IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 257 of 1986
With
CRIMINAL APPEAL NO. 591 of 1986
With
CRIMINAL APPEAL NO. 592 of 1986
With
CRIMINAL APPEAL NO. 461 of 1986
With
CRIMINAL APPEAL NO. 660 of 1986

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI Sd/-
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA 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 or any order made thereunder ?	No

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VASUDEV CHATURBHAI PATEL & 3....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:

CRIMINAL APPEAL NO. 257 of 1986

MR AD SHAH, ADVOCATE for the Appellant(s) No. 1 - 4

MR KB ANANDJIWALA, ADVOCATE for the Appellant(s) No. 1 - 4
MR LR PUJARI, APP for the Opponent(s)/Respondent(s) No. 1

CRIMINAL APPEAL NO. 591 & 592 of 1986

MR LR PUJARI, APP for the Appellant.
MR NITIN AMIN, ADVOCATE for the Respondent.

CRIMINAL APPEAL NO. 461 of 1986

MR NITIN AMIN, ADVOCATE for the Appellant.
MR LR PUJARI, APP for the Respondent.

CRIMINAL APPEAL NO. 660 of 1986

MR LR PUJARI, APP for the Appellant No.1.
MR AD SHAH, ADVOCATE for the Appellant(s) No. 1-3, 5-7, 10.
MR KB ANANDJIWALA, ADVOCATE for the Appellant(s) No.1, 4, 8, 9.

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 30/11/2015

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. All these Criminal Appeals are preferred against judgment and order dated 4.2.1986 passed by learned Additional Sessions Judge, Ahmedabad (Rural) at Narol in Sessions Case Nos.102 and 103 of 1985. By the said judgment, accused no.1 of Sessions Case No.102 of 1985 was convicted for the offence punishable under Section 304, Part-I of the Indian Penal Code (For short “IPC”) and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- and in default of payment of fine, accused no.1 was ordered to undergo simple imprisonment for one month.

Accused no.1 was also convicted for offence under Section 324 of IPC and sentenced to undergo rigorous imprisonment for a period of three months and ordered to pay fine of Rs.200/- and, in default of payment of fine, simple imprisonment of fifteen days was awarded. Though accused nos.5, 6 and 7 were convicted for the offences punishable under Sections 325, 324 and 323 respectively, they were given the benefit of probation and were released. Accused nos.2, 3, 4, 8 and 9 were acquitted of the charges for offences punishable under Sections 143, 148, 504, 302, 307, 324, 325, 323, 506 (2) and 149 of IPC. They were also acquitted of the charges for the offences punishable under Sections 25 (1) (A) and 27 of the Indian Arms Act as well as Section 135 (1) of the Bombay Police Act. Criminal Appeal No.257 of 1986 is filed by accused nos.1, 5, 6 and 7 of Sessions Case No.102 of 1985 against their conviction. Criminal Appeal No.660 of 1986 is preferred by the State against acquittal of all the accused of Sessions Case No.102 of 1985 from the charges of offences punishable under Sections 302 read with Sections 143 to 149 of IPC.

2. So far as Sessions Case No.103 of 1985 is concerned, accused nos.2, 3 and 4 were acquitted from the charges of offences punishable under Sections 147, 452, 506 (2), 323,

336 and 149 of IPC and Section 135 (1) of the Bombay Police Act. Accused nos.5 and 6 were also acquitted of the aforesaid charges. However, accused no.1 was convicted for offences punishable under Sections 452 and 323 of IPC and sentenced to imprisonment till rising of the Court and also to pay fine of Rs.300/- and, in default of payment fine, he was ordered to undergo simple imprisonment for one month for offence punishable under Section 452 of IPC and for offence punishable under Section 323 of IPC, he was sentenced to pay fine of Rs.400/-, and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of two months. Being aggrieved by this judgment, Criminal Appeal No.592 of 1986 is preferred the State against acquittal of accused nos.2, 3 and 4 from the offences punishable under Sections 147, 452, 506 (2), 323, 336 and 149 of IPC. Criminal Appeal No.591 of 1986 is preferred by the State for enhancement of sentence imposed on accused no.1 of Sessions Case No.103 of 1985 for offences punishable under Sections 452, 323 of IPC. Criminal Appeal No.461 of 1986 is preferred by accused no.1 of Sessions Case No.103 of 1985 against his conviction for offence under Sections 452 and 323 of IPC.

