

(2025) 01 GUJ CK 0048

Gujarat High Court

Case No: Criminal Appeal (Against Conviction) No. 1344 of 2014, Criminal Miscellaneous Application (For Temporary Bail) No. 4 of 2024

Lalabhai Punambhai Beldar &
Anr.

APPELLANT

Vs

Vs State of Gujarat

RESPONDENT

Date of Decision: Jan. 20, 2025

Acts Referred:

- Indian Penal Code, 1860 - Section 147, 148, 149, 300, 302, 307, 323, 324, 325, 504, 506(2)
- Gujarat Police Act, 1951 - Section 135

Hon'ble Judges: Ilesh J. Vora, J; S.V. Pinto, J

Bench: Division Bench

Advocate: Kirtidev R Dave, Pratik B Barot, Jay Mehta

Final Decision: Dismissed

Judgement

PW no.1 â€" Exh. 28,Dilipbhai Bijalbhai Beldar

PW no.2 â€" Exh. 30,Kamleshkumar Navinchandra Patel

PW no. 3 â€" Exh. 34,Dr. Harshadkumar Kantilal Rathod

PW no. 4 â€" Exh. 46,Khodabhai Dahyabhai Baraiya

PW no. 5 â€" Exh. 51,Rajubhai Lalubhai Sheikh

PW no. 6 â€" Exh. 54,Mansingbhai Amarsang Parmar

PW no. 7 â€" Exh. 55,Mafatbhai Dahyabhai Beldar

PW no. 8 â€" Exh. 57,Dhulabhai Budhabhai Baraiya

PW no. 9 â€" Exh. 61,Bhupatbhai Dhirubhai Beldar

PW no. 10 â€" Exh. 62,Raejibhai Shanabhai Solanki

PW no. 11 â€" Exh. 67,Dr. Rajesh Girjashankar Purani

PW no. 12 â€" Exh. 79,Dr. Vijay Arjandas Sahitya

PW no. 13 â€" Exh. 88,Dr. Minakshiben Kumaril Amravat

PW no. 14 â€" Exh. 95,Amarsang Manubhai Beldar

PW no. 15 â€" Exh. 96,Dhirubhai Hanubhai Beldar

PW no. 16 â€" Exh. 99,Kamleshbhai Manubhai Beldar

PW no. 17 â€" Exh. 102,Dr. Nina N. Shah

PW no. 18 â€" Exh. 114,Rekhaben Gambhirsinh Beldar

PW no. 19 â€" Exh. 116,Jigiben w/o Kamleshbhai Manubhai

PW no. 20 â€" Exh. 117,Kuvarben w/o Himmatbhai Hanubhai

PW no. 21 â€" Exh. 119,Manjulaben Amarsang Manubhai Beldar

PW no. 22 â€" Exh. 126,Chetabhai Khimabhai Bharwad

PW no. 23 â€" Exh. 127,Ghanshyambhai Bhikhabhai Patel

PW no. 24 â€" Exh. 128,Ajabhai Kavabhai Bharwad

PW no. 25 â€" Exh. 130,Ajitsinh Shivsindh Rathod

PW no. 26 â€" Exh. 133,Dr. Balwantbhai Khodabhai Makwana

PW no. 27 â€" Exh. 138,Motibhai Vaghabhai Sodhaparmar

PW no. 28 â€" Exh. 140,Dhananjay Maganbhai Patel

PW no. 29 â€" Exh. 143,Jalaluddin Kaderkhan Pathan

PW no. 30 â€" Exh. 145,Suryakant Ashabhai Patel

PW no. 31 â€" Exh. 149,Lalabhai Sardarbhai Taviyad

PW no. 32 â€" Exh. 152,Karansinh Dilipsingh Mandora

PW no. 33 â€" Exh. 159,Varshaben Lajibhai Sakaria

Exh. 43,"Medical certificate of witness â€" Rekhaben issued by Civil Hospital dated
04.12.2012

