

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL CONFIRMATION CASE NO. 1 of 2022****With
R/CRIMINAL APPEAL NO. 588 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and
HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
VIPULBHAI BHARATBHAI BIN CHHAPPANBHAI PATANI

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Appearance:
PUBLIC PROSECUTOR for the Appellant(s) No. 1
MR.DHAIRYAPALSINH N PUWAR(17496) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 14/10/2025

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)

1. The Appellant – Org. Accused namely Vipulbhai Bharatbhai @ Chhappanbhai Patani has preferred the present Appeal under Section 374 of the Criminal Procedure Code (now Section 415 of BNSS, 2023), against the

judgment and order dated 11.02.2022 passed by the Additional Sessions Judge, Kheda @ Nadiad, convicting the present Appellant to undergo RI for ten years and fine of Rs. 50,000/- and in default thereof one year RI for the offence under Section 328 of the IPC as well as Capital punishment and fine of Rs. 50,000/- and in default thereof RI for one year under Section 302 of the Indian Penal Code.

2. The brief facts of the FIR is that :-

2.1 On 04.08.2017, at approximately 10:30 PM, the Complainant, together with his brother, Vikkibhai, and his sister-in-law, Twinkleben, had completed their dinner and were listening to music on his laptop. At that time, five masked men, approximately 25 to 30 years of age, entered the premises through an open door, two of whom were armed with swords. They rendered the Complainant's brother and sister-in-law unconscious by drug muffled cloth. Upon resistance, one of the accused inflicted a sword blow on the Complainant's left wrist and rendered him unconscious with a drug muffled cloth. Upon regaining consciousness, he found himself locked inside the bathroom. He called his brother Kishan using Vikki's phone and informed him of the incident. The bathroom door was opened only around 2:30 AM, at which time he saw his brother and sister-in-law lying dead, in a pool of blood. His brother, Vikkibhai, had his hands and legs tied, and he

sustained deep sword wounds on his cheek and neck. His sister-in-law had a fatal throat wound. The five accused persons had murdered them with swords and fled the scene after locking him inside.

2.2 Thereafter, the FIR came to be lodged before the Mahudha Police Station being I CR No. 50/2017 on 26.10.2017 under the provisions of Section 302, 324, 328, 341, 452, 143, 147, 149, 34 of IPC as well as 135 of the GP Act.

2.3 After Investigation, the Chargesheet came to be filed before the concerned Ld. Magistrate, wherein, the complainant was arraigned as accused and the case was committed to the Sessions Court, Nadiad as the case was sessions triable and the same was registered as Sessions Case No. 93/2017. Thereafter, charges were framed vide Exh. 5 and the accused denied the charged and prayed for trial.

2.4 The Prosecution has examined the following witnesses to prove the guilt of the accused.

Witnesses			
PW No.	Name	Status of Witness	Exh.
13	Madhuben Bharatbhai Patani	Mother of deceased	71

15	Aurangzeb Abdulsalam Azmi	Person who sold knife to the accused	74
16	Bhikhabhai Harmanbhai Patel	Tenant of deceased	77
17	Kishanbhai Bharatbhai Patani	Brother of deceased	79
14	Irfanmiya Husainmiya Malek	Auto rickshaw driver	73
18	Vasimbhai Majurhussain Shaikh	Auto rickshaw driver	82
19	Geetaben Nareshbhai Patani	Mother of deceased Twinkleben	84
20	Akshay Nareshbhai Patani	Brother of deceased Twinkleben	87
4	Ramanbhai Ravjibhai Thakor	Owner of Fritters (Bhajiya) Lorry	25
21	Udesinh Melabhai Gohel	Working at Fritters (Bhajiya) Lorry	89
22	Nitinbhai Ramanbhai Patani	Pharmacist (Civil Hospital, Ahmedabad)	90
23	Mukeshbhai Keshavlal Kapadiya	Pharmacist (Civil Hospital, Ahmedabad)	91
11	Kanubhai Nathabhai Rathod	Person who prepared map of place of offence (Circle Officer, Taluka Panchayat, Mahudha)	62
Doctor witness			
2	Dr. Lakshesh Virjibhai Aashra	Medical Officer conducting PM, PHC Alina	11
12	Dr Harshilaben Sukhlal Gir	Medical Officer Civil Hospital Ahmedabad	66
24	Dr. Sanjay Amrutlal Solanki	Medical Officer Civil Hospital Ahmedabad	94
FSL Witness			
5	Dhananjay Maganbhai Patel	FSL Officer, Kheda Nadiad	26
Police Witness			
10	Savjibhai Merubhai Makwana	Dog Handler, Kheda Head Quarter	59
25	Abdulsatar Akabmiya Malek	PSO Mahudha Police Station	103

27	Ajmalsinh Bhalsinh Solanki	Police Constable, Sevaliya Police Station (Photographer)	134
29	Bharatsinh Ghansyamsinh Parmar	Bharatsinh Ghanshyamsinh Parmar PI, IO, Mahudha Police Station	136
Panch witness			
1	Shakuntlaben Bhikhabhai Patel	Panch of Inquest Panchnama	8
3	Aashishkumar Ragunathbhai Desai	Panch of reconstruction Panchnama	23
6	Arvindbhai Ranchodbhai Patel	Panch of panchnama of place of offence	34
7	Pravinbhai Somabhai Patel	Panch of panchnama of place of offence	50
8	Urvishbhai Rameshbhai Patel	Panch of Panchnama regarding Physical condition of Vipulbhai's body as well as seizure of clothes	51
9	Shaileshbhai Bhailalbhair Thakor	Panch of Panchnama regarding Physical condition of Vipulbhai's body as well as seizure of clothes	56
26	Manharbhai Bhailalbhair Patel	Panch of discovery pachnama as well as seizure of clothes from dead body.	107
27	Zahirhussain Ahemadmiya Malek	Panch witness.	131