3. As all these appeals are arising out of the same judgment

and since they are arising out of the same incident and the evidence is common in all these appeals, the same are taken up for hearing together.

4. At the outset, it is stated that accused no.4 of Sessions Case No.102 of 1985, viz. Chaturbhai Bhudarbhai has expired on 28.9.1999, while accused no.8, Ravjibhai Bhuderbhai has expired on 24.5.1994 and accused no.9, Thakarji Sunderji has expired on 17.4.1989. Therefore, Criminal Appeal No.660 of 1986 filed by the State against acquittal of all the accused stands abated qua accused nos.4, 8 and 9.

5. The case of the prosecution is that on 16.4.1985 at about 2 p.m. son of accused no.2 and son of the prosecution witness Naranbhai, who were small children, had a quarrel. Thereafter, wife of Naranbhai went to reproach the son of accused no.2, accused no.2 and his wife. Upon that, exchange of abuses had taken place. Thereafter, at about 2.30 p.m. near the house of Odhavji, the accused have formed an unlawful assembly and they were armed with deadly weapons like dhariyas, guns and sticks and they had assaulted the prosecution witnesses and have caused death of Pursottambhai and have also caused hurt and grievous hurt to Hiralal Purshottam, Naranbhai

Purshottam, Odhavji Purshottam and Manjulaben. Therefore, they were admitted in the hospital. According to the prosecution, there was a previous enmity between the parties as accused no.2 had filed a suit for damages against Odhavji Purshottam for defaming him. It is also the case of the prosecution that some years back, the accused wanted to purchase the land which was purchased by the prosecution witness by paying higher price. These are the reasons which prompted the accused to take up a quarrel with the complainant side. Accordingly, a complaint was filed by Naranbhai with the police and the offence was registered against the accused. The accused side had also filed a cross complaint against the prosecution witnesses for having committed hurt and grievous hurt by entering into the house of the accused no.2. Vikramsinh Gagubha Jadeja, PSI, has made investigation into the matter. He made panchnama of the place of the offence and recorded the statements of the witnesses.

5.1 Accordingly, investigation was carried out and charge sheet was submitted in the Court of learned Magistrate. However, as the case was exclusively triable by the Court of Sessions, the same committed to Sessions Court. Thereafter,

charge was framed against the accused persons. The accused persons pleaded not guilty and claimed to be tried.

5.2 During the trial, the prosecution had examined following witnesses in Sessions Case No.102 of 1985:-

Sr. No.	Name	Exh.
1	Naranbhai Purshottam	43
2	Manjulaben Naranbhai	45
3	Kantaben Odhavji	46
4	Hiraben Purshottam	47
5	Govindji Purshottam	48
6	Odhavji Purshottam	49
7	Goardhan Pitamber-Panch	50
8	Manjibhai Gandabhai-Panch	52
9	Babubhai Shankarbhai	55
10	Bhagwandas Laxmanbhai, Circle Inspector	56
11	Dr.Kiritkumar Patel	58
12	Dr.Pratima Desai	60
13	Dr.Mahesh Babubhai Patel	61
14	Vikram Gagubha Jadeja, PSI	62

5.3 The prosecution has also produced and relied upon following documentary evidence:-

Sr. No.	Description	Exh.
1	FIR	44
2	Panchnama of place of incident.	51
3	Panchnama of production of dhariya.	53 & 54

4	Medical certificates of prosecution witnesses.	27 to 32
5	Postmortem Notes.	36
6	Medical certificates of injuries of prosecution witnesses.	33, 34

5.4 During the trial, the prosecution had examined following witnesses in Sessions Case No.103 of 1985:-

Sr. No.	Name	Exh.
1	Dr.Kiritkumar Jayantilal Patel	13
2	Keval Chaturbhai	19
3	Gauriben Kevalbhai	21
4	Bachu Ravji	22
5	Vasudev Chaturbhai	23
6	Gordhan Pitambar-Panch.	24
7	Chaturbhai Bhudarbhai	28
8	Natvar Mangal-Head Constable	29
9	Vikramsinh Gagubha Jadeja, PSI	30

5.5 The prosecution has also produced and relied upon following documentary evidence:-

Sr. No.	Description	Exh.
1	FIR	20
2	Panchnama of place of incident.	25

5.6 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgments and orders awarding the sentence, as aforesaid, and also acquitting the

accused persons of some of the charges levelled against them. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court.

