IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 604 of 1999

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR. JUSTICE VIMAL K. VYAS 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 ?	**YES**
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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STATE OF GUJARAT
Versus
JIVRAJBHAI RAMJIBHAI KOLI

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Appearance:
MR DHAWAN JAYSWAL, APP for the Appellant(s) No. 1
BAILABLE WARRANT SERVED for Opponent(s)/Respondent(s) No. 1
MR P B KHANDHERIA(5228) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
And
HONOURABLE MR. JUSTICE VIMAL K. VYAS

Date : 22/03/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

Dura lex, sed lex

"The law [is] harsh, but [it is] the law."

(1) The respondent - original accused, in his sunset years, is facing capital punishment

for the crime, which he committed 27 years ago. Today, he is 73 years of age.

(2) The present appeal filed under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") is directed against the judgment and order of acquittal dated 20.04.1999 passed by Additional Sessions Judge, Gondal at Rajkot in Sessions Case No.95 of 1997.

(3) The case of the prosecution, as per the charge at Exh.1, is that on 29.03.1997 at around 7:35 hours in the morning in Jetpur City at Nava Darwaja in Gondra area, near Kaccha Road, the respondent - accused murdered his wife Savitaben (deceased) by inflicting various blows of knife on account of some proceedings filed by her against him seeking maintenance. The first informant, Kanjibhai Bijalbhai Dabhi, (PW-5) is the brother of the deceased - Savitaben. The accused was arrested on 29.03.1997 i.e. on the very same day. The trial Court, after examination of both - ocular as well as documentary evidence, has acquitted the respondent - accused by giving him benefit of doubt.

(4) Learned APP, while assailing the judgment of the trial Court, has submitted that the trial Court has committed grave error in disbelieving the evidence of the eye-witness, (PW-5) Kanjibhai Bijalbhai Dabhi (Exh.21) i.e. the complainant , who is the brother of the deceased and has acquitted the respondent-accused on very technical grounds. He has referred to the observations made by the trial Court in this regard. He has further submitted that the medical evidence corroborates the ocular evidence, however, the trial Court has not appropriately appreciated the same in its true perspective. He has submitted that the clothes of the accused were found with the blood stains having blood group “B”, which was the blood group of the deceased. It is submitted that the weapon - knife used by the accused for commission of the offence was also having blood group “B”. Finally, it is submitted that in fact, the accused has confessed about the commission of murder before PW-18, Dahyabhai Dudabhai Parghi (Exh.44), in the morning hours at 7 O'clock, when the accused had come to his home with blood stained knife and confessed that he

has committed murder of his wife. Learned Additional Public Prosecutor has submitted that the trial Court has discarded the confession and has acquitted the accused by disbelieving it. Similarly, he has submitted that the incident, as narrated by the eye-witnesses, is also corroborated with the evidence of the Investigating Officer and PW-18, Dahyabhai Dudabhai Parghi. He has submitted that the trial Court has discarded the entire evidence on minor contradictions, which are irrelevant and hence, it is urged that the acquittal recorded by the trial Court, by giving benefit of doubt to the accused, is required to be reversed.

(5) In response to the aforesaid submissions, learned advocate Mr.Khandheria appearing for the respondent - accused has urged that the present appeal may not be entertained as the trial Court, after appreciating ocular as well as the documentary evidence, has precisely acquitted the accused. He has submitted that the eye-witness is an interested witness, being cousin of the deceased, and hence, his evidence should not be believed. It is submitted that the place of the offence itself is not identified as

the same does not reconcile with the version of the eye-witness.

(6) Learned advocate Mr.Khandheria, has submitted that in the present case, neither the place nor the time of occurrence of offence has been proved by the prosecution. He has referred to the map of place of occurrence produced at Exh.15, and has contended that it suggests that the dead body of the deceased was found at a distance of around 108 feet on the Eastern side of the road going from Nava Darwaja towards Saran Bridge towards Gondra and the public toilets are located first and then the road going to Gondra is shown as per the map. It is submitted by learned advocate Mr.Khandheria, that as per the deposition of PW-5, Kanjibhai Bijalbhai, if the sole eye-witness was disbelieved to be going to attend the nature call then also, he would face the public toilet first and thereafter, walking for more than 130 feet, the eye-witness could have seen the incident or else if the eye-witness would have come to the corner of the close house of Amrabhai Virabhai, he could have seen the incident, whereas as per the version of the eye-

witness, before going to the public toilet, he had seen the alleged incident, which creates suspicion about the veracity of the version of the sole eye-witness.

(7) Learned advocate Mr.Khandheria, has submitted that it is doubtful that the eye-witness has seen the incident since he did not state that the accused had inflicted knife blows on the deceased, hence, the trial Court has rightly disbelieved his evidence, and precisely acquitted the accused. Learned advocate Mr.Khandheria, has further contended that the trial Court has disbelieved the timings of registration of FIR for the alleged commission of murder at 7 O'clock and since the inquest panchnama, has been drawn at 8:00 to 8:40 a.m., whereas, as per the evidence of the PW-2, Pravinbhai Somabhai (Exh.16), the same was carried at around 6:00 a.m., which also creates doubt about the case of the prosecution.

