

**Vinod Jaswantray Vyas (Dead) Through Lrs.**

**v.**

**The State of Gujarat**

(Criminal Appeal No. 2038 of 2017)

09 July 2024

**[B.R. Gavai and Sandeep Mehta,\* JJ.]**

### **Issue for Consideration**

The instant appeal is directed against the judgment dated 13.02.2017 passed by the Division Bench of the High Court, whereby, the Division Bench partly accepted the appeal preferred by the appellant accused-A1 and altered his conviction as recorded by the trial Court for the offence punishable under Section 302 of the Penal Code, 1860 to one under Section 304 Part I IPC.

### **Headnotes<sup>†</sup>**

**Penal Code, 1860 – Custodial torture – Death of victim – Acquittal of accused – Prosecution case that the two police officers i.e. A1 and A2, assaulted J in the confines of the Amraiwadi police station at separate intervals causing multiple injuries all over his body due to which he later died – Trial Court proceeded to convict both the accused and sentenced them to imprisonment for life – A1 and A2 appealed before the High Court – During the pendency of appeal, A-2 expired – High Court affirmed the decision of the trial Court, however, the offence was toned down from Section 302 IPC to offence under Section 304 Part I IPC – Correctness:**

**Held:** J had come along with his advocate and his two sisters namely, PW-1 and PW-2 and surrendered at the Amraiwadi police station – Next evening J was produced before the jurisdictional Magistrate, who remanded him to judicial custody whereafter, he was taken to and lodged at the Sabarmati Central jail – J's condition deteriorated in the prison, later he died – It is further revealed from the records that deceased-J had been taken and presented before the DCP at the Karanj Bhavan, Ahmedabad and only thereafter, he was produced in the concerned Court of the Magistrate – The Medical Jurist (PW-9) stated that the person having received the injuries noted in the post-mortem report (Exhibit-50) would not be

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able to climb a stair case without support and that the expression of the person and his movement would be painful – Thus, there was hardly any possibility that after having received the injuries mentioned in the postmortem report (Exhibit-50), deceased-J could have climbed up the stairs of Karanj Bhavan, Ahmedabad for being presented before DCP – Furthermore, on being presented before the Magistrate, the expression of pain on the face of the victim, would be prominently visible and could not have escaped being noticed by the Magistrate – Medical Jurist (PW-9) opined in his examination in chief that the injuries caused to the deceased were fresh and must have occurred within six to eight hours of the death – Thus, there is formidable evidence of the Medical Jurist (PW-9) which totally discredits the version of the eyewitnesses (PW-1, PW-2 and PW-3) that deceased-J was inflicted the injuries leading to his death while being in police custody at the Amraiwadi Police Station – Their evidence is contradicted in material particulars by the medical evidence and other attending circumstances – Considering the unimpeachable and strong opinion of the Medical Jurist (PW-9), the probability of the victim having been assaulted in Sabarmati Central jail leading to the fatal injuries noted in the postmortem report (Exhibit-50) is much higher as compared to the theory set up in the complaint and the evidence of the star prosecution witness that deceased-J was fatally assaulted by A1 and A2 while he was detained at the Amraiwadi Police Station – The prosecution has failed to bring home the guilt of both the accused persons (A1) (since deceased) and (A2)(since deceased) by leading cogent, convincing and reliable evidence and their conviction as recorded by the trial Court and affirmed by the High Court is not sustainable in the eyes of law – Resultantly, both accused A-1 and A-2 are acquitted of the charges. [Paras 41, 42, 43, 46, 50, 52]

#### **Evidence – Testimony of witness – Unnatural conduct:**

**Held:** In the instant case, two sisters (PW-1 and PW-2) claimed to have personally witnessed the assault being made on J (deceased) – They admitted in their cross-examination that they had been arraigned as accused in a couple of prohibition cases – Thus, it can safely be inferred that these two so-called eyewitnesses were having sufficient contact with the legal system and were well aware of the legal machinery and would be knowing the importance of filing a complaint promptly – However, they did not approach the higher officials or the concerned Court to make

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a complaint of the alleged assault made on their victim brother in the Amraiwadi Police Station by the police officials – They also did not approach the advocate engaged by them to tell him about the custodial torture – This pertinent omission in failing to inform their advocate about the custodial torture allegedly meted out to J gives rise to a strong assumption about the unnatural conduct of these eyewitnesses, casting a doubt on the truthfulness of their version and discredits their testimony. [Paras 29, 30]

**Evidence Act, 1872 – Marking of exhibit – Proof of document:**

**Held:** Mere marking of exhibit upon the letter without the expert deposing about the opinion given therein would not dispense with the proof of contents of the document as per the mandate of the Indian Evidence Act, 1872. [Para 36]

**Evidence – Contradiction between the opinion of Medical jurist and ocular testimony:**

**Held:** This Court is conscious of the proposition that where there are contradictions *inter se* between the opinion of the Medical Jurist and the ocular testimony, generally, the evidence of the eyewitnesses should be given precedence – However, where the contradiction is so prominent that it completely demolishes the version of the eyewitnesses who are interested and partisan, in such cases, the Court should be circumspect in admitting the evidence of the eyewitness while ignoring the convincing opinion of the Medical Expert. [Para 44]

**Case Law Cited**

*Lahu Kamlakar Patil and Anr. v. State of Maharashtra* [2012] 9 SCR 1173 : (2013) 6 SCC 417; *Shivasharanappa and Others v. State of Karnataka* [2013] 5 SCR 1104 : (2013) 5 SCC 705; *Narendrasinh Keshubhai Zala v. State of Gujarat* [2023] 2 SCR 746 : [2023] 4 SCALE 478; *Harvinder Singh alias Bachhu v. State of Himachal Pradesh* [2023] 13 SCR 1157 : 2023 SCC OnLine SC 1347; *Chunthuram v. State of Chhattisgarh* [2020] 8 SCR 1071 : (2020) 10 SCC 733; *Sait Tarajee Khimchand and Others v. Yelamarti Satyam alias Satteyya and Others* (1972) 4 SCC 562; *Narbada Devi Gupta v. Birendra Kumar Jaiswal and Another* [2003] Supp. 5 SCR 90 : (2003) 8 SCC 745; *Bhajan Singh alias Harbhajan Singh and Others v. State of Haryana* [2011] 7 SCR 1 : (2011) 7 SCC 421 – relied on

**Digital Supreme Court Reports****List of Acts**

Penal Code, 1860; Evidence Act, 1872

**List of Keywords**

Custodial torture; Custodial death; Police custody; Judicial custody; Multiple injuries; Formidable evidence of the Medical Jurist; Ocular evidence; Acquittal of charges; Unnatural conduct of witnesses; Marking of exhibit; Proof of document; Contradiction between the opinion of Medical jurist and ocular testimony.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2038 of 2017

From the Judgment and Order dated 13.02.2017 of the High Court of Gujarat at Ahmedabad in CRLA No. 210 of 1997

**Appearances for Parties**

Harin P. Raval, Sr. Adv., Anando Mukherjee, Ms. Ekta Bharati, Shwetank Singh, Ms. Shreya Bansal, Ms. Shrestha Narayan, Ms. Urmi H. Raval, Advs. for the Appellants.

