

Manovarkhan @Manukhan ... vs State Of Gujarat on 27 February, 2025

Author: Ilesh J. Vora

Bench: Ilesh J. Vora

R/CR.A/795/2015

JUDGMENT DATE

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 795 of
2015

With

R/CRIMINAL APPEAL NO. 802 of 2015

With

R/CRIMINAL APPEAL NO. 806 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Approved for Reporting

Yes

No

Yes

-

MANOVARKHAN @MANUKHAN GULMOHAMMADKHAN PATHAN &
ANR.

Versus

STATE OF GUJARAT

Appearance:

MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1,2

MR. ALTAF Y CHARKHA(7271) for the Appellant(s) No. 1,2

MR SADIK A ANSARI(5388) for the Respondent(s) No. 1

MR ROHAN SHAH APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK

Date : 27/02/2025

ORAL JUDGMENT

NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined (PER :
HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK)

1. Criminal Appeal No. 795 of 2015 has been filed by the appellants - original accused No. 8 and 9, Criminal Appeal No. 802 of 2015 has been filed by the appellants - original accused No. 1 and 2 and Criminal Appeal No. 806 of 2015 has been filed by the appellants - original accused No.3 to 7 against the judgment and order dated 18.06.2015 passed by the learned 3 rd Additional Sessions Judge, Nadiad (hereinafter be referred to as "the trial Court") in Sessions Case No.86 of 2012 whereby the trial Court has convicted all the original accused and imposed sentence to undergo life imprisonment and to pay fine of Rs.25,000/- each and in default of payment of fine, to undergo further simple imprisonment of six months for the offence punishable under Section 302 r/w. Section 149 of the Indian Penal Code (hereinafter be referred to as "the IPC").

2. As all these criminal appeals having been arisen from the same judgment and order, all these appeals are heard together and are being disposed of by this common judgment.

3. Brief facts of the prosecution case is that on 01.06.2012 when the complainant - Bernadine proceeded at around 9:00 pm. at Advance, Vijayawada, accused No.3 Athabaskan Yusufkhan Pathan and accused No.5 Tousifmiya Yusufmiya Malek because of previous animosity used abusive language upon the complainant and then other accused came taking side accused NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined No. 3 and 5 along with respective weapons in their hands forming unlawful assembly and assaulted on the complainant - Nadimbeg for which he was shouting, accused No.1 - Sadikkhan Jafarkhan Pathan, accused No.2 - Rajik @ Raju Jafarkhan Pathan have given dharia blow on the head of one Munirbeg Mustufabeg Mirza and due to said injury Munirbeg was profusely bleeding and fallen down on the road. At that time, Jahiruddin while coming to rescue Munirbeg, he sustained dharia blow on his first finger on left hand. It is also alleged that accused No.8 - Manovarkhan @ Manukhan Gulmohammadkhan Pathan and accused No.9 Jainul Aabeddin @ Abu Yusufali Saiyed were instigating the other accused and accused No.4 Samsherkhan Yusufkhan Pathan gave hockey blow on the head of the complainant and when his maternal uncle came in between he also received hockey stick blow on his forehead and many people gathered there and, therefore, the accused were run away. Munirbeg Mustufabeg Mirza sustained serious injury, due to which initially he was admitted in the Civil Hospital, Ahmedabad and after 4 to 5 hours, he was shifted to Apollo Hospital and ultimately he died on 08.06.2012 at about 11.00 p.m. 3.1 On the basis of the complaint filed by the complainant, the First Information Report (FIR) being C.R.No.I - 32 of 2012 came to be registered with Kapadvanj Town Police Station for the offence punishable under Sections 143, 147, 148, 323, 324,

326, 504 read with Section 149 of the IPC.

NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined 3.2 After completion of investigation, as the sufficient evidence was found, the police has arrested the accused and have filed the charge-sheet against the accused before the Judicial Magistrate (First Class), Kapadvanj. As the offence was triable by the Court of Sessions, the Judicial Magistrate (First Class) has committed the case under Section 209 of the Criminal Procedure Code to the Court of Sessions where it has been registered as Sessions Case No.86 of 2012.

3.3 On the basis of the material available on record, the trial court has framed the charge vide Exhibit 11 against the accused for the offences punishable under aforesaid sections and the same were explained to them. The accused have denied having committed any offence. The accused pleaded not guilty to the charge and pleaded for trial and hence, the case was tried by the learned Sessions Judge, Nadiad.

3.4 Considering the evidence on record and after hearing the respective parties, ultimately, the learned Sessions Judge has convicted the accused for the aforesaid offences as stated above.

4. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

W.No.	Name of Witnesses
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5. In addition to this, the prosecution has also produced the following documentary evidence:-

Sr.No.	Particulars	
	accused	
	accused	
4	Panchnama of the physical condition Samsherkhan and Tofikmiya	condition
5	Panchnama of the weapon Samsherkhan and Tofikmiya	found
7	Panchnama of the physical condition Murtujaali	condition

Sadikkhan Jafarkhan Pathan and Rajidkhan Jafarkhan Pathan 12 Panchnama of the weapons found by 61 Shabajkhan Pathan and Yusufmiya Malek offence offence NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined 19 Injury certificate issued by Civil Hospital, 76 Ahmedabad of deceased Munirbeg 20 Letter with regard to the information to the 77 police to take statement 21 Medical Certificate of Apollo Hospital of 78 deceased Munirbeg 27 Cause of death certificate of the deceased 85 Sessions Case No. 47 of 2013

6. After closure of the evidence, the statements of the accused under Section 313 of the Criminal Procedure Code, 1973 have been recorded wherein they denied having committed any offence and have stated that they are innocent.

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7. After hearing both sides and considering the evidence on records, the learned Sessions Judge by impugned judgment and order has convicted the accused as stated hereinabove.

8. Heard Mr.Ashish Dagli, learned counsel with Mr.Altaf Charkha, learned counsel for the accused, Mr.Sadik Ansari, learned counsel for the complainant and Mr.Rohan Shah, learned Additional Public Prosecutor for the State of Gujarat at length.

9. Mr.Dagli, learned counsel with Mr.Charkha, learned counsel for the accused has submitted the same facts which are narrated in the memo of appeals. It is submitted that the impugned judgment and order of convicting is illegal, unjust and improper. It is submitted that the trial Court has committed an error of facts and law in not considering the evidence of the witnesses as per the settled principles laid down by the Hon'ble Supreme Court of India as well as this Court. It is submitted that there was free fight between the two groups and out of the appellants - accused, two accused have sustained serious injury, for which an FIR came to be filed by accused No.7, who sustained knife blow, against eight accused being C.R.No.I-31 of 2012 and the same registered as Sessions Case No.47 of 2013 before the trial Court which came to be tried together by the trial Court and decided same on 18.06.2015 whereby the trial Court, after considering the evidence led by the prosecution, was pleased to acquit the accused from the charges levelled against them. It is submitted NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined that Sessions Case No. 86 of 2012 came to be decided by the trial Court and convicted the accused for the offences punishable under Section 302 r/w. Section 149 of the IPC and, therefore, it is an admitted fact that there was cross case and free fight between the two groups where the appellants have also sustained serious injury. It is submitted that in view of the above, the trial Court has committed serious error of facts and law while passing the impugned judgment and order of conviction and sentence against the appellants for the offence under Section 302 r/w. Section 149 of the IPC and disbelieved the case against the other side and acquitted them. It is submitted that the trial Court has committed serious error while appreciating the evidence led by the prosecution more particularly when the prosecution witnesses had not disclosed the true and correct facts and not explained injuries caused to the accused during the course of scuffle. It is submitted that though the

specific questions were asked to the concerned witnesses, but they have given evasive answers and even the Investigating Officer has also not explained and not investigated properly and, therefore, the impugned judgment and order of conviction is unjust, illegal and erroneous. It is submitted that the doctor, who treated the victim first time at Kapadvanj has stated that the injury sustained by the victim is likely to be caused by sticks and not by dharia because the injury was contusion lessor wound, meaning thereby weapon used was hard and blunt substance used for causing injury. It is submitted that as per the evidence of the witnesses, accused No.8 and 9 who subsequently reached NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined to the scene of offence and they having not weapons in their hands, despite of that the trial Court has recorded that accused No.8 and 9 have taken part in unlawful assembly and convicted for the offence under Section 302 r/w. Section 149 of the IPC, is completely erroneous, unjust and the same deserves to be quashed and set aside. It is submitted that there are inconsistency in the evidence of the three doctors who treated the deceased one after another at later point of time and therefore the accused are entitled to get the benefits under exception 300 of the IPC and they are entitled to get the benefits of doubt. It is submitted that none of the witnesses have disclosed the names of the assailants before the doctors and, therefore, the impugned judgment and order is required to be modified and conviction is required to be altered from Section 302 r/w. Section 149 to Section 304 Part II of the IPC. It is submitted that evidence of the witnesses is consistent to the effect that all nine accused were not come together; initially accused No.1 and 2 were come at the place of occurrence and the scuffle took place between accused No.1 and 2 and, thereafter, other accused reached to the spot and, therefore, the conviction recorded by the trial Court with regard to nine accused for the offence under Section 149 of the IPC deserves to be quashed and set aside. It is submitted that the story of assault made by the accused if believed then also the offence is not fallen under Section 302 but it is fallen under exception 300 of the IPC and, therefore, the accused are liable to be held for the offence under Section 304 Part II instead of Section 302 of NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined the IPC. It is urged that the present appeals deserves to be allowed and the impugned judgment and order deserves to be quashed and set aside.

9.1 Over-and-above the aforesaid oral submission, Mr.Dagli, learned counsel has submitted the written submissions as follows:

Place and date, time of incident 1.6.2012 around 21 hours at Jathvada, Kapadvanj.

Witnesses - Total 30 prosecution witnesses include complainant, medical officer, investigating officer and police officials etc. Weapon in the hand of accused as per FIR and their role.

A-1 Sadik who was carrying a Dhariya.

A-2 Rajik@ Raju who was carrying Dhariya. A-4 Shamsher who was carrying Hockey.

A-6 Yusufmiya who was carrying Stick.

A-7 Murtaza @ Sajju who was carrying stick. A-8 Manovar and A-9 Jenulabdin without any weapon. A-1 and A-2 gave blows of Dhariya to the deceased, A-2 having caused an injury to PW-20 Jahiruddin on finger, A-4 and A-5 injured complainant PW-25 on head and back, A-4 injured PW-10 Ilyas and other accused instigated.

Deceased and Injured name Munirbag-Deceased, Injured- Nadimbeg (complainant), Zahiruddin, Ilyas Bag.

Charge - Exhibit 11, page 155 for the offence Section 143 read with 149, 147 read with 149, 148 read 149, and as far as section 302, charge under section 302 read with 149, qua Sadikkhan Pathan A1, Rajik @ Raju Jafarkhan Pathan A2, stated to have caused injury to deceased by use of Dhariya on his head. Sections 323, 324 read with 149 A2, A5, A4 504 read with 149.

