



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (FOR ENHANCEMENT) NO. 582 of 2014

With

R/CRIMINAL APPEAL NO. 527 of 2014

With

R/CRIMINAL APPEAL NO. 907 of 2014

With

R/CRIMINAL APPEAL NO. 1051 of 2014

With

R/CRIMINAL APPEAL NO. 1216 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

and

HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No
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RANJITBHAI MANSINGBHAI ZADA

Versus

HARIBHAI THAKARSINH & ORS.

Appearance:

MR SHIRISH R PATEL(5605) for the Appellant(s) no. 1

HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) no. 1

MR KAIVAN K PATEL(6338) for the Opponent(s)/Respondent(s) no. 1

MR PARTH S TOLIA(5617) for the Opponent(s)/Respondent(s) no. 2

MR MANAN MAHETA, APP for the Opponent(s)/Respondent(s) no. 3

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

and

HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 19/08/2026

COMMON JUDGMENT

(PER : HONOURABLE MS. JUSTICE GITA GOPI)



1. Criminal Appeal no.582 of 2014 is filed by the original complainant against two accused for enhancement of sentence who came to be convicted on 20.2.2014 by learned 3rd Ad-hoc Additional Sessions Judge, Ahmedabad Rural, Ahmedabad in Sessions Case no.14 of 2010. The trial was against 11 accused under Sections 147, 148, 149, 302, 307, 324, 323, 504, 506(2), 337 of the IPC and Section 135 of the Gujarat Police Act. The Sessions Court convicted accused no.1-Haribhai Thakarsibhai and accused no.2-Vasantben Haribhai Babar under Section 304 Part I and ordered accused no.1 to undergo 10 years rigorous imprisonment and fine of Rs.5,000/-, in failure to pay the fine amount to undergo six months rigorous imprisonment. The conviction under Section 326 was for 5 years rigorous imprisonment with the fine of Rs.3,500/- with default stipulation to undergo 3 months rigorous imprisonment in failure to pay the fine, while for offence under Section 324, the sentence awarded was 2 years rigorous imprisonment and a fine of Rs.1500/-, in default of payment of fine to undergo one month rigorous imprisonment.
2. Accused no.2-Vasantben Haribhai Babar who was convicted



under Part I of Section 304 was sentenced to undergo 7 years rigorous imprisonment with fine of Rs.5,000/- and in default of payment of fine to undergo 6 months rigorous imprisonment. For offence under Section 326, the sentence ordered was 5 years rigorous imprisonment and fine of Rs.3,500/- and in failure of payment of fine to undergo 3 months rigorous imprisonment. While for the offence under Section 324, sentence awarded was 2 years rigorous imprisonment with the fine of Rs.1,500/- and in non-payment of fine to undergo one month rigorous imprisonment.

3. The sentence was ordered to run concurrently. From the fine amount, Rs.10,000/- was ordered to be paid to the widow of deceased Rupsangbhai and Rs.5,000/- to be paid to injured Rameshbhai Bhopabhai as compensation as per Section 357(1) of Cr.P.C. The endorsement shows that on 26.2.2014, fine amount of Rs.20,000/- was paid.
4. The jail remarks has been produced by learned APP and according to the same, accused no.1 Haribhai has already undergone the sentence and he came to be released on 27.4.2018, while co-accused Vasantben, jail remarks



suggests that she has remained in jail to suffer the sentence for about 9 months and 2 days and her sentence came to be suspended and she was released on bail on 11.8.2014.

5. Criminal Appeal no.527 of 2014 was preferred by both the accused challenging the judgment of conviction and sentence.
6. Criminal Appeal no.907 of 2014 is by the State against both the accused challenging the acquittal under Section 302 of IPC.
7. Criminal Appeal no.1216 of 2014 was filed by the original complainant Ranjitbhai Mansingbhai against the acquittal of rest of the accused nos.3 to 11.
8. While Criminal Appeal no.1051 of 2014 is by the State against acquittal of accused nos.2, 3 and 6 of Sessions Case no.114 of 2010.
9. The facts of the case, as has been noted in Sessions Case no.14 of 2010 was to the effect that the deceased had scolded accused no.1 Haribhai saying that he had dashed



his tempo with the rickshaw of his brother Rameshbhai and had rebuked him that he ought to have been mindful while driving his tempo. Thus, as per the prosecution case Haribhai and his brothers got excited and started abusing in vile language and therefore, deceased Rupabhai asked them not to utter abuses, at that time, the wife of Haribhai Babar-accused no.1, Vasantben-accused no.2, came with the spade in her hand and gave a blow on the head of the deceased Rupabhai and therefore, he collapsed and at that time, accused no.1 Haribhai with a hoe in his hand gave a blow on the head and therefore, the deceased started bleeding.

10. The complaint was given by the nephew of the deceased Ranjit Mansinhbhai. During the trial the Sessions Judge examined about 13 witnesses and had relied upon documentary evidence.
11. Heard learned advocate Mr. Parth Tolia for the appellants-convict nos.1 and 2, learned advocate Mr. Shirish Patel for the original complainant Ranjit Mansingbhai and Mr. Manan Mehta, learned APP for the State in Criminal Appeal nos.527 of 2014, 582 of 2014 and 907 of 2014. Mr. Y.M.



Thakore, learned advocate is representing the convict Vasantben Haribhai Babar as advocate from the panel of High Court Legal Services Committee in Criminal Appeal no.907 of 2014, the appeal filed by the State.