Exh. 81,Certificate of deceased - Manubhai issued by Ami Hospital

Exh. 91,Posthumous form dated 29.11.2012

Exh. 92,Post Mortem notice dated 29.11.2012

Exh. 153,Receipt of handing over of corpse dated 29.11.2012

Exh. 132,Map of place of crime

Exh. 154,Notification dated 29.11.2012

Exh. 155,Forwarding note

Exh. 142,Report dated 29.11.2012 of FSL mobile-van

Exh. 144,FSL receipt dated 21.12.2012

Exh. 160,FSL letter dated 07.02.2013

Exh. 161,FSL report dated 06.02.2013

Exh. 162,Serological report dated 05.02.2013

Exh. 40,"Medical certificate of witness â€" Kamuben Beldar issued by Civil Hospital dated 16.05.2013

Exh. 39,Transfer form of witness â€" Kamuben dated 25.11.2012

Exh. 41,"OPD case papers of witness â€" Kamuben Beldar issued by Civil Hospital, Ahmedabad

Exh. 44,Transform form of witness â€" Dhirubhai Hanubhai Beldar dated 25.11.2012

Exh. 45,"OPD case papers of witness â€" Dhirubhai Hanubhai Beldar issued by Civil Hospital, Ahmedabad

Exh. 35,Transfer form of witness â€" Kamleshbhai Manubhai Beldar dated 25.11.2012

Exh. 36,"OPD case papers of witness â€" Kamleshbhai Manubhai Beldar issued by Civil

Hospital, Ahmedabad

Exh. 37,Transfer form of Manubhai Beldar dated 25.11.2012

Exh. 42,Transfer form of witness â€" Rekhaben dated 25.11.2012

Exh. 187,"Certified copy of plaint of Civil Suit no. 36 of 2012, between Complainant and

Accused, pending in Civil Court, Matar

three punctured wound and (iii) fracture right tibia and fibula over the right leg. According to the opinion of doctor, the injuries suffered by the",

deceased would be possible by dhariya and stick.,

7.3 PW:17 Dr.Nina N. Shah was on duty as professor and head of the surgery unit at Civil Hospital, Ahmedabad. On 25.11.2012, she had examined",

and treated deceased Manubhai. After noticing the head injuries, and the fracture injuries over the right leg of the deceased. The emergency operation",

was carried out for the injury of right leg. The witness in his deposition stated that on 26.11.2012, the patient Manubhai had complained of vomiting",

and against the advice, he left the hospital on 27.11.2012. The witness had produced treatment case papers and certificate at Exhs.106 and 107.",

7.4 PW:12 Dr.Vijay Sahitya was examined to prove the treatment given to the deceased Manubhai Beldar. The doctor was on duty as medical officer,

with Ameer Specialty Hospital at Nadiad. On 27.11.2012, deceased Manubhai aged about 65 was brought before him for further treatment. The doctor",

has examined him and found that the operation external fixation for the fracture of tibia and fibula was undertaken by the doctor of civil hospital,",

Ahmedabad and the second injury which he found over the right partial region. The doctor had produced treatment case papers at Exhs.80 to 86.,

According to the opinion of the doctor, the injuries would be possible by dhariya and stick.",

7.5 PW:13 Dr.Minakshi Amravat, who conducted the post-mortem, noticed the following external and internal injuries on the body of deceased",

Manubhai, who succumbed to injuries on 27.11.2012.",

(A) External Injuries :,

(1) White banded and external fixation on the body.,

(2) Abrasion and swelling over mid left thigh. Size 3 cm x 2 cm, color - reddish blue.",

(3) Multiple stitch wounds over left knee and middle of left leg.,

(4) Stitched wound over both left and right tempoparital region of head.,

(5) Abrasion over corner of left side of head, size 2 cm x 1 cm, reddish blue colour.",

(6) External fixation in the middle part of the right leg (operative procedure).,

(7) Multiple contusion injuries over left arm and forearm, size about 4 - 5 cm and the colour was black, this part was swollen.",

(8) Multiple contusion injuries over para-umbilicus region, size about 4 Å- 5 cm and the colour was black.",

(9) Multiple contusion injuries over right arm, forearm and backside of palm, size about 2 Å- 1 cm and the colour was black, this part was",
swollen.,

(B) Internal injuries;