Case as per the charge : 1.6.2012 at 21 hours at Kapadvanj, Jathwada -Shabaz Khan, Tausifmiya A5, keeping grudge of the earlier dispute with complainant, used NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined abusive words and thereafter formed unlawful assembly and at the same place other accused Sadikkhan A1, Raju @ Rajik A2 caused injury to Munirbeg Mustafa Beg by a dharia on his head and while in treatment Munirbeg Mustafa Beg passed away at Apollo Hospital.

It is also the case that Shamsher Khan Yusuf Khan A4 along with accused Tosifmiya Yusufmiya A5 caused injury with stick and hockey to complainant on his head and on his back and Rajik @ Raju A2 caused injury to witness Zahiruddin Gulumiya on left hand finger by use of Dhariya and accused Shamsher Khan Yusuf Khan A4 caused injury to witness Ilyas Bag on his forehead by hockey and remaining accused have instigated. The accused also charged with 504 read with 149.

While passing the order of conviction, the accused convicted for the offences u/s 302 read with 143, 147, 148, 149 and acquitted from the charge u/s 323, 324, 504 read with 149.

Cross case - The cross complaint is filed before Kapadvanj Town Police Station for the same incident dated 1-6-2012 registered as I-CR no. 32-2012 for the offences 326 of IPC. Both the FIR investigated by PW-30 Dineshumar Pl of Kapadvanj Town Police station and charge sheet came to be filed and common panchnama of place of incident was made.

Motive - For the commission of offense as alleged by the prosecution, is not established nor proved. Injuries to the complainant and to the witnesses are not proved.

Evidence of complainant - Even as per the complainant A3, A6, A7, A8 and A9 nothing alleged against them.

From the evidence of investigating officer also corroborate that it is true that in the charge sheet is filed A3, A6, A7, A8, A9 against them no case was pleaded about caused injury to anybody, under the circumstances, the case of prosecution about injury by A3, A6, A7, A8, A9 has not even established.

The evidence of injured witnesses-complainant, Zahiruddin and Ilyas Bag. in their police statement, it is say of complainant that injury was caused to him by A4 Shamsheer Khan on his head by use of hockey and A5 Tosifmiya by stick on back of his body, Zaheeruddin alleged that injury was caused to him by A2 Rajik @ Raju on the left hand NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined finger, Ilyas Bag alleged use of weapon by A4 on the forehead and deceased Munir Bag to whom injury was caused by A1 and A2. The medical evidence in this regard seems so far as injury to complainant, Zaheeruddin and Ilyas Bag Is not proved and surprisingly no doctor is examined to prove the injury of this witness.

Defence application produce their medical papers - 29.1.2013 Exh.8, application was produce to produce to so called injury certificate of the injured and also to produce their medical papers, in spite of same, no medical evidence was produced nor any explanation was tendered not to produce such relevant medical case papers under the circumstances the prosecution has purposefully and deliberately withheld such vital documents and has not produced on record the relevant medical paper certificates come under the circumstances prayer was made to draw adverse inference as available under section 111G of the Indian Evidence Act.

To prove the injury deceased Munirbhai -

Prosecution Examined PW-21, Dr. Brijesh Sisodia, of Exh.

71. where, in history before him, on 1-6-2012, at 9-30, that assault by opposite party, by stick. Similar is the history of other injured, the chief examination of this witness on page 789, he opined that the injuries are possible with stick, under the circumstances the specific case of the prosecution in the charge insofar as A1 and A2 towards the injury to the deceased Munirbeg was found to be falsified from the evidence of this medical witness.

It is therefore found that the case of the prosecution, particularly the eye witness of the incident whose case is falsified from the medical evidence and found completely contradictory version.

Doctor at Apollo Hospital namely Ashok in his evidence Is Ex. 44 on page 797, history before him by son of deceased that the injury with sharp weapon on head and stick on the other parts of the body. The opinion of that doctor that because of the heart attack the deceased passed away and he has

kept cause of death reserved. He noticed use up three types of weapon.

Pw-23 Dr. Meena Patel, Exhibit 82, the doctor who has performed post mortem. Her evidence is contrary to the NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined inquest panchnama.

for the charge of 302 - To prove the charge under section 302 towards the injury to the deceased Munirbag, the prosecution is examined Exh.21 doctors Sisodiya who admitted that subdural and subarachnoid injury are not fatal in every case. On the contrary report opined about the subdural hemorrhage to the deceased. He also admitted that even if the head injury is serious but not always fatal. In the cross-examination he admitted that craniotomy surgery is life-saving surgery and in the event surgery is performed, the deceased may survive and as per his opinion, the deceased passed away on account of heart failure, under the circumstances homicidal death is not real and 302 charge is not established.

Pw-23 Dr. Meena Patel her evidence is absolutely silent insofar as the charge in section 302.

In cross examination paragraph S she admitted that the Injuries are simple and not likely to cause death, under the circumstances, from the evidence of these medical experts, it has been found that injuries found on the person named Munirbeg were not sufficient to cause death in normal course of life or they were not always fatal or the death cannot be said to be homicidal one, under the circumstances, the charge u/s 302 is also not established.

Cross case - Pw-30, investigating officer, Dineshkumar examined at page 957, Pl of Kapadvanj Town Police Station has admitted that with respect to the incident on 1.6.2012 in the evening at Kapadvanj town two cases were filed which are cross cases CR No. 31 of 2012 and 32 of 2012. Cr NO. 31 of 2012 is a complaint filed by complainant Murtuzaali Salyed le. A7 in the present case, and during the course of treatment, collected the evidence of injured from CR NO. 32 of 2012, however not shown in the charge sheet.

He also admitted that the place of incident is same and panchnama was made by him in CR NO. 31 and 32 of 2012. He admitted that charge sheet filed by him for both the cases.

He admitted that during investigation, no statement of Dr. Umesh Shah, Dr. Yogesh Shah from Kapadvanj was taken, nor any statement of any witnesses were taken.

NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined He admitted that nearby persons from the vicinity and nearby persons at the hospital, whose statements are not recorded and till charge sheet he has not collected injury certificate of injured complainant, witness Ilyas Bag. He admitted that till 6.6.2012 no information was available to him about the weapon.

He admitted that accused Murtujaali, accused no.7, to whom injuries were received but who has caused injury? No inquiry/investigation was made. Joint panchnama was made.

It is submitted that undoubtedly the incident arising out of the cross-cases filed against each other and from the evidence of the investigating officer the investigation was neither fair nor impartial for the reasons stated here under:

1. Same investigating officer investigated/inquired and filed charge sheet for the offence u/s 302 as well as for the offence filed by accused side.
2. Common panchnama was made about the place of incident in respect of both the FIR.
3. Though investigating officer admitted that nothing is found on record about any injury by accused particularly A3, A6, A7, A8, A9.
4. Injury to the accused of the cross cases were not explained nor certificate was collected.
5. Till the filing of the charge sheet, no injury certificate was collected of complainant, witness Zahiruddin and Ilyas Beg.
6. Joint panchnama was made.

Charge in respect of unlawful assembly - To prove the charge with regard to the unlawful of assembly, the prosecution mainly relied upon the evidence of Zahiruddin Sheikh pw-20, page 773. He was accused in the cross case, admitted by him at the time of incident. 40-50 persons were gathered and could not make it sure that because of the mob, who caused injury to whom. However, he admitted that at the time, only two persons were present without any weapon. He submitted that two persons went back and arrived with the weapon after five minutes. He admitted that at the time two persons came back with the weapon, there were no other person except those two and afterwards NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined gradually on intervention other accused arrived (page 778 paragraph 6). He admitted that gradually the accused who arrived whose residence is far away from the residence of this witness.

PW 25 Nadimbeg son of deceased Munirbeg Mirza - In his cross-examination, he admitted that obstructions made by the mob so as to enable them to approach the hospital was not stated so before the police. He admitted that he and other persons are the accused in the cross case and knife was found from him in the cross case. He admitted that A3, A6, A7, AB and A9 have not caused any injury and surprisingly stated that he has found nothing proper to mention that those five persons have not caused injury to anybody.

Pw-27 Zahrabibi page 929 - In her cross-examination, she admitted that it was not said before the police about the utterance of word by her and requested the accused not to cause the injury. All contradictions about her exaggerations in the evidence before the court was placed on record. She admitted that the Shabaz, Murtujaali, Munnavar and Jainulabidin @ Aby have not caused injury to anybody and such version was disclosed before the police as well.

Creation of unlawful assembly - It is submitted that the case of creation of unlawful assembly is in fact destroyed from the evidence of the prosecution witness as well, therefore conviction with the aid of section 149 to all accused therefore deserves interference as well.

Serological report Exh.103 - Under section 45 of Indian Evidence Act it is not substantive evidence. It is submitted that serological report page 989 for weapon mark B and B1 that it is found undecided. Blood sample A was found of Munirbeg, however the FSL report is not conclusive nor establish anything in respect of the use of weapon as well, under the circumstances FSL report also doesn't specify about use of weapon and involvement of the appellants.

9.2 Learned counsel appearing for the appellants has relied upon the following decisions:-

NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined (1) Lalji Vs. State of Uttar Pradesh, (1974) 3 SCC 295; (2) Munir Khan Vs. State of Uttar Pradesh, (1970) 3 SCC 191; (3) Khuman Singh Vs. State of Madhya Pradesh, (2005) 9 SCC 714;

(4) Devendra Singh Vs. State of Uttar Pradesh, AIR 2024 SC 4413;

(5) State of Gujarat Vs. Govindbhai Nathubhai Boria, 2024 JX (Guj) 1379;

(6) Parshuram Vs. State of Madhya Pradesh, AIR 2023 SC 5685;

(7) Bhablubhai Aapabhai Kathi Vs. State of Gujarat, 2011 JX (Guj) 1198;

(8) Jelusinh Galabji Thakor Vs. State of Gujarat, 2007 (4) GLR 2778;

(9) Mohd. Ahsan Vs. State of Haryana, AIR 2024 SC 2533; (10) Hare Ram Yadav Vs. State of Bihar, 2024 (4) Crimes 635;

10. Per contra, Mr.Rohan Shah, learned Additional Public Prosecutor has submitted that the trial Court has not committed any error of facts and law in passing the impugned judgment and order of conviction. It is submitted that the prosecution has proved the charge levelled against the accused beyond reasonable doubt and there was no any illegality and infirmity in the judgment and order passed by the trial Court. It is further submitted that the accused were aggressor and reached near the house of the complainant and took quarrel with him and thereafter during the course of scuffle, the accused have made assault with their respective weapons upon the deceased and hence all the accused have equally taken part in the alleged offence and, therefore, the trial Court has rightly convicted the accused for the offence punishable under Section 302 r/w. Section 149 of the IPC. It is also submitted that accused No.8 and NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined accused No.9 though not having weapons in their hands but they instigated the other accused and abetted in the alleged offence and, therefore, they are rightly be held liable for the offence under Section 302 r/w. Section 149 of the IPC. It is further submitted that thus, the impugned judgment and order of conviction and sentence is not required to be interfered

with and the same deserves to be confirmed. It is also submitted that looking to the deposition of P.W.20 being eye witness, who tried to save the deceased, has sustained injury by dharia in his finger and has corroborated the case of the prosecution. While referring to the cross-examination of P.W.20, it is submitted that the accused have not brought any material which shows that they are falsely arraigned in the alleged offence. It is submitted that the son of the deceased and the first person with whom accused No.1 and 2 have picked up the quarrel has registered the FIR wherein the role of the accused persons and initiation of quarrel have been described. It is also submitted that P.W.27 the mother of the deceased is consistent and has supported the case of the prosecution and, therefore, under such circumstances, the impugned judgment and order deserves to be confirmed and the appeals being meritless deserve to be dismissed.

