 and 6 respectively. The learned Sessions Judge thereafter, recorded the statement of both the accused under section 313 of the Cr.P.C. wherein, the accused denied the evidence against them and in the further statement, it was stated that a false case is filed against them and they are innocent.
4. The learned Sessions Judge thereafter heard the prosecution and defence and found that the

prosecution has been able to prove the case against both the accused for the charged offences and has held both the accused guilty for the charged offences. The learned Sessions Judge thereafter, heard the prosecution and the defence for sentence and ultimately, imposed sentence of life imprisonment with the fine of Rs.50,000/- and further 2 years' RI for default in payment of fine for the offence under section 302 r/w section 114 of IPC. The learned Sessions Judge imposed sentence of 1 year SI for the offence under section 201 r/w section 114 of IPC with the fine of Rs.200/- and further 3 months SI for default in payment of fine. The learned Sessions Judge further ordered that the compensation of Rs.75,000/- be paid to the wife of the deceased Nimuben Labhubhai as per section 357 (1) (b) of Cr.P.C. but the relevant aspect is that the learned Sessions Judge did not order for the sentence to be undergone concurrently. It is under these circumstances, for A1, Criminal Appeal No.108/10 has been preferred and A2 has preferred Cr.Appeal No.109/10 against the order of conviction and sentence imposed upon them.

5. Mr.P.B. Goswami, learned counsel appearing in both the appeals for the appellants as well as Mr.Jani, learned APP appearing in both the appeals for the State have taken us to the entire evidence on record. We have considered the judgment and the reasons recorded by the learned Sessions Judge. We have heard the learned APP

for the State.

6. The evidence of the prosecution can be broadly considered as under.

7. The testimony of Dr.Chetan, PW-1, Exh.7, is supporting the case of the prosecution for the injury caused to the deceased on the jaw as well as on the skull. As per the said doctor, the cause of death was the injury caused on the head with hard and blunt substance. Case property article no.10, log of wood was shown to the said Doctor and he opined that such injury could be caused with the said article and those injuries would cause death in natural course. In the cross-examination of the said witness, the defence has not been able to bring about any material contradiction except that the Doctor admitted that such injury could be caused on jaw if a person has fallen down, but he further stated that they are not sufficient to cause death in natural course. PM note, Exh.10 and the certificate issued for the cause of death at Exh.11 and Exh.12 are supporting the case of the prosecution.

8. The testimony of the complainant, Dineshbhai, PW 2, Exh.15 is supporting the case of the prosecution and the said witness has supported the complaint. As per him, the dead body was identified by him on account of the denture of his father. The defence in the cross-examination

of the said witness has not been able to bring about any material contradiction except that in the cross-examination, the said witness admitted that he had no knowledge about the height and width of the teeth of his father or the number of teeth of his father. The said witness in the cross-examination has further categorically stated that when the dead body was taken out, Bhaijibhai, PW 4 was present. The testimony of Nimuben, PW 3, Exh.17, wife of the deceased is supporting the case of the prosecution. She has deposed that the father of the deceased Bhaijibhai did point out the place at which the dead body was cremated and the said place was dug and the body was found. The said body was of her husband. She identified the body because the half pant put on by her husband was there. She also identified the dead body due to teeth/denture of her husband. In the cross-examination of the said witness, the defence has not been able to bring about any material contradiction, except that she deposed that the dead body was in the form of skeleton. In the cross-examination, she stated that as the half pant had chain, she could identify the same.

9. Bhaijibhai, PW 4, father of A1, at Exh.18, to some extent has supported the case of the prosecution inasmuch as he has admitted that his statement was recorded by the police and the police had come for digging and the dead body was found near the house. He also admitted that

police had taken him to Pipalata and when he was taken by the police, three to four persons from Rajkot were there. He stated that the police had called two persons and the digging was made where skeleton was found. Again he reiterated that his statement was recorded by police. Thereafter, he has been declared hostile and the permission was granted for cross-examination.