6. Mr.A.D.Shah, learned advocate appearing for the appellant (original accused no.1) in Criminal Appeal No.257 of 1986 has taken us through the evidence and submitted that the prosecution has miserably failed to prove its case against the appellant. He has also taken us through the medical evidence and statements of PW-11 and PW-12. PW-11 is the doctor who had given treatment to the witnesses as well as accused while PW-12 is the doctor who performed postmortem of the deceased. Following injuries were found by the doctor.

"I. Manjulaben Naranbhai

CLW vertical of size of about 4" X ½ " bone deep over the occipital region.

II. Naranbhai Purshottambhai

1. Incised wound on palmer aspect of first phellings of left hand of the size of 3 cm. x 1 cm x 1 cm.

2. Punctured wound on lateral aspect of left elbow about 1 cm. in diameter.

3. A punctured wound on the region of posterior aspect on left elbow just above the olecramen process of ulma bone.

III. Kantaben Odhavji, wife of Accused No.1 in cross-case.

Contusion on the right side back on upper part of the size of 2” x ¾ “.

IV. Odhavji Purshottamdas, Accused no.1 in cross-case.

1. Swelling and pain present at the dorsal aspect of left hand just above the wrist joint. Mere swelling and pain present on the radial aspect.
2. Contusion of red colour on the posterior aspect of upper 1/3rd of left arm 2” X 1/2” in size.

X-ray shows fracture of styloid process of radial bone.

V. Govindbhai Purshottambhai

CLW on the vault of the scalp of the size of 3” X 1/4” bone deep.

VI. Hirabhai Purshottamdas

1. CLW of the size of 3” x 1 ½“ bone deep on right parietal temporal region.
2. CLW horizontal in shape of the size of 2” x ½” bone deep on the occipital region.

VII. Purshottambhai Abaram

CLW on right front parietal region of the size of 2 ½” x ½” bone deep.

VIII. Gauriben Kevalbhai, wife of Accused no.2 in this case

CLW of left parietal region posterior aspect of the size of 2” X 1/2” bone deep.

IX. Bachubhai Ravjibhai, Accused no.3 in this case

1. Abrasion of the size of 2 cm. X 1 cm. on region of first metacarpal bone dorsal aspect of left thumb.
2. Contusion of the size of 1 ½” X 1” on the left elbow joint lateral aspect.

X. Chaturbhai Bhudarbhai, Accused no.4 in present case.

1. CLW of the size of 1 cm. X ½ cm. X ½ cm. on the distal aspect of the second metacarpal bone, on the dorsal region of right hand.
2. A CLW on right parietal bone of the size of 1 ½” X ½” bone deep.

XI. Vasudev Chaturbhai

1. Swelling on dorsal aspect of middle finger proximal phellin of left hand. Tenderness at above mentioned site.
2. Abrasion of the size of 1 cm. X 1 cm. at the above mentioned site.

* Upon postmortem of the deceased, PW-12 found the following injuries.

1. A sutured wound with six stitches over right front parietal region. It is 4 cm. long.
2. Two burr-hole wounds, one on left temporal region and one on left parietal region. 3.5 cm. long and 4 cm. long respectively.

Injuries mentioned in column no.19:-

1. Defused heametema under the scalp extending from right front-parietal region, right temporal region, occipital region, left temporal region and left front-parietal region.
2. Linear fracture of right frontal bone 7 cm. long
3. Fracture of right middle cranial fossa.
4. Two burr-holes in the dura on left side corresponding to injury no.2 of column no.17.
5. Deffused subdural clotted blood over left temporal lobe and occipital lobe. Left temporal lobe is lacerated.