Ms. Deepanwita Priyanka, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Advs. for the Respondent.

**Judgment / Order of the Supreme Court****Judgment**

**Mehta, J.**

1. The instant appeal is directed against the judgment dated 13<sup>th</sup> February, 2017 passed by the Division Bench of the High Court of Gujarat in Criminal Appeal No. 210 of 1997, whereby, the Division Bench partly accepted the appeal preferred by the accused appellant Vinod Jaswantray Vyas and altered his conviction as recorded by the trial Court for the offence punishable under Section 302 of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC') to one under Section 304 Part I IPC and sentenced him to undergo eight years rigorous imprisonment and further directed that he shall pay a compensation of Rs. 50,000/- to the heirs of the deceased.

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2. Learned Additional City Sessions Judge, Ahmedabad(hereinafter being referred to as the 'trial Court') tried the accused appellant Vinod Jaswantray Vyas(Original accused No.1)(hereinafter being referred to as 'A1') and his co-accused Chinubhai Govindbhai Patel(Original accused No.2)(hereinafter being referred to as 'A2') for the offences punishable under Section 302 read with Section 114 IPC and *vide* judgment dated 4<sup>th</sup> March, 1997, the learned trial Court proceeded to convict both the accused for the above offences and sentenced them to imprisonment for life and fine of Rs. 25,000/- each, in default, to undergo rigorous imprisonment for a period of two years.
3. A1 and A2 preferred separate appeals before the Gujarat High Court being Criminal Appeal Nos. 210 of 1997 and 226 of 1997 respectively, to challenge the judgment dated 4<sup>th</sup> March, 1997 passed by the learned trial Court. A2 expired during the pendency of the appeal before the High Court. However, being a Government servant, the question of his conviction had a direct bearing on his death-cum-retiral benefits and thus, his legal heirs applied for and were granted permission to prosecute the appeal further. Both appeals were decided by a learned Division Bench of the Gujarat High Court *vide* common judgment dated 13<sup>th</sup> February, 2017 and the learned Division Bench proceeded to affirm the findings of the learned trial Court holding that A1 and A2 had subjected Jeeva(deceased) to physical violence in police custody and thereby, the findings of guilt were affirmed. However, the offence was toned down from Section 302 IPC to offence under Section 304 Part I IPC and the sentence was modified as above.
4. Only A1 approached this Court to challenge the impugned judgments whereas, the legal heirs of the co-accused, A2 have not challenged his conviction. Leave was granted by this Court on 27<sup>th</sup> November, 2017.
5. During the pendency of the appeal, the sentence awarded to the accused appellant(A1) was suspended *vide* order dated 6<sup>th</sup> June, 2017 and he was directed to be released on bail. However, A1 also passed away during pendency of the instant appeal and accordingly, by an order dated 12<sup>th</sup> August, 2022 his legal heirs were taken on record and were allowed to continue the appeal by virtue of provisions contained in Section 394 of the Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC'), so as to seek service benefits of the original appellant Vinod Jaswantray Vyas(since deceased) in the event of the acceptance of the appeal.

**Digital Supreme Court Reports****Brief facts: -**

6. The accused appellant(A1) was posted as a Police Inspector at Amraiwadi Police Station, Ahmedabad. One Jeeva had appeared and surrendered at the said police station in the late hours of the night on 10<sup>th</sup> June, 1992 as he had been arraigned as an accused in C.R. No. 555 of 1992 registered at the said police station for the offences punishable under Sections 143, 147, 148, 149, 307, 323, 324 and 427 IPC. He was also accompanied by the co-accused Anna Dorai.
7. Jeeva had come to surrender at the police station along with his advocate Shri Patanwadia and his two sisters namely, Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2). The advocate Shri Patanwadia left after production of Jeeva at the police station, however, the two sisters remained behind.
8. The original accused No.2(A2) was the Superintendent of Police at the relevant point of time who came to the police station sometime later. It is the case of prosecution that the two police officers i.e. A1 and A2, assaulted Jeeva with fists and sticks in the confines of the police station at separate intervals causing multiple injuries all over his body due to which he became unconscious. He was then dragged and placed in the lockup room of the police station. Next evening i.e. on 11<sup>th</sup> June, 1992, Jeeva was produced before the jurisdictional Magistrate, who remanded him to judicial custody whereafter, he was taken to and lodged at the Sabarmati Central jail. Jeeva's condition deteriorated in the prison and thus, he was rushed to the civil hospital in the early hours of 12<sup>th</sup> June, 1992, where the doctors declared him dead.
9. Selvin Prabhakar(PW-1), the sister of Jeeva(deceased), forwarded a telegram(Exhibit-14) to the DGP office, Ahmedabad regarding the custodial torture leading to her brother Jeeva's death. However, no action was forthcoming upon this telegraphic complaint, whereupon she lodged a complaint(Exhibit-13) in the Court of the Magistrate concerned on 1<sup>st</sup> July, 1992. In the interregnum, a magisterial enquiry(inquest) had been undertaken. The dead body of Jeeva(deceased) was subjected to postmortem at the BJ Medical College, Ahmedabad by Dr. Nayan Kumar-Medical Jurist(PW-9). As per the postmortem report(Exhibit-50), following external injuries were observed on the body of Jeeva: -

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- “1) Abrasion on the dorsum of right hand 1 x 1 cm in size which was red in colour.
- 2) Abrasion on the posterior aspect of middle one-third of the right arm 1 x 1 cm in size red in colour.
- 3) Two abrasions on the right shoulder each measuring 17 x 1 cm in size and red in colour.
- 4) Two bruises on the right scapular region each 6 x 4 cm in size on the back.
- 5) Seven bruises on the back each varying in size but about 2 x 4 cms to 4 x 1 cm.
- 6) Abrasion on the left wrist 1 x 1 cm.
- 7) Abrasion on the middle third of left forearm posterior aspect about 2 x 1 cm.
- 8) Abrasion on the left shoulder 1 x 1 cm.
- 9) Abrasion on the left side of leg 1 x 1 cm.
- 10) Bruise on the left lateral aspect of abdomen on mid-axillary line at 10<sup>th</sup> rib 6 x 4 cm in size.
- 11) Bruise on the front of chest midline and 3<sup>rd</sup> rib 6 x 4 cm in size.
- 12) Bruise on the left anterior axillary line 4 x 5 cms in size at nipple level.
- 13) Bruise on the left side of knee 2 x 5 cm.
- 14) Bruise on the left thigh 4 x 4 cm in size on thigh on front middle.