(1) Head: Subdural haemorrhage over right tempoparital region;;

(2) The chest wall and ribs were normal, the lung membrane was congested and the concentric bronchial column was normal, the right",

pharynx and left pharynx were congested and distended. Upon opening the heart, the right chamber was filled with blood and the left",

chamber was empty, its weight was normal.",

(3) Abdominal wall was normal. And the skin inside the abdomen was congested. Cavity was normal. The tongue was inside the mouth.,

Esophagus was distended with gas, stomach was empty. Small intestine was distended with gas. The large intestine was also full of gas and",

some part filled with fecal material.,

(4) Liver, gallbladder, adrenal glands, spleen, urinary tract were all congested, urinary bladder was empty.",

(5) Spinal cord - normal.,

In the opinion of the doctor, cause of death was due to cardio respiratory arrest on account of head and right lower limb injuries and their",

complication. The doctor further opined that the injuries could be possible by scythe (dhariya) and sticks and same were sufficient in,

ordinary course of nature to cause death. The doctor has denied to the suggestion that the head injury was simple in nature.,

7.6 PW:16 Kamlesh Beldar, being a son of the deceased Manubhai, had sustained injuries over his left hand as he was assaulted by the accused no.1",

Deva Beldar. In his deposition, he has stated that on 25.11.2012, he along with his father proceeded from Village Hadeva to Village Limbasi and at",

the relevant time, he was riding on his motorbike and his father Manubhai was pillion on the bike.",

So far as incident is concerned, he has stated that at about 09:45 a.m., the appellant accused Vitthal Popat, Lala Beldar, Deva Beldar, and Mangabhai",

Gafurbhai (accused nos.1 to 4), raising the land dispute, stopped them and assaulted him as well as his father. It has been stated that by the injured",

witness that the accused Deva Gafur inflicted wooden stick blow on his left hand, whereas accused Lalabhai Punambhai gave a dhariya blow on the",

head of his father and accused Vitthal Popat, armed with dhariya inflicted blow on the right leg of his father Manubhai. So far as Manga Gafur is",

concerned, it is stated that he inflicted a blow over the right ear of his father by using dhariya. The witness has further stated that due to hue and cry,"

accused nos.5 to 12, came in support of accused nos.1 to 4 and they had assaulted the witnesses Kamuben, Rekhaben PW:18, Jigiben PW:19,"

Kuvarben PW:20 and Manjulaben PW:21.,

7.7 PW:16 the injured eyewitness in his deposition has further stated that someone has called 101 ambulance and after arrival of the ambulance, he",

along with his father and others taken to the civil hospital at Kheda. The witness has stated that motive behind the assault was the land dispute for,

which the civil suit is also filed by the accused. The witness has stated that he had lodged the FIR with Limbasi Police Station, which he produced at",

Exh.100. The witness has also identified the accused sitting in the Court as well as the weapons dhariya and sticks allegedly used by the accused. In,

the cross examination, he has stated that his house is situated at the distance of 300 to 400 sq. ft. from the place of occurrence. He also admits that",

when he and his father had been assaulted, the injured witnesses had not come. The witness has denied that his family has illegally taken the",

possession the disputed land for which the accused no.3 Vitthalbhai Popat filed a civil suit. The defence has tried to establish that due to vehicular,

accident, PW:16 and deceased Manubhai sustained injuries, however, witness PW:16 has denied the said suggestion. It is also denied by PW:16 that in",

order to mounting pressure on the accused to withdraw the civil suit, they had been falsely implicated in the crime.",

7.8 PW:18 Rekhaben Beldar, PW:19 Jigiben Beldar, PW:20 Kuvarben Beldar, PW:21 Manjulaben Beldar and PW:1 Dhiruben Beldar, have been",

examined by the prosecution as they are the witness of the incident and also sustained injuries. In the instant case, the learned Trial Court mainly",
relied on the testimony of PW:16 and the medical evidence, as referred above. In the circumstances, there is no need to refer the evidence of injured",
eyewitnesses.,