11. We have considered the submissions made on behalf of learned counsel appearing for the respective parties and perused the evidence on record. Before parting with the findings recorded by the trial Court, the following issues are required to be determined.

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(a) whether the prosecution has proved the case against the accused for the offence punishable under Section 302 r/w. Section 146, 147, 148 and 149 etc or not?

(b) Whether the prosecution has suppressed the genesis of the incident by not explaining the injuries caused to the accused or not?

(c) Whether the Investigating Officer has explained the facts of the cross case or not?

12. Before going to discuss the evidence in detailed and appreciating the contentions raised by learned counsel for both the sides, first of all we consider and peruse the evidence of P.W.20 Jahiruddin Gulumiya Shaikh at Exhibit 70, who sustained injury in his finger while saving the deceased from the accused, P.W.24 Najmabanu Munirbeg Mirza at Exhibit 86, P.W.25 Nadimbeg Munirbeg Mirza at Exhibit 87 and P.W.27 Joharabibi Mustufaali Mirza at Exhibit 90.

13. On perusal of the evidence of P.W.20 Jahiruddin Gulumiya Shaikh, it appears that when he reached to the spot the quarrel took place between two groups. On perusal of the evidence of P.W.24 Najmabanu Munirbeg Mirza, it appears that she and her husband while at their residence, they heard some noise and one lady running from otherside and asked her that their son was beaten by the accused and, therefore, on receipt of such information, P.W.24 - Najmabanu Munirbeg Mirza along with her husband reached to the spot and they have asked the assailants not to quarrel with their son i.e. P.W.25 - Nadimbeg Munirbeg Mirza, however, the assailants have not stopped and started to NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined make assault upon husband of Najmabanu in presence of his son and at that time P.W.27 Joharabibi Mustufaali Mirza i.e. mother of the deceased while hearing the incident reached to the spot. It appears from the material and evidence that none of the witnesses have explained the injury caused to the otherside. On perusal of the evidence of the witnesses in detailed and minutely examined, it reveals that initially the quarrel took place between P.W.25 Nadimbeg Munirbeg Mirza and accused

No.1 and 2 only and at that time, they were not having any weapons in their hands, but after picking up quarrel with P.W.25 Nadimbeg Munirbeg Mirza, they went to their house and collected the weapons and, thereafter, one after another accused reached to the spot and joined the scuffle and, therefore, the findings recorded by the trial Court relating to the unlawful assembly and their intention to cause injury / death of the deceased is not established by the prosecution beyond reasonable doubt. So far as the evidence of the three doctors, who have given the treatment to the injured / deceased, is concerned, these doctors have specifically stated that in the history given before them, none of the witnesses have given the names of the accused and there are variation in the evidence of the doctors and there is no consistency in their evidence with regard to the injury and the weapons used in the commission of offence. We are of the opinion that the trial Court has completely ignored these aspects while passing the impugned judgment and order of conviction and sentence.

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14. It is worthwhile to refer to the evidence of P.W.20 Jahiruddin Gulumiya Shaikh at Exhibit 70, who sustained injury in his finger while saving the deceased from the accused, P.W.24 Najmabanu Munirbeg Mirza at Exhibit 86, P.W.25 Nadimbeg Munirbeg Mirza at Exhibit 87 and P.W.27 Joharabibi Mustufaali Mirza at Exhibit 90 as under:-

"Deposition of P.W. 20 Jahiruddin Gulumiya shaikh at Exhibit 70 :

1. I am residing at Kapadwanj, Jethwada and serving as Security. Earlier, I was serving in Army. We are 3 sisters and 3 brothers in my family. Among us, the eldest is Sadaruddin Gulumiyan Shaikh, Abaruddin Gulumiyan Shaikh is younger than him and I, Zahiruddin Gulumiyan Shaikh is younger than him. Thereafter, Badaranben is younger than me. Jubedaben and Abedaben are younger than her. My marriage was solemnized with Shenazbanu. I have a daughter and two sons. I have two brother-in-laws. The eldest one Munirbeg Mustaffabeg Mirza had passed away. The youngest one is Nasirbeg Mustaffabeg Mirza. We all residing at Kapadwanj.

2. I was at home with my wife on 1/6/2012 at about nine O'clock at night. When I heard that the quarrel took place in Jatwada, I went there. When I went there, Tosifmiyan Isubmiyan Malek and Shahbaz Isubkhan Pathan were hurling abuses Nadimbeg - son of my brother-in-law under the municipality electricity pole. Tosifmiyan got instigated and inflicted stick-blows in back to son of my brother-in-law.

Shahbazkhan came with sword and Sajidkhan Jafarkhan Pathan came with scythe. His brother Rajikkhan Jafarkhan Pathan came with scythe and Shamsheer Khan came with hockey-stick. Yusufmiyan Gulam Mohammad Malek and Murtuza Ali Sajju came with sticks and thus all ran to beat. Upon screaming by my brother-in-law Nadimbeg, my brother- in-law Munirbeg, wife of my brother-in-law Najmabanu, I and my distant brother-in-law Iliyazbeg reached there. Upon saving Nadimbeg, Sajidkhan and Rajikkhan had hit scythe in the head of my brother-in-law and he fall

down in profusely bleeding condition. Although he fall down, they caused injuries to him with swords, hockey and sticks. Upon intervening them, I sustained injury in the first finger of my left NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined hand due to the scythe of Rajik alias Raju and as the skin torn, there was bleeding. Other two persons Manowarkhan and Jainul Abedin alias Abu Saiyed came there. Upon instigating by them, Shamsherkhan caused injury by hockey- stick in head to the son of my brother-in-law. Upon intervening, my distant brother-in-law Iliyazbeg sustained injuries of hockey in right side of forehead. Due to lot of screaming, many people gathered and the mob of these people left from there. As my brother-in-law sustained many injuries, he was brought to the hospital by cart. At that time, He was brought to hospital of Dr. Umesh by Auto from Andhariyavad. The mob of the respondent party also reached at the hospital. Therefore, we brought my brother-in-law to hospital of Dr. Yogesh Shah in Minabazar. The compounder was present but the doctor was not present there. As the mob of the respondent party arrived there, we called ambulance of Municipality and took my brother-in-law along with her wife Najmabeg, Nadimbeg-son of my brother-in-law and distant brother-in-law Ilyazbeg to Nadiad Civil Hospital by ambulance. When we reached there, we saw that the mob of the respondent party also arrived there. As they threatened us to kill by abusing, we did not take any treatment from there and left for V.S.Hospital, Ahmedabad by ambulance. When we reached at V.S.Hospital, we came to know that the mob of the respondent party had also arrived there. Therefore, my brother-in-law was admitted in Civil Hospital at about 3 am. After taking treatment about 4 hours, the doctor adviced us to take him in any other hospital. Therefore, we took my brother-in-law to Apollo Hospital. He was admitted there. After 8 days, he passed away on 08/6/12 at 11:30 pm. After completing police proceedings, postmortem was conducted in Gandhinagar Civil Hospital in the morning and thereafter he was taken to home by ambulance. He was buried as per our rituals. Nadimbeg lodged complaint in this matter. The police recorded my statement. All accused persons are present before the court whose names are stated. I can identify the muddamal if it is shown to me. I can state that who had which weapon.

3. I am shown Muddamal article no, 1 hockey. It is the same which was in hand of Shamsherkhan Isubkhan Pathan. He is also present before the court. I am shown muddamal article stick no. 2. It is the same which was in the hand of accused Tosifmiyan Isubmiyan Malek. I am shown muddamal stick article no. 3. It is the same which was in the hand of accused Murtuza Ali Isubali Saiyed. I am shown muddamal Scythe article no. 4. It is the same which was with accused NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Sadikkhan. I am shown muddamal Scythe article no. 5. It is the same which was in the hand of accused Rajikkhan alias Rajukhan Pathan. I am shown muddamal article no. 6 Sword. It is the same which was in the hand of accused Shabazkhan Isubkhan Pathan. I am shown muddamal Stick article no. 7. It is the same which was in the hand of accused Isubmiyan Gulammohammad Malek.

4. I sustained injury in first finger of left hand and the treatment of the same was taken in Ahmedabad Civil Hospital.

Cross-examination:

5. I am residing at Kapadwanj since last 15 years. The place of incident is about 50 ft away from the place where I am residing. I have my own house. From the place where the incident took place, one can go to Meena bazar at one side and to Nadi Darwaja at the other side. My house is not located at the either side of them. There is a lane at the north from the place of incident mentioned by me. My house is not located in the said lane. There are the Madhresa building and other three houses located in the south of the place of incident mentioned by me. My house is also not located there. I do not know the Municipal number of my house. House of Adibali is situated beside one side of my house and house of Chinubhai is situated on the other side. Both owners were residing in the respective house at the time of incident. The distance between my house and the deceased Munirbhai is about 100 ft. There are residential houses between our houses. People were also residing in those houses. The other names of persons I have stated are those who are residing near the house of the deceased. It take about ten minutes to reach from the house of the deceased to the place of incident. It was a period of around one hour between the time I reached the place of offence and we took the deceased person to the hospital from there. As stated by me, they continued to beat about an hour. I saw that Iliyazbeg sustained injuries in addition to me and the deceased. I saw that Nadimbeg sustained injuries in head and back side. I did not noticed as to whether any other person sustained injuries or not. Case is filed against me in this matter and I am the accused person in it. It is true that there is a charge of two persons sustained injuries in the case filed against me.