(8) Learned advocate Mr.Khandheria, has further submitted that the prosecution has failed to prove beyond reasonable doubt the injury No.4 caused to the deceased by knife since PW-14, Dr.Narginbhai Sarvaiya (Exh.30), who

conducted the post mortem of the deceased, has stated in his deposition that injury No.4 could not have been caused by muddamal article No.1 – knife recovered at the behest of the accused and, therefore, it has been believed that the injury No.4 could not have been caused by muddamal knife, whereas in the column No.17 of the post mortem report, 6 incised wounds are mentioned amongst one is cut injury, which cannot be said to have been caused by any weapon and hence, it is submitted that the injuries caused by the muddamal weapon as alleged by the prosecution appears to be doubtful. Thus, it is submitted that the trial Court has rightly disbelieved the evidence of sole eye-witness i.e. PW-16, Vajubhai Vaghjibhai, since it does not corroborate with the medical evidence.

(9) In support of his submissions, learned advocate Mr.Khandheria, has placed reliance on the judgment of the Apex Court in the case of *Mallappa and Ors. Vs. State of Karnataka*, [2024 (2) JT 433], which pertains to the power of the Appellate Court under the provisions of Section 378 of the Evidence Act. He has further placed reliance

on the judgments of the Apex Court in the case of *Fedrick Cutinha Vs. State of Karnataka*, [2023 (7) Scale 49] and in the case of *Roopwanti Vs. State of Haryana*, [2023 (3) Scale 323, which pertains to the proposition of law governing the testimony of interested witnesses. Reliance is also placed on the judgment in the case of *Mohan Alias Srinivas Vs. State of Karnataka*, [AIR Online 2021 SC 1184]. Thus, it is urged by the learned advocate Mr.Khandheria, that the judgment and order of the trial Court recording the acquittal of the accused may not be disturbed and the present appeal filed by the State is required to be rejected.

ANALYSIS OF EVIDENCE AND FINDINGS

(10) Before we proceed to analyze the evidence, we may refer to the decision of the Apex Court in the case *Chandrappa Vs. State of Karnataka*, [2007 (4) S.C.C. 415]. The Apex Court, while considering the provision of Section 378 of the Cr.P.C., and the scope of the appellate Court in examining the appeal against the acquittal, has observed thus:

"41. From the above decisions, in our considered view, the following general principles regarding powers of 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 curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize 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 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."

(11) The paramount consideration of the Court is to ensure that miscarriage of justice, which may arise from acquittal of the guilty is no less than from the conviction of an innocent. Keeping in mind the parameters set by the Apex Court, we shall make an endeavour to scrutinize the evidence, which is established on record.

(12) As narrated hereinabove, the case of the prosecution is that on 29.03.1997, the accused committed murder of his wife in the morning hours at around 7 O'clock. The facts indicate that the accused and the deceased were having 20 years of wedding life, and it is alleged that he had ill-treated her and had driven her out from the house. Before we delve into the evidence of the complainant (PW-5), Kanjibhai Bijalbhai Dabhi, who is the brother of the deceased, it would be apposite to refer to the evidence of PW-18, Dahyabhai Dudabhai Parghi, who is examined at Exh.44. This witness was serving as a Police Constable at Jetpur City Police Station. He has deposed that the incident has occurred on 29.03.1997 and after his night duty, he came back home and at around

7:50 hours, the accused - Jivraj, who stays at Gondra area, came to his house and informed him that he has murdered his wife Savitaben. When such confessional statement of the accused was narrated by PW-18, the objection was taken by the learned advocate appearing for the accused before the trial Court by citing the decision in the case of *Kantilal Kalidasbhai and Anr. Vs. (The) State of Gujarat*, [1999 (1) G.L.H. 964] and it was submitted that as per the provisions of Section 18 of the Evidence Act, 1872, such confessional statement cannot be approved. Thereafter, the deposition of the said witness was continued. He has further deposed that the accused had thereafter, taken out the knife from his pant, which was having outer cover and fresh blood stains were found on the knife and the cover. The accused handed over the knife to him and thereafter, he had taken the accused to the Police Station with knife, which was made of stainless steel and having black coloured handle. He has further submitted that after the accused was handed over to the Police Station, PSO - S.M.Qureshi and Police Inspector, Shri Patel were present there and

after handing over the accused, he immediately returned and went to the Government Hospital at the PM Room. He has identified the both in the open Court i.e. the accused as well as blood stained clothes of the accused, which were recovered. He has also identified muddamal article knife.

(13) In his cross-examination, he has deposed that he was on duty in the night hours from 23:00 hours to morning 6:00 hours. We do not find the evidence of this witness tainted with any contradictions or improvements. Thus, the evidence of PW-18, Dahyabhai Dudabhai Parghi, establishes that he was not on duty on the day of incident and was at his home in the morning. After he has completed his night hours' duty, the accused came to his home at around 7:15 hours in the morning with the blood stained knife and his clothes were also stained with blood. However, the fact remains that this witness is treated as official witness as no statement under Section 161 of the Cr.PC is recorded of this witness, and he has directly deposed before the trial Court.