Corresponding to such external injuries, following internal injuries were observed:-

There was fracture of sternum under external wound No.11 which was transverse in direction. There was fracture of 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> ribs under external injury No.12. Pleura on left side was cut. Left lung was ruptured under external injury No.12. There was about 600ml fluid and clotted blood in thoracic cavity. Peritoneal cavity contained 1600 ml of clotted blood and fluid blood. Rupture of liver on

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the interior aspect of right lobe 3 x 4 cm in size. There as rupture of spleen under external injury No.10. Rupture of 4 x 6 in size at diaphragmatic surface.”

10. The complaint(Exhibit-13) submitted by Selvin Prabhakar(PW-1) was initially registered as Inquiry Case No. 84 of 1992. The learned Magistrate directed an inquiry under Sections 200 and 202 CrPC. Cognizance was taken for the offence punishable under Section 302 IPC and the complaint came to be registered as Criminal Case No. 1920 of 1993. Since the offence alleged was exclusively sessions triable, the case was committed to the Court of Additional City Sessions Judge, Ahmedabad, where the same was registered as Sessions Case No. 378 of 1993. Charges were framed by the trial Court against both the accused for the offence punishable under Section 302 read with Section 114 IPC. The accused abjured their guilt and claimed trial. The prosecution examined a total of 10 witnesses and exhibited 62 documents in order to prove its case. In their statements under Section 313 CrPC, the accused denied the allegations appearing against them in the prosecution case and claimed to have been falsely implicated.
11. The learned trial Court, after hearing the arguments advanced by the learned Additional Public Prosecutor and the learned defence counsel and upon appreciating the evidence available on record proceeded to convict A1 and A2 and sentenced them both as above *vide* judgment dated 4<sup>th</sup> March, 1997. The Division Bench of the Gujarat High Court in appeal, while affirming the guilt of both the accused, toned down the offence from Section 302 IPC to offence under Section 304 Part I IPC *vide* judgment dated 13<sup>th</sup> February, 2017 which is assailed in the present appeal by special leave.

#### **Submissions on behalf of the appellant: -**

12. Shri Harin P. Raval, learned senior counsel representing the accused appellant(A1), put forth the following submissions in order to assail the impugned judgments seeking acquittal for the accused appellant-Vinod Jaswantray Vyas(since deceased):-
  - (i) That there is a delay of around 20 days in filing the formal complaint before the concerned Court of the Magistrate, since the alleged incident took place on 10<sup>th</sup> June, 1992 and the complaint came to be filed on 1<sup>st</sup> July, 1992.



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- (ii) That the accused appellant had neither any motive nor any reason to assault Jeeva(deceased).
- (iii) That Jeeva(deceased) and Anna Dorai(both accused in C.R. No. 555/92) had voluntarily surrendered at the Amraiwadi Police Station. However, the injuries were suffered only by Jeeva(deceased) which creates a doubt about the prosecution story, inasmuch as, it cannot be believed that the police officers who were presumably intending to extract confessions from the accused would focus their attention only on one accused while totally sparing the other who was also arraigned in the same case.
- (iv) That Jeeva(deceased) was presented in the concerned Court on 11<sup>th</sup> June, 1992, but he made no complaint whatsoever to the Magistrate that he had been maltreated or assaulted by the police officials at the police station. Jeeva(deceased) was having significant criminal antecedents and had been arraigned as an accused in multiple cases and had also been placed under preventive detention. Therefore, he was fully aware about the nitty gritty of the legal system. Thus, the rank silence on part of the victim and his failure in raising a grievance before the remand Magistrate that he had been subjected to custodial torture at the police station despite having ample opportunity, creates a grave doubt on the truthfulness of the entire prosecution case.
- (v) That Jeeva(deceased) had been taken and presented before the DCP Shri Surelia at the Karanj Bhavan, Ahmedabad and only thereafter, he was produced in the concerned Court of the Magistrate. Shri Raval referred to the testimony of Pratapbhai Jagannath(PW-6) to contend that the office of DCP Shri Surelia was located on the fifth floor and Jeeva(deceased) climbed the staircases without any support or displaying signs of discomfort or pain. He fervently contended that it is impossible to believe that after having received such grave debilitating injuries as described in the postmortem report, Jeeva(deceased) would have been in a physical or mental condition to ascend and descend five flights of stairs and that too without exhibiting any sign of discomfort.
- (vi) Shri Raval urged that Jeeva(deceased) had been sent to the Sabarmati Central jail on 11<sup>th</sup> June, 1992 at around 6:30 pm after being remanded to judicial custody. As per Shri Raval, the

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probability of Jeeva(deceased) having been assaulted by co-prisoners in the prison cannot be ruled out and is rather more probalitized considering the fact that the injuries noticed on the body of the victim were fresh in nature as per Dr. Nayan Kumar-Medical Jurist(PW-9). To emphasize the above contention, Shri Raval referred to the testimony(Exhibit-49) of the Medical Jurist(PW-9) who categorically stated that the injuries caused to Jeeva(deceased) were fresh and would have been suffered within six hours of the death.

- (vii) Shri Raval referred to the testimony of Udesingh Himmatsingh Chauhan(PW-8) who stated that he had seen the red dust over the clothes of dead body. He also claimed to have seen Sabarmati Central jail from inside and stated that the soil of the jail was red in colour. Based on the deposition of PW-8, Shri Raval contended that when the inquest(Exhibit-45) was carried out, the dead body of Jeeva was found smeared with red soil which is typical to the Sabarmati Central jail. He thus urged that there is imminent probability that Jeeva(deceased) must have suffered the fatal injuries while being confined at the Sabarmati Central jail.
- (viii) That the so-called eyewitnesses(Selvin Prabhakar(PW-1), Dhanlakshmi Vaiyapuri(PW-2) and Nyakar Vasudev(PW-3)) emphatically stated that Jeeva(deceased) was beaten on same parts of the body both by the accused appellant(A1) and co-accused(A2). Shri Raval urged that it is impossible to believe that two accused who assaulted the deceased at different intervals would selectively target the same parts of the body to land the blows.
- (ix) That the accused appellant(A1) was a seasoned police officer and hence, it does not stand to reason that he would use sticks to assault the victim so as to leave behind visible marks and risk the chance of the injuries being detected. He submitted that clearly Jeeva(deceased) had been assaulted at the Sabarmati Central jail and a totally false case has been foisted by the family members of Jeeva(deceased) to wreak vengeance against the accused persons on account of the fact that Jeeva(deceased) was a known bootlegger and had been arraigned in number of criminal cases by the police officials.

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On these counts, learned senior counsel implored the Court to accept the appeal, set aside the impugned judgment and acquit the accused appellant of the charges.