6. The person who attacked me with scythe caused injury by waving it. About 40-50 people gathered at the time of NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined incident. It is not true that it can not be stated confidently that as there was mob, who was beating to whom. Only Two persons were beating when I reached. They had no weapons at that time. They went to bring weapons. About five minutes later they came back by bringing weapons with them. I did not believe at that time that they would attack on us also. I saw from the distance of fifty ft. away that these two persons were coming to bring weapon with them. Though I saw that they had brought weapons with them, I did not believe that they would attack and should ran away from there. No one was there except me and the person who sustained injuries when they came back by bringing weapons. The people who came later were coming intermittent. At that time, I did not feel it necessary to leave the place to defend myself. None of the people who came from our party had any weapon. When the fight took place, none of us tried to escape to protect ourselves. None of us tried to escape. When I went there, I did not know the reason why Nadeem was attacked. Even after making inquiry, I did not know the reason. None of persons from our side tried to stop the other people who came later to the place of offence. It is true that the houses of all the people who came there are separate and far from each other. It is true that the houses of those people who came later intermittent are far from ours.

Question: The houses of those who came later are away from my house and the place where the quarrel took place. Therefore, it will take more time for those who came later to reach that place than me?

Answer: It is not true.

7. It was a Municipality tube light. It is not true that the street light was about 30 ft away from the place of incident. It is not true that I did not get a chance to see the weapon because it was waved very quickly. I was looking at the weapon closely. I saw the broken scythe. I dictated in my statement that I have seen the broken scythe. I did not see any marks of other weapons. It is not true that despite of not seeing the weapons, I described it in my deposition after seeing the weapons later. It is not true that I did not know who killed whom and I dictated my statement later after arranging it. It is not true that I am giving false deposition.

Cross-examination:

8. I do not know whether Nadimbeg Munirbeg lodged a NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined complaint on 2/6/12 with regard to the incident dated 1/6/12. I know that Nadimbeg has lodged a complaint in the police station regarding this incident. It is true that I also know that the police recorded Nadimbeg's complaint in my presence at the Ahmedabad Civil Hospital. I know that the police detained and arrested some persons on the basis of Nadimbeg's complaint. It is true that I know that police seized weapons from the people arrested on the basis of Nadimbeg's complaint during the investigation. It is true that the police called me in Kapadvanj Town Police Station to identify the seized weapons. I identified the muddamal weapons in the police station which were produced in the court. It is not true that after three days of the incident dated 1/6/12, police called me in Kapadvanj Town Police Station to identify the weapons. The police called me in Kapadvanj Town Police Station to identify the muddamal weapons of this case after about twenty days. That means I was called by the police in Kapadvanj Town Police Station on 20 June or 21 June to identify the weapons. I dictated the details about the incident in my statement to the police on 30/7/12. When the police called me to identify the weapons, the police made inquiry about the incident. That inquiry was conducted by the then Police Inspector Mr. Pundiya of Kapadvanj Town Police Station. It is true that the police made inquiry about the incident and recorded my statement once. It is not true that I did not state the police regarding the details of who hit whom and what during the incident when I went to identify the weapons. It is not true that I did not disclose any details about who hit whom and what during the incident before 30/7/12 to anyone. Before 30/7/12, I talked with Mr. Pundiya and in the hospital about the incident.

9. I have studied upto 10th Std. I have knowledge of left and right. It is true that the treatment of my finger injury was performed at Ahmedabad Civil Hospital. It is true that the doctor who treated me at that time asked me the cause of injury before starting the treatment. It is not true that the doctor also asked me who had hit me before treating me. It is true that I told the doctor at Ahmedabad Civil Hospital only that I had been hit by a sharp weapon. It is true that at that time I did not inform that I sustained injury caused by scythe on my finger. It is not true that upon showing the injury, the doctor treated me on my right hand finger. I did not willingly stated the doctor the name of the person who caused injury to me at Ahmedabad Civil Hospital. It is not true that very first time I declared the name of the person who hit me on 30/7/12. I know that Nadimbeg's complaint was recorded by NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Mr. Pundiya because I was present there at that time. It is not true that after the complaint was registered, Mr. Pundiya inquired me about the incident at Ahmedabad Civil Hospital. After the complaint was registered, no conversation took place between me and Mr. Pundiya with regard to

the incident. The treatment of my finger was done before the complaint was registered. At the time of the lodging complaint, the complainant Nadimbeg did not stated Mr. Pundiya that I sustained injury caused by scythe in manner I could hear. It is true that at the time of lodging the complaint, the complainant Nadimbeg did not dictate any details to Mr. Pundiya about who hit whom in my presence and in manner I could hear.

10. The treatment of my injury was done for a day at Ahmedabad Civil Hospital. It is not true that I was absconding from 2/6/12 to 30/7/12 so that the police could not arrest me. It is true that when the police recorded my statement, he showed me the complaint filed against us by Murtuzaali alias Sajju Saiyed. It is true that my name was mentioned as an accused in that complaint. It is true that the police recorded my statement after showing me the said complaint. It is not true that at the time of recording my statement after showing me the complaint, I dictated any statement against Sajju and Abu. It is not true that I did not dictated any details in my statement before the police that Shabazkhan, Yusufmiya, Sajju, Manovar alias Manu and Jainul alias Abu had caused injuries to whom. At present I remember who hit whom and the details dictated in the statement to the police. I have given my deposition today as per the details dictated in the statement before the police.

11. When Munirbeg sustained injuries and fall down, I saw his body. I saw two wounds on his head. Both the wounds were different in appearance. I have served in the army for sixteen and a half years. It is true that if an injury is caused with a scythe and a stick, then different types of injuries are caused by both weapons. It is true that Munirbeg sustained various types of injuries on his head. It is not true that there was not a single incised wound on his head. Ilyasbhai is the son of Munirbeg's uncle. His full name is Ilyasbhai Mustafabeg Mirza. It is true that I was with Munirbeg when he was taken to Ahmedabad Civil Hospital and Ilyasbhai was also with him. It is not true that at that time Ilyasbhai stated to the doctor the cause of injury sustained to Munirbeg in my presence. It is not true that Ilyasbeg Mustafabeg did not sustained any injury.

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12. It is true that I know that Murtaza alias Sajju has filed a complaint against 8 persons of our party. I know Nazirbeg Mugarbeg Mirza and Mohammadkhan Abbaskhan Pathan. In the presence of these persons, Mr. Pundiya did not come to the place of incident in my presence. Zohrabibi Mustafamiya was at home from 11 am to 2 pm on 2/6/12. I was in Ahmedabad Hospital at that time. The police had showed the complaint of Murtuja alias Sajju to me and the same was read before me. I did not see that any men of the accused party injured at the time of incident. I did not see Murtuja alias Sajju injured on the left side and it was bleeding at the time and place of the incident. I did not see that Jainul Abeddin sustained any injury on forehead.

13. It is true that there are residential houses on both sides of the road from the place of incident to Andhariya Vad. We went from Andhariya Vad to Umeshbhai's hospital by rickshaw. I do not know as to whether a group had come there for the treatment of Murtuja and Sajju. It is true that I did not dictated any detail about the persons who were in that mob in my police response. It is true that I saw the mob and therefore assumed that it was a mob of the respondent party. Yogeshbhai's hospital is about two hundred mtrs away from Umeshbhai's hospital. We went there by rickshaw

too. Looking mob there, I assumed that it is crowd of opposition party. It is true that I have not dictated any fact in the police statement as to who was there in the said mob. Ambulance was called at the clinic of Yogeshbhai. Ambulance came from Nagarpalika. Najmaben Munirbeg Mirza telephoned to call the ambulance from Nagarpalika. I know the fact that if the ambulance is required to be called, it is required to mention on the phone as to why the ambulance is required. It is not true that Najmaben told on the phone only that Munirbeg is injured on his head portion, hence, you send the ambulance. It is true that Najmaben had not given any details while calling the ambulance as to who hit Munirbeg. Ambulance came at about ten or half past ten o'clock. I did not think to go to Kapadvanj Town Police Station with ambulance. None out of the person with me had mobile. Najmaben Munirbeg Mirza, Nadimbeg Munirbeg Mirza, I and Ilyasben Mustufabeg Mirza went at Ahmedabad in ambulance. First we came to Nadiad Civil Hospital in the ambulance. It is not true that I assumed that it is the mob of opposition party and therefore, we left the place. Police persons were called near ambulance in Nadiad Civil. We told the police persons that we have brought injured person. At that time, there were three injured NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined persons in the ambulance. Police personnel told us that you immediately leave this place. I know that police persons always remain present at Nadiad Civil Hospital. Surname of the said police person was Gadhavi. I know him by face. I remember the version which I had told to police person Mr. Gadhavi at Nadiad Civil Hospital when police recorded my statement on 30/07/2012. I had not dictated the said fact to Mr. Punadiya. We did not go at Nadiad Town police Station from Nadiad Civil Hospital. We did not go at Ahmedabad V.S. Hospital. It is true that I came to know from hearsay that the mob of opposition arrived and therefore, we did not go at V.S. Hospital. We reached at Ahmedabad Civil Hospital at three o'clock in the midnight. It is not true that after giving treatment at Ahmedabad Civil Hospital, we took Munirbeg for treatment at Apollo Hospital against the advise of the doctor. Doctor of Civil Hospital had issued Chit to transfer Munirbeg from Ahmedabad Civil Hospital to Apollo Hospital. I gave the said chit at Apollo Hospital. It is true that I and Nadimbeg were there when Munirbeg was admitted in Apollo Hospital. It is not true that Nadimbeg told the doctor when Munirbeg was admitted at Apollo Hospital that Munirbeg sustained injury in the head by wooden stick. Munirbeg died on 08/06/2012. It is true that police persons of Kapadvanj Town used to visit frequently by the time Munirbeg was admitted in Apollo Hospital and he died on 08/06/2012. Mr. Punadiya also used to come there. I have been knowing Mr. Punadiya by name and face since 02/06/2012. It is true that I did not tell the version to Mr. Punadiya as to who beat me and with what I was beaten. It is not true that I had not directly stated the version to Mr. Punadiya as to who beat me and with what Ilyasbeg, Nadimbeg and Munirbeg. These facts were stated by me to Mr. Punadiya on 03 or 04/06/2012 as I said. It is not true that I had not given names of any present accused to Mr. Punadiya.

14. It is not true that I had not seen Nadimbeg sustaining injury on the back personally. It is not true that I had also made uproar when Munirbeg got injured and fell down. Persons of my party made uproar when Munirbeg fell down. It is not true that hearing the said uproar, Ilyasbeg rushed there. It is not true that when I reached at the scene of offense for the first time, I saw Munirbeg bleeding from his head.

15. It is true that police had not asked me the cause of incident when police recorded my statement on 30/07/2012. It is not true that I have not dictated the cause NEUTRAL CITATION

R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined of incident before the police till today. It is not true that I was not knowing the cause of incident till 30/07/2012. It is not true that no incident as stated in the Examination-in- chief has happened. It is not true that the accused have not delivered injuries to the concerned persons as stated in Examination-in-chief. It is not true that I am giving false deposition as I am relative of the deceased.