(14) The next deposition, which would be relevant, is the deposition of PW-22,

Sardarbhai Qureshi. He was serving as PSO, and was on duty, when the first informant came to the police station, he instantly informed P.I. Shri Patel, and after the P.I. arrived at the police station, the FIR was registered. It is deposed by him that at that very moment, Head Constable, Dahayabhai Dudabhai (PW-18) arrived with the accused, who was holding a red color sheathed knife having black handle, and he informed that the accused had killed his wife at Gondra. It is further deposed by him that the P.I. thereafter called two panchas, and the accused was arrested, and the sheathed knife, which was produced by the accused was seized. The knife brought by the Head Constable, was seized by him and a panchnama was drawn at Exh.51. He has identified the knife and has deposed that the same was produced before him. He has identified his signature as well as the signatures of both the panchas. In his cross-examination, it is elicited that the knife and the cover was separately given by Dahyabhai (PW-18). He has also stated that there were blood stains inside the cover of the knife however, when he is shown the knife's cover in the trial

Court, he has deposed that no blood stains are shown in the trial Court.

(15) The Investigating Officer, Kanubhai Patel, (PW-23) has been examined at Exh.52. He has deposed in the line of PW-22, PSO. He has registered the FIR. He has also produced the station diary at Exh.54. He has deposed that after the accused was arrested and panchnama was drawn, he went to the place of incident and saw the dead body of the deceased and accordingly, the inquest panchnama was drawn and place of incident panchanama was drawn. He has sent the accused to the medical officer for collecting the blood sample vide Yadi at Exh.56. He has sent the muddamal articles to FSL and also to the chemical analyzer. The clothes of the accused were also sent to the FSL. He has identified the clothes of the accused. In his cross-examination, he has stated that the time recorded in the FIR is 7:35 hours and he has sent the copy of the FIR to the Magistrate through PSO. In his cross-examination, he has referred to the contradiction in the deposition of the eye-witness, Vajubhai Vaghjibhai (PW-16), which is minor in nature and we have verified the statement recorded

under Section 161 of the Cr.P.C. of the said witness dated 29.03.1997 and on perusal of the same, it is found that it reconciles with the examination-in-chief.

(16) The fact which is disclosed from combined reading of the evidence of PW-18, Dahyabhai Dudabhai Parghi, PW-22, Sardarbhai and the Investigating Officer, PW.23 is that the accused on 29.03.1997 had gone to the house of PW-18, after murdering his wife along with the blood stained knife and he made a confession before PW-18 and immediately, PW-18 had taken the accused along with him to the Police Station and the accused was arrested with the bloodstained knife and clothes.

(17) At this stage, we may refer to the evidence of the complainant, Kanjibhai Bijalbhai Dabhi, (PW-5), who is examined at Exh.21. In his examination-in-chief, he has narrated the incident. He has deposed that on 29.03.1997 at around 7 O'clock in the morning, PW-16, Vajubhai Vaghjibhai, came to his house and informed him that the accused killed his sister—Savitaben inflicting blows of a sharp knife and has fled away and accordingly, the complainant went along with

PW-16, Vajubhai Vaghjibhai, at the scene of offence and he found that his sister was lying in bleeding condition and blood was also oozing out from her mouth and nose. It is further deposed that from the right side of stomach, intestine had come out due to the injuries by knife and accordingly, he rushed to the Police Station for registering an F.I.R. and he reached the Police Station within 5 to 7 minutes. He has also referred that his sister has filed the proceedings claiming maintenance from the accused. Thereafter, the witness has been extensively cross-examined with regard to the scene of offence with the measurements, where the dead body was found and the neighbour's residential house. He has specifically stated that the dead body was 15-20 feet away from the residential house. We do not find any major contradiction or omission in his deposition and his evidence requires acceptance on principle of *res gestae* embodied in Section 6 of the Evidence Act, 1872. The Apex Court in case of *Balu Sudam Khalde Vs.State of Maharashtra*, [2023-AIR(SC)1736] in context of *res gestae* witness has held thus:

“47. The reason for referring to the aforesaid a piece of evidence is that the PW 3 Nasir Rajjak Khan (Exh. 10) could be termed as a res gestae witness. This principle of res gestae is embodied in Section 6 of the Act 1872:

> *"6. Relevancy of facts forming part of same transaction. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and place."*

48 In the case of Sukhar v. State of U.P. reported in (1999) 9 SCC 507, this Court noticed the position of law with regard to Sections 6 & 7 resply of the Act 1872 thus:

> *"6. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus:*
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> *"Under the present exception [to hearsay] an utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car-brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided, it is near enough in time to allow the*

assumption that the exciting influence continued."