This witness has stated that the cause of death is due to shock and hemorrhage resulting from intra-cranial injuries. He also stated that in my opinion, these injuries were sufficient in the ordinary course of nature to cause death of the deceased.

PW-13, Dr.Maheshbahi Patel, who examined Naranbhai Purshottambhai, Accused no.2 has found the following injuries. He found CLW 2 cm. over palmer aspect of left index finger. There was also swelling over left elbow joint and pain and tenderness on posterior part of left thigh. He stated that these injuries could be caused by any hard and blunt substance."

6.1 Mr.Shah has submitted that the prosecution has not explained the injuries of the accused. He has also taken us through the evidence of PW-1 to PW-9 and contended that the place of incident is inside the house of accused no.2 and that the reason for beginning of the quarrel was a fight between two children. At that time wife of accused no.2, Manjulaben, had gone to the place of the deceased and tried to scold and that is how the quarrel started. He further contended that injury to Guariben is not explained. He has taken us through paragraph 27 of the impugned judgment, wherein the trial Court has described the place of incident, and the place of incident is wrongly being described as outside the house. He has also taken us through the evidence of witnesses to the panchnama and panchnama of scene of offence.

6.2 Mr.Shah submitted that learned trial Judge has found that the incident started from the house of accused no.2 when Odhavji gave a stick blow on the head of Gauriben, however, there is no basis to come to such conclusion. Mr.Shah also submitted that the learned trial Judge further erred in imagining that since the spot is found outside the house of Odhavji, subsequent incident took place outside the house. He

also submitted that the learned trial Judge erred in believing that since all the accused were injured outside the house, there was no question of right of private defence. He also submitted that the prosecution witnesses could not explain as to how Gauriben got injured and how Chatur got injury on head. He submitted that accused no.2 also had injuries on his back, however, no reference is made to this injury and the finding that it was not a bleeding injury or there were no blood stains on his clothes is a wrong statement. He submitted that this case was filed with a view to involve the whole family as the allegations are made even against young boys. He submitted that even if it is believed that accused no.1 gave a blow to Purshottam, he can be said to have acted in private defence as his father Chaturbhai was injured on the head and thereafter he had a right of self-defence. He further submitted that learned trial Judge ought to have seen that in no case accused no.1 has committed an offence under Section 304, Part-I of IPC as a single blow with blunt side of the *dharia* was given in a sudden quarrel where his father is injured on the head and his brother's wife was also injured. He, therefore, submitted that accused no.1 cannot be held guilty as has been done by the learned trial Judge. He also submitted that accused nos.5 to 7 have also wrongly been convicted for

offences punishable under Sections 325, 324 and 323 of IPC respectively. Therefore, he prayed that this appeal may be allowed by reversing the judgment of conviction recorded against present appellants.

6.3 In support of his submission Mr.Shah has relied on the decision of the Apex Court in the case of **Dr.Mohammad Khalil Chisti v. State of Rajasthan & Others** reported in **2013 AIR SCW 115**, wherein it is observed in paragraphs 20 and 21 as under:-

> *"20. In Lakshmi Singh and others v. State of Bihar,(1976) 4 SCC 394 : (AIR 1976 SC 2263), this Court held that:*
>
> > "*? ? It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. ? ?*"
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> *It is clear that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witness is untrue and (2) that the injuries probabilize the plea taken by the appellants. In a murder case, non-explanation of the injuries sustained by the accused at about the time of the*

occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

"*(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;*
(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

21. It is further clear that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. However, there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries."

6.4 Mr.Shah has also relied on the decision of the Apex Court in the case of **Dev Raj and Another v. State of Himachal Pradesh** reported in **AIR 1994 SC 523**, wherein it is observed as under in paragraph 9:-