Deposition of P.W.24 - Najmabanu Munirbeg Mirza at Exhibit 86:

1. I stay at Jatwada, Kapadvanj with my three sons. I have three sons and one daughter. It includes eldest son Tanvir, Nadim, Afwaz and youngest, a daughter Nausinabanu respectively. My husband Munirbeg is not alive. My eldest son Tanvir got married with Rukshanabanu, daughter of Ikrambhai Pathan at Nadiad. Remaining two sons are unmarried. Tanvir works as a peon in M.P. High School.

Nadim was in raw grain business with my husband. Youngest son Afwaz studies in third year of Civil in Tatva Institute of Technology at Modasa and he used to commute Kapadvanj from there. During the exams, he used to stay at Modasa in rented house with his friends. Daughter Nausinabanu is married with Mahammad Munaf at Kapadvanj. My son-in-law is raw grain merchant at Market Yard. My maternal home is at Jatwada. My father is died. My mother Latifunnisa is alive. My brother namely Sajidbeg resides at Africa.

2. This incident happened on 01/06/2012 at 9 o'clock in the night. At that time, My husband and I were at home and preparing to sleep. At that time, he was in Lungi and Banyan and Afwazbeg was at Modasa. My husband was talking with him on phone about his exam preparation and at that time, my son Nadim went to buy a Soda for his father. Within a while, two to four women from the street rushed to my house and they told that 'Where are you Najmanu and Munir, Pathan's sons are beating you son Nadim. Therefore, I and my husband rushed to the street and upon reaching near Madresa in front of my father-in-laws house, we saw that Tosifmiya and Shabashkhan staying at Jatwada were hurling abuses to my son and shouting to him as to why are you standing here. They got agitated and started beating Nadim and at that time, I and my husband reached there. At the place of quarrel, my husband asked the said persons that why are you beating my son. Meanwhile, Samsherkhan, Sajidkhan, Rajidkhan, Murtujaali, Manovarkhan Jenul Abedin, Yusufmiya, all arrived there and they came with weapons in NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined their hands. Sajidkhan was armed with scythe. Rajikkhan had scythe. Samsherkhan armed with Hockey. Tosifmiya armed with wooden. Shabashkhan armed with sword. Murtujaali had stick in his hand. At that time, my husband stated not to quarrel and to talk peacefully in the morning. At that time, the said persons told that we want to beat you only. Sajidkhan blew scythe he had with him, in the head of my husband. Rajikkhan blew scythe he had with him, in the head of my husband. Meanwhile, my husband collapsed in bleeding condition. I started uproar and my brother-in-law Jahiruddin intervened and as Rajikkhan inflicted scythe on him, it hit on the finger portion of left hand. Meanwhile, Samsherkhan hit hockey in the head of my son Nadim and at that time, my cousin Iliyas intervened, he got injured on the forehead portion. I shouted for help but no one came there. Meanwhile, these persons kept continue to inflict the weapons he armed with, on my husband like cattle even after he collapsed on the ground. At that

time, Samsherkhan also told that beat him, I have beaten him with hockey, you also do the same. Saying so, the said persons started beating him inadvertently with sword and sticks. Public rushed there upon hearing uproar. The said persons stood opposite side with their weapons. At that time, I and my mother-in-law shouted for help but none came to help. These persons said that see, we have killed your son and they told to the viewers that don't dare to help these persons. Therefore, none helped us. At that time, none came to help and as there was no vehicle available, a cart lying near the scene of offense, I dragged the same and with help of my cousin Ilyas, my brother-in-law Jahiruddin and one Hindu brother, took my husband in the cart and took him to the clinic of Umeshbhai. On the way, we took rickshaw and reached at the clinic of Doctor Umeshbhai. Upon reaching there, the mob of the said persons also reached there and they were shouting and hurling abuses there. The said persons were doing so with intention to not to let the treatment availed over there. Therefore, we scarred and took the rickshaw return from there and went to the clinic of Yogeshbhai at Mina Bazar. The doctor was not present when we reached there. Immediately we called the ambulance from Nagarpalika. While we were getting out of the clinic, the mob of the said persons also reached there and there also, the said persons were saying that don't let these persons go anywhere. However, we managed to enter into ambulance there. At that time, my brother-in-law Jahiruddin, my cousin Ilyasbeg, my son-in-law Mahammad Munaf, my son Nadim and I took him at Nadiad Civil Hospital. Mob of the said persons reached there also and they were NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined shouting that not let these persons get down and kill Munir. Therefore, we did not get down from the ambulance due to fear and someone from the hospital came there and said us to leave the place because more persons gathered here and it will be converted into big quarrel. You took your husband to any other hospital and upon saying so, we took the vehicle out of the hospital and while going to the Ahmedabad V.S. Hospital, I called my cousin Aasif that we are coming to V.S. Hospital, you also reach at V.S. Hospital. Upon saying so, my cousin reached there and meanwhile, my cousin called me and said that the persons of Kapadvanj with whom your dispute took place, have arrived here, so you do not come here and go to some other hospital. Therefore, we went to Civil Hospital. We reached there at Ahmedabad Civil Hospital at about three o'clock. My husband got treatment there by the doctors. After staying there for four to five hours at Civil Hospital, we deemed it fit to take him at other hospital, we asked the same to the doctor and doctor replied that you can take him at your own responsibility. Therefore, we took my husband at Apollo Hospital. We reached there at about six o'clock and admitted there. My husband Munirbeg was under

treatment there for eight days and died around 11.30 o'clock in the night on 08/06/2012. Police came there and after doing required procedure, police took the deadbody to Gandhinagar for post-mortem and we returned Kapadvanj in private vehicle. Complaint thereof was lodged by my son Nadim. On the basis of the said complaint, police recorded my statement. I dictated the facts to the police which I witnessed.

3. I can identify if the weapon is showed to me. I am shown Muddamal Article No.1, it is the same hockey which was with Samsherkhan in his hand. I am shown sticks of muddamal article no.2-3-7, which were in the hands of Tosifmiya, Murtuzaali and Yusufmiya. I am shown scythe of muddamal article no.4, which was in the hand of Sadikkhan. I am shown scythe of muddamal article no.5,

which was in the hands of Rajikkhan. I am shown sword of muddamal article no.6, it was in the hands of Shabashkhan.

4. After recording the said statement, police further interrogated me. The said interrogation was done at Apollo Hospital on 05/06/2012. Police recorded my statement over the clothes of my husband Munirbeg. I do not know as to where was the banyan he wearing as it was torn during the quarrel. He was wearing Lungi, which was dirty due to blood, vomit and potty and I do not know as to where the ward boy NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined threw it when doctors told to clean the same. Statement for the same was recorded and I stated that I will produce upon found. All accused, whose names were stated by me, they all are present before this court today. I know all the accused as they reside in my street.

Cross-examination:

5. It is true that we were at my home and two or four women came to my house and gave information and I have not given the names of the said women to the police till today. It is true that I had not dictated in my police statement that my husband told them as to why are you beating my son. It is true that I have not dictated in my police statement that my husband told them not to quarrel and to talk next morning peacefully. It is true that I had dictated in my police statement that the said persons told us that we want to beat you. It is true that I had not dictated in my police statement that I shouted for help but no one came there. It is true that I had not dictated in my police statement that Samsherkhan also told that beat him, I have beaten him with hockey, you also do the same. It is true that I had not dictated in my police statement that the accused beat my husband like cattle. It is true that I had not dictated in my police statement that I and my mother-in-law shouted for help to save the son and the husband but none came to help and these persons said that see, we have killed your son and they told to the viewers that don't dare to help these persons and therefore, no one helped us. At that time, none came to help and as there was no vehicle available, a cart lying near the scene of offense, I dragged the same and with help of my cousin Ilyas, my brother-in-law Jahiruddin and one Hindu brother, took my husband in the cart and took him to the clinic of Umeshbhai. Witness herself states that I had dictated that he was taken to the hospital of Umeshbhai in the hand-cart. It is true that I had not dictated in my police statement that when they told that do not let these persons go anywhere, somehow, we managed to sit therein. It is true that I had not dictated in my police statement that mob of the said persons reached there also and they were shouting that not let these persons get down and kill Munir. Therefore, we did not get down from the ambulance due to fear and someone from the hospital came there and said us to leave the place because more persons gathered here and it will be converted into big quarrel. You took your husband to any other hospital. I had not dictated in my police statement that at that time, I called my cousin Aasif that we are coming to V.S. Hospital, you also reach at V.S. NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Hospital. And on saying that, maternal uncle's son reached. During that time, my maternal uncle's son said on a phone call that, the people of Kapadvanj with whom a quarrel has taken place, have come here. You should not come here, go to some other hospital. Being informed so, we went to the civil hospital, Ahmedabad." It is true that the doctor at the civil hospital did not advise us to go for further treatment to some other hospital. It is true that, it has been dictated in my police statement that on

being advised by the doctor, we went to other hospital for treatment.

Cross-Examination:

6. It is true that the police has inquired me twice till date with respect to the incident. It is true that, on 05/06/12, the head constable of Kapadvanj had inquired me at the Apollo Hospital with respect to the incident. The surname of the person who conducted the said inquiry is Punadiya. It is true that, when I was inquired on 05/06/12, at that time, my husband was undergoing the treatment. It is true that the police personnel had come to the Apollo Hospital from Kapadvanj to conduct the inquiry regarding the incident. It is true that, on 05/06/12, the police inquired me as to what had happened during the incident. The witness voluntarily states that, the police had inquired about clothes. It is not true that, on 05/06/12, the police asked me the fact as to what had happened and as to who did what during the incident. On 05/06/12, I remembered the details as to what had happened during the incident. It is true that I did not voluntarily dictate the details in the police statement on 05/06/12 as to what had happened and as to who did what during the incident.

7. The police had recorded my statement on 28/07/12. It is true that, when the police recorded my statement on 28/07/12, I had revealed the details for the first time as to what had happened and as to who said what during the incident. It is not true that, I did not dictate more facts in my statement dated 28/7/12 than the same dictated by me in my statement dated 05/07/12. It is not true that after the incident, we immediately took my husband directly to the civil hospital, Ahmedabad. It is true that, I have dictated in the statement dated 05/06/12 that "As my husband sustained grave injuries on his head, he was immediately admitted first to the civil hospital, Ahmedabad for treatment." It is true that, the treatment of my husband was done for around four hours at the Ahmedabad civil hospital. I know how to do my signature in Gujarati. I am shown Page No.11 of the list produced with NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Mark - 10/1. It bears my signature at the bottom. It is true that, I made the said signature at the Ahmedabad civil hospital. It is true that, I made the said signature after understanding the details written above the signature in the said paper. It is true that, my husband was taken for treatment to the Apollo Hospital from the Ahmedabad civil hospital against the advice of the doctor.