2.5 Apart from leading oral evidence as mentioned above, prosecution to bring home the charge has relied upon the following documentary evidences:-

Sr No	Type of documents	Exh.
1	Complaint	137

2	Inquest Panchnama	9
3	Police Yadi for PM	12
4	P M Note (Twinkle Ben)	13
5	Provisional Cause of Death Certificate(Twinkle Ben)	14
6	Cause of Death Certificate (Twinkle Ben)	15
7	P M Note (Vikkibhai)	16
8	Provisional Cause of Death Certificate. (Vikkibhai)	17
9	Cause of Death Certificate (Vikkibhai)	18
10	Medical Case Papers (Vipulbhai)	20
11	Medical Certificate (Vipulbhai)	21
12	Certificate regarding Blood Grouping of Vipulbhai which sent for FSL	22
13	Reconstruction Panchnama	24
14	FSL Report	27
15	Reconstruction Report	28
16	Exh. 28 Report	29
17	Blood Sample taken from the dead body of victim woman - Mark A	35
18	Blood Sample taken from the dead body of victim man - Mark B	36
19	Blood Sample taken from the spread blood from the place of offence	37
20	Bajiya taken for testing from the place of offence	38
21	Receipt of seizure of one Chhara and Chhari (Knife) from the place of offence.	39,40
22	Receipt of seizure of one scissors from the crime scene	41
23	Receipt of a blood stain near the bathroom and a piece of it rubbed off with a cotton swab	42

24	Receipt of a blood stain near the bathroom and a piece of it rubbed off with a cotton swab	43
25	Something had fallen on the kitchen floor and the piece of the object that had been seized was broken.	44
26	Receipt of dried blood spots on the left side of Vipul's head, which were taken by a cotton swab	45
27	A receipt of blood stain taken from Vipul's toes which was taken by cotton swab	46
28	Panchnama of Place of offence.	47
29	Panchnama regarding seizure of Cloth of Accused	52
30	Panchnama regarding physical condition of accused.	57
31	Police Uniform given to dog Handler	60
32	Call form Report of Dog Handler	61
33	Police Yadi for preparing map for place of offence	63
34	Panchkyas of Place of offence.	64
35	Map of place of offence	65
36	Refer Note for Medical Examination of Vipulbhai Patani of PHC, Alina	67
37	Medical Certificate of Vipulbhai Patani	68
38	Medical Case Papers, X Ray of Vipulbhai	69
39	Police Yadi for Medical Certificate	70
40	Establishment Certificate and Aadharcard of Seller selling Knives	75,76
41	Information sought from the Civil Hospital, Ahmedabad regarding case details	95
42	Forwarding letter of information of Case Details	96

43	Print outs of case details of Twinkle ben and Vikkibhai	97,98
44	Station Diary	104
45	Panchnama regarding cloths of dead body	108
46	Discovery Panchnama	109
47	Panchnama regarding seizure of CCTV footage and DVD	110
48	Panchnama regarding samples collected from the dead boy as well as bloodstain on the boy of the accused	111
49	Discovery Panchnama	112
50	Death Form of Vikibhai	139
51	Death form of Twinkleben	140
52	Receipt regarding delivery of dead body	141
53	Panchkyas report of Circle Officer from the crime scene	142
54	Public notice of Collector	143
55	Report of Fingerprint Expert, Ahmedabad	145
56	FSL Dispatch note	146
57	FSL Dispatch note	147
58	FSL Receipt	148
59	FSL Receipt	149
60	FSL Letter	150
61	FSL Report	151
62	FSL Receipt	152
63	Order of office of FSL	153
64	FSL Letter	154
65	Dispatch note for Biometrics sent to FSL	155
66	FSL Dispatch note	156
67	FSL Report	159

68	FSL biological report	160
69	FSL Sirolgy Report	161
70	FSL Receipt	162
71	FSL letter	163
72	FSL report	164
73	FSL report	165
74	FSL report	166

2.6 After completion of the trial, statement of the accused was recorded under Section 313 of the CRPC. After hearing the Ld. Advocates for both parties and considering the documentary as well as oral evidence on record, the Appellant was convicted as stated above. Hence, the present Appeal.

3. Ld. Advocate Mr. Dhairyapalsinh Puwar for the Applicant – Org Accused has argued and raised the following grounds that :-

3.1 Investigative Lapses and Glaring Contradictions :

(1). Suspicious Conduct and Bias of the Investigating Officer (IO):

The IO's presence at the crime scene, 12 km from Mahudha P.S. based on an unverified & unrecorded theft call, raises serious doubts. The IO, instead of delegating to the nearby Alina checkpost, assumed direct control and showed apathy to the complainant casting doubt on the

investigation's integrity, IO while instructing the ASI to register FIR also asked to enter his own name as an IO in Station Diary. Thus IO showed unusual personal interest or bias by being heavily involved in all procedural activities, including panchnamas and inquiry etc. without recovery of crucial evidence of nakucho, string etc at crime spot and ignoring the collection of notable finger/ foot prints and failure to act on Dog Squad's inputs, the dog findings contradicted the prosecution's story, suggesting escape by unknown persons and not implicating the accused or his family, a line of actual inquiry deliberately ignored by the IO. The Knife seller and IO's bluff about non-existence of CCTV cameras is exposed through their own contrasting testimonies.