> *"9. As already mentioned, we are concerned only with Dev Raj now. Dev Raj as well as Des Raj undoubtedly received injuries during the same occurrence and when they have taken the plea that they acted in self-defence, that cannot be lightly ignored particularly in the absence of any explanation of their injuries by the prosecution. It is not necessary to refer to various decisions where it has been held that the accused if acted on self-defence, need not prove beyond all reasonable doubt and if two views are possible, the accused should be given the benefit of doubt. Having regard to the nature of the injuries on the two accused persons, we find it difficult to hold that their pleas altogether are unfounded. Then the next question would be whether they had exceeded the right of self-defence. Admittedly, the occurrence is said to have taken place in a sudden manner. Even, according to the prosecution, they did not come there armed. A quarrel ensued there and they picked up iron pipes and wooden phattis that were lying there and a clash took place. In such a situation, their plea of right of private defence has to be accepted, but having regard to the injuries inflicted by them on the two deceased persons as well as on PW-23, they have definitely exceeded the right of private defence and the accused are entitled to the benefit of Exception 2 of Section 300 and the offence punishable is*

one under section 304, Part 1, IPC. Accordingly, conviction of Dev Raj under Section 302, IPC and the sentence of imprisonment for life awarded thereunder are set aside and, instead, he is convicted under Section 304 Part I, IPC and sentenced to R. I. for seven years. His conviction under Section 307, IPC and the sentence of five years R.I., are, however, confirmed. The sentences are to run concurrently. His conviction under Section 451, IPC and the sentence of six months' R.l. and fine on default clause, if any, are confirmed. Sentences to run concurrently. Dev Raj shall surrender and serve out the remaining sentence. In the result, the appeal abates so far as Des Raj is concerned and allowed partly so far as Dev Raj is concerned to the extent indicated above."

6.5 Mr.Shah has further relied on the decision of the Apex Court in the case of **Subramani and Others v. State of Tamil Nadu** reported in **AIR 2002 SC 2980**, wherein it is observed as under in paragraph 9:-

"18. We observe that the State has not preferred any appeal against the acquittal of the appellants of the charge under Sections 302 and 302/34, I.P.C. The High Court on a finding that the appellants had exceeded their right of private defence of property, convicted and sentenced them under Section 304, Part I read with Section 34, I.P.C. Counsel for the appellants rightly submitted that the conviction of the appellants, in the facts of this case, under Section 304, Part I read with

Section 34, I.P.C. is clearly illegal. The High Court having found that the appellants acted in exercise of their right of private defence, the conviction of all the appellants with the aid of Section 34 was unwarranted. In our view the submission has force and must be accepted."

7. On the other hand, learned APP, Mr.Pujari has contended that the trial Court has not committed any error while convicting the accused no.1. He contended that this is a case wherein the trial Court should have convicted the accused under Section 302 of IPC. Looking to the evidence, even if the story of the self-defence put forward by the accused is believed, it has to be viewed very seriously and for a trivial issue the accused could not have used deadly weapon. He submitted that the accused have tried to show their supremacy and, therefore, the other side got frightened. He supported the impugned judgment and submitted that it may not be disturbed by this Court in the present appeal.

8. We have heard learned advocates Mr.Shah for the appellant-accused and learned APP Mr.Pujari for the State. From the evidence on record, particularly, the medical evidence, it is clear that the death of Purshottambhai is unnatural death and considering the injuries which are caused

to the deceased the case will be that of culpable homicide. From the evidence on record, it is clear that all the prosecution witnesses have stated in their deposition that it was the accused no.1 who had given *dhariya* blow by blunt portion on the head of the deceased and there is no reason to disbelieve the evidence of the prosecution witnesses. As per the say of accused no.1, he heard the shouts from the house of accused no.2 and has gone there and the prosecution witnesses were beating accused no.2 and his wife, however, accused no.1 did not do anything. On the other hand, accused no.2 has stated that since prosecution witnesses were beating him, therefore, he started moving his stick, however, he do not know whether any injury is caused to anyone. No question in this regard is put in the cross-examination of the prosecution witnesses. Therefore, from the evidence of accused no.2 and prosecution witnesses, learned trial Judge has rightly found that the incident took place outside the house and it cannot be said that the accused no.1 has acted in self-defence. Therefore, judgments relied upon by Mr.Shah do not apply to the facts of the present case. So far as submission of Mr.Shah that the prosecution could not explain the injury to the accused and the place of offence is concerned, it is true that the wife of Naranbhai had gone to the place of accused no.2 but at that