7.9 PW:32 Karansinh Mandora being a investigation officer of the case has stated that on the next day of the incident, he had recorded the statement",
of injured eyewitnesses and others, drew the panchnama of place of occurrence and collected necessary samples for FSL purpose, seized the",
bloodstained clothes of the witness Amarsang Beldar and Manubhai. The witness has further stated in his deposition that on 29.11.2012, deceased",
Manubhai died during his treatment at Ameer Private Hospital, as a result, he went to the hospital and drew the inquest panchnama and sent the body",
of the deceased for post-mortem. The witness has further stated that the accused Lalabhai Punambhai and Vitthalbhai Beldar produced the weapons,
dhariya and the same had been seized and recovered. The witness has further stated that, he had arrested the accused and sent the muddamal for",
FSL purpose. The witness has further stated that at the end of investigation, he found the sufficient evidence against the accused and finally",
chargesheet came to be filed for the offences enumerated above.,

8. Submission on behalf of the accused " appellants;

Mr. Pratik Barot and Mr. Rahul Dave, learned advocates appearing for the appellants " accused vehemently submitted that, the trial Court",
committed a serious error in holding the accused appellants guilty of the offence of murder. They urged the following submissions ;,

(i) That, the accused No. 4 Manga Gafur, according to case of the prosecution, inflicted a dhariya (scythe) blow over the right ear of the deceased",

Manubhai. The accused No.4 Manga Gafur has been acquitted of the charge under Section 302 of the IPC and is convicted for the offence of,

causing grievous injuries punishable under Sections 323 and 325 of the IPC. The appellant accused Lalabhai Beldar, as per the prosecution case,"

caused injuries over the head of the deceased by using a weapon " Dharia. In such circumstances, it was submitted that, the conviction of the",

appellants accused is not sustainable when the accused no.4 Manga Gafur, who was charged for similar offence has been acquitted. That the learned",

trial Court cannot convict one accused and acquit the other when there is similar or identical evidence. Relying on the case of Javed Shaukat Ali,

Qureshi Vs. State of Gujarat, 2023 INSC 829, it has been urged that, when there is similar or identical evidence against two accused by ascribing",

them the same or similar role, the court cannot convict one accused and acquit the other. In such circumstances, it was submitted that in the facts of",

the present case, the allegations against the appellant accused Lala Beldar being the same as made against the accused no. 4 Manga Gafur, the Court",

below could not have convicted the appellant accused while acquitting the Manga Gafur.,

(ii) That, as per the prosecution case, deceased Manubhai sustained head injury as well as multiple fracture injuries over his right leg. The medical",

evidence suggestive of the fact that, there was lacerated wounds over the right parietal region. The said injury could be possible by blunt edge of the",

weapon used in the crime. In the instant case, the appellant accused Viththal Popat inflicted dhariya blow over the right leg of the deceased and",

appellant accused Lala Beldar, caused injuries over the head of the deceased by weapon Dharia. The witness PW-16 " Kamleshbhai Beldar, stated",

in his deposition about the role attributed to the appellant accused. The witness PW-16 in his deposition, has not stated specifically that, the blunt edge",

of the weapon was used by the accused. It is the duty of the prosecution to obtain a clarification from the witness that blunt edge of the weapon,

dhariya was used by the accused. In absence of such clarification, the evidence of eyewitness causing injury by the accused with weapon dhariya",

cannot be accepted. In that view of the matter, it was urged that, the version of the eyewitness stands falsified by the medical evidence and when",

medical evidence makes the oculars testimony improbable or ruled out all possibility of ocular evidence being true, the oral version of the witness PW-",

16 cannot be believed. Thus, the Court below could not have been convicted the appellants for the offence of murder.",

(iii) That, the entire case hinges upon the evidence of PW-16 Kamlesh Beldar, as the evidence of other witnesses, who also sustained injuries were",

not being considered to be truthful so far as death of the deceased is concerned. In such circumstances, the evidence of PW-16, cannot be termed as",

wholly reliable. The learned trial Court, while appreciating the evidence of PW-16 in his judgment has observed that, the evidence of the witness is not",

wholly reliable, as after sustaining injuries by him as well as his father Manubhai, he jumped into nearby lake. The witnesses who sustained the",

injuries, came later on at the place of incident and as per the observation of the trial Court, they were not the witness of the first incident. In that view",

of the matter, relying on the case of Vadivelu Thever Vs. State of Madras, AIR 1957 SC 614, it was submitted that, the testimony of PW-",