7. Sarkar on Evidence (Fifteenth Edition) summaries the law relating to applicability of Section 6 of the Act 1872 thus:

"1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot, the declarations of all concerned in the common object are admissible.

4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.""

49. The rule embodied in Section 6 is usually known as the rule of res gestae. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence.

> *50. Sections 6 and 7 resply of the Act 1872 in the facts and circumstances of the case, in so far as, the admissibility of a statement of the PW 3 Nasir Rajjak Khan coming to know about incident, immediately from the PW 1 Asgar Shaikh that Abbas Baig had been seriously assaulted and that Asgar Shaikh had also suffered injuries and admitted by the PW 1 Asgar Shaikh in his evidence would be attracted with all its rigour."*

(18) Thus, the evidence of the first informant, a *res gestae* witness, who arrived at the place of incident immediately on being informed by the eye-witness cannot be discarded as hearsay, but deserves acceptance under Section 6 of the Evidence Act.

(19) In order to establish the complicity of the accused in the offence, the most relevant evidence would be of the eye-witness (PW-16), Vajubhai Vaghjibhai, who is examined at Exh.39. In his examination-in-chief, he has narrated that the entire incident is seen by him. He has stated that on the day of the incident at around 7:15 hours in the morning, when he was going to answer the nature's call on the way of Gondra area, he saw that the accused was inflicting blows on the deceased and accordingly, when he ran after him, the accused had fled away and he saw that the deceased was lying in the pool

of blood. He has specifically stated that 6 to 7 blows were inflicted by the accused on the chest and stomach of the deceased and thereafter, he immediately went to inform his brother- Kanjibhai Bijalbhai Dabhi about the incident. He has submitted that thereafter, he called his younger brother - Vinu and three of them arrived at the place of incident and saw the deceased lying in the pool of blood. Accordingly, he has deposed that thereafter, the complainant went for registration the F.I.R. He has stated that the incident has occurred at around 15 feet away from the house of one Champaben. He has identified the accused in the Court. This witness is extensively examined by the defense with regard to the place where the incident has occurred. He has been examined with regard to the distance where he was going for answering the nature's call and the place where the incident has occurred.

(20) In his cross-examination, when a question was put to him, he has denied that the accused has not run away when he went at the place. He has deposed that when he was around 1 ft. away from the deceased, at that

time, the accused fled away. He has also affirmatively answered that where he was standing at the place of toilet, he could see both – the accused and the deceased as their faces were in front of him. He has also stated in the cross-examination that when he went to answer the nature's call, at that time, the deceased was shouting and that is why he ran towards her. On a question put to him by the trial Court as to whether the deceased was shouting when he arrived from the toilet; he has categorically answered that the deceased was shouting. Thereafter, he has been examined with regard to an electric pole where the deceased was lying. He has answered that it was around 15 ft. away and he has also denied the suggestion that the place of toilet was around 130 feet away from where the deceased was lying and instead he has stated that it was around 15 ft. away. He has further cross-examined with regard to the distance of the house from the toilet, in his cross-examination he has asserted the fact that when he was going to toilet, he heard cries of the deceased and at that time, he saw that the deceased was not

lying, but she was being held by the accused and when he reached near the deceased after hearing her cries, at that time, the accused inflicted 6 to 7 knife blows on the deceased and thereafter, the deceased had fallen down, and further no blows were inflicted by the accused. He has further deposed that immediately, he started shouting and on hearing his shouts, the accused fled away. He has also asserted that he saw 6 to 7 wounds on the chest and stomach of the deceased. On a question put to him, he has again asserted that both the accused and deceased were facing him and the accused had caught the deceased by one hand and was inflicted blows with other hand. The overall appreciation of the evidence of this witness suggests that he has established himself as the witness of sterling quality.

CONFESSION OF ACCUSED

(21) Section 25 of the Evidence Act mandates that :-

"No confession made to a police officer, shall be proved as against a person accused of any offence."

(22) It is contended by the learned APP that the trial Court should not have ignored the

confession made by the accused before PW-18, Dahyabhai Dudabhai Parghi, who is a police constable, since he was not on duty when such confession was made. In this regard, we may refer to the observations made by the Apex Court in case of ***State of Punjab Vs. Barkat Ram***,[AIR 1962 SC 276], in which, the Apex Court has held thus:-

> *"9. The police officer referred to in sec. 25 of the Evidence Act, need not be the officer investigating into that particular offence of which a person is subsequently accused. A confession made to him need not have been made when he was actually discharging any police duty. Confession made to any member of the police, of whatever rank and at whatever time, is inadmissible in evidence in view of sec. 25."*

(23) The Apex Court has unequivocally directed that the confession made at whatever time before any member of police officer of whatever rank, who may not be discharging the duties, is inadmissible in evidence in view of Section 25 of the Evidence Act. Similar view has been expressed by the Division Bench of this Court in the case of ***Kantilal Kalidasbhai and Anr.(supra),*** wherein in an identical situation, where the police officer was not on duty and the accused had confessed the crime, the

Division Bench, after analyzing the provisions of Section 25 of the Indian Evidence Act, has held that such confessional statement is hit by Section 25 and cannot be used against the accused. Thus, the trial Court on this issue has not faltered, and has precisely discarded the confession made by the accused before PW-18.