10. Through the testimony of IO, PW 22, Vinodsinh Khengar, Exh.80, the contents of the statement made by the said witness before the Police Sub-Inspector Shri MM Chauhan has been proved by the prosecution and as per the statement made by Bhaijibhai before the said police officer, on 4th or 5th day of Dasama Vrat in the month of Shravan, his daughter-in-law Manjulaben was alone and at about 7.30, deceased had come in drunken condition at the house of A1 and thereafter, A1 came at about 8.30 night from Nadiad and at that time, Bhaijibhai heard the shouting in the house of A1 and therefore, he had gone to the residence of A1. At that time a log of wood was in the hand of A1 and deceased had lied down and A1 gave a blow on the head and body of the deceased. When he asked his son as to why he was beating, he was told by A1 that he should not come in between otherwise his position will be the same. But when he further inquired as to why he was beating this much to the deceased, A1 told him that the deceased was doing unnatural work with his wife Manjula and he was lying on Manjula and

he had seen him and therefore, he was beating him. At that time, deceased was shouting that he may not be beaten and thereafter, he had left due to fear. It was further stated by Bhaijibhai before the said police officer that on the next day when he inquired with A1, he was told by A1 that the deceased is done and his dead body is cremated near badam tree and if he discloses it to anybody, he and his wife would be killed.

11. Through the testimony of Naranbhai Sumantlal Jayswal, PW 8, Exh.22, the prosecution has produced the sketch at Exh.24 showing the location of the residence of A1, the place at which the offence was committed and the place at which dead body was cremated. The residence of the father of A1 is just adjacent to the residence of A1, and the distance of the place of offence is the compound adjacent to the residence of A1. The place where the dead body was cremated is at about a distance of 80 Ft., but the land is shown as that of Bhaijibhai, father of A1.

12. Through the testimony of Ashwinbhai Chagganbhai Parmar, PW 10, Exh.46, pointing out panchnama for the place of the offence at Exh.47 has come on record. It is true that in the cross-examination, the said witness had stated that he did not go to the place of the field, but the contents of the panchnama is proved through the testimony of Manjibhai Malabhai Chauhan, 2nd IO, PW 21, Exh.73. As per the said panchnama,

disclosure was made of the fact by Bhaijibhai about the place of offence and the place at which the dead body was cremated. Thereafter, the said place was dug deep by 3 ft. & 6" and the dead body was found. The videography for digging of the place nearby badam tree has come on record through the document Exh.49. The another relevant aspect is that the document at Exh.25 to 44 and at Exh.67 to 71 were exhibited with consent. Under these circumstances, the contents of the said documents otherwise also could be said as proved. Such would include letter to FSL, FSL report and serological report, Exh.29, 30 and 31.

13. Jayantibhai Vitthalbhai Parmar, PW 19, Exh. 63, the panchamana for disclosure and discovery of the weapon has supported the case of the prosecution. The said panchnama has come on record at Exh.64, wherein before panchas, A1 had disclosed about the place at which the weapon of log of wood was kept. Thereafter, in presence of panchas, the discovery of weapon, log of wood is made. The said article is identified and as per the said panchnama, the blood was not found on the said log of wood. One of the aspect which may be relevant is that in the panchnama, A1 had declared that he and his wife had cremated the dead body, which in our view, cannot be used against A2, his wife, who was co-accused. The iron axe is also discovered as per the said panchnama which was used for digging of the place

and for cremating the dead body. FSL report and more particularly, serological report Exh.31, shows the blood of "A" group found from the clay, the rope and the cloth. The another serological report for the log of wood at Exh.44 shows that the blood is found of the very "A" group matching to the blood found from the clay, cloth and rope, of the deceased.

14. Mr.Goswami, learned counsel for the appellants raised the first contention that it is not proved by the prosecution that the dead body was of the deceased inasmuch as there is no conclusion recorded in the DNA report and therefore, he submitted that mere skeleton was found is not sufficient evidence to prove that it was the skeleton of the deceased and not of anybody else.

15. In our view, matching of DNA may be one of the relevant aspect for finding out the dead body of the deceased, but there are other ways through which the prosecution may be in a position to prove the fact. In the present case, through the testimony of son of the deceased, PW 2, Dinesh and the wife of the deceased Nimuben, PW 3 at Exh.15 and 17 respectively, the dead body is identified by the close family members. Further, father of A1 had stated before the police officer that deceased was beaten by A1 and thereafter, A1 had conveyed that the dead body was cremated. The place was disclosed in presence of panchas and thereafter, the dead body is found. Under

these circumstances, we do not find that the prosecution has not been able to prove the case for bringing about the identity of the dead body merely because the DNA report is not available.