**Submissions on behalf of the respondent-State: -**

13. *Per contra*, Ms. Deepanwita Priyanka, learned Standing Counsel for the State of Gujarat, vehemently and fervently opposed the submissions advanced by the learned senior counsel for the appellant. She contended that the trial Court and the High Court, after thorough appreciation of evidence have recorded concurrent findings of facts holding the accused appellant(A1) and the co-accused(A2) responsible for indulging in custodial violence thereby causing death of Jeeva.
14. She contended that the witnesses, Selvin Prabhakar(PW-1), Dhanlakshmi Vaiyapuri(PW-2) had no reason so as to falsely implicate the accused appellant(A1) for the murder of their brother Jeeva(deceased). Presence of these witnesses at the Amraiwadi Police Station was not disputed by the accused persons. The evidence of these witnesses is reliable and trustworthy. The witness Nyakar Vasudev(PW-3) was admittedly detained in the lockup of the police station with Jeeva(deceased) and he too has given clinching evidence supporting the case of prosecution and hence, this Court should not feel persuaded to interfere with the concurrent finding of facts recorded in the impugned judgments.
15. She further urged that Jeeva(deceased) was apprehensive that he may be subjected to further cruelty at the hands of the police officials if he made a complaint about the violence meted out to him in police custody. Thus, rather than speaking out before the learned Magistrate, he confided about the violence to his sister, Selvin Prabhakar(PW-1), who sent a prompt telegram(Exhibit-14) setting out the details of the incident to the DGP office, Ahmedabad promptly after the news of death of her brother Jeeva was conveyed to her and thus, there is no delay in lodging of the complaint.
16. She further contended that the influence of the accused persons upon the investigation agency is clearly visible inasmuch as no action was taken on the telegram(Exhibit-14) promptly sent by Selvin Prabhakar(PW-1) who was later compelled to lodge a complaint before the concerned Magistrate, only whereafter, the criminal case could be registered against the accused.

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17. She thus urged that the testimony of the witnesses examined by the prosecution was rightly relied upon by the trial Court and the High Court and that the impugned judgments do not warrant any interference by this Court.
18. We have given our thoughtful consideration to the submissions advanced at bar and have minutely reappreciated the evidence available on record. We have also perused the judgments rendered by the High Court as well as the trial Court.

**Discussion of material/evidence available on record: -**

19. The following facts are undisputed as per the record: -
  - (i) That A1 was posted as Police Inspector, Amraiwadi Police Station and A2 was posted as Superintendent of Police on the date of the incident.
  - (ii) That Jeeva(deceased) and Anna Dorai were arraigned as accused in C.R. No. 555 of 1992, registered at the Amraiwadi Police Station for the offences punishable under Sections 143, 147, 148, 149, 307, 323, 324 and 427 IPC.
  - (iii) That on 10<sup>th</sup> June, 1992 at 10:45 pm, Jeeva(deceased) accompanied by his two sisters, Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2) and advocate Shri Patanwadia had gone to the Amraiwadi Police Station for surrendering in connection with the above case. Anna Dorai also surrendered along with Jeeva as he too was arraigned as an accused in the same case.
  - (iv) That advocate Shri Patanwadia was not examined in evidence in support of the prosecution case.
  - (v) That Anna Dorai who surrendered at the police station along with Jeeva(deceased) in the same case, did not suffer any injuries during the period of detention at the police station. Anna Dorai was surprisingly not examined as a witness by the prosecution.
  - (vi) That Meena, wife of Jeeva(deceased), who went to meet him in the morning of 11<sup>th</sup> June, 1992 was not examined in evidence.
  - (vii) Jeeva(deceased) had sufficient exposure to the legal system and procedure as he had previously also been arraigned in numerous

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criminal cases. Association of advocate Shri Patanwadia in the process of Jeeva's surrender is ample proof of this fact.

- (viii) Before being presented in the Court of the Magistrate, Jeeva (deceased) was taken to the Karanj Bhavan and was presented before DCP Shri Surelia whose office was located at the fifth floor of the building and that Jeeva(deceased) ascended and descended the multiple flight of stairs without exhibiting any discomfort or signs of pain whatsoever.
- (ix) Jeeva(deceased) was produced in the Court of Magistrate in evening of 11<sup>th</sup> June, 1992 but he did not make any kind of complaint whatsoever to the Magistrate that he had been beaten by the accused at the police station.
- (x) That as per Jeeva's sister, Selvin Prabhakar(PW-1), Jeeva(deceased) had complained after coming out of the Magistrate's Court that he had been beaten/tortured at the police station but he could not make any complaint to the Magistrate owing to the threat of retribution at the hands of the police officials. However, the fact remains that Jeeva's sisters(PW-1 and PW-2) were free birds and nothing prevented them from lodging a prompt complaint regarding the custodial torture allegedly meted out to Jeeva(deceased) while he was in police custody.
- (xi) That the first complaint of the custodial torture meted out to Jeeva(deceased) in form of the telegram(Exhibit-14) came to be forwarded by Selvin Prabhakar(PW-1) to the DGP office, Ahmedabad on 13<sup>th</sup> June, 1992. When no action was forthcoming on this telegram(Exhibit-14), a formal complaint came to be filed in the Court of the Magistrate concerned on 1<sup>st</sup> July, 1992.
- (xii) That as per the evidence of Medical Jurist(PW-9), the injuries noticed on the body of the deceased at the time of the postmortem examination which was conducted on 12<sup>th</sup> June, 1992(between 4:15 pm to 5:30 pm) were fresh and were caused within six to eight hours of the death. The Medical Jurist(PW-9) observed in the postmortem report(Exhibit-50) that he noticed 600 ml fluid blood and clotted blood in the thoracic cavity and 1600 ml of fluid blood and clotted blood in peritoneal cavity. He also gave a pertinent reply to a question put in cross-examination that looking to the number of injuries

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including the fractures and having rupture of liver and lung, a person could not climb a staircase without support; he would be depressed and his expression and movements would be painful. The fracture of sternum and ribs would cause severe pain and would also affect the respiratory system. Due to the bruises and the fractures, the loss of blood would be about 30-35% of the total volume of blood in the body which would cause drop in the blood pressure.

- (xiii) The prosecution tried to overcome this pertinent opinion of the Medical Jurist(PW-9) regarding the time of injuries by examining the expert witness-Dr. Ravindra(PW-10) who gave his opinion(Exhibit-53) on queries being raised by the Investigating Officer which were based on the findings in postmortem report(Exhibit-50). Nevertheless, the expert witness(PW-10) while deposing, did not elaborate about the opinion which he had expressed in answer to the queries raised by the Investigating Officer. He only formally proved the letter(Exhibit-53) without elaborating upon its contents. In the cross-examination, the expert witness(PW-10) admitted that the doctor who had performed the postmortem examination would be in a better position to give opinion about the age of injuries.
20. Having set out the admitted facts, we shall now proceed to discuss the evidence of the prosecution witnesses. For the sake of convenience, the details of the prosecution witnesses are reproduced hereinbelow in a tabular form: -

PW-1	Selvin Prabhakar(Eyewitness)
PW-2	Dhanlakshmi Vaiyapuri(Eyewitness)
PW-3	Naykar Vasudev(Eyewitness)
PW-4	Harishkumar Fakirswamy
PW-5	Dr. Digant Kalidas Dixit(Medical Officer)
PW-6	Pratapbhai Jagannath
PW-7	Ranjitsing Tensing
PW-8	Udesinh Himmatsinh Chauhan
PW-9	Dr. Nayankumar Natvarlal Parikh(Medical Jurist)
PW-10	Dr. Ravindra Shrikrishna Bhise(Expert witness)

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21. First, we shall discuss the evidence of the star prosecution witnesses namely, Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2). Some relevant excerpts from the deposition of Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2) are reproduced hereinbelow for the sake of ready reference: -

Examination-in-Chief of Selvin Prabhakar(PW-1)

“1.....Thereafter in the night at quarter to eleven hours PSI Shri Vyas in the same room only nearby to the table of the PSO making my brother to stand up facing the wall and keeping both hands up and thereafter Shri Vyas delivered blows with stick on the claws of the hands of my brother, on the back, on the buttock, on the ankle and on the thigh as also on the leg. Vyas Sir also pushed with stick on the chest of my brother. For half an hour, as on getting beaten up in this manner, my brother had fainted and had fallen down. Thereafter two police persons lifted and threw away my brother nearby to the table. At two hours in the night, SP Shri C.G. Patel had come. I know that C.G. Patel and at present he is present in the court as an accused person.