CONDUCT OF THE ACCUSED

(24) Though, the confessional statement by the accused of murdering his wife is inadmissible in evidence, however his conduct of production of knife before the police officer requires an in-depth scrutiny. The provision of Section 8 of the Evidence Act, makes the conduct of the accused as relevant. The same reads under:-

> *"SECTION 8 : Motive, preparation and previous or subsequent conduct*
>
> *Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."*

(25) The Apex Court in the case of ***Subramanya Vs. State Of Karnataka***, [2022-AIR(SC)5110] in context of conduct of accused has held thus:-

> *"88. Mr. V.N. Raghupathy, the learned counsel for the State would submit that even while discarding the evidence in the form of various discovery panchnamas the conduct of the appellant herein would be relevant under Section 8 of the Evidence Act. The evidence of discovery would be admissible as conduct under Section 8 of the Evidence Act quite apart from the admissibility of the disclosure statement under Section 27 of the said Act, as this Court observed in A.N. Venkatesh and Another v. State of Karnataka, (2005) 7 SCC 714 :*
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> > *"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8....." [Emphasis supplied]*
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> *89. In the aforesaid context, we would like to sound a note of caution. Although the conduct*

> *of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction."*

(26) In the instant case, when the accused presented himself with the blood stained knife before PW-18, who is a police officer. PW-18 and the accused arrived at the police station with the weapon, at the very moment of registration of FIR, the weapon was seized by the I.O., and was sent to the FSL. Albeit, the confessional statement of the accused before PW-18, the police constable is hit by the provisions of Section 25 of the Evidence Act, however, the accused has also produced the weapon used by him in the offence before him, which has been collected by PW-18. PW-18 is examined as an official witness, hence, his entire testimony cannot be discarded. PW-18 has assisted the investigation. He has prepared the report relating to the clothes of deceased and has also collected the blood samples given to

him by the doctor at the time of Post Mortem of the deceased. He has identified the clothes worn by the accused and the deceased. The knife used by the accused in the offence was collected in the police station at the time of his arrest. This knife was produced by PW-18 along with the accused in the police station. Albeit, the confessional statement made by the accused before this witness has to be eschewed, however, the conduct of the accused of handing over the knife to him, which is also supported by the evidence of PW-22, the PSO and the evidence of PW-52, the I.O. cannot be ignored. We are conscious of the legal precedent that the conduct, which may be a relevant fact under Section 8 of the Evidence Act, by itself may not be sufficient to hold a person guilty of offence of murder, and the prosecution has to establish the charge against accused beyond reasonable doubt, however, there is ample evidence both in the form of ocular and documentary to establish the complicity of the accused in the offence beyond reasonable doubt. The forensic tests reveal

the blood group of deceased on the knife and clothes of the accused.

(27) We shall now refer to the medical evidence of the doctor, who had undertaken PM of the deceased i.e. PW-14, Dr.Naginbhai Bhovanbhai Sarvaiya, who is examined at Exh.30. He has narrated the wounds, which are found on the deceased. There are 6 injuries referred by him in his evidence, which are as under:-

"(1) Puncture wound on left side of chest at level of 4th rib 1 inch lateral to mid line size 1/2" X 1/2" X 1".

(2) Puncture wound on right side of chest 1inch medial to nipple size 1" X 1/4" X 1".

(3) Puncture would on left mid auxiliary line at level of 7-8 Rib size 1" X 1/4" cavity deep.

(4) Puncture wound on left side of abdomen 1/2" lateral to midline size 1" X 1/2" below last rib size 1" X 1/2" cavity deep oval in shape.

(5) 1/2" lateral to left puncture wound No.4 another puncture wound size 1" X 1/4" cavity deep.

(6) 1" below No.3, a puncture wound horizontal size 1" X 1/4" X cavity deep.

(7) Incised wound 1" above umbilicus in midline size 1/4" X 1/4" X 1/4".

(8) Right lower incisor teeth fall down all wounds are corresponded to cloth blouse and saries."

(28) The doctor has been extensively cross-examined for injuries found on the deceased.

He has specifically stated that the injury No.1 was sufficient enough to cause the death immediately. Thereafter, he has been cross-examined with regard to the weapon used in the offence i.e. Stainless Steel knife, which was sharp at one edge. He is also cross-examined with regard to the shape of wounds. He has stated that if the weapon is sharp edged on one side and blunt on the other side, the injury will be of wedge shape. He has also referred to the medical evidence of Dr.Modi with regard to the injuries. He has stated that he has not referred the type of the injuries, which were found on the deceased. He, on the cross-examination done with regard to Injury No.4, has stated that such injury is not possible with article No.1 i.e. knife. Further, the cross-examination is done with regard to depth of injury Nos.1 to 4 and shape of the injuries. He has also been cross-examined with regard to the cuts on the saree. He has admitted that he is not aware whether the deceased had worn saree in Gujarati style or not.