8. The complaint lodged by Nadimbeg on 01/06/12 regarding the incident was lodged at the civil hospital, Ahmedabad. When my husband was taken to the civil hospital, Ahmedabad, I, Nadimbeg, Iliyazbeg and Zahiruddin were accompanying my husband. It is true that, at the time of admitting my husband at the Ahmedabad civil hospital, the doctor had asked in my presence and in the manner I could hear as to what had happened to my husband. It is true that my son informed the doctor about the incident in my presence. It is not true that, at that time, my son told the doctor that "The defendant has beaten up with a stick at 9:30 o'clock in night on 01/06/12 at Kapadvanj." I do not know that, at that time, Iliyazbeg also told the doctor at the civil hospital, Ahmedabad that my husband had been beaten up with a stick at Kapadvanj. It is true that, at the time of admitting my husband at the civil hospital, Ahmedabad, I, Nadimbeg, Iliyazbeg and Zahiruddin did not give any name as to who has beaten up my husband. It is not true that, at that time, I said that my husband has sustained injuries as two Muslim groups have quarreled with each other. It is true that, I have dictated in my statement before the police on 05/06/12 that "A quarrel and scuffle took place

between two Muslim groups in our Jatwada Maholla at Kapadvanj on the night of 01/06/12." It is not true that, when my first statement was recorded before the police on 05/06/12, at that time I was not knowing the facts as to who sustained injuries in the incident. It is true that I know the fact that the police had arrested 9 persons on the basis of the complaint by Nadimbeg. I know the fact that Murtuzaali @ Sajju Yusufali Saiyyad has lodged a complaint against the persons of our group. The said complaint was lodged against accused (1) Nadimbeg Munirbeg Mirza (2) Tanvirbeg Munirbeg Mirza (3) Sarfrazkha Maiyuddinkha Pathan (4) Imran Khan Maiyuddinkha Pathan (5) Zahiruddin Gulumiya Shaikh (6) Mustufabeg Ahemadbeg Mirza. In the incident I am saying about, I have not seen that anyone among Murtuzaali @ Sajju Yusufali and Jenul Abeddin had sustained injuries or was bleeding. I and Zahiruddin have not been called to the police station for the identification of the weapons on the NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined basis of the complaint of Nadimbeg. Zahiruddin is the husband of my sister-in-law. It is not true that Iliyazbeg had not sustained any injury.

9. It is true that as my husband sustained injury on his head, he had fallen down on the ground. It is true that, I had shouted there at that time. It is true that, because of my shouting, Zahiruddin had come there. It is true that, in the same manner, Iliyazbeg had also come there.

10. It is true that, on the day of the incident, when I was at home in the night, around two to four women came and told me that Pathan's sons are beating up Nadim. I do not know the names and address of the said women. It is true that the said women had told that Nadim is being beaten. It is true that, when I went to the place after hearing the said women, I saw that Nadim was bleeding from his head. It is not true that the incident mentioned in the examination-in- chief has not taken place in my presence. It is not true that, the accused mentioned by me have not caused injuries to the persons of our group as stated in the examination-in- chief. It is not true that the weapons identified by me were not held by the accused persons. It is not true that I give a false deposition.

Deposition of P.W. 25 - Nadimbeg Munirbeg Mirza at Exhibit 87:

1. I reside at Jatwada, Kapadvanj with my mother and do the business of raw grain. I have two brothers and one sister.

Among them, Tanvirbeg is the eldest and I am younger than him and Afwadbeg is the youngest. I have a sister, namely Nausinabanu. My mother's name is Nazmaben. My father used to do the business of selling and purchasing of lands, he is no more at present.

2. On 01/06/12, at around 9 o'clock in the night, I left my home with my motorcycle to bring a soda for my father and I stopped near the house of my grandmother in Jatwada. At that time, both Tosifmiya Yusufmiya Malek and Shabashkhan Yusufkhan Pathan came to me and asked me as to why you are standing here. After saying this, they started abusing me arbitrarily. When I told them not to use abusive language, they suddenly got provoked and Shabashkhan came with a sword in his hand and Tosifmiya came with a stick in his hand and Tosifmiya inflicted a blow of the stick with him on my back. As there was shouting, taking their side, Sadiqkhan NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Zafarkhan Pathan came with a

scythe in his hand and his brother Rajidkhan also came with a scythe and Murtuzaali came with a stick and Yusufmiya came there with a stick. Shamsherkhan came with a hockey stick in his hand. As there was shouting, my father Munirbeg, my mother Nazmabanu, my uncle Zahiruddin and my maternal uncle Iliyazbeg rushed there to save me. At that time, Sadiqkhan Zafarkhan Pathan inflicted a blow of the scythe in his hand on my father's head and his brother Rajid inflicted a blow of the scythe in his hand on my father's head. Thereafter, my father fell down on the ground in profusely bleeding condition. At that time, when my uncle Zahiruddin intervened, he sustained injury on the fingers of his left hand due to the scythe of Rajidkhan. Manovarkhan Pathan and Abedun Saiyyad were instigating them. During the said quarrel, a blow of the hockey stick in the hands of Shamsherkhan was inflicted on my head. When my maternal uncle intervened to save me, he also sustained an injury on his forehead due to the hockey stick. When my father fell down on the ground in profusely bleeding condition, Manovarkhan Pathan and Abu Saiyyad instigated them and all these persons started to beat my father arbitrarily with the weapons in their hands. As there was chaos, the people of the neighbourhood had gathered there. Thereafter, the said persons left from there with their weapons. As my father had sustained grave injuries, we were taking him to the hospital of Umesh Shah in a handcart standing nearby. Since the mob of the said opposite party was present there, we turned back and take him to the hospital of Yogesh Shah. A compounder was present there and the doctor was not available. The persons of the said opposite party had come to the ground floor of the said hospital also. Being afraid of the mob of the said persons, we called an ambulance of the municipality and took my father to the civil hospital, Nadiad for treatment in the said ambulance. The persons of the said opposite party had come there also. They were using abusive language and threatening to kill me and the persons accompanying me. We did not get treatment there and we left for V.S. Hospital from there in the same ambulance. When we were going to the V.S. Hospital, we came to know in the midway that the mob of the said persons had also reached there and therefore, we took him to the civil hospital, Ahmedabad. My father was admitted there and got the treatment. After four hours, since the doctor advised us to take my father to a big hospital for treatment as he had sustained grave injuries, we took him to the Apollo Hospital for further treatment. After being treated there for seven or eight days, he died there on 08/06/12. When the police came NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined to the civil hospital, Ahmedabad for the complaint in this regard, I lodged the complaint before the Kapadvanj police at the civil hospital with respect to the facts of the incident. I am shown the complaint with Mark - 9/1. It was written as dictated by me. After reading the said complaint, I put my signature on the second page and at the end of the complaint. I am shown the said signature and I identify the same as my signature. It is given Exhibit - 88.

3. Thereafter, my father died and he was buried as per our rituals. The accused persons are the same as are present in the court today. If I am shown the weapons held by the accused persons and the weapons which were used to beat us, I can identify them. The Muddamal Article No.4 is the same scythe which was held by Sadiqkhan and the Muddamal Article No.5 is the same scythe which was held by Rajidkhan. I am shown the hockey stick of Muddamal Article No.1. The said hockey stick was in the hand of Shamsherkhan. I am shown the sword of Muddamal Article No.6 . It was in the hand of Shabashkhan. I am shown the sticks of Muddamal Article Nos.2, 3 and 7. They are the same sticks which were in the hands of Tosifmiya, Yusufmiya and Murtuzaali.

4. Thereafter, the police inquired me and recorded my further statement on 30/07/12. At the time of recording my statement, they gave me the complaint lodged against us by the opposite party to read, which I had read. In the said complaint, the name of my younger brother Afwazbeg was mentioned. At the time of the incident, he was studying at Modasa and living there on rent. I also stated the fact that, he was not present at the time of the incident. When I was called for the statement on 30/07, I was shown the complaint and therefore, I came to know the fact that the opposite party had lodged a complaint against us. It was a false complaint. I got treated at the civil hospital, Ahmedabad for the blow of the hockey stick inflicted on my head and the blow of the stick inflicted on my back. The said hockey stick and the stick are shown to me, they are the same.

Cross-Examination:

5. It is true that I have not dictated in my complaint that "we were taking him to the hospital of Umesh Shah in a handcart standing nearby. Since the mob of the said opposite party was present there, we turned back and take him to the hospital of Yogesh Shah. A compounder was present there NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined and the doctor was not available. The persons of the said opposite party had come to the ground floor of the said hospital also. Being afraid of the mob of the said persons, we called an ambulance of the municipality and took my father to the civil hospital, Nadiad for treatment in the said ambulance. The persons of the said opposite party had come there also. They were using abusive language and threatening to kill me and the persons accompanying me. We did not get treatment there and we left for V.S. Hospital from there in the same ambulance. When we were going to the V.S. Hospital, we came to know in the midway that the mob of the said persons had also reached there and therefore, we took him to the civil hospital, Ahmedabad."

6. It does not take ten minutes, but two minutes to reach the place of the incident by walking from my house. It is true that, my house is located after the houses of the people who came after me, and after that comes the place of offence. It is true that, when I reached the place of the offence, the persons, who had asked me as to why you are standing here, did not have any weapons in their hands. The persons who talked to me had gone to their houses and brought the weapons. The houses of both the said persons were located at a distance of around 50 steps from the place where I was standing. At that time, I was not afraid and did not run away. I had seen the persons coming with weapons. Seeing them, I got scarred and I tried to run away. It did not take five to ten minutes for them to bring weapons, but according to me, they had come immediately. The persons, who came to aid me, had come after around ten to fifteen minutes after I reached there. I was being beaten up during the said ten to fifteen minutes. There are residential houses located in the surrounding area of the place of the incident. No one from the said residential houses had come out. The persons who had come to aid me did not have any weapon. I did not see any other person sustaining injury there, except those mentioned by me in the examination-in-chief.

7. My father did not fall down when the first blow of the scythe was inflicted on him, he fell down after sustaining the second blow. My father had fallen down in supine position after sustaining the blow of the scythe.

Cross-Examination:

8. I know the directions. My house is located near the Nadi Darwaza. There is a road in front of my house. The said road NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined leads to the Nadi Darwaza in the north and the Pathan Road in the south. After a little distance towards south from house, there is a cross-road. The house of my grandmother is located on the road leading towards the east among the said cross-road. It is true that the house of the accused Tosifmiya is located on the said cross-road. It is true that, the road towards my grandmother's house is located exactly opposite to the house of the accused Tosifmiya. It is not true that, my grandmother's house is located at a distance of around 50 - 60 feet in the east from the house of Tosifmiya. It is true that, three shops facing the north are located on the road towards my grandmother's house in the east from Tosifmiya's house. There is a madrasa located adjacent to it. My grandmother's house is located about five feet inland from the main road. It means that we can reach the main road after going five feet ahead from the door of my grandmother's house. If we go straight after coming to the road from my grandmother's house, there is a road towards the other street. It is true that, the road located in front of my grandmother's house is going from east to west. I was standing on the northern side of the said road. According to me, the incident took place at the northern side of the said road. It is true that, no incident has taken place at the southern side of the said road. It is true that, if we want to go to buy or drink a soda from my house, the nearest place to get a soda is located at the Nadi Darwaza. It is true that, if we want to go to buy a soda from my house towards my grandmother's house, it can be bought at a distance of around two thousand feet. It is true that, I did not feel it necessary to go towards the Nadi Darwaza to buy a soda. There is also a street in the west of my grandmother's house. Around twenty or thirty houses are located in the said street. Nearest to my grandmother's house is the house of my uncle Zahiruddin Gulammahammad. One has to go towards east on the road to go to the hospitals of Umeshbhai and Yogeshbhai from the place of the incident.