2. Shri C.G. Patel coming there made my brother to stand up in such manner that his face was towards the wall and he delivered stick blows on the hand, on the back, on the side and also pushed with stick in the chest. Thereafter two police persons had put my brother in the lock up. When this happened at that time I and my sister Dhanlaxmi both were present at the Amraivadi Police Station. We were present in front of the lock up....

3.....At quarter to six hours in the evening police persons brought down stairs my brother and Anna. Thereafter, policemen took both these persons at Court No. 7 and I and my sister Dhanlaxmi had gone to the Court No.7. In Court No. 7 these policemen were waiting for Shri Vyas Sir with my brother and Anna as they were not having sufficient papers. At that time my brother talked with me in Madrasi means in Tamil language. At that time my brother was weeping. When I asked him the reason for weeping he told to me that- he is having severe pain in the chest

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and stomach and therefore he is unable to stand up. When asked why, then he told to me that- both those persons had beaten me up and therefore I am feeling the pain. I asked my brother that as he has been beaten up, do you want to file complaint before the Magistrate sir. Then refused for the same. When I asked why, then he told to me that- PI Shri Vyas and C.G. Patel have given me the threat that if you will file complaint against us then, after getting released from the jail, by planning police encounter, and making you to run, bullet will be fired at you. Again he stated to say that still he feels fearful....

4. On 12/6/92, at half past eleven hour in the morning two police persons from jail had come there in civil dress and told to us that-my brother Jeeva has died and his dead body is kept in the PM Room of Civil Hospital and saying this they had gone away.....

....Thereafter at seven hours in the evening after conducting the post mortem, we were handed over the dead body. We had brought the dead body to our home. During the night the dead body was kept at the home and on the next day morning means on 13/6/92 the last ritual rites were performed. During this night I had sent a telegram from Lal Darwaja telegram office to Meghaninagar DGP Office. The telegram stating about death of my brother in this manner was sent.....

Thereafter, regarding this incident I had filed complaint in the Metropolitan Court.

5.....In the year 1990, my brother Jeeva was arrested and was sent up outside Ahmedabad in the jail. Jeeva was kept in this manner for four months and after around four months he was released.....

6.....During last year two cases of prohibition were filed against me. The cases that were filed against me were pertaining to Amraivadi Police Station. When Vyas Sir was in charge of the Amraivadi Police Station, at that time prohibition case was filed against me.....



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....I have filed the complaint. In this complaint as witness No.3 name of Vasu Parthasarathi is in Ex-12 complaint who is not known to me.....

....In this complaint I did not give the name of Anna as the witness. On 1/7/92, complaint was filed. During the period when I had sent to telegram and filed the present complaint, Vasu, Ravi, Hari and Anna none of these persons had met me and I have not met them....

....It is not true that I, Jaykant and my sister and my deceased brother Jeeva were jointly working as botleggers. It is not true that, due to Vyas Sir joining the duty, as this business has been closed, we have animosity towards Vyas Sir....”

Cross-examination of Selvin Prabhakar(PW-1)

“8.....Thereafter on the next day, at 5.45 hours in the evening when my brother was brought in the Court at that time Advocate Shri Patanwadia met us. Prior to that we did not inform to our advocate that as my brother is to be produced, he should make the preparation for getting him released on bail....

....During the period from 5.45 to 6.45 hours means for around one hour my brother was made to sit in the Court. During this period in the Court room many persons were moving.....

....After my brother was brought in the Court, Patanwadia Sir had gone out of the court compound. We had sent the message to Patanwadia Sir and he came there and after meeting he had gone. Our advocate stayed with us for five-ten minutes....

....After my brother was beaten up, we met Patanwadia Sir in the Court and during the intervening period, we did not meet him. In the Court when Patanwadia Sir met us for five-ten minutes, at that time he was informed that my brother Jeeva has been beaten up in this manner and we had shown the marks of my brother Jeeva getting beaten up. These marks were not shown to Patanwadia Sir so that he can take appropriate actions....

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9. When Jeeva is produced before the Magistrate and if Jeevo makes a complaint before the Magistrate about his getting beaten up, then threat was given to him for killing him. We had informed about this to our advocate Patanwadia Sir. At the time when Jeeva was produced before the Magistrate at that time Patanwadia Sir should remain present before the Magistrate, about which we had not given intimation to Patanwadia Sir. However he told to us that at the time when Jeeva will be produced before the Hon'ble Magistrate, at that time we should inform him. When Patanwadia Sir left the court compound means at the second time he did not meet us.....

10.....We do not have any relationship with accused person Mr. Vyas and we also do not have relationship with Patel Sir. Prior to the incident I had never met any of the accused persons.....

11.....The facts as to how he was beaten up and who had beaten up where, have not been stated in the telegram.....

12....My brother was kept at the Karanj Bhavan for two and half hour. During this two and half hours, when was my brother kept in the Karanj Bhavan I could not know about the same. However he was taken upstairs and was made to climb the steps about which fact I am aware. I am not aware as to which floor he was taken. The police persons who had brought my brother downstairs, had told that Jeeva was taken before Sureliya Sir.....

14....Ex-14 is the copy of the telegram wherein it has been stated that, "when my brother was produced PI Shri Vyas Saheb had beaten up him severely with stick.".....

19. ....It is true that I have not seen if my brother had been beaten up by Sureliya Sir. In the Karanj Bhavan, Sureliya Sir had beaten up my brother, if such fact has been stated in the telegram then the same is false. It is true that I have not seen taking my brother to Stadium. It is true that I had filed complaint against the present two accused persons and Sureliya Sir.

20....It is true that prohibition cases have been filed against my mother, myself and Pappu....."