(29) From the injuries as mentioned hereinabove and in light of the deposition of the

doctor, it is manifest that the injuries were caused with a sharp edged weapon like knife. As per the deposition of PW-18, Dahyabhai Dudabhai Parghi, and the PSO (PW-22), Sardarbhai Mirajbhai Qureshi, it is established that the accused had surrendered himself before PW-18, who took him to the Police Station and ultimately, the accused was arrested. The Arrest Panchanama (Exh.51) describes the clothes of the accused, which he was wearing. It also describes that the hands of the accused were red in colour, after he was searched, nothing was found from him and thereafter, it is recorded that the Head Constable, Dahyabhai Dudabhai Parghi, (PW-18) has produced the knife with the cover, which was shown to the accused and it is stated by PW-18 that it was used in the offence. The description of the knife is narrated in the Arrest Panchnama. This panchnama has been proved by the PW-22 (PSO)- Sardarbhai Mirajbhai Qureshi.

(30) The Inquest Panchnama (Exh.17) is proved by PW-2, Pravinbhai Somabhai, (Exh.16). He has narrated the spot from where the dead body of the deceased was found. He has stated that the dead body was found on the road

between two houses and almost 8 to 10 steps from the house of one Amra Virabhai. He has also referred that from the corner of his house, at a distance of 20 to 25 feet near the Saran Bridge (Saran no Pool), there are public toilets.

(31) The FSL / biological / serological / physics department report (Exh.60) reveals that the blood of the deceased has been found on the knife as well as clothes of the accused i.e. pant and open shirt. The blood group of the deceased is “B”, whereas the blood group of the accused is “A”. Thus, the aforesaid Report indubitably points out that the blood of the deceased has been found on the knife and clothes of the accused. The report of the Physics Department at Junagadh describes the knife, which corroborates the testimony of the constable PW-18, it also states that the cuts, which are found on the saree worn by the deceased, can be made by the muddamal article knife. The Exh.63 is the report of the seizure of muddamal by the FSL, which also refers that the blood on the hands of the accused as well as from his nails were collected. The serological report, if read in juxtaposition, reveals that from the

nails of the accused, blood having the blood group "B" has been found, which belongs to the deceased. Thus, the scientific reports also unequivocally establish the complicity of the accused in the offence.

EVIDENCE OF THE SOLE EYE-WITNESS

(32) It is an established legal precedent that the conviction can be premised on the evidence of even a solitary eye-witness, who has established himself as a reliable witness and his evidence is of sterling quality. In the instance case, the evidence of the eye-witness, PW-16, Vajubhai Vaghjibhai, does not in any manner suffers from major contradiction or omission, which can make his testimony unreliable.

(33) In this context, we may refer to the decision of the Apex Court in case of *Rajesh Yadav Vs.State Of Uttar Pradesh*, [2022-SCC-12-200]. The Apex Court, after survey of several judgments, has reiterated that conviction can be based on the testimony of sole eyewitness, if the same inspires confidence. It is held thus:-

"2. This Court has reiterated the aforesaid principle in Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401:

> *"19. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide Vadivelu Thevar v. State of Madras [AIR 1957 SC 614: 1957 Cri LJ 1000] , Kunju v. State of T.N. [(2008) 2 SCC 151: (2008) 1 SCC (Cri) 331] , Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91: (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] , Mahesh v. State of M.P. [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], Prithipal Singh v. State of Punjab [(2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and Kishan Chand v. State of Haryana [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807: JT (2013) 1 SC 222].)"*

(34) In the instant case, the sole eyewitness, has stood the assault of cross-examination. We do not find that his evidence is tainted with any major contradiction or omission or he has exaggerated the incident. Even if we

discount the other evidence, his evidence is adequate for inviting conviction of the accused. It is also noticed by us that in the statement recorded by the trial Court under Section 313 of the Cr.P.C., when the accused was confronted with the evidence of eyewitness and the production of knife, he has simply denied the same and has not offered any explanation. It is no more *res integra* that the accused is under an obligation to furnish some explanation to justify the established incriminating evidence against him, and if he maintains complete denial, the Court is entitled to draw an adverse inference against the accused.

(35) In the case of ***Balu Sudam Khalde & Anr. (supra)***, the Apex Court has enumerated the principles of the appreciation of oral evidence as below:-

> *"25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:*
>
> *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression*

is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall

the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

> *XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."*

(36) The reading of the evidence of PW-16, as a whole, appears to have a ring of truth. The Apex Court has held that once such impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence, more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. It is reiterated that minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit

rejection of the evidence as a whole. In the present case, the trial Court has examined and dissected the evidence of the PW-16 and has disbelieved the same by adopting an hyper technical approach.