time it was only a conversation between the ladies and nothing untoward had happened at that time. Subsequently, when she had gone some altercation had taken place between the two ladies, viz., Manjulaben and Gauriben and at that time accused have started abusing the family members of the witnesses and that is the real genesis of the dispute. The accused have started abusing the family members of the witnesses outside the house, and each of the witnesses have narrated the role of each of the accused. No doubt an admission is also made to prove that the accused acted in self-defence but the prosecution has successfully proved the case against accused no.1. Taking into consideration long period of time that has elapsed, we are not enhancing the sentence imposed upon accused no.1 otherwise this is a fit case to enhance the sentence imposed upon accused no.1 as we are of the opinion that the accused no.1 is guilty of offence under Section 302. Looking to the evidence on record and the circumstances, as aforesaid, we are not inclined to disturb the finding of the trial Court holding accused no.1 guilty of offence punishable under Section 304, Part I of IPC and we confirm it. So far as accused nos.5 to 7 are concerned, learned advocate for the appellants is not in a position to take a different view than the one taken by the learned trial Judge. Therefore, this appeal deserves to

be dismissed.

CRIMINAL APPEAL Nos.461 & 591 of 1986

9. So far as Criminal Appeal No.461 of 1986 is concerned, it is preferred by accused no.1 of Sessions Case No. 103 of 1985 against his conviction for the offences under Sections 452 and 323 of IPC. It is submitted by Mr.Nitin Amin, learned advocate for the appellant-accused no.1 that the trial Court has committed an error in convicting the accused for the aforesaid offences. He submitted that the learned trial Judge has wrongly discarded the evidence of the complainant, Kevalbhai Chaturbhai, Exh.19. He also submitted that except the evidence of Gauriben, there is no other evidence involving present accused in the commission of offence and the evidence of Gauriben suffers from various infirmities. He submitted that Gauriben was an interested witness and she has tried to change her version number of times, therefore, it could not have been believed. He, therefore, submitted that present appeal being Criminal Appeal No.461 of 1986 may be allowed and Criminal Appeal No.591 of 1986 preferred by the State for enhancement of sentence imposed upon accused no.1 may be dismissed.

10. On the other hand, learned APP, appearing for the State has supported the order of conviction passed against accused no.1 in Sessions Case No.103 of 1985. So far as Criminal Appeal No.591 of 1986 preferred by the State for enhancement of sentence imposed on accused no.1 of Sessions Case No.103 of 1985 is concerned, learned APP that State has taken us through the oral as well as documentary evidence and contended that the trial Court has committed an error in imposing lesser sentence upon accused no.1 inspite of voluminous evidence against him and also contended that the trial Court ought not to have imposed such a lesser punishment. He submitted that without appreciating the documentary as well as oral evidence available on the record of the case in their proper perspective, learned Judge has erred in imposing lesser punishment on accused no.1 for the offences punishable under Sections 452 and 323 of IPC, as the punishment imposed is till rising of the Court and to pay fine of Rs.300/- for offence under Section 452 of IPC and order to pay fine of Rs.400/- for offence under Section 323 of IPC. He submitted that the learned trial Judge has rightly convicted the accused, however, lesser sentence is imposed upon the accused. He further submitted that the learned Judge has also erred in not properly appreciating the gravity of the offence

committed by the accused while imposing the sentence and thereby committed grave error by imposing lesser punishment. He also submitted that the learned Judge ought to have imposed maximum sentence on the present accused as provided under the aforesaid provisions. Hence, impugned judgment and order passed by learned Judge in imposing the lesser sentence deserves to be modified by this Hon'ble Court and the sentence imposed upon accused no.1 deserves to be enhanced to maximum sentence as provided under the aforesaid sections. The learned Judge also failed to appreciate that there is no sufficient and reasonable cause for the learned Judge to impose lesser punishment. He also submitted that the learned Judge failed to appreciate that there is no any mitigating circumstance to impose less punishment and it is very clear from the facts and circumstances of the case and the material available on record of the case that there is aggravating circumstances in which Hon'ble Judge ought to have imposed the maximum sentence as provided under the law.