(2). Suppression of Actual Threats to the Deceased Couple:

The deceased were two-way distant relatives but still again got married just a few days after the couple's return from Delhi, and after winkle's hand written complaint dt. 30/06/2017 fearing for her life, mainly from her own family members, around 20 people specifically named out of which a few matched the age group as narrated in FIR, and not from the accused or his family. The chapter cases 925 & 926 of 2017 were registered but finally things were managed and the prosecution deliberately ignored this incriminating aspects, in fact tried to suppress it, as evident from the IO's testimony, and this factor was actually the potential threat/

danger to the couple as rightly feared earlier. This followed their honour killing, obviously not by the accused but as a collective conspired group task under pressure from others of society/ family who generally thinks of and pressurize for doing anything to maintain such false honour etc. under societal pressure and the 22 years of age of the accused is far away from doing such honour killing alone, as alleged by Prosecution through false narrative/ concocted claims.

(3). Concocted Story of sedative laced Bhajiya etc:

Despite complainant in FIR mentioning buying Bhajiya from Alina Crossing itself, IO concocted the buying place entirely to an enroute place of Khatraj Crossing with false witnesses like Bhajiya makers & Auto Drivers who were exposed by their own testimonies in light of facts and other testimonies highlighting contradictions as well as tutoring of witnesses at Circuit house & timeline contradictions. Pharmacy officials claimed to discuss and give 160 Lorazepam sleeping tablets to the accused, in emotion, without evidenced prescriptions and after unauthorized entry of accused into the restricted area of the store, all against the set norms of Hospital/ Pharmacy Act. Testimonies reveal timing contradiction and stock register entry shows no tablets were ever given to the accused. Even the scientific evidences do not support, but reject, the said entire claim as detailed.

(4). IO Violated Norms/ Protocols & lost Credibility:

IO started Panchnama before Inquest Van arrived and

briefed all voluntarily about the crime. IO acted on oral orders and didn't record vital LCB/ SOG inquiry records or Lockup entries, didn't maintain vehicle log-book, didn't conduct the identification parade of the accused , lost his credibility of doing Panchnamas, didn't prefer to get recorded CrPC-164 statements of accused but indulged in media briefing with others to crack the case within 3 days itself based on defamatory declaration of accused as crime serial buff, all without waiting for any FSL scientific results etc.

(5). Botched up Reconstruction Panchnama by the Prosecution:

There were notable Reconstruction Contradictions like Witness saw bandage on accused's right hand, but actually injury was on left. Dr. Laxesh Ashra was present during reconstruction, though IO denied it. The prosecution's claimed sequence of events (murder, self-injury, disposal of knives, entry into bathroom) contradicts the reconstruction sequence, which omits reference to the wrist injury, weakening the prosecution's case. IO even had no Idea who brought effigies during the said reconstruction.

(6). Failure to Decipher Injury Marks:

Prosecution failed to observe & analyse nature, number & type of inflicted injuries keenly on the deceased bodies deciphering murderers having vengeance feeling towards deceased Vikki and his main injury mark from

Right Ear to Left Ear indicating the possibility of Left Handed Murderer while the main injury Mark of Twinkle from Left Ear to Right Ear indicating the possibility of Right Handed Murderer.

2.2 Injustice resulting from Non-Application of Mind to FSL-Scientific Evidences as per Section-293 of CrPC.

7 Foul Play in Fingerprint Analysis

Fingerprint Unit's records a 'NIL' result despite notable impressions found during panchnamas (2 right leg foot prints found/ seen whereas blood was recovered from the accused's left foot only and there were other fingerprints). This discrepancy suggests foul play in the collection or reporting of fingerprint evidence, casting doubt on the crime spot management by prosecution.

8. Negative Toxicology Results of Viscera & Bhajiya:

Exh. 151 reveals that viscera samples (Mark S-1, S-2, S-3, T-1, T-2, T-3) tested negative for chemical toxins. Similarly, Exh. 162 confirms that 4 no of uneaten Bhajiya samples tested negative for poisons or drugs. These findings contradict any prosecution theory of mixing of Lorazepam sleeping tablets in bhajiya and then giving the same as food leading to chemical poisoning etc.

9. Serology and DNA Evidences:

Table-B, Exh. 164 notes that DNA analysis of blood samples from knives (Mark I, I-1, I-2, J, J-1, J-2) and those of

deceased (Vikki-Mark-Q & Twinkle-Mark-R) and accused (Body blood =Mark-O, Cotton swab= Mark-P) logically conclude the following.

9.1 None of 6 knife blood samples matched the accused's blood and it contradicts police theory that the accused had cut/ injured his hand with the knife after committing murders. So, a different

weapon (sword), as claimed by the complainant was used to injure him, Dr. Harshilaben Gor (PW-12) had hinted such possibility.

9.2 The Blood on the accused Vipul's body is actually of his own due to a cut on his left wrist (Mark-O=Mark-P) and it's not that of any deceased persons(Mark-Q/ R).

9.3 Out of 6 blood samples taken, only one sample (I-2) that too amplified loci only matched deceased Twinkle's (Mark-R) blood (probably due to blood splatter) whose throat was cut 15x5x3 cm so Twinkle's throat was also most probably cut by a separate sword and not knives because if she was murdered by any knife, at least 2 samples of blood of said knife will match with her blood due to spread of blood on knife after murder while taking to terrace etc as per prosecution's false story.

10. CCTV Footage Analysis:

Exh. 166 is CCTV footage analysis report of 2 Parcels/ samples of Ahmedabad Civil Hospital CCTV Footage dt. 04/08/2017, DVD and sample photos of accused and conclusion was that it failed to confirm the accused's (Mark CP-1) presence at the pharmacy as claimed by prosecution.

11. Conclusions based on logical deductions of available evidences:

The prosecution has eliminated the impossible, whatever remains, however improbable, must be the truth, said Sherlock Holmes in 'The Sign of Four' and the same is applicable in the present case in reality to prove the innocence of the respondent accused clearly indicating the Incomplete Chain/ breaking of the chain of circumstantial evidences based narrative of prosecution without any Eye witnesses of the said crime.