16 is not cogent, credible and trustworthy and sole evidence of the witness is not sufficient to hold the accused for the guilt of murder.",

9. In such circumstances referred above, Mr.Pratik Barot and Mr.Rahul Dave, learned advocates prayed that there being merits in the appeal and the",

same may be allowed and further prayed that the judgment of conviction and order of sentence be set aside and appellants may be acquitted from the,

charges of murder and causing voluntary injuries to the witnesses.,

10. Submissions on behalf of the State:,

Mr. Jay Mehta, learned APP vehemently opposed the appeal and contended that no error, not to speak of any error of law could be said to have",

been committed by the Court below in holding the accused appellants guilty of the offence punishable under Sections 302, 323, 325 of the IPC; that the",

learned Trial Court was justified in convicting the appellants on the evidence led by the prosecution which was found insufficient for the act of murder,

qua accused nos.1, 4 to 12; that the plea of parity as claimed by the appellants would not be available to them as there is no evidence against accused",

no.4-Manga Gafur, to establish that he had caused head injuries by using weapon dhariya and the medical evidence would also not support to the role",

attributed to accused no.4; that it is always open to the Court to differentiate between the accused who has been convicted and those who have been,

acquitted; that so far as appellants are concerned, the prosecution is able to establish its case by cogent and acceptable evidence; that the PW:16",

Kamlesh Beldar has categorically stated that the appellants accused beaten his father by dangerous weapon dhariya; that the doctors who had,

performed the post-mortem and treated the deceased Manubhai clearly opined that the injuries were sufficient in ordinary course of nature to cause, death and the same would be possible by weapon dhariya and sticks; that considering the nature of injuries, it can be inferred that there was an", intention on the part of the accused to inflict injuries on the vital part of the body; that there is no contradiction and/or inconsistency in the, eyewitnessâ€™s account vis-a-vis medical evidence, the blade of the dhariya was fitted in the wooden stick and therefore, there is no need of any", clarification that the head injury inflicted by the blunt side of the dhariya; that the learned Trial Court has rightly believed the evidence of injured, eyewitness Exh.16 and his evidence does not suffer from any infirmities.,

11. In such circumstances, Mr. Mehta, learned APP prayed that there being no merits in the appeal filed by the accused and the same may be", dismissed.,

12. In the instant case, out of 12 accused, accused no.1, and accused nos.4 to 9, 10, 11 and 12 have been acquitted of the charge under Sections 302,"

147, 148, 149, 506(2) of the IPC, whereas accused nos.1 to 6 including present appellants have been convicted under Sections 323, 325 of the IPC.",

The accused nos.7, 9, 11 and 12 have been acquitted for the offence punishable under Sections 323, 325 of the IPC. The State has not filed acquittal",

appeal and those who have been convicted under Sections 323, 325, except the present appellants, have not challenged their conviction under Sections",

323, 325 of the IPC. Therefore, we are concerned only with the case of these accused appellants i.e. accused nos.2 and 3. Thus, making a reference",

of any other co-accused, at this stage, would not serve any purpose.",

13. We shall first deal with the contentions regarding the principle of parity on acquittal of accused no.4 Manga Gafur. Before advertng to the,

submission, it may be desirable to refer to the settled legal principles on the aspect of parity on acquittal of co-accused. It is settled position of law that",

the Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against accused persons. In the case of,

Javed Shaukat Ali Qureshi Vs. State of Gujarat (2023 INSC, 289), the Supreme Court has held that, when there is a similar and identical evidence of",

eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a",
case, the cases of both the accused will govern by the principle of parity. This principle means that the Criminal Court should decide like cases alike",
and in such cases, the Court cannot make a distinction between two accused, which will amount to discrimination."