11. So far as Criminal Appeal No.461 of 1986 is concerned, it is preferred by accused no.1 against his conviction, while Criminal Appeal No.591 of 1986 is preferred by the State for

enhancement of sentence imposed on accused no.1 in Sessions Case No.103 of 1985. We have heard learned advocate for accused no.1 and learned APP for the State. We have also gone through the evidence on record. So far as role of accused no.1 is concerned, it is important to refer to the evidence of Gauriben Kevalbhai, who was examined at Exh.21. She has stated in her deposition that when the incident took place she was doing her household work and her husband was sitting. At that time, her son Yogesh came from outside and he was wiping. At that time, accused no.1 came to her house with a stick and gave a blow on her head. Therefore, bleeding started and her clothes have also become blood stained. Her say is support by the medical evidence as Dr.Kirit Patel, who is examined at Exh.13 that he had examined Gauriben and found the injury on her head. Therefore, learned trial Judge has found accused no.1 guilty of offences under Sections 452 and 323 of IPC i.e. criminal trespass in the house of Keval Chaturbhai to give stick blow on the head of Gauriben. However, considering the fact that this is the first offence of accused no.1, injury on the head of Gauriben was not serious in nature, the accused no.1 had given only blow and also considering the fact that in cross-case the accused persons, who were convicted for offences under Sections 323, 324, 325 of IPC, were released on

probation of good conduct, accused no.1 was awarded token sentence of imprisonment and fine. Considering the facts and circumstances of the case, we find that the sentence awarded by the trial Court is just and proper and it is not required to be enhanced as this is the first offence of the accused and it is rightly found that jail term would have adversely affected him. Therefore, we find that the learned trial Judge has not committed any error in finding accused no.1 guilty not any error is committed while awarding the punishment. Thus, both these appeals deserve to be dismissed.

Criminal Appeal Nos.660 and 592 of 1986

12. Mr.Amin, learned advocate for the respondent-accused has submitted that original accused no.2, Naranbhai, has expired on 11.6.2001, therefore, the State appeal qua him will stand abated. Death of Naranbhai certificate is produced. So far as Criminal Appeal Nos.660 of 1986 and Criminal Appeal No.592 of 1986 preferred by the State against the acquittal of the accused persons is concerned, learned APP submitted that acquittal is against law and evidence on record. He submitted that so far as Criminal Appeal No.660 of 1986 is concerned, learned trial Judge has erred in discarding the evidence of

prosecution witnesses, as these witnesses have received injuries and it is proved by medical evidence, therefore, their evidence could not have been discarded. He submitted that all the accused had come with deadly weapons by forming an unlawful assembly, however, learned trial Judge has given weightage to some omission and contradictions in the evidence and acquitted them of the charges under Section 302 read with Section 147 to 149 of IPC. He also submitted that even the FSL report supports the case of the prosecution and it is clear that gun shots were fired by the accused. He, therefore, submitted that this appeal may be allowed.

13. So far as Criminal Appeal No.592 of 1986 is concerned, which is preferred against acquittal of accused nos.2 to 4 of Sessions Case No.103 of 1985, learned APP submitted that the learned trial Judge has erred in appreciating the evidence of the prosecution witnesses wherein the prosecution has established that the respondents-accused were guilty of the offence punishable under Sections 147, 452, 506 (2), 323, 336 and 149 of IPC and Section 135 (1) of the Bombay Police Act and the trial Court has committed an error in acquitting them. He submitted that the prosecution has proved the presence of these accused persons in the house of the complainant by the

evidence of witness Gauriben and other witnesses. He, therefore, submitted that by allowing both these Criminal Appeals, impugned judgment acquitting the respondents-accused of the charges levelled alleged against them may be set aside.

14. On the other hand, learned counsel for the accused persons has contended that the trial Court has rightly appreciated the evidence on record and acquitted the accused persons of the charges levelled against them. It is also submitted that so far as acquittal appeals are concerned, the law is well settled and by taking us through the impugned judgment, he submitted that this Court may not interfere with the impugned judgment and the appeals may be dismissed.