The discrepancies in forensic reports and investigative lapses fail to establish a complete chain of events pointing solely to the Appellant's guilt. The Hon'ble Supreme Court has held that circumstantial evidence must be conclusive and exclude every other hypothesis. The inconsistencies in Table-A and Table-B create reasonable doubt, rendering the conviction unsustainable, also the Violation of Article 21,

Fair Investigation to be taken into account from the IO's suspicious conduct in the entire case and Hon'ble Supreme Court emphasized that a defective investigation cannot sustain a conviction.

Judicial Negligence coupled with Non-Application of Mind in deciphering/appreciation of Scientific Evidences (CrPC - Sec-293, which all were mostly available by the end of 2017 (around the initiation of the Trial) itself were sufficient enough to prove the innocence of the accused in the said crime. If all imp. aspects could have been looked into, then miscarriage of justice leading to around 8 years of incarceration of the accused could have been surely avoided. Also CrPC-313 long paragraphs clubbed many questions put to the accused in a single day upto 59 pages length in total are also not in the right Spirit. Conclusively this case is nothing but Miscarriage of justice, to be looked into and addressed for delivery of justice in totality and thus, prayed to allow the present Appeal of the Org. Accused and quashed and set aside the order of conviction.

4. Ld. APP Mr. Jay Mehta would submit that

4.1 The order of conviction passed by the learned Sessions Court is just and proper, having considered both oral and documentary evidence on record, qua the present appellant. The manner in which the entire incident occurred has been clearly deposed to by the witnesses, whose testimonies are

found to be credible and trustworthy. Minor discrepancies, which do not go to the root of the prosecution case, are not sufficient grounds for acquitting the appellant. In case of honour killing the view taken by Trial Court is just and proper and hence argued that the Trial Court has not committed any error, either on facts or in law, in convicting the Accused. Thus, has prayed to reject the appeal of the accused and allow the reference

5. Heard Ld. Advocate for the respective parties.

6 The case of the prosecution is based on circumstantial evidence. The law is well settled that in a criminal case, the prosecution is under an obligation to prove the guilt of the accused by leading evidence that is legally admissible and links the accused to the crime beyond reasonable doubt. In a case based on circumstantial evidence, the burden is upon the prosecution to prove the chain of circumstances beyond all reasonable doubt. The law in this respect has been clearly laid down in the case of ***Sharad Birdhi Chand Sarda vs. State of Maharashtra, reported in (1984) 4 SCC 16***, wherein it is held that:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to

be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved,

and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

Keeping in view the aforesaid principles, we shall now advert to the facts of the case on hand. The appellant herein has been convicted and sentenced to death in relation to the incident involving the murder of his own brother and sister-in-law, which took place at the house of the deceased in Village Alina on the intervening night of 04.08.2017 and 05.08.2017.

7. We note that there is no dispute regarding the cause of death of the two deceased persons, namely the accused's brother and his sister in law. Both bodies were subjected to autopsy by the Medical Officer, Dr. Lakshesh Virji Aashara (PW-2), who proved the post-mortem reports in detail through his testimony, marked as Exhibit 11. The evidence of this witness has remained unchallenged, and we find no reason to doubt the opinion expressed that the deaths of the two victims were homicidal in nature and could have been caused by sharp-cutting instruments. This witness also examined the complainant on 05.08.2017, who was brought

in by the police and was found to have a sharp cut on the outer region of the wrist, measuring 2x2 cm. The accused was also referred to the Higher Health Centre. Blood samples of the accused were collected by this witness. He further deposed that the injuries sustained by both deceased were sufficient, in the ordinary course of nature, to cause death. It is worth noting that the presence of the accused is also not disputed since he is the complainant and has lodged complaint as a victim and is also injured however, after investigation is arrayed as an accused.

8. The case of the prosecution is based on circumstantial evidence, namely:-

- (1) Purchasing knife from the shop namely German Steel situated at Pankornaka, Ahmedabad.
- (2) Collecting lorazepam 160 tablets from Civil Hospital, Ahmedabad.
- (3) Mixing of lorazepam tablets in the batter used for preparing fritters (bhajiya), which were cooked at a Lorry at the instance of the accused near Khatraj Cross Road.
- (4) The accused contacting his mother using the mobile phone of Irfan Miya, a rickshaw driver at Khatraj Cross Road before going to his brothers residence at Alina.
- (5) Discovery of weapons at the instance of accused.
- (6) Motive: The alleged motive for committing the crime is

the difficulties faced by the family due to the love marriage of the accused's brother, Vickybhai, with the deceased, Twinkleben, which was within an incestuous relationship.

Circumstances that prosecution has tried to prove:

(1) Purchasing knife from the shop namely German Steel situated at Pankornaka, Ahmedabad.

9. To prove that the accused had purchased the knife, the prosecution examined PW 15, vide Exhibit 74, namely Aurangzebzen Abdulsalam Aazmi. On perusal of the testimony of this witness, he stated that the police had come with one person who was sitting in the police van and was pointing a finger towards his shop. When questioned by the police, the witness informed them that the said person had purchased a Chinese chopper from his shop. He also recognized the accused and stated that the chopper had been purchased two years back. He further informed that he had sold the said chopper for Rs. 450/-. At the instance of the accused, this witness had sharpened the said chopper twice. He remembers the accused because he had come twice for sharpening of the chopper. He recognizes Article No.9 (chopper) and also recognizes the accused before the Court.

In cross-examination, the witness admitted that such choppers are easily available in the market. He also stated that other knives similar to Article No.9 were available in his shop. Additionally, he admitted that Vrindavan Shopping Centre, which is opposite his shop, as well as nearby shops, are equipped with CCTV cameras. Nothing shaking the veracity of this witness has come on record during the cross examination.