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“2. Thereafter in the night at eleven or quarter to eleven hours PI Shri Vyas making my brother Jeeva to stand facing the wall and keeping hands up as support, PI Shri Vyas had beaten up my brother. He delivered blows with stick on the palm of his hand, on the back on the waist, on the thigh, on the ankle and pushed with stick in the chest. He continued to beat up my brother in this manner for around half an hour. Thereafter my brother fainted and had fallen down and thereafter two police persons had come and lifting my brother they had thrown him on the wooden bench. Thereafter at night at quarter to two or two hours, SP Shri Patel had come there. He had come down from the second floor. Thereafter he made my brother to stand up facing the wall with hands up and Shri C.G. Patel had beaten up Jeeva on the palm of his hand, on the back, on the side, on the buttock, on the thigh and on the ankle with stick and pushed with stick in the chest. The C.G. Patel was the SP.....

3.....Thereafter on that day at two hours in the noon PSI Shri Rana along with one police persons taking out from the police station my brother and Anna, they were sitting in the auto rickshaw and they had come in the office of DCP Shri Sureliya Sir. His office is at Lal Darwaja. After this rickshaw, in another auto rickshaw we had gone after Shri Rana Saheb. Thereafter, Rana Sir had taken my brother and Anna in the Office of DCP Shri Sureliya Sir. At 5.45 hours in the evening he was brought downstairs.....

3.....Thereafter my brother Jeevo was talking in Tamil language told to my sister crying. He said that- SP and PI had beaten up very severely. In the hand and leg, marks of stick could be seen. When my sister touched the body of my brother, at that time there was swallowing.....

5.....Thereafter on 12/2/92, at eleven or quarter to eleven hours in the morning, two police persons came to our' home. They said that Jeeva has died.”

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### Cross-Examination of Dhanlakshmi Vaiyapuri(PW-2)

“6.....It is true that, arresting my brother under PASA , he was set up in the jail outside Ahmedabad.....

8.....It is true that in the portion inside the police station, Jeeva and Anna were taken and our advocate was with them and at that time the inside portion could not seen.....

12....It is not true that in my statement dated 13/6/92 I have stated that, “ on the next day on 11/6/92, at nine hours in the morning I and my sister Selvin and my sister in law all the three of us had gone to the Amraivadi Police Station for giving snack to my brother but my brother did not eat the snack. My sister stayed back to have talk with my brother. I and my sister in law Meenaben were sitting outside the police station”.....

12...For an hour Jeevo was in the Court of the Metropolitan Magistrate. I had seen Jeeva in Court No. 7. I am not aware as to whether on that day whether the Magistrate of Court No. 7 was on leave or not?....

12.....My brother Jeeva was taken at Karanj Bhavan on the upper floor where there is staircase and from the staircase, one can go upstairs about which I am not aware....”

22. From the testimony of Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2), it is evident that Jeeva(deceased) was having long standing criminal antecedents and there were allegations of bootlegging against him. He had also been detained under the Gujarat Prevention of Anti-Social Activities Act, 1985. Likewise, the evidence of the prosecution witnesses(PW-1 and PW-2) also reveals that Anna Dorai who too was arraigned as accused with Jeeva(deceased) in C.R. No. 555 of 1992 also had similar criminal antecedents. However, as per these prosecution witnesses, Jeeva(deceased) was singled out for the custodial torture whereas even a finger was not laid on Anna Dorai by A1 and A2. This creates a doubt in the mind of the Court on the truthfulness of the allegations set out in the evidence of the two sisters of Jeeva, i.e., PW-1 and PW-2.
23. PW-1 and PW-2 claim to have personally witnessed the assault being made on Jeeva. In this background, there is a serious question mark on the claim of PW-1 that after being produced in the Court,

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Jeeva talked to her in Tamil language and that he was weeping and when the witness asked Jeeva for the reason of his grief, he told her that the police personnel had beaten him up and he was under severe pain and was unable to standup. If at all PW-1 and PW-2 had themselves seen the victim being beaten up, there was no occasion for PW-1 to put a question to Jeeva as to why he was weeping or as to the manner in which he had been beaten up.

24. This Court has considered the effect of unnatural conduct on the credibility and evidentiary value of testimony of a witness through a series of judicial pronouncements over time. In the case of [\*Lahu Kamlakar Patil and Anr. v. State of Maharashtra\*](#)<sup>1</sup>, this Court held as follows: -

**“26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.”**

(emphasis supplied)

25. In the case of [\*Shivasharanappa and Others v. State of Karnataka\*](#)<sup>2</sup>, it was held as follows: -

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1 [\[2012\] 9 SCR 1173](#) : (2013) 6 SCC 417

2 [\[2013\] 5 SCR 1104](#) : (2013) 5 SCC 705

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**“22. Thus, the behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance.”**

(emphasis supplied)

26. In [\*Narendrasinh Keshubhai Zala v. State of Gujarat\*](#)<sup>3</sup>, it was held as follows: -

**“8. It is a settled principle of law that doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence [Jagga Singh v. State of Punjab, 1994 Supp (3) SCC 463]. Only such evidence is admissible and acceptable as is permissible in accordance with law. In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness.”**

(emphasis supplied)

27. In the case of [\*Harvinder Singh alias Bachhu v. State of Himachal Pradesh\*](#)<sup>4</sup>, this Court held as below: -

**“18. Character and reputation do have an element of interconnectivity. Reputation is predicated on the general traits of character. In other words, character may be subsumed into reputation. Courts are not expected to get carried away by the mere background of a person especially while acting as an appellate forum, when his conduct, being a relevant fact, creates**

3 [\[2023\] 2 SCR 746](#) : 2023(4) SCALE 478

4 [\[2023\] 13 SCR 1157](#) : 2023 SCC OnLine SC 1347

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**serious doubt. In other words, the conduct of a witness under Section 8 of the Evidence Act, is a relevant fact to decide, determine and prove the reputation of a witness. When the conduct indicates that it is unnatural from the perspective of normal human behaviour, the so-called reputation takes a back seat.”**

(emphasis supplied)

28. In the case of [Chunthuram v. State of Chhattisgarh](#)<sup>5</sup>, a three judge Bench of this Court discarded the testimony of a eyewitness on the ground that the deceased was known to the witness and claimed to have seen the assault on the deceased, but curiously, he did not take any proactive steps in the matter to either report to the police or inform any of the family members. The Court held that such conduct of the eyewitness is contrary to human nature. The relevant extracts from the judgment are as follows: -

“15. Next the unnatural conduct of PW 4 will require some scrutiny. The witness Bhagat Ram was known to the deceased and claimed to have seen the assault on Laxman by [Chunthuram](#) and another person. But curiously, he did not take any proactive steps in the matter to either report to the police or inform any of the family members. Such conduct of the eyewitness is contrary to human nature. In **Amar Singh v. State (NCT of Delhi)**[2020 SCC OnLine SC 826], one of us, Krishna Murari, J. made the following pertinent comments on the unreliability of such eye witness : (SCC para 32)

“32. The conviction of the appellants rests on the oral testimony of PW 1 who was produced as eyewitness of the murder of the deceased. Both the learned Sessions Judge, as well as High Court have placed reliance on the evidence of PW 1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there are inherent improbabilities in the prosecution story and the conduct of eyewitness is inconsistent with ordinary course of human nature we do not

5 [\[2020\] 8 SCR 1071](#) : (2020) 10 SCC 733

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think it would be safe to convict the appellants upon the uncorroborated testimony of the sole eyewitness. Similar view has been taken by a three-Judge Bench of this Court in **Selveraj v. State of T.N.** [(1976) 4 SCC 343] wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature concurrent findings of guilt recorded by the two courts below were set aside.”