15. So far as Criminal Appeal Nos.660 of 1986 and 592 of 1986 are concerned, which are preferred against acquittal of the accused persons of some of the charges levelled against them, we have heard learned APP for the State and learned advocate for the respondents-accused. We have also gone through the evidence on record and the impugned judgment. Since accused nos.4, 8 and 9 have expired, this appeal qua them has abated. So far as other accused persons are concerned, from the evidence on record, it is clear that at the

most the injury caused by the accused to the deceased was caused by the hard and blunt substance and it is rightly believed that the accused were not guilty of offence under Section 302 of IPC. The prosecution has also failed to prove offence under Sections 143 to 149 against the accused in Sessions Case No.102 of 1985. Therefore, they are rightly acquitted of these charges by the learned trial Judge. In view of this, we find that Criminal Appeal No.660 of 1986 sans merit and deserves to be dismissed.

16. Criminal Appeal No.592 of 1986 is preferred by the State against acquittal of accused nos.2 to 4 from the charges of offence levelled against them in Sessions Case No.103 of 1985. We find that so far as these accused persons are concerned, the prosecution has failed to establish that any of the accused have committed the offence of criminal intimidation by giving threats to any of the prosecution witnesses. Though Gauriben has stated that the accused were threatening to kill them, she has not stated as to how long prior to the incident such threats were given and by which accused. From the evidence of the prosecution witnesses in this case, it is clear that they have stated that accused nos.1 to 4 and their father Purshottam were coming out of the house of Kevalbhai and at that time the

accused persons have attacked the prosecution witnesses and caused injuries. Therefore, according to the witnesses, the incident in question took place outside the house of Kevalbhai and not inside the house. It is clear that the incident happened outside the house, therefore, the manner in which they received the injuries is rightly not believed by the trial Court. As the witnesses have received injuries outside the house and that too when the accused were going back from the place, it cannot be said that the accused had formed an unlawful assembly to commit the offence. In view of this, it is rightly found that it cannot be said that the accused nos.2 to 4 were guilty of rioting. In view of this, we find that Criminal Appeal No.592 of 1986 also sans merit and deserves to be dismissed.

17. It is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in a catena of decisions. In the case of **M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr., (2006) 6 S.C.C. 39**, the Apex Court has narrated the powers of High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

> "54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

17.1 Further, in the case of **Chandrappa Vs. State of Karnataka, (2007) 4 S.C.C. 415**, the Apex Court laid down the following principles;

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:
>
> [1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
> [2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
> [3] Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtain extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasis the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
> [4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of

> innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.
> [5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

17.2 Thus, it is a settled principle that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

17.3 Even in the case of **State of Goa V. Sanjay Thakran & Another, (2007) 3 S.C.C. 75**, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to

> review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

17.4 Similar principle has been laid down by the Apex Court in the cases of **State of Uttar Pradesh Vs. Ram Veer Singh & Ors, 2007 A.I.R. S.C.W. 5553** and in **Girja Prasad (Dead) by LRs Vs. State of MP reported in 2007 A.I.R. S.C.W. 5589**. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

17.5 In the case of **Luna Ram Vs. Bhupat Singh and Ors, (2009) SCC 749**, the Apex Court in paras-10 and 11 has held as under:

> "10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.
> 11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

17.6 Even in a recent decision of the Apex Court in the case of

Mookkiah and Anr. Vs. State, rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321, the Apex Court in para 4 has held as under:

> "4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be re-appreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]"

17.7 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of **State of**

Karnataka Vs. Hemareddy, **AIR 1981, SC 1417**, wherein it is held as under:

> "...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93:(AIR 1967 SC 1124) that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

17.8 Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then the discussion of evidence is not necessary. Therefore, both these appeals being Criminal Appeal Nos.660 and 592 of 1986 deserve to be dismissed and are dismissed accordingly.

18. For the foregoing reasons, all these Criminal Appeals are dismissed. The impugned judgments and orders dated 4.2.1986 passed by learned Additional Sessions Judge, Ahmedabad (Rural) at Narol in Sessions Case Nos.102 and 103 of 1985 are hereby confirmed. Bail bonds, if any, of the accused stand cancelled. Since accused no.1 of Sessions Case No.102 of 1985 is on bail, he shall surrender before the jail authorities within a period of twelve weeks from today to serve out the remaining period of sentence. Record and proceedings, if lying here, be sent to the Court below forthwith.

Sd/-

(K.S.JHAVERI, J.)

Sd/-

(R.P.DHOLARIA,J.)

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