On perusal of the entire deposition of this witness, the fact of the accused having purchased the knife and the fact of sharpening the knife twice are proved beyond reasonable doubt.

(2) Collecting lorazepam 160 tablets from Civil Hospital, Ahmedabad.

10. To prove the fact that the accused had collected Lorazepam tablets, the prosecution examined PW-22, vide Exhibit 90, namely Nitinbhai Ramanbhai Patni. This witness deposed that he had been working as a pharmacist at the Civil Hospital for the last four and a half years. He stated that two years ago, the police had approached him along with one person and made some inquiries. He informed them that the person was Vipul Bharatbhai Patni, whom he knew because he had taken tuition from his father

when he was in the 10th standard. When the police asked how the accused had received Lorazepam tablets, this witness stated that while he was on duty on 04.08.2017 between 9 a.m. and 3 p.m., at around 12 noon, he had gone to collect medicines. At that time, store in-charge Mukeshbhai was present, and the accused, Vipulbhai Patni, was sitting near Mukeshbhai. When asked whether Mukeshbhai knew Vipul, Mukeshbhai denied knowing him and said that Vipul had come to collect medicines. The witness then introduced Vipulbhai to Mukeshbhai, after which he left the store with the medicines. After making entries in the computer, he handed over 60 Lorazepam tablets to the accused, along with the case papers.

When asked about the case papers, the accused replied that they belonged to Twinkle and Vicky. The accused further requested more tablets, stating that his brother and sister-in-law were going out of station and would not be able to return only for the purpose of collecting tablets. Since the witness knew Vipulbhai through his father Bharatbhai (with whom he had taken tuition), he gave him additional 100 tablets out of affection.

The witness further stated that Lorazepam tablets are given to patients with mental disorders, particularly those who have difficulty sleeping at night.

In his cross-examination, this witness admitted that he was aware that giving more tablets than those

prescribed is a punishable offence under Section 42 of the Pharmacy Act, 1948. He also admitted that he had not informed the police about the number of milligrams of Lorazepam tablets that were given. Furthermore, he acknowledged that Lorazepam tablets are sometimes consumed for the purpose of committing suicide. From the deposition of this witness, the fact that the accused had collected a total of 160 Lorazepam tablets stands proved.

11. PW-23, examined at Exhibit 91, namely Mukeshbhai Kaishavlal Kapadia, deposed that he is the store in-charge at Civil Hospital, Ahmedabad, and is responsible for maintaining the stock of all medicines in the store. His duty hours are from 9:00 a.m. to 5:00 p.m.

There are 17 people working in the medicine department. These individuals deliver medicines through the window based on the case papers, and they collect the medicines from this witness. In the year 2017, the police came to the hospital along with Vipul and inquired whether this witness knew him. The witness stated that on the 4th (of August), Vipul had come to the hospital and informed him that he had two case papers one for his brother and one for his sister-in-law both suffering from mental illness, and requested more tablets so he wouldn't have to visit again. This witness further deposed that Vipul had arrived between 9:00 and 9:15 in the morning. While the witness was speaking with Vipul, Nitinbhai Patni, a pharmacist at the

hospital who is entrusted with the task of dispensing medicines, approached him and asked whether he knew Vipul. The witness replied to Nitinbhai that he did not know him. Nitinbhai then informed him that he used to take tuition from Vipul's father when he was in the 10th standard and therefore knew Vipul. Nitinbhai then left for his work, and after that, Vipul also left. The witness stated that he was unaware whether Nitinbhai had handed over Lorazepam tablets to Vipulbhai Patni. However, the police later informed him that Nitinbhai had given Lorazepam tablets to Vipul thereafter upon inquiring with Nitinbhai, he was told that 60 tablets had been given on the basis of two case papers, and, on Vipul's request, further 100 tablets of Lorazepam had been handed over. This witness has also produced on record, vide Exhibit 92, the attendance sheet for July and August 2017, which shows that Nitinbhai was on duty. Additionally, the computer entry sheet prepared by Nitinbhai on 04.08.2017, showing the issuance of 2 mg Lorazepam tablets, has been produced by this witness as Exhibit 93.

In cross-examination, this witness admitted that he agrees with the view that a person suffering from mental illness should not be given more medicines than the prescribed quantity. He also admitted that he has the authority to take action against any employee who issues more medicines than prescribed. However, he admitted that

he did not take any action against Nitinbhai.

Vide Exhibit 94, PW-24, namely Dr. Sanjay Amratlal Solanki, Medical Officer serving at Ahmedabad Civil Hospital, has been examined. He deposed that the Mahuda Police, vide a written yaadi dated 08.08.2017, had sought information regarding the case details of the deceased Vickybhai Bharatbhai Patni and Twinkleben Vickybhai Patni, dated 04.08.2017. Based on this yaadi and upon examining the hospital computer system, one case in the name of Twinkle Naresh Patni, female, aged 21, resident of 40, Patni Sanjogh Society, Meghaninagar, Ahmedabad, bearing case paper No. AHD/17/00290920, was found to have been prepared at 11:52 a.m. by the Mental Department, Unit-1. Similarly, a case in the name of Vicky Patni was also found to have been prepared. Printouts of both case papers have been placed on record vide Exhibit 95. The above details were forwarded to the police through a covering letter marked as Exhibit 96, and the printouts were also forwarded to the police vide Exhibits 97 and 98..

In cross-examination, this witness admitted that he could not state exactly from which window the case papers at Exhibits 97 and 98 were issued. Thus, from the deposition of 3 witnesses, the fact that Vipul collected Lorazepam tablets from Ahmedabad Civil Hospital more specifically from Nitinbhai Patni, who is known to the

accused stands proved beyond reasonable doubt.