16. The witness here knew the victim, allegedly saw the fatal assault on the victim and yet kept quiet about the incident. If PW 4 had the occasion to actually witness the assault, his reaction and conduct does not match up to ordinary reaction of a person who knew the deceased and his family. His testimony therefore deserves to be discarded.”
29. The two sisters(PW-1 and PW-2) were not under any restraint after witnessing the custodial assault allegedly made on Jeeva. They admitted in their cross-examination that they had been arraigned as accused in a couple of prohibition cases. Thus, it can safely be inferred that these two so-called eyewitnesses were having sufficient contact with the legal system and were well aware of the legal machinery and would be knowing the importance of filing a complaint promptly. Nothing prevented these ladies from immediately approaching the higher officials or the concerned Court to make a complaint of the alleged assault made on their victim brother in the Amraiwadi Police Station by the police officials.
30. Admittedly, an advocate named Shri Patanwadia was taken to the Amraiwadi Police Station for facilitating Jeeva’s surrender and he was also present when Jeeva(deceased) was presented in the Court on 11<sup>th</sup> June, 1992 by the Investigating Officer. Thus, the advocate was a vital witness to unfold the truth of the case. However, he was not examined in evidence for reasons best known to the prosecution. Even if we assume that the advocate may have been hesitant to become a witness in a case involving his client, the fact remains that PW-1 and PW-2 had engaged Shri Patanwadia to represent Jeeva(deceased) in the criminal case wherein he was arraigned as an accused and he was taken along for effecting the surrender of Jeeva at the police



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station. Thus, it was logically expected from PW-1 and PW-2, that after having seen their brother Jeeva being assaulted by the police officer, they would have immediately thought of approaching the advocate engaged by them and tell him about the custodial torture. However, no such step was taken by the sisters(PW-1 and PW-2) of the deceased and this pertinent omission in failing to inform their advocate about the custodial torture allegedly meted out to Jeeva gives rise to a strong assumption about the unnatural conduct of these eyewitnesses, casting a doubt on the truthfulness of their version and discredits their testimony.

31. Keeping in view the above referred judgments and the infirmities noticeable in the evidence of Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2), we are convinced that they are not witnesses of sterling worth and their evidence is not fit to be relied upon.
32. The prosecution claims that Naykar Vasudev(PW-3) was purportedly arraigned as an accused on a complaint lodged by one Babu Raja Ram and was also lodged at the Amraiwadi Police Station, at the same time, when Jeeva was allegedly subjected to custodial violence. He was examined as PW-3 and deposed that he saw the Police Inspector Vyas(appellant herein)(A1) and Mr. Patel(co-accused)(A2) beating Jeeva with sticks, etc. However, in cross-examination, the witness admitted that he had not stated the aforesaid details to the Sabarmati police which were being asked from him in the Court. He also feigned ignorance as to the nature of case filed against him by Babu Raja Ram. He also stated that he had not tried to move Jeeva or talk to him when they were taken out of their lockup. Selvin(PW-1) and Dhanlakshmi(PW-2) had come to the police station with breakfast on the next morning. He did not see Jeeva in a conscious state till he woke up in the next morning. He was released on bail at half past 3'o clock in the afternoon. He did not tell his advocate Mr. Pathan about the incident with Jeeva. He also admitted that he had not given the name of Mr. Patel in the statement recorded by the Sabarmati police. He explained that Sabarmati police had not recorded his statement willingly. He also admitted that he did not state at the police station that he was knowing Mr. Vyas and Mr. Patel previously. He tried to explain that he had not divulged at the Sabarmati Police Station that Mr. Patel had inflicted blow of stick on the chest of Jeeva as he was not asked about the same.

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33. Considering the tenor of evidence of PW-3, it is evident that his version also suffers from grave infirmities, contradictions and omissions and thus, implicit reliance cannot be placed on his testimony.
34. Jeeva(deceased) expired around 36 hours after his surrender before the officials of the Amraiwadi Police Station and thus, the medical evidence assumes great significance in the case. Dr. Digant Kalidas Dixit(PW-5) who was working as a Medical Officer at the Civil Hospital, Ahmedabad deposed as below: -

“On 12th June 1992 at 8/00AM to 2/00 PM I was on duty as Casualty Medical Officer at Civil Hospital, Ahmedabad. At about 8/30AM on that day Shri R.K. Thakur, Jailor of Sabarmati Central Prison, Head Constable Udaysinghbhai and police constable Maheshbhai of Central Prison, Ahmedabad had brought one Jeevabhai Vaiyapuri from Sabarmati Central Prison. I had examined him and I found that the patient was unconscious. His body was cold and calm. Pulse was not palpable and it was not possible to record Blood Pressure: respiration was absent; heart sounds were not heard by stethoscope; pupils were dilated, fixed and not reactive to light. All functions were suggestive that the patient is dead. As such I had made a note in the Register that the person is dead.”

35. Dr. Nayan Kumar-Medical Jurist(PW-9) conducted postmortem upon the dead body of Jeeva. The relevant excerpts from the evidence of the Medical Jurist(PW-9) are reproduced below: -

“The injuries found by me externally were fresh in nature. The injuries were fresh and must have occurred within six to eight hours of the death. I have brought the case papers. A query was raised by the Police Inspector of Sabarmati Police Station and it was replied by my brother doctor Dr. Desai. In reply to the query, it was stated by Dr. Desai that the injuries were fresh and he had opined in the said letter that the injuries were within few hours before the death. Again there was query from the Crime Branch and they had made a query to the tune as to what was the meaning of “few hours” and he had given time that it may have occurred within four to five hours prior to the post-mortem.

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It is true that if lathi blow is given on the back side of a person, then it will cause wheel marks.

All the bruises were red in colour. From the colour of bruises time can be ascertained by the medical man who has seen the injuries.

Taking into consideration the bruises and the fracture there will be loss of blood of about 30 to 35 per cent of the total blood. With this loss of blood gradually blood pressure will come down. It is true that fracture of sternum and three ribs would cause severe pain and would also affect the respiratory system as well. In the present case there was fracture of lung also. I am of the view that having four fractures as in this particular case and after having rupture of liver and lung, a person cannot climb stair-case without support. A man would be depressed and his expression and movements will be painful.”