14. In the case on hand, according to the case of the prosecution and evidence led before the Trial Court, the appellant Lala Beldar inflicted a blow on",
the head of the deceased Manubhai by using weapon dhariya fitted with the wooden stick. The allegation qua accused no.4 Manga Gafur who has,
been acquitted was to the effect that he inflicted a blow on the right ear of the deceased by weapon dhariya. In order to prove and establish the facts,
of injuries, the prosecution had examined six doctors viz.PWs:3, 11, 12, 13, 17 and 26. According to the opinion of the doctors, the deceased sustained",
head injuries of dimension 6.1 X 1.5, in the nature of contused lacerated wound over the right tempo parital region. The treatment case papers of",
deceased Manubhai shows that there were stitch wound at the left and right parital region on the body of the deceased. We have minutely scanned,
oral as well as the documentary evidence and we do not find any injury over the right ear of the deceased. In such circumstances, though there is a",
statement made by PW:16 that the deceased was assaulted by Manga Gafur using weapon dhariya, the treating doctor as referred above did not find",
any injury over the right ear of the deceased. Thus, the learned Trial Court was justified in acquitting the accused no.4 Manga Gafur of the charge",
under Section 302 of the IPC. So far as principle of parity is concerned, we do not find any merits in the contentions. The testimony of PW:16 has not",
been corroborated by the medical evidence so far as role attributed to the accused no.4 Manga Gafur is concerned and we also found a credible,
evidence against him. The evidence led before the Trial Court as referred above, cannot be said to be a similar or identical evidence against the",
accused nos.2 and 4-Manga Gafur. In the facts of present case, the evidence of PW:16 though found to be deficient qua accused no.4 Manga Gafur",
can be accepted and acted upon to prove the charge against the remaining accused i.e. present appellants. It is in this context, we would like to refer",

the observations of the Supreme Court made in the case of Rizan Vs. State of Chhattisgarh (2003 (2) SCC 665), Para-12 of the judgment reads thus:",

“12. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about,

desirability to throw out entire prosecution case. In essence prayer is to apply the principle of 'falsus in uno falsus in omnibus' (false in one,

thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is",

sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained.",

It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an",

accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular,

material witness or material particular would not ruin it from the beginning to end. The maxim 'falsus in uno falsus in omnibus' has no,

application in India and the witnesses cannot be branded as liar. The maxim 'falsus in uno falsus in omnibus' has not received general,

acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such",

cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence",

which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Ali v.",

The State of Uttar Pradesh (AIR 1957 SC 366)). Merely because some of the accused persons have been acquitted, though evidence against",

all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must",

also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See,

Gurucharan Singh and another v. State of Punjab (AIR 1956 SC 460)). The doctrine is a dangerous one specially in India for if a whole,

body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that",

administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in",

the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some",

respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a",

matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a,

sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate,

exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Navata and another v. The State of Madhya Pradesh ((1972) 3 SCC 751)",

and Ugar Ahir and others v. The State of Bihar (AIR 1965 SC 277)). An attempt has to be made to, as noted above, in terms of felicitous",

metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and",

chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential",

details presented by the prosecution completely from the context and the background against which they are made the only available course,

to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15) and Balaka Singh and,

others v. The State of Punjab ((1975) 4 SCC 511). As observed by this Court in State of Rajasthan v. Smt. Kalki and another ((1981) 2 SCC,

752), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of",

time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful",

a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the",

category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material",

discrepancies do so. These aspects were highlighted recently in Krishna Mochi and others v. State of Bihar etc. ((2002) 6 SCC 81) and,

Gangadhar Behera and others v. State of Orissa ((2002) 8 SCC 381). Accusations have been clearly established against accused-appellants, in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted, accused are concerned.â€

15. In view of the foregoing discussions, we do not find merits in the submissions that the accused appellants shall be acquitted applying the principle", of parity with the acquittal of accused Manga Gafur.,

16. The contention relates to the contradiction between medical and ocular evidence. The thrust of the argument advanced by learned counsel, appearing for the appellants accused is that the injuries sustained could be possible by blunt side of the weapon dhariya as the injuries were in nature, of lacerated wounds. It is further submitted that, the witness PW:16 says that the weapon dhariya used by the accused appellants, however, the", witness has not clarified that injuries caused by the blunt edge of dhariya. In support of the said contention, heavy reliance has been placed of the case", of Hallu Vs. State of Madhya Pradesh (1974 (4) SCC 300), to contend that it is the duty of the prosecution to obtain a clarification from the witness as", to whether the injuries caused by blunt side of the dhariya.,