16. Mr.Goswami, learned counsel for the appellants next contended that Bhaijibhai, father of A1, PW 4, has not supported the case of the prosecution to the fullest extent and therefore, in his submission, pointing out panchnama prepared at the instance of Bhaijibhai, PW 4 be discarded. He submitted that the requirement of section 27 of the Evidence Act could not be said as proved by the prosecution and if the said prime evidence is not considered, such would be fatal to the case of the prosecution and the accused would be entitled to the benefit.

17. Consideration of the requirement under section 27 of the Evidence Act has been elaborately considered by this Court in Criminal Appeal No.27/10 and allied matters, decided on 25-27/03/2014. This Court in the said judgment, had observed thus -

> *"24. We may further make useful reference to the decision of this Court in the case of* ***Vinugiri Motigiri v. State of Gujarat, reported in 2002(1) GLR, 702****, wherein this Court had an occasion to consider the question that if the panchas have turned hostile, whether the fact disclosed and the incriminating material could be considered with the aid of the testimony of the police officer or not. This Court, at paragraph 24.2, observed thus:-*

*24.2 It was submitted that since the panch witnesses have turned hostile, the Court cannot rely on the evidence of discovery. This submission is erroneous, because, as held by the Supreme Court in Modan Singh v. State of Rajasthan, reported in AIR 1978 SC 1511, if the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version. In a recent decision of the Supreme Court in State, Government of NCT of Delhi v. Sunil, reported in (2001) 1 SCC 652, while considering the provisions of section 27 of the Evidence Act, and section 114 Ill.(e) thereof, the Supreme Court has held that there is no requirement either under section 27 of the Evidence Act or under section 161 of the Criminal Procedure Code to obtain signature of independent witnesses on the record in which statement of an accused is written. The obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. It was held that it is a fallacious impression that when*

*recovery is effected pursuant to any statement made by the accused, the document prepared by the investigating officer contemporaneous with such recovery must necessarily be arrested by the independent witnesses. It was held that if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. The Court observed that, it is an archaic notion that actions of the police officer should be approached with initial distrust and that it is not a legally approvable procedure to presume the police action as unreliable to start with, and to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions. It was held that when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused, it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. In the present case also, we find that the version given by the police officer about the discovery of the weapons at the instance of the accused persons is reliable and re-assures the evidence of the prosecution witnesses who have deposed as to the participation of the accused persons in the crime. Even without these discovery panchnamas, as noted by us hereinabove,*

*there is reliable evidence to connect all these accused with the crime, and, their evidence is sufficient to hold that these accused persons had formed an unlawful assembly and with a view to achieve their common object of intentionally causing death of deceased Hareshbhai they had on 15-9-1992 around 9.30 in the morning, attacked him with knives and a gupti and caused eighteen incised wounds which resulted in his death.*

*25. The aforesaid shows that the recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. Further, the Court has to consider the evidence of the Investigating Officer, who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. It is an archaic notion that actions of the police officer should be approached with initial distrust and that it is not a legally approvable procedure to presume the police action is unreliable to start with, and to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions. The aforesaid further shows that if a police officer gives evidence in the Court that certain articles were recovered by him on the strength of the statement made, it is upon the Court to believe the information to be correct, if it is otherwise shown not to be unreliable."*

*26. It is in this light of the aforesaid legal position we cannot accept the contention of the learned Counsel for the appellant that since the panchas have only admitted their signature in the panchnama prepared for disclosure of certain facts and thereafter incriminating material is also discovered, such should be discarded. In our*

*view, as per the above referred legal position, the Court while considering the aspect that the panchas after admitting signatures have not further supported the case of the prosecution, would also consider as to whether the contents of the panchnama are proved by the prosecution through the evidence of concerned police officers in whose presence the panchas had signed and who subsequently had recovered or discovered the incriminating material. Further, after the discovery or recovery of the incriminating material is proved, the Court may also be required to examine as to whether any possible explanation has been given to such fact of discovery of incriminating material by the accused in the statement under Section 313 of Cr. P.C., or by way of substantial defence. In the present case, as recorded by us herein above, in the statement under Section 313 of Cr.P.C., there is mere denial. In the further statement as recorded by us herein above, A-3 as not stated anything except the false case filed against him. So far as A-1 and A-2 are concerned, except denial of stating that no discovery is made, nor any facts were disclosed or that no panchnama was prepared in their presence, no other specific explanation has been given. Similar is the further statement of A-5. There is no denial by A-5 that he was not knowing A-3. Apart from the testimony of the police officer in whose presence the incriminating materials were discovered and also recovered, the document at Exh.121 further shows that the recovery of the clay/earth and the particles of burnt jute pieces of the coat was in presence of scientific officer, who is a public servant."*