(3) Mixing of lorazepam tablets in the batter used for preparing fritters (bhajiya), which were cooked at a Lorry at the instance of the accused near Khatraj Cross Road.

12. To prove the fact that the accused had mixed Lorazepam tablets into the batter used for preparing bhajias (fritters), which were cooked at the instance of the accused near Khatraj Crossroads, the prosecution has examined PW-21, vide Exhibit 89, namely Udaisinh Melabhai Gohel. In his testimony, the witness states that he resides in the village of Khatraj and works at the lorry (food stall) of Ramanbhai Raojibhai Thakore, where he prepares fritters. Around one and a half years ago, the police had come to their lorry and had taken both the witness i.e. himself and his employer Ramanbhai with them. The police had arrived with one person. At that time, this witness did not say anything. The police informed them that the said person had cut his vein. Thereafter, the police left with that individual. The witness stated that he did not know who that person was. He further stated that the same person had previously come to the lorry with batter and had mixed something into it. When asked what he had mixed, the accused replied that it was a substance to make the fritters tastier. The witness then proceeded to prepare the fritters,

which the accused took with him. The accused had given Rs. 100 or 130 to the witness's employer for preparing the fritters. The witness identified the accused in court as the person for whom fritters were prepared. In cross-examination, nothing inconsistent regarding the preparation of fritters and the mixing of the substance has come on record. Thus, from the entire deposition of this witness, the fact that the accused had mixed something in the batter, after which the fritters were prepared by Udaisinh Gohel and taken away by the accused is proved beyond reasonable doubt.

(4) The accused contacting his mother using the mobile phone of Irfanmiya, a rickshaw driver at Khatraj Cross Road before going to his brothers residence at Alina.

13. As far as the allegation of the accused contacting his mother by using the phone of Irfanmiya, a rickshaw driver at Khatraj Cross Road, is concerned, the prosecution examined Irfanmiya as PW-14, vide Exhibit 73. From the testimony of this witness, it emerges that on the material aspect such as disclosing his own phone number or that of the accused Vipul, was not deposed before the court and therefore, to that extent, the witness was declared hostile. However, during cross-examination by the APP, he admitted that in his police statement, he had disclosed his mobile

number as 8160055478. He also admitted that the police had informed him that a call was made from his mobile number to mobile number 9157690317. In his examination-in-chief, he further stated that approximately two years ago, on the occasion of Bakri-Eid, the police had called him. However, due to the festival, he visited the police station the next day. He deposed that he drives a rickshaw on the route from Mehmabad-Khatraj Cross Road to Mahuda. At around 4:00 to 4:30 p.m., while he was standing at Khatraj Cross Road, his conductor, Vaseemhusain Shaikh, was also present with him. His phone was lying on the dashboard of the rickshaw. At that time, one person approached and requested to use his phone to call his mother. As the rickshaw was full and the conductor started the vehicle, due to the noise, the person went a short distance away to talk. After finishing the call, he returned, sat beside the witness. Later on reaching at village Arreri, two or three passengers disembarked and this witness asked Vipul to sit on the back side of the rikshaw. Upon arrival at Mahuda-Dakore Cross Road, the passenger paid Rs. 50, and after deducting the fare of Rs. 20, the witness returned Rs. 30. This witness identified the accused in court as the same person. In cross-examination by the defence, the witness admitted that he had identified the accused at the police station. However, apart from this, he was not taken anywhere else for a test identification parade. It is also relevant to note that the investigating agency has not produced on record the call

detail records (CDRs) of Irfanmiya or of Madhuben Bharatbhai Patani mother of the deceased and the accused along with the certificate under Section 65B of the Indian Evidence Act to prove the same in accordance with law. The mother of the accused was also examined but has not deposed in her testimony that accused had called her and had talk with his mother. However, PW 18 Vasimhussian Seikh deposed at Exh.82 also confirms the presence of accused at Khatraj cross roads where the accused tried to use mobile of this witness but as number "0" in his mobile was not working the accused handed over the mobile back to this witness and boarded the rikshaw of Irfan and asked Irfan to give him phone from which this witness telephoned some one. Thus, the fact that the accused used the mobile phone of witness Irfanmiya is proved however the accused contacted his mother is not proved beyond reasonable doubt.

(5) Discovery of weapons at the instance of accused.

14. To prove the discovery, the prosecution has examined Arvindbhai as PW-6, vide Exhibit 34, and Praveenbhai as PW-7, vide Exhibit 50. From the deposition of PW-6, Arvindbhai Ranchodbhai Patel, it is stated in his examination-in-chief that he was called by the police on 05.08.2017 to the residence of Maharbhai Harmanbhai

Patel at Shiv Shakti Society for the preparation of the panchnama of the scene of offence, which was shown by Vipulbhai Bharatbhai Patani, who was present at the location. Although the witness deposed in detail, he did not support the prosecution on some material aspects and was, therefore, declared hostile. Upon cross-examination by the APP, he supported the prosecution's case. In cross-examination by the defence, nothing emerged that would shake the veracity of his deposition. Similarly, PW-7, Pravinbhai Somabhai Patel, the other panch witness to the panchnama of the scene of offence, also deposed in detail in support of the prosecution. During his cross-examination, a question was put suggesting that neither the FSL officer nor PI Parmar had asked Vipul to narrate how the incident occurred. The witness responded by stating that Vipul had admitted the crime himself. The evidence shows that various articles were collected from the scene of offence and that two knives were recovered from a heap of dried tobacco waste in an open field near the plot where the incident occurred. However, it must be noted that the panchnama of the scene of offence (Exhibit 47) was prepared while the accused was neither formally arrested nor treated as a suspect but had shown the place of offence as an complainant. Therefore, the recovery of weapons cannot be said to have been made at the instance of the accused. The recovery appears to have occurred merely in the course of preparing the panchnama of the scene of offence. There is