17. In the case on hand, the injured witness PW:16 Kamlesh Beldar in his deposition gave a clear version that the accused appellants viz. Vitthal",

Popat, Lala Punabhai, and other two accused Deva Gafur and Manga Gafur restrained him and his father and assaulted them by using weapon",

dhariya and sticks. He has also clarified that the appellants and accused Manga Gafur armed with dhariya gave a blow on the head as well as right leg,

of his father. As per the medical evidence, there was a lacerated wounds on the right perital region and three punctured wound along with grade 2",

fracture of tibia and fibula for which, external fixation was done. The treating doctors PWs:3, 11, 17 and 79 have opined that the injuries could be",

possible by weapon dhariya and sticks. The defence did not have asked the treating doctors that the lacerated wounds could not be possible by,

weapon dhariya. It is not in dispute that the 12 persons were tried for the offence of murder read with Section 149 and Section 323, 325 of the IPC. In",

such circumstances, when four persons as referred above, assaulted the deceased as well as PW:16, it would not be prudently possible by the witness",

to have noticed whether sharp edge or blunt edge dhariya was used. In an identical case, subsequent to the judgment of the Hallu Vs. State of",

Madhya Pradesh (supra), the Supreme Court in a case of Ranmal Samat Vs. State of Gujarat (AIR 1993 Supreme Court 1676) held and observed",

that it cannot be accepted from the witness to depose whether sharp edge or blunt edge of the weapon was used. Para-5 of the judgment reads thus;

“5. We have gone through the evidence of P.Ws. 4 and 5 who are the parents of the deceased. They deposed that there was enmity,

between them and that on the day of occurrence all the four accused came armed with different weapons and they showered abuses on P.W.,

4 and his family members and A-1, gave a blow with an axe on the head of the deceased and the other accused gave blows on both of them.",

In this appeal the evidence of injured witnesses, P.Ws. 4 and 5, is most important. P.W. 5 has not deposed that the sharp edge of the axe was",

used by A-1 in giving a blow on the deceased. It is only P.W. 4 who states at one stage that A-1 dealt one blow with sharp edge. The doctor,"

who conducted the post-mortem, however, has clearly stated that the injuries found on the deceased could be caused by blunt edge of the",

axe. The occurrence took place during the night time and we cannot expect the witness to have noticed whether sharp edge or the blunt,

edge of the axe was used. The medical evidence thus is not in conflict with the oral evidence. The evidences of P.Ws. 4 and 5 are no other,

than the parents of the deceased and they have come with cogent and convincing evidence. Having gone through the judgments of the,

Sessions Court and the High Court, we are of the view that the view taken by the Sessions Court is highly unreasonable and the High Court",

has rightly appreciated the evidence of eye-witnesses and reached the conclusion that the prosecution has established that the blows both,

on the deceased as well as on P.Ws. 4 and 5 were inflicted by these accused.â€

On the similar facts situation, the Supreme Court in the case of State of Rajasthan Vs. Major Singh (AIR 1999 Supreme Court 1073) held and",

observed that it would be practically impossible for any injured witness to exactly notice and memorize that which accused was assaulting by blunt,

side of the weapon and which accused was causing injuries by sharp edge weapon.,

18. In the present case, as noticed above, PW:16 was having received injuries in the said incident, and he was treated by the Civil Hospital, Kheda as",

well as Ahmedabad and the same facts are not in dispute that he is not an injured eyewitness. It needs to be noted that on the day of incident, the four",

accused as referred above, armed with dhariya and sticks gave a blow to the deceased Manubhai and witness PW:16 and after hearing the hue and",

cry, the family members of the deceased came into his rescue and while rescuing him, the witnesses received the injuries at the hands of present",

appellants and co-accused. In such circumstances, non-clarification by the prosecution about the use of blunt or sharp edge weapon is not fatal to the",

case of prosecution and it cannot be said that the medical evidence is conflict with the oral evidence.,