18. If the facts of the present case are examined in light of the aforesaid legal position when the fact of recording of the statement is admitted by

the witness Bhaijibhai, PW 4 and the contents of the pointing out panchnama is proved through the testimony of IO, and when subsequently, the dead body of the deceased is discovered, the said fact can be considered as per section 27 of the Evidence Act. Same will be the position for consideration of the disclosure made by A1 and the discovery of log of wood and iron axe at the instance of A1.

19. Under these circumstances, we do not find that the evidence for disclosure of the fact by pointing out panchnama and the place shown by Bhaijibhai and discovery of dead body as well as the disclosure of fact made by A1 and the discovery of log of wood and iron axe deserves to be discarded while considering the case of the prosecution. Hence, the contention cannot be accepted.

20. In view of the above, it can be said that the prosecution has been able to prove the case for causing death of the deceased and of destroying of the evidence by cremating the dead body of the deceased. However, important aspect which has been lost sight of by the learned Sessions Judge is that as per the case of the prosecution and the fact disclosed by Bhaijibhai before the police officer, Shri Vinodsinh PW 22, Exh. 80, since A1 had seen the deceased doing unnatural work with his wife Manjulaben and he had seen deceased lying above Manjulaben, his wife, he had

beaten the deceased. There is also disclosure for shouting at the residence of A1. Such would make out a case for sudden provocation in natural course for a husband. At this stage, we may make useful reference to the decision of the Apex Court in the case of KM Nanavati v. State of Maharashtra reported in AIR 1962 SC 605, wherein the Apex Court had an occasion to consider the aspect of sudden provocation in normal circumstances. The Apex Court, in the said decision, at paragraphs 83 to 85, observed thus -

> *"83) Where the deceased led an immoral life and her husband, the accused, upbraided her and the deceased instead of being repentant said that she would again do such acts, and the accused, being enraged struck her and, when she struggled and beat him, killed her, the Court held the immediate provocation coming on top of all that had gone before was sufficient to bring the case within the first exception to s. 300 of the Indian Penal Code. So too, where a woman was leading a notoriously immoral life, and on the previous night mysteriously disappeared from the bedside of her husband and the husband protested against her conduct, she vulgarly abused him, whereupon the husband lost his self-control, picked up a rough stick, which happened to be close by and struck her resulting in her death, the Lahore High Court, in Jan Muhammad v. Emperor, held that the case was governed by the said exception. The following observations of the court were relied upon in the present case :*
>
> > *"In the present case my view is that, in judging the conduct of the accused, one must not confine himself to the actual moment when the blow, which*

> *ultimately proved to be fatal was struck, that is to say, one must not take into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman..... ..... .....*
>
> *As stated above, the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death."*

*A division bench of the Allahabad High Court in Emperor v. Balku invoked the exception in a case where the accused and the deceased, who was his wife's sister's husband, were sleeping on the same cot, and in the night the accused saw the deceased getting up from the cot, and going to another room and having sexual intercourse with his (accused's) wife, and the accused allowed the deceased to return to the cot, but after the deceased fell asleep, he stabbed him to death. The learned Judges held :*

> *"When Budhu (the deceased) came into intimate contact with the accused by lying beside him on the charpai this must have worked further on the mind of the accused and he must have reflected that `this man now lying beside me had been dishonouring me a few minutes ago'. Under these circumstances we think that the provocation would be both grave and sudden."*

*The Allahabad High Court in a recent decision, viz., Babu Lal v. State applied the exception to a case where the husband who saw his wife in a compromising position with the deceased killed the latter*

*subsequently when the deceased came, in his absence, to his house in another village to which he had moved. The learned Judges observed :*