9. It is true that, I had lodged the complaint before PSI Mr. Valand at the civil hospital, Ahmedabad on 02/06/12. I lodged the said complaint at around 3 or 4 o'clock in the morning. It is true that, at the time of lodging the complaint, PSI Mr. Valand had asked me to state all the details of the incident. It is true that, I have dictated all the details of what I saw and knew in the complaint. It is true that, I have dictated all the details of the incident that I saw. The complaint was read to me before putting my signature in the same. It is not true that, at the time of signing in the complaint, I was sure that all the details of the incident has been recorded in the complaint. It NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined is not true that, at the time of signing in the complaint, I was sure that, no further detail of the incident is remaining to be recorded in the complaint.

10. It is true that, I was given treatment at the Ahmedabad Civil Hospital on the night of 02/06/2012. At that time, the Doctor who was treating me asked me as to how the injury occurred. It is true that, I stated before the Doctor at Ahmedabad Civil Hospital that, I sustained blow of stick on my head on 01/06/2012 at Kapadvanj. It is true that, no treatment of my back was done at the Ahmedabad Civil Hospital. It is not true that, I did not inform the Doctor regarding the injury sustained on back.

11. It is true that, I was present among the other persons when my father was admitted in the Ahmedabad Civil Hospital. It is not true that, the Doctor giving treatment at that time, asked me as to what relation you have with this injured person. Doctor did not ask my name. It is true that, at that time I told the Doctor that, this is my father and on 01/06/2012 at 9 o'clock at Kapadvanj, he sustained injury on head caused with blunt and sharp weapon. It is true that, this detail given to the doctor by me is true. It is true that, I did not inform the Doctor who gave me treatment about the name of the person who caused me injury. It is true that, I did not inform at the Ahmedabad Civil Hospital about the names of the persons who caused injury to my father. It is not true that, the reason for not giving these names to the Doctor is that, I did not have knowledge of their exact names.

12. It is true that, after my father died on 08/06/2012, the police personnel came from Kapadvanj to carry out necessary procedure. I know that, the post mortem of the dead body of my father was carried out at Gandhinagar. I know that, a panchnama was drawn before the post mortem was carried out. It is not true that, I was present at the place from starting to the end when postmortem of the dead body of my father was carried out. I have knowledge that, Utkarsh Ashishbhai Patel and Iliyazbeg Mustufabeg Mirza remained present as panch when panchnama regarding the dead body was carried out at Gandhinagar. Iliyazbeg Mustufabeg is my uncle. I did not meet this Iliyazbeg Mustufabeg Mirza, when the panchnama regarding the dead body was drawn. I do not know that, the panchnama regarding the dead body was drawn at Gandhinagar on 09/06/2012. Nasirbeg Mustufa is my uncle. He is younger than, Iliyazbeg Mustufabeg. The dead body of my father was taken to Kapadvanj for final NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined rights. Burial was taken place on 09/06/2012. The police personnel met me after the completion of burial ritual on 09/06/2012. It is not true that, at that time also my statement was recorded. It is not true that, on 09/06/2012, I knew that, the opponent persons had filed complaint against me and other persons from our side. It is true that, Inspector Punadiya from Kapadvanj recorded my statement on 30/07/2012. It is not true that, at that time Inspector Punadiya asked as to why your father was taken to the Apollo Hospital from the Civil Hospital. It is true that, I and my mother were present when my father was taken to the Appollo Hospital from the Civil Hospital. It is not true that, my father was taken to the Apollo Hospital for further treatment against the Doctor's advise.

13. All the details I dictated in the statement before the police on 30/07/2012 are true. It is true that, on 30/07/2012, after recording my statement, the police read the same to me. It is true that, at that time, the complaint filed against me and others by the accused Murtza Ali alias Sajju was read to me. In regard with the said complaint, a court case against me and my other persons is pending. It is not true that, I have dictated in my statement dated 30/07/2012 that, "the knife I had at the time of incident is produced before you in presence of the pancha." It is not true that, Altaf Anwarbhai Vohra and Sakirbhai Sikandarbhai Sheikh were present when I produced the knife. It is not true that, I caused injury to the accused Murtuza Ali alias Sajju by a knife at the time of incident.

14. It is not true that, the accused Nos. 3-6-7-8-9 did not caused injury to any one as stated by me. I have seen these five persons causing injury to someone. The details as to whom these five persons caused injury was in my memory when I lodged the complaint on 02/06/2012 and on when I

dictated my statement on 30/07/2012. It is not true that, I did not consider it to be necessary to dictated the detail before the police that, these five persons caused injury to someone. It is true that, I have not dictated any details before the police that, we had any animosity against accused persons Tosif and Shabash. The police asked me the cause of this incident. It is true that, I dictated in the complaint that, this incident occurred due to the past animosity. It is true that, I have never dictated any details regarding animosity before the police. It is not true that, as complaint has been filed against us, I have lodged this complaint to falsely implicate the names of the accused NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined persons.

Deposition of P.W.27 - Johrabibi Mustufa Ali Mirza at Exhibit 90:

1. I reside at Kapadvanj Jatvada with my husband and do house chore work. I had two sons. Name of the eldest was Munirbeg who is not alive, younger than him is Nasirbeg.

Both the brothers reside separately with their children. Munirbeg was engaged in grains business at Kapadvanj, opposite of Kapadvanj bus-stand and Nasirbeg is engaged in business situated in a shop at Town-hall.

2. On 01/06/2012, at 9 o'clock, I and my husband were at home and we were seating on the veranda after completing our meal. During that time, noise came from some distance forward from our veranda. As they were hurling verbal abuses, I and my husband both went to the place where verbal abuses were being hurled to see what is happening. Shabash and Tosif both were present there and were hurling verbal abuses to Nadim. This Nadim was son of my son Munirbeg. I told Shabash, "don't hurl abuses, why are you hurling verbal abuses?" As I spoke in this manner, Shabash went to his house and brought a sword and Tosif were hurling verbal abuses there. Thereafter, Tosif went to his house and brought a stick. This Tosif inflicted blow of the stick on the back of Nadim and therefore we all shouted. As we shouted, Sajid came with a scythe, Raju alias Rajik came with a scythe and Shamsher came with a hockey stick. Sajju came with a stick. Isub came with a stick. Abu and Manovar both came hurling verbal abuses. Seeing weapons in their hands, we got scared. Thereafter, we shouted more. Upon hearing our shouting, my son in law Jahiruddin came there. There after my son Munirbeg, my daughter in law Najama also came there. Thereafter, Nadim's uncle Iliyazbeg also came there. Thereafter, my son Munirbeg told these person with folded hands that, he does not want to fight, he does not want to quarrel. As he was making them understand in this manner, Sajid inflicted a blow of scythe on the backside of the head of Munirbeg. Thereafter, Raju alias Rajik inflicted blow of scythe on the head of my son Munir. Therefore, my son Munirbeg started bleeding and fainted; collapsed there. Thereafter, Shamsher was inflicting blow of hockey stick on Munirbeg. Sajju and Isub were inflicting blows of stick on Munirbeg. At that time, Abu and Manovar were hurling abuses and saying, " just kill him and finish him." As Raju alias Rajik was going to inflict NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined blow of scythe in his hand on Munirbeg, my son in law Jahiruddin came between them and therefore, scythe of Raju alias Rajik struck in the fingers of Jahiruddin. Shamsher inflicted blow of hockey stick on head of Nadim. Thereafter, as Shamsher was going to inflicted another blow of hockey stick on Nadim, uncle Iliyaz came between them and therefore, hockey stick of Shamsher got

hit on the head of Iliyaz. At that time, as Shabash was going to inflict blow of sword on my son Nadim, Nadim got away from there and therefore Shabash's sword struck on the left arm of Sajju. All these persons were brutally thrashing my son with the sticks in their hand and I was shouting and begging them not to beat my son and when I was trying to go between them to save him, they used to push me aside. These persons brutally thrashed my son. Abu and Manovar were telling me that, your son is finished and we were shouting there. As we were shouting, people from around the place came there and these persons moved aside with their weapons. There was a handcart lying nearby. My son in law, Nadim's uncle Iliyaz and Najma put Munirbeg in the handcart and took him to the hospital. After they took Munir to the hospital, I remained at the house. After sometime, news came that, they have been taken to Ahmedabad Civil Hospital. Two police personnel came to my house on the next day and recorded my statement. I described the fact as I had seen. As the police asked me to show the place I showed them the place where the incident took place. Blood smeared sandal of my son Munirbeg was lying on that place and blood splatters were on the adjacent wall and blood was spilled on the veranda and on the around that place, I showed the same to the police. The police put this sandal in a bag and seized it. After drafting about this place, the police obtained signatures of Nazir and Mohammaad. I was present there during this time and was standing there. Thereafter, as the police completed the drafting about this place and they asked me to go to home, I went home. Thereafter, I came to know that, my son is being taken to other hospital named Apollo from Ahmedabad Civil. Thereafter, around three days letter, I went to meet my son at Apollo, Gandhinagar. There too, my son Munir was lying unconscious and there was no hope of his survival. Thereafter, my son died on the 8 th at around 11/30. Two police personnel came there. Thereafter, dead body of my son was taken to Gandhinagar for postmortem. Thereafter, we returned to our home and as the dead body of my son was handed over on the next day, we completed last rituals as per our religion.

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3. All accused, whose names were stated by me, they all are present before this court today. I can identify if the weapons which the said accused were armed with, are showed to me. I am shown Muddamal Article No.1, it is the same hockey which was with Samsherkhan in his hand. I am shown stick of muddamal article no.2, which were in the hands of Isubbhai. I am shown stick of muddamal article no.3, which were in the hands of Sajju. I am shown scythe of muddamal article no.4, which was in the hand of Sajidkhan. I am shown scythe of muddamal article no.5, which was in the hands of Rajidkhan. I am shown sword of muddamal article no.6, it was in the hands of Shabash. I am shown stick of Muddamal Article No.7, it is the same which was with Tosif in his hands. Chappal, which I saw at the scene of offense, was of yellow color. Police made my interrogation twice. Police interrogated me first time on Second and second interrogation after the death of my son. I dictated the facts to the police which I came to know.