19. In view of the aforesaid discussions and reasons thereof, we do not find merits in the submissions on the aspect of contradiction between medical",

and ocular evidence.,

20. The third contention relates to the reliability and acceptability of the oral evidence of PW:16 Kamlesh Beldar. It was submitted that the learned,

Trial Court appreciated the evidence and found that his evidence does not inspire confidence. In the circumstances, without corroboration of the",

evidence of PW:16, on the basis of sole evidence of the witness, the accused could not have been convicted. In the instant case, as per the evidence",

of PW:16, he was assaulted by accused Deva Beldar and his father Manubhai assaulted by accused Lala Beldar, Vitthal Popat and Manga Gafur.",

After the said incident, the co-accused no.5 to 9, 11 and 12 came armed with dangerous weapon and assaulted the witnesses who later on came to",

save the PW:16 and deceased Manubhai. After careful examination of evidence of PW:16, who sustained injuries in the incident, the presence of the",

accused as well as the injured witnesses has been established and proved. The motive behind the incident is the immovable property for which the suit,

is pending before the Civil Court, Matar. In our opinion, the evidence of PW:16 has a ring of truth and there is no any reason for the witness to falsely",

implicate the appellants accused who had assaulted him as well as his father. In the cross examination also, his evidence is not shaken so far as",

attributed to the accused appellants are concerned and there is nothing to show that the witness had a reason to falsely involve the appellants accused.,

The Supreme Court in its catena of decision, time and again, held and observed that the testimony of injured witness is accorded a special status in",

law. This is as a consequence of the fact that the injuries to the witness is an in-built guarantee of his presence at the scene of crime and because the,

witness will not want to let actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the",

deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradiction and,

discrepancy therein. The PW:16 Kamlesh Beldar had given graphic description of entire incident and his deposition stood fully corroborated by the,

medical evidence. The learned Trial Court while dealing with the issue of unlawful assembly, recorded that the evidence of the PW:16, on the aspect",

of unlawful assembly, cannot be accepted and relied upon. We have carefully examined the testimony of PW-16 on this aspect and found that his",

version qua the appellants for causing fatal injuries on the person deceased who happened to be a father of him, is clear and consistent and having got",

corroboration from the medical evidence.,

21. In the present case, the death of deceased Manubhai was homicidal in nature. According to doctor PW:13, who had conducted a postmortem, the",

injuries found on the body of the deceased were sufficient in ordinary course of nature to cause death. Both the injuries, according to the opinion of",

the doctor, were serious in nature. In such circumstances, it is proved and established that the deceased Manubhai suffered fatal injuries and the",

accused appellants caused the injuries on the vital part of the body and it is not the case of the appellants that it was accidental or unintentional or that,

other kind of injuries were intended. The appellants accused armed with deadly weapons inflicted a fatal injuries which indicates their clear intend to,

cause harm that could lead to death. The deliberate act of causing injuries with the scythe (dhariya) on the vital parts of the body and according to,

medical evidence, there were serious head injury and multiple fractures found on the leg of the deceased, indicate that, the appellants must have been",
aware of the likely fatal consequences of their actions. Under the provisions of Section 300 of IPC, an intention to cause death qualifies as murder and",
even if ingredients other than intention to cause death are proved, mere a knowledge of the result of fatal actions is enough to ascribe culpability of the",
accused persons.,

22. For the foregoing reasons, the prosecution has proved its case with sufficient oral and documentary evidence, beyond all reasonable doubt and we",
are satisfied that the trial Court has rightly found the appellants guilty and convicted them under Sections 302, 323, 324 and 325 of the IPC. Thus, we",
do not find any reason or scope for interference with the findings of convictions made by the court below.,

23. In the result, present Criminal Appeal stands dismissed. The conviction and sentence are upheld. R&P, if any, be sent back to the trial Court",
forthwith.,

Order in Criminal Misc. Application No. 4 of 2024;:

In view of order passed in Criminal Appeal, no order in present application and is disposed of accordingly.",