36. Dr. Ravindra(PW-10) was examined by the prosecution as an expert witness to give opinion on certain queries raised by the Investigating Officer. Dr. Ravindra(PW-10) responded to these queries *vide* a letter which was marked as Exhibit-53 during his sworn testimony. However, what precisely were the contents of the letter were not deposed by the expert in his evidence. Thus, mere marking of exhibit upon the letter without the expert deposing about the opinion given therein would not dispense with the proof of contents of the document as per the mandate of the Indian Evidence Act, 1872.
37. This Court in the case of ***Sait Tarajee Khimchand and Others v. Yelamarti Satyam alias Sattैया and Others***<sup>6</sup> held as follows: -

“15. The plaintiffs wanted to rely on Exs. A-12 and A-13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgments. **The mere marking of an exhibit does not dispense with the proof of documents.** It is common place to say that the negative cannot be proved. The proof of the plaintiffs’ books of account became important because the plaintiffs’ accounts were impeached and falsified by the

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defendants' case of larger payments than those admitted by the plaintiffs. The irresistible inference arises that the plaintiffs' books would not have supported the plaintiffs."

(emphasis supplied)

38. In the case of *Narbada Devi Gupta v. Birendra Kumar Jaiswal and Another*<sup>7</sup>, it was held as follows:

"16. ....The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue"....."

39. Furthermore, the expert witness(PW-10) admitted in his cross-examination that the doctor who had performed the postmortem examination physically can give better opinion about the age of the injuries. Thus, there is no doubt in the mind of the Court that the evidence of the expert witness(PW-10) does not lend any support to the case of prosecution.
40. From the evidence of the so called eyewitnesses Selvin Prabhakar(PW-1) and Dhanlakshmi Vaiyapuri(PW-2), it is apparent that the victim was made to climb the five flights of stairs for being presented before DCP Shri Surelia at the Karanj Bhavan, Ahmedabad.
41. Looking to the nature of injuries noted by the Medical Jurist(PW-9) in the postmortem report(Exhibit-50), it is impossible to believe that the victim, having received the multiple injuries, which included rupture of spleen, rupture of liver, fracture of ribs, would have been in a position to walk what to say of climb five flight of stairs. The Medical Jurist(PW-9) stated that the person having received the injuries noted in the postmortem report(Exhibit-50) would not be able to climb a stair case without support and that the expression of the person and his movement would be painful. Thus, there was hardly any possibility that after having received the injuries mentioned in the postmortem report(Exhibit-50), Jeeva(deceased) could have climbed up the stairs of Karanj Bhavan, Ahmedabad for being presented before DCP Shri Surelia.

7 [\[2003\] Supp. 5 SCR 90](#) : (2003) 8 SCC 745

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42. Viewed in light of the evidence of the Medical Jurist(PW-9) who conducted the autopsy upon Jeeva's dead body, we are of the opinion that, if at all, the victim had already been subjected to the injuries noted in the postmortem report(Exhibit-50), he would be having a severe expression of pain and it would have been impossible for him to climb up the flights of stairs. Furthermore, on being presented before the learned Magistrate, the expression of pain on the face of the victim, would be prominently visible and could not have escaped being noticed by the learned Magistrate.
43. The opinion of the Medical Jurist(PW-9) regarding the age of injuries has not been controverted by the prosecution. The said witness was examined by the prosecution and he has categorically opined in his examination in chief that the injuries caused to the deceased were fresh and must have occurred within six to eight hours of the death. The expert witness(PW-10) also admitted that the doctor who had performed the postmortem examination would be in a better position to give opinion about the age of injuries. Thus, there is formidable evidence of the Medical Jurist(PW-9) which totally discredits the version of the so called eyewitnesses(PW-1, PW-2 and PW-3) that Jeeva(deceased) was inflicted the injuries leading to his death while being in police custody at the Amraiwadi Police Station. Their evidence is contradicted in material particulars by the medical evidence and other attending circumstances.
44. We are conscious of the proposition that where there are contradictions *inter se* between the opinion of the Medical Jurist and the ocular testimony, generally, the evidence of the eyewitnesses should be given precedence. However, where the contradiction is so prominent that it completely demolishes the version of the eyewitnesses who are interested and partisan, in such cases, the Court should be circumspect in admitting the evidence of the eyewitness while ignoring the convincing opinion of the Medical Expert.
45. Our view is fortified by the judgment of this Court in the case of **Bhajan Singh alias Harbhajan Singh and Others. v. State of Haryana**<sup>8</sup> wherein, it was held as below: -
- “38. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised

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to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. **However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.**"

(emphasis supplied)

46. Considering the unimpeachable and strong opinion of the Medical Jurist(PW-9), the probability of the victim having been assaulted in Sabarmati Central jail leading to the fatal injuries noted in the postmortem report(Exhibit-50) is much higher as compared to the theory set up in the complaint and the evidence of the star prosecution witness that Jeeva(deceased) was fatally assaulted by A1 and A2 while he was detained at the Amraiwadi Police Station.
47. The witness Udesingh Himmatsinh Chauhan(PW-8) categorically stated in his evidence that at the time of inquest, he had seen the victim's clothes thoroughly and there was red dust over the said clothes. He also stated to have seen Sabarmati Central jail from inside and deposed that soil of the jail is red.
48. We feel that since the victim was brought dead from the Sabarmati Central jail, it was imperative upon the Investigating Agency to have made extensive investigation from the prison authorities so as to rule out the possibility of injuries having been caused, while the victim was lodged in the prison. We are also of the view that if at all, Jeeva(deceased) was having the large number of injuries as noted in the postmortem report(Exhibit-50), the prison authorities would definitely have made a note thereof in the jail records at the time of his admission in the jail premises and the observations made at that time would be crucial for arriving at the truth of the matter.
49. The theory of motive attributed by the prosecution witnesses (PW-1 and PW-2) to the accused A1 and A2 is also not palpable. It may be noted that the accused appellant(A1) had been posted as Police Inspector at the Amraiwadi Police Station just a few months before the incident. Merely because Jeeva(deceased) was having prior criminal antecedents, that by itself, could not have provided motive

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to the accused police officials to have singled him out for custodial torture while totally sparing the co-accused Anna Dorai.

50. As an upshot of the above discussion, we are of the view that the prosecution has failed to bring home the guilt of both the accused persons i.e. Vinod Jaswantray Vyas(A1)(since deceased) and Chinubhai Govindbhai Patel(A2)(since deceased) by leading cogent, convincing and reliable evidence and their conviction as recorded by the trial Court and affirmed by the High Court is not sustainable in the eyes of law.
51. Resultantly, the accused appellant Vinod Jaswantray Vyas(A1) (since deceased) deserves to be acquitted of the charges. The co-accused Chinubhai Govindbhai Patel(A2)(since deceased) who too was convicted by the trial Court and his appeal was also dismissed by the High Court, also deserves to be given the benefit of the conclusions drawn by us in this appeal even though no appeal has been preferred on his behalf.
52. As a consequence, the judgment dated 4<sup>th</sup> March, 1997 passed by the trial Court and judgment dated 13<sup>th</sup> February, 2017 passed by the Division Bench of the High Court are quashed and set aside. Both the accused i.e. Vinod Jaswantray Vyas(A1)(since deceased) and Chinubhai Govindbhai Patel(A2)(since deceased) are acquitted of the charges.
53. The appeal is allowed in these terms.
54. Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeal allowed.