Cross-examination:

4. It is true that I was sitting on the Otla (Platform outside the house) with my husband. I sit on the platform on that day only. The incident happened about five feet away from the place where we sit. It took five mintes to gather the people there. We got scarred but did not go back in the house and

stood there only. They brought swords and sticks within two minutes. By the time the said persons went to take the weapons, my son did not try to escape but he stood there. We did not try to go in the house. It is true that I had not dictated in my police statement that 'My son requested with folded hands that I do not want to quarrel'. Around fifteen to twenty blows might have been given to my son. It is not true that I had not dictated in my police statement that Manohar and Abu were hurling abuses and saying to kill him. My son did not collapse after getting first blow of scythe. First blow was made on his head. Blow was given very aggressively. My son fell upside down due to blow of scythe. Blows of stick were made on him after he fell upside down. It is not true that I had not dictated in my police statement that my son was beaten like cattle and Abu and Manohar were saying that we have killed your son. No one else got injured except of person about whom I have stated in Examination-in-chief. It is not true that I have not dictated in my police statement that blood-shaded chappal was lying on the spot and it was of yellow colour. It is not NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined true that I have not seen anything and I was not present there.

Cross-examination:

5. It is not true that I have not dictated the fact in my police statement that Tosif inflicted blow of stick in the back of Nadim. This contradiction is for the word 'Back'. It is not true that I have not dictated the fact in my statement before police that 'Munir fell down and Samsher was beating Munir with hockey and Sajju and Yusuf were also beating Munir with sticks and Abu and Manu were shouting to kill him. It is not true that I have not dictated the fact in my statement before police that 'Shabash was about to inflict the sword on my son Nadim and as Nadim moved aside, Sajju got blow of sword of Shabash on left back side.' It is not true that I have not dictated in my statement before police that all the said persons were beating them like cattles. It is not true that I have not dictated in my statement before police that 'hand-cart was lying near the place and my son-in-law Ilyasbhai, Nadim and Najma took Munir to the hospital in the said cart.'

6. It is not true that there were two chappals when I showed the scene of offence. It is true that police recovered chappals from the scene of offence in my presence at the time of panchnama of scene of offence. Police recovered one chappal only and not two.

7. I do not know directions. It is true that it can be reached to the scene of offence by going towards Madresa from my house and taking turn from there. It is not true that scene of offence is 250 steps away from my house. It is not true that many persons were gathered when I reached on the spot upon hearing uproar. It is not true that I saw it was bleeding from the head of Nadim when I reached at the spot. It is not true that Munirbeg reached there before I reached there. I stated all the facts before police whatever I saw. It is true that I have not dictated in the statement before police the details such as injury was caused by Shabash, Yusufmiya, Murtujaali @ Sajju, Manovar @ Manu and Jainul @ Abu out of the accused persons. It is not true that I have not dictated in the statement before police that why the incident happened and how it happened.

8. I know that Nadimbeg lodged the complaint about the incident on 02/06/2012. I know that the said complaint was NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025

undefined lodged at Ahmedabad Civil Hospital. I know that police arrested several persons on the basis of the said complaint. Police called me and Jahiruddin at police station to identify the weapons. It is true that police recorded my statement on the second and called me at police station to identify the weapons on third and Jahiruddin was with me at that time. The weapons shown by the police to me were the same which have been identified by me today. Ilyasbeg Mirza is brother-in-law of my son Munir. It is not true that Ilyasbeg did not sustain any injury. Witness states that he got the blow of hockey in the head. Ilyasbeg was not bleeding.

9. It was not so happened that cross-fighting took place at the time of incident which I have stated. I had not seen the persons, whose names are given by me, getting injured or bleeding. I do not know that Murtuja @ Sajju had lodged complaint against 8 persons of our side. I had not seen Murtuja @ Sajju and Jenul Abedin, getting injured or bleeding. Now, I say that I saw that Murtuja got a blow of sword. When my statement was recorded before the police, I remember the fact that Murtuja got a blow of sword. Police asked me as to who inflicted sword to Murtuja. It is not true that I had not dictated to the police as to who inflicted blow of sword on Murtuja. I intervened to save but I did not get injury. It is true that I had not dictated it in the statement before police that all were moving me aside. It is not true that I have not seen the incident as stated in the Examination-in-chief and I am giving false deposition.

15. On perusal of the evidence of panch witnesses, it appears that they have not supported the case of the prosecution and has declared hostile.

16. Considering the aforesaid facts, it appears that the aggression and omission are proved and also material and major contradiction were proved in the deposition of the Investigating Officer and, therefore, the trial Court has committed an error while passing the impugned judgment and order of conviction and sentence for the offence punishable under Section 302 r/w.

NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Section 149 of the IPC. It is further noted that initially the deceased was taken to the concerned doctors, who have first in point of time had occasion to examine the deceased, namely Dr. Umesh Shah and/or Dr. Yogesh Shah of Kapadvanj have not been examined by the prosecution nor have they produced any medical certificate or evidence of those two doctors. It also appears that thereafter, the injured was taken to the Civil Hospital at Nadiad in ambulance of Kapadvanj Nagarpalika, however, the prosecution has not examined the driver and the attendance of the ambulance. That the documentary evidence or the evidence of the doctor of Civil Hospital at Nadiad was not brought on record before the trial Court and, therefore, the evidence with regard to initial treatment given to the deceased either at Kapadvanj or at Nadiad was not brought on record. Even the prosecution has not explained that whether it has recorded the statement or dropped the concerned witness or not, for that there was no explanation. It is the case of the prosecution that initially the injured was taken to the V. S. Hospital at Ahmedabad but the otherside reached to V. S. Hospital and therefore they reached to the Civil Hospital, but all these facts have not corroborated by any substantive piece of evidence. As per the deposition of P.W.21 Dr. Brijesh Narendrabhai Sisodiya, he was on duty at Civil Hospital, Ahmedabad from 01.06.2012 to 02.06.2012 between 8.00 pm to 8.00 am and at about 2.05 am, the deceased - Munirbeg was brought before him. As per evidence of P.W.20 Jahiruddin

Gulumiya Shaikh, he accompanied the deceased and one NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined Ilyashbhai - brother-in-law of the deceased has given history before the doctor that the accused have assaulted by sticks, which fact was first made before the doctor who had an occasion to examine the injured for the first time. The incident took place at about 8.30 or somewhere 9.00 and upto 2.00 pm without there being any preliminary treatment the injured reached to the Civil Hospital almost after five hours and there was no satisfactory explanation rendered by the prosecution. On preliminary examination, the doctor i.e. P.W.21 stated that on making siti skane of the injured, he found sub dural hemorrhage on left frontal temporal parital and sub aracnoid hemorrhage on left parital. He has also found fracture in the parai oxipital bone of the injured and the injured was referred to Dr.J. H. Shelat, Nuro Surgon for treatment. This doctor has deposed that there was no injury found likely to be caused by dharia. Immediately, the deceased was taken to the Apollo Hospital by the family members as per the medical advice. Even in Apollo Hospital also while recording the history, the assailants were not named before the concerned doctor and after treatment, about eight days the deceased died at Apollo Hospital because of the complication. It is surprised that P.W.23 Dr Binna Babubhai Patel deposed in her examination-in-chief, that she has not mentioned any injury in column No.17 of the postmortem note. In her cross- examination, Dr.Binna Patel has categorically stated that since she has not noted any injury in column No. 17 because there was no injury. In fact, this doctor has clarified that in column No.19 she has not mentioned any injury as there was no injury found.

NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined The version of P.W.22 Dr.Ashokkumar Jankilal Somani is also different and, therefore, on perusal of the evidence of the three doctors, it appears that there was inconsistency in their evidence with regard to the injury sustained by the deceased and the nature of the injuries and, therefore, the prosecution has unable to bring cogent, convincing and clinching evidence to establish the case against the accused under Section 302 of the IPC, for which the prosecution has not examined relevant witnesses nor it has recorded the statement of the witnesses for the reason best known to it.

17. It is worthwhile to refer to Sections 299, 300, 302 and 304 Part II of the Indian Penal Code, which read as under:-

"299. Culpable homicide.--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

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

2ndly.--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or --

3rdly.--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--

4thly.--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined of causing death or such injury as aforesaid.

302. Punishment for murder.--Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.

304 (Part II) - Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

18. Considering the abovementioned facts and circumstances of the case and the relevant provisions of law and the decisions relied upon by the learned counsel appearing for the accused, we are of the opinion that and considering the well settled principles of law and on perusal of the evidence, it is clearly found that the prosecution has miserably failed to prove the charges levelled against the present accused beyond reasonable doubt. In view of the above, we are of the opinion that the conviction under Section 302 r/w. Section 149 of the IPC qua accused No.1 to 7 deserves to be altered to Section 304 Part II of the IPC and appeals filed by accused No.1 to 7 deserve to be partly allowed. So far as accused No.8 and 9 are concerned, as they have not caused any injury nor participated in the alleged offence except the allegations that they were present at the time of offence and abusing and instigating the other accused.

22. In the light of the above discussion, Criminal Appeals No.802 of 2015 and 806 of 2015 are hereby partly allowed. The NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined conviction of appellants - original accused No.1 to 7 under Section 302 read with Section 149 of the Indian Penal Code is altered to under Section 304 Part II of the Indian Penal Code. The judgment and order dated 18.06.2015 passed by the learned 3rd Additional Sessions Judge, Nadiad in Sessions Case No.86 of 2012 is modified to the extent. The appellants - original accused No.1 to 7 have already undergone imprisonment for almost 8 years, 9 years and 10 years respectively as under-trial prisoners, which shall be given as set off to them. The accused, who have not completed the sentence of ten years, shall surrender to the concerned jail authority forthwith and shall serve out the remaining sentence and after completion of sentence, they may set at liberty forthwith if not required in connection with any other case. If the accused, who have completed the sentence of ten years, then they are ordered to be set at liberty forthwith if not required in connection with any other case. The amount of fine, if any, paid by the accused, shall be refunded to them forthwith, who have completed the sentence.

Criminal Appeal No.795 of 2015 is allowed. The impugned judgment and order dated 18.06.2015 passed by the learned 3 rd Additional Sessions Judge, Nadiad in Sessions Case No.86 of 2012 is quashed and set aside qua original accused No.8 and 9. The appellants - accused No.8 and 9 are hereby acquitted for the charges levelled against them. The accused No.8 to 9 are ordered to be set at liberty forthwith if not required in connection NEUTRAL CITATION R/CR.A/795/2015 JUDGMENT DATED: 27/02/2025 undefined with any other case. The amount of fine, if any, paid by the accused, shall be refunded to them forthwith. Bail bond, if any, shall stand cancelled.

Record and proceedings be transmitted back to the concerned trial Court forthwith.

(ILESH J. VORA,J) (HEMANT M. PRACHCHHAK,J) V.R. PANCHAL