(37) A contention is raised before us to discard the testimony of two witnesses, since they are interested witnesses. In this regard, we may refer to the decision of the Apex Court in case *State Of Uttar Pradesh Vs. Kishanpal, [2008 SCC 16-73]*. The Apex Court has held thus:

> *"8 As observed earlier, though the High Court accepted the testimony of PWs 1, 5, 7 and 9 while confirming the conviction and sentences of Onkar Singh has not given due credence to their testimonies in respect of other accused. This Court has repeatedly held that if the testimony of prosecution witnesses was cogent, reliable and confidence inspiring, it cannot be discarded merely on the ground that the witness happened to be relative of the deceased. The plea "interested witness" "related witness" has been succinctly explained by this Court in State of Rajasthan V/s. Smt. Kalki & Anr., 1981 2 SCC 752. The following conclusion in paragraph 7 is relevant:*
>
> *"7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a*

litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

***9** From the above it is clear that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she has derived some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. A witness, who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'.*

***10** The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance.*

Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. Vide State of A.P. V/s. Veddula Veera Reddy & Ors., 1998 4 SCC 145, Ram Anup Singh & Ors. V/s. State of Bihar, 2002 6 SCC 686, Harijana Narayana & Ors. V/s. State of A.P., 2003 11 SCC 681, Anil Sharma & Ors. V/s. State of Jharkhand, 2004 5 SCC 679, Seeman @ Veeranam V/s. State, By Inspector of Police, 2005 11 SCC 142, Salim Sahab V/s. State of M.P., 2007 1 SCC 699, Kapildeo Mandal and Ors. V/s. State of Bihar, AIR 2008 SC 533, D. Sailu V/s. State of A.P., AIR 2008 SC 505."

Thus, after survey of various judgements, it is held by the Apex Court that the evidence witness cannot be discarded merely on the ground that he or she is a related witness, if otherwise the same is found credible. The witness could be a relative, but that does not mean his or her statement should be rejected. It is observed that in such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. On a careful scrutiny of the

evidence of both the witnesses, we do not find that they are tainted with any vice which will make them wholly reliable, hence the request made by learned advocate appearing for the respondent-accused to discard their evidence since they are relatives, does not merit acceptance.

FINDINGS OF THE TRIAL COURT

(38) After analysis of the evidence as narrated hereinabove, we shall now advert to the findings of the trial Court, which appears to be perverse.

(39) The trial Court has discarded the evidence of eye witness by recording of finding that the eye-witness has not deposed in his examination-in-chief that he has seen the accused inflicting knife blows on the deceased. This finding is absolutely perverse since PW-16 has deposed that *"he saw the accused assaulting the deceased, and he ran after him, Jivraj fled away, and he saw Savitaben lying in pool of blood. Six to seven injuries were inflicted by knife on her chest and stomach".* In fact, this observation is false and incorrect as in the examination-in-chief, the eye-witness has

specifically stated that he saw the accused inflicting the knife blows on the deceased, more particularly in chest and stomach.

(40) A perusal of the findings of the trial Court discloses that after the medical evidence, including the injuries found on the deceased are recorded in the judgment. The trial Court has compared the same with the ocular evidence. While referring to the evidence of PW-16, Vajubhai Vaghjibhai, who is an eye-witness, the trial Court has done microscopic dissection and has arrived at a finding that the medical evidence of number of injuries do not reconcile with the ocular evidence. The trial Court has also gone into minute details with regard to the timings mentioned in the Inquest Panchnama and also with the evidence of PW-16. This approach of the trial Court appears to be perverse. In the case of *Pruthiviraj Jayantibhai Vanol Vs.Dinesh Dayabhai Vala*, [2021-AIR(SC)-3532], the Apex court has held that *"ocular evidence is considered the best evidence unless there are reasons to doubt it, and it is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical*

evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved". In the instant case, we do not find any major or vast discrepancy which can render the ocular evidence superfluous.

(41) While referring to the evidence of PW-14, Dr.Naginbhai Bhovanbhai Sarvaiya, who is examined at Exh.30, the trial Court has concluded that it is impossible for PW-16, Vajubhai Vaghjibhai, to witness the incident, since the P.M. Note (Exh.31), describes that the incident occurred in the morning at 6 O'clock. Similarly, the trial Court has delved into the length in the measurement of the place from where the dead body of the deceased was found and it is compared with the ocular evidence as well as the contents of the F.I.R. (Exh.53) and it is held that it is impossible that since the place of incident is 1 km away, it was impossible for the complainant to reach at 7:35 a.m. and hence, the incident could not have occurred between 7:00 a.m. to 7:30 a.m. The trial Court has drawn an inference on approximate timing recorded in the P.M.

report with regard to the timing of death and has recorded a definite finding that the same does not reconcile with the timings of the registration of the FIR as well as the deposition of the eye-witness – Vajubhai Vagjibhai, who has referred the incident, which has happened at around 7:00 a.m. to 7:15 a.m. in the morning.