no admissible evidence linking the recovery of the knives with any disclosure made by the accused under Section 27 of the Indian Evidence Act. Further, Exhibit 52 the panchnama of the physical condition of the complainant was recorded as the complainant was also injured and had bloodstained clothes. However, Exhibit 52 also does not fall within the scope of Section 27. Similarly, Exhibit 57 the panchnama of the physical condition of the accused (who was initially the complainant) records his admission of guilt, but that too does not qualify as a discovery within the meaning of Section 27. A reconstruction panchnama (Exhibit 24) was prepared on 09.08.2017 from 14:55 to 16:30 hours at the instance of the accused. However, no recovery or discovery was made during this process. PW-3, Ashishkumar R. Desai, also confirmed that nothing was recovered while preparing the reconstruction panchnama. Thus, although the weapons were found during preparation of the scene of offence panchnama, there is no evidence that they were discovered at the instance of the accused. The accused merely pointed out the scene of offence; there is no link showing that the weapons were recovered based on his disclosure.

15. It is also important to note that the panchnama of scene of offence Exh. 47 is prepared on 05.08.2017 between 9/45 to 12/00 hrs. Exh. 52 Panchnama of physical condition of complainant who was also injured is prepared

on 05.08.2017 between 14/30 to 15/30 hrs. Panchnama of physical condition of the accused while admitting his guilt is prepared on 06.08.2017 between 12/30 to 13/15 hrs while the recovery panchnama at Exh. 24 is prepared on 09.08.2017 between 14/55 to 16/30 hrs.

Thus, when the recovery is made not at the instance of the accused but merely while preparing the panchnama of scene of offence whereas, admission of the guilt before the police is made on 06.08.2017 and subsequently, preparing reconstruction panchnama on 09.08.2017 will not come to the aid of the prosecution so as to attract the provisions of section 27 of the Indian Evidence Act. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of an independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent panch witnesses would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the

panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer as well as the panch then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter. Thus, for bringing the case under Section 27 of the act, it is necessary for the prosecution to establish that based on the information given by the accused while he was in police custody, it led to the discovery of the fact which was distinctly within the knowledge of the maker of said statement. Thus, it is only so much of the information as relates distinctly to the fact thereby discovered would be admissible. We therefore, hold that prosecution has bitterly failed to prove discovery of weapon at the instance of the accused on the basis of the disclosure statement made by the accused falling within the four corner of Section 27 and that nobody knew about the same before that. Thus, there is a missing link in the chain of circumstances, the benefit of which must go to the accused.

In the case of Aghnoo Nagesia v. State of Bihar reported in (1966) 1 SCR 134 : AIR 1966 SC 119 Honourable Supreme Court has held in paragraph 13 and 14 as follows:

“13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but

also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact i.e. some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

14. If proof of the confession is excluded by any provision of law such as Section 24, Section 25 and Section

26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as Section 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.”

Thus, applying the aforesaid principles to the case on hand as noted above when there is admission in the nature of confession before the police while in police custody which is in admissible and as noted above the weapons were already recovered/discovered even before the admission and there was no recovery/discivery of weapons during reconstruction panchanama under the circumstances the prosecution has failed to prove its case in accordance with law. Honourable Supreme Court in Jaikam Khan v. State of U.P reported in (2021) 13 SCC 716 has thus observed: –

“One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place

of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries.”

In the case on hand the recoveries made during drawing panchanam of place of offence at Exh. 47 and as deposed by the panch namely Arvindbhai Vide Exh. 34 (PW-6) it is evident that recovery of knives are made from the open filed of Jayantibhai Poonambhai Patel and such the place is accessible to one and all. Thus, no reliance can be placed on such recoveries.

(6) Motive

16. As far as motive is concerned, there are allegations from both the sides. None of the parties, namely the family of the deceased or the accused (original complainant), nor the maternal side of the deceased, were happy with the marriage and there are allegations from both the sides. Thus, when two views are possible, the view benefiting the accused ought to have been adopted. The investigating officer has deposed vide Exb.136 as PW 29 and has admitted in his cross examination that the maternal side of Twinkle were not happy with the marriage with Vicky however on his own volition states that families from both

the side were not happy. He has also admitted that cross applications against each other were also preferred in police station. Thus, the motive is also not proved beyond reasonable doubt. As held by the Honourable Supreme Court in the case of Pannayar v/s. State of T. Nadu reported in AIR 2010 SUPREME COURT 85 the absence of motive in a case which depended on circumstantial evidence is more favourable to the defence. Thus, applying the same principle the benefit of this third missing link in the chain of circumstances should go to the accused.

17. Bloodstained weapons would be of no consequence when the recovery or discovery/discovery at the instance of the accused is not proved. It is the duty of the prosecution to prove each link satisfactorily by cogent admissible evidence and such each link collectively should point the finger of guilt towards the accused only, which in the present case as stated herein above is missing. It is also required to be noted that it is the case of the accused that five masked persons had attacked the complainant/accused as well as the deceased brother and deceased sister-in-law. The factum of the accused being found in a bathroom which was closed from outside, and the factum of the accused having closed himself by using a unique technique as demonstrated by him in the reconstruction/demonstration panchnama, would be barred by law, more particularly in view of provisions of section 25 and 26 of the Indian