> *"The appellant when he came to reside in the Government House Orchard felt that he had removed his wife from the influence of the deceased and there was no more any contact between them. He had lulled himself into a false security. This belief was shattered when he found the deceased at his hut when he was absent. This could certainly give him a mental jolt and as this knowledge will come all of a sudden it should be deemed to have given him a grave and sudden provocation. The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any the less sudden."*

*All the said four decisions dealt with a case of a husband killing his wife when his peace of mind had already been disturbed by an earlier discovery of the wife's infidelity and the subsequent act of her operated as a grave and sudden provocation on his disturbed mind.*

*84) Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is*

*not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self- control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.*

*85) The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."*

21. If the facts of the present case are considered in light of the above referred observations, the natural provocation by A1 in capacity as the husband on account of the deceased doing unnatural work with his wife and on account of the deceased found lying above his wife, resulting into loosing of self control and of giving blows with the log of wood could not be

ruled out. It is by now well settled that when two views are possible, the court would lean for the view in favour of the accused.

22. Under these circumstances, we find that if the incident of causing death by A1 of the deceased is considered on account of sudden provocation, the case would fall not under section 302 of IPC, but would fall under section 304 Part-II of IPC. Hence, the appropriate sentence would be 10 years RI in place of life imprisonment as imposed by learned Sessions Judge upon A1. However, so far as A2 is concerned, no reliable and material evidence is led by the prosecution to show that A2 had played any role for causing death of the deceased. The disclosure made by A1 for digging and cremating the dead body with his wife A2 cannot be made use against A2 who is a co-accused. Further, there is no corroboration by any other evidence for the role played by A2 for digging and for cremating the dead body of the deceased. Under these circumstances, the learned Sessions Judge has committed error in relying upon the disclosure made of a fact against other co-accused, more particularly in absence of any other independent evidence led by the prosecution against A2 for the role played by her. Hence, the conviction recorded by the learned Sessions Judge against A2 and the sentence imposed upon A2 cannot be maintained.

23. In our view, the learned Sessions Judge has

committed on additional error in not granting benefit of section 427 of Cr.P.C. to the accused. It is not that in every case, Court may grant benefit of section 427 of Cr.P.C. to all the accused, but in our view, if there are specific reasons recorded by the learned Sessions Judge for not to extend the benefit under section 427 of Cr.P.C., the matter may stand on different footing and different consideration. No reason whatsoever is mentioned by the learned Sessions Judge. Further, there is no past history of A1 of committing of any crime. Under these circumstances, we find that the benefit under section 427 of Cr.P.C. of undergoing sentences simultaneously, could have been extended by the learned Sessions Judge. But, as the benefit is not extended, the same can be extended by us in the present appeal.

24. It also appears to us that the fine imposed of Rs.50,000/- upon accused is on higher side inasmuch if the financial background of the accused is considered, they are from a very poor class of the society. It appears that before the learned Sessions Judge, the lawyer was engaged through legal aid. They did not have the financial capacity even to engage lawyer. Further, the agricultural land is held by father of A1 and not by A1 and A1 was doing labour work in sawmill at Nadiad. Hence, we find that the fine imposed deserves to be reduced appropriately by Rs.25,000/-. As the amount of fine deserves

to be reduced accordingly, the compensation would also be required to be reduced.

25. In view of the aforesaid observations and discussions, the conviction made by the learned Sessions Judge of A1 for the offence under section 302 r/w section 114 of IPC is modified by converting the same as conviction under section 304 Part-II of IPC. The sentence upon A1 shall be 10 years RI with the fine of Rs.25,000/- and further 6 months RI for default in payment of fine. The conviction recorded and sentence imposed upon A1 for the offence under section 201 of IPC is confirmed. However, both the sentences imposed shall be undergone concurrently by A1.

26. The conviction recorded and the sentence imposed upon A2 by the learned Sessions Judge is set aside. A2 shall be set to liberty forthwith unless her presence is required for any other lawful purpose.

27. The order of the learned Sessions Judge for awarding compensation under section 357(1)(b) of Cr.P.C. shall stand modified to the effect that the amount of compensation shall be Rs.25,000/- in place of Rs.75,000/-.

28. Criminal Appeal No.108/10 shall stand partly allowed to the aforesaid extent. Criminal Appeal No.109/10 shall stand allowed accordingly.

**(JAYANT PATEL, J.)**

**(Z.K.SAIYED, J.)**

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