(42) While referring to the Inquest Panchnama and the Scene of Offence Panchnama and the Map of Scene of Offence, the Trial Court has minutely gone into the distance and has concluded that the dead body of the deceased, which was found as per the evidence of other witnesses do not reconcile. He has referred to the evidence of PW-16, Vajubhai Vaghjibhai, and has concluded that it is impossible to see the offence from such a distance since, as per the testimony of the eye-witness, the dead body of the deceased was lying around 15 feet away from the electric pole, whereas in the scene of offence panchnama, the incident had occurred at a distance of around 40 feet away from the electric pole.

(43) The trial Court has also disbelieved the Arrest Panchnama (Exh.51) by observing that the Arrest Panchnama shows the timings of 7:30 to 7:45, whereas the F.I.R., which is registered being C.R. No.52 of 1997 (Exh.53) shows the timing of 7:35. Finally, it is recorded by the trial Court that there is vast discrepancy in the timings of the commission of offence from the evidence of eye-witness, PW-16, Vajubhai Vaghjibhai and of the doctor, which does reconcile with each other. By making such observations, the trial Court has acquitted the respondent by giving benefit of doubt. The trial Court has also concentrated only on the injury No.4, which was found on the deceased and the shape of the injury being oval and has concluded that the same does not reconcile with the evidence of the eye-witness, Vajubhai Vagjibhai. Such an approach of the trial Court is not palatable as the injuries are inflicted on the deceased with the weapon used by the accused, can even cause injuries in oval shape due to the elasticity of human flesh and the skin. Thus, an hyper technicality has been adopted by the trial

Court by giving benefit of doubt to the accused.

(44) So far as the decision referred by the learned advocate Mr.Khandheria, in case of ***Mohan Alias Srinivas (supra),*** wherein the Apex Court has observed that the Appellate Court shall not expect the trial Court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merits despite its sensitivity and different decisions being made by the different courts, may be trial Court on the one hand and the Appellate Courts on the other hand. If such decisions are made due to institutional constraints, they do not augur well. There cannot be any cavil on the proposition of law of the Apex Court, however in the present case, as noticed hereinabove, the trial Court has miserably failed and misdirected itself in appreciating the evidence in its true perspective. Further, the judgments relied upon by the learned advocates appearing for the accused would not help the present accused in any manner.

CONCLUSION

(45) The post mortem report reveals 8 injuries on the body of the deceased on the vital parts. Section 300 defines Murder as under:-

"SECTION 300 : Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly.If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly.If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly.If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

(46) The nature of injuries proves that the accused had the intention and knowledge of committing murder of the deceased. His case will fall in first and second clause to Section 300 of IPC. The deceased was brutally assaulted by him with a knife on vital parts. The commission of offence of "murder", by the accused stands proved. As a sequel, it invites capital punishment as stipulated in Section 302 of IPC.

(47) Today, when the judgment was dictated, we had asked the concerned Police Authority to produce the original accused before us. The accused is present before this Court and the judgment is dictated in his presence.

(48) For the reasons recorded hereinabove, the present appeal succeeds. The judgment and order of acquittal dated 20.04.1999 passed by the Additional Sessions Judge, Gondal at Rajkot in Sessions Case No.95 of 1997 is quashed and set aside. The accused is sentenced to undergo the rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, the accused is directed to undergo further imprisonment of three months. Record and Proceedings, if any, be returned back to the trial Court concerned, forthwith.

(49) At this stage, learned advocate Mr. P. B. Khandheria, appearing for the respondent-accused requests that six weeks' time may be granted to the accused for surrendering himself before the concerned trial Court.

(50) The request is acceded to. The accused shall surrender within a period of six weeks before the Trial Court. In case, he does not

surrender, the concerned trial Court shall accordingly initiate appropriate proceedings in accordance with law seeking his presence.

(51) Before we part, few observations on the pending acquittal appeals are necessitated. We have noticed that acquittal appeals in heinous offences which are more than three decades old are still pending in this Court, apparently the State is major stakeholder. The State cannot remain a mute spectator and ignore the proceedings after they are filed, without owing any responsibility. In case of heinous offences, which affects the society at large, it is the onerous duty of the State under the Constitution of India, to act as guardian and protector of law. By keeping the criminal appeals pending for more than two decades, and without making any attempts to see that the same are put to an end or are heard expeditiously, the State is failing in its sacrosanct duty which directly impacts the social order. In order to see that some mechanism is developed by the State for hearing the old criminal appeals, this Court vide order dated 21.07.2023, passed in Criminal Appeal No.599 of 2013 had requested the State to form a

Committee, but it appears that such request has fallen in deaf ears. This Court is conscious of its limitation and the contours of law in which it has to function, but the State cannot simply ignore the observations made in the order. It is high time that the State has to streamline the entire process governing the criminal appeals. The Committee can certainly look into the merits of the old criminal appeals and request the Courts to get the matter listed. With the expectation and hope of productive and meaningful efforts at the end of the State, we do not intend to issue further directions.

(52) Registry is directed to send a copy of this order to the Secretary, Law Department, as well as to the Office of the Public Prosecutor.

Sd/-

(A. S. SUPEHIA, J)

Sd/- .

(VIMAL K. VYAS, J)

MAHESH/NVMEWADA/01