Evidence Act. It is also required to be noted that the chemical analysis report with regard to any poison etc. being administered by accused to both the deceased, which is placed on record vide Exh. 151, is negative. This aspect also goes in favour of the accused. The mother of the deceased who also happens to be the mother of accused has not supported the case of the prosecution; witnesses of the in-laws of the deceased are hearsay evidence and have no personal knowledge nor are they eyewitness more particularly, PW 19, Geetaben, mother of the deceased, PW 20, Akshaybhai, brother of the deceased Twinkle, who had admitted that Twinkle had also given an application before the Meghaninagar police station against number of in-laws on the maternal side, which also proves that the maternal side of the deceased Twinkle were also at loggerheads with Twinkle as well as Vicky. In cross examination of witness Kisan Bharatbhai Patni (Brother of deceased as well as accused) PW 17 vide Exh.79 has admitted that his family members were not agreeable to the divorce which took place between Vicky and Twinkle on 23.05.2016. This witness further admits that again on 14.12.2016 Vicky and Twinkle had eloped. He further admits that the maternal side of Twinkle had grudge with Vicky and Twinkle as they again eloped. This aspect also goes in favour of the accused.

18. As far as treatment given to the accused is concerned, the prosecution has examined Dr. Harshilaben Sukhlal Gir,

as PW 12 vide Exh. 66, who treated him on 05.08.2017 at about 9:15 am. This witness has admitted in cross-examination that the stich taken on the wound of the accused is possible with a sword. As stated herein above, when two views are possible, the view benefiting the accused must be adopted. The accused, original complainant himself, has lodged the complaint interalia contending that he was also injured with a sword. The said aspect gets support from the deposition of this witness.

19. While recording the further statement of the accused under Section 313 of the CRPC, the accused has given four pages written submissions. The crux in nutshell is that the police has failed to search the real culprit and the accused has wrongly been implicated. The sniffer dog stopped near Mahudha Dakor road and could not find the real culprit. That the in-laws of the deceased Vicky were not happy with the marriage and were having a grudge against the couple. That Twinkle had also given an application before the Meghaninagar police station naming a number of persons from her parental side.

Thus, at this juncture it would be apt to refer to the case of **Abdul Razzak Murtuza Dafadar Vs. State of Maharashtra** reported in AIR 1970 SC 283, where the Hon'ble Supreme Court has observed as follows:-

“It was argued that the tracker dog’s evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the actions of bacilli. The comparison does not, however, appear to be sound because the behavior of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. But dogs are intelligent animals with many thought process similar to the thought processes of human beings and wherever you have thought processes there is always the risk of error, deception and even self- deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight.”

Thus, even as per the aforesaid observations, the evidence of sniffer dog/dog tracking is of no much weightage however, when the sniffer dog could not go beyond Mahudha Dakor road, this aspect would also lean in favour of the accused. It is settled law that suspicion, however

strong it may be, cannot be a ground to convict since it cannot take place of proof beyond reasonable doubt. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not. The law does not contemplate gathering the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. If, upon the collation and examination of all presented evidence, a cogent picture emerges that establishes the accused's involvement in committing the crime beyond a reasonable doubt, the court shall deem the accused criminally liable. In absence of proof beyond reasonable doubt the benefit must enure to the accused.

20. Thus, after re-appreciation of both oral as well as documentary evidence, there are missing links in the chain of circumstances namely:

(i) The factum of accused having called his mother from the mobile of Irfanmiya is not proved.

(ii) The factum of recovery/discovery at the instance of the accused is not proved.

(iii) Motive is not proved

Over and above the links to complete the chain are also missing namely the fact of Negative FSL report with regards to contents of Lorazepam from the viscera, parents of both the deceased (parental and maternal side) were not happy with the marriage of deceased Vicky and deceased Twinkle and thus motive to the accused alone cannot be attributed. The Investigating officer has also admitted in his cross examination that he has not found the thread alleged to have used by the accused for closing the stopper outside the bathroom while he was inside the bathroom by using a unique technique (as admitted by the accused and based on such admission prepared reconstruction/demonstration Panchanama). Thus, the theory of prosecution that he had committed crime and had locked inside the room by a trick using thread is also not proved. The possibility of injury to the accused by sword by Dr. Harshilaben Sukhlal Gir who treated the accused is admitted in cross examination thus, the theory of complainant sustaining injury by a sword by 5 unknown masked assailants cannot be ruled out. It is also required to be noted that the Investigating Officer PW 29 at Exh.126 namely Bharatsingh Ghanshyamsingh Parmar has

admitted in cross examination that FSL officer has not taken any finger print or foot prints from the place of offence. He also admits that he had taken help of Local Crime Branch (LCB) for investigation of the offence and on the basis of interrogation by LCB the present Investigation Officer had proceeded with further investigation but has not placed on record the details of such interrogation and that after such interrogation Vipuls was shown as accused in the present case. This aspect reflects the slipshod manner of investigation carried out in the present case.

It is important to note that the cardinal principles in the administration of criminal justice in cases where heavy reliance is placed on circumstantial evidence, is that where two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to the accused must be adopted as held in the case of *Kali Ram v. State of H.P.* reported in (1973) 2 SCC 808.

21. In the present case, we find neither the chain of circumstances to have been completely established nor the guilt of the accused alone, having committed the crime to be proven, much less beyond reasonable doubt. The essential conditions that must be fulfilled before an accused can be convicted in a case revolving around circumstantial evidence in the landmark case of *Sharad Birdhichand Sarda* (Supra) which are lacking in the case on hand.

22. In view of the afore-stated facts and circumstances and for the reasons stated herein above, Criminal Confirmation Case No. 1/2022 is dismissed and Criminal Appeal No. 588/2022 preferred by the accused is allowed. The Appellant-Accused is ordered to be acquitted of all charges framed against him and be released forthwith if not required in any other case. Record and proceedings to be sent back to the concerned Trial Court forthwith.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

MMP