12. Mr. Tolia has submitted that the learned Judge has not believed the case against all the remaining accused nos.3 to 11 during the trial. Mr. Tolia has submitted that the genesis of the incident has been suppressed and those facts have been reflected in the decision of the Sessions Judge in Paragraph 28 where actual fact was noted that the daughter of the deceased was having love affair with the son of the accused no.1 and 2. Mr. Tolia submitted that the complainant, deceased and the witnesses had come at the house of the accused no.1 which fact has been believed by the learned Trial Court Judge. The said fact gets disclosed during the investigation and it has also been disclosed that all these witnesses had weapons in their hand. Mr. Tolia submitted that the said facts get fortified by the testimony of the investigating officer. Mr. Tolia thus submitted that the circumstances as had come on record proved that the witnesses, complainant and the deceased all had come to



assault accused side and in self-defence, accused nos.1 and 2 had given the blow by bringing weapons from their house, which had caused death. Mr. Tolia submitted that the weapons as have been found in the hands of the accused nos. 1 and 2 was hoe and spade, which would be instrument found in the house of almost all the agriculturalists. Mr. Tolia has submitted that no case was found against accused nos.3 to 11. Mr. Tolia said that it seems all are residing in the neighborhood and being relatives had been dragged in the matter. Thus, it is a case of false implication with the suppression of the genesis of the case. Mr. Tolia further submitted that the witness Ramesh had referred in his history about the assault by sword, knife and pipe, while in his history before the doctor, no such fact of any injury by hoe or spade was given before the doctor. Referring to the testimony of the doctor who had conducted the postmortem, PW-1, Dr. Paresh Lakhania, Mr. Tolia submitted that the injury was recorded as chop wound on head at occipital region above 4.5x1x bone deep with associated skull bone fracture and chop wound on head on right parietal region about 4x1x bone deep associated fracture of skull bone which as



opined could be possible only with the weapon as hoe, and the doctor had very specifically denied of any such injury with the spade. Mr. Tolia submitted that the appellant no.1 Haribhai had already undergone the sentence where the allegation was of injury by hoe, while the doctor has not corroborated the injury on the head with the spade, which was attributed to the appellant Vasantben.

13. Mr. Manan Mehta, learned APP submitted that the learned Trial Court Judge has recorded the statement of the evidence of the witnesses, postmortem report as well as the injuries and the injured witnesses whose evidence has been corroborated by the medical certificate to believe the case of assault to the injured witnesses Rameshbhai, Ranjit Mansingbhai, Ratanben Khodabhai, Sanjay Khodabhai. Learned APP submitted that the doctor has affirmed the injuries by way of testimony and further submitted that Jagubhai, aged about 14 years had also received injured in the assault and hence, submitted that the evidence though was recorded and had been proved by the witnesses, the learned Trial Court Judge has acquitted the accused nos.3 to 11 and the sentence as awarded to accused no.1 and 2



is not consistent with the offence as proved and thus, urged for life sentence of both the accused by convicting them under Section 302 of IPC.

14. Mr. Shirish Patel, learned advocate for the original complainant also has supported the argument of learned APP submitting that the learned Trial Court Judge has wrongly acquitted accused nos.1 and 2 for the offence under Section 302 of IPC, where the evidence has been led by all the witnesses to prove the case of murder.
15. Mr. Yogendra Thakore, learned advocate for Vasantben submitted that the case of use of spade to cause injury to the deceased has not been proved. No such history has been given by any such injured witnesses before the treating doctor and the witness injured Ramesh before the doctor had given the history of assault by Hareshbhai, Mahipatbhai and brother of Hareshbhai by sword, knife and pipe. Mr. Thakore has submitted that there is no reference of spade and that fact also gets corroborated by the evidence of PW1-Dr. Paresh Lakhania who in the evidence in chief has confirmed that the injury to the deceased could not be caused by spade and thus, submitted that the



conviction would be bad in the eyes of law and when all the other accused have been acquitted, the provision under Section 149 of IPC could not be invoked against Vasantben who was mere spectator at the place of incident.

16. Having considered the submissions raised by all the respective advocates on record, the appeal as referred is concentrating the conviction which has been challenged by the accused nos.1 and 2, while the State has moved the appeal considering the sentence and the conviction insufficient, at the same time, the original complainant has also challenged the judgment on the ground that the learned Judge has failed to convict the accused nos.1 and 2 appropriately in accordance with the evidence on record and has erred in acquitting the rest of the accused nos.3 to 11. The State has also challenged the acquittal of accused no.2, 3, 6 in Sessions Case no.114 of 2010.
17. Both the cases had been tried by the same learned Judge on the basis of the analysis of the evidence, it could be concluded and as noted by the learned Sessions Judge in Sessions Case no.14 of 2010 that the complainant, witnesses and the deceased were the assaulters and the



accused no.1 and 2 had used the weapon in self-defence. The learned Trial Court Judge has not found the evidence of the injured witnesses reliable while had concluded that accused nos.1 and 2 had not caused any injury with the weapons to be considered as dangerous to injured Rameshbhai and complainant Ranjitbhai, but had observed that because of the quarrel and since the deceased and his family members had come with the weapons, during the altercation, accused nos.1 and 2 had brought hoe and spade from their house, which would be the instrument available ordinarily in the house of all the villagers and for their self-defence, they have given the counter blows to the deceased and injured Rameshbhai and the complainant Ranjitbhai and thus, had found the injury so caused as being proved.

18. The learned Judge had considered the evidence of injured Rameshbhai but had not believed him for any conviction under Section 307 of IPC, however, believed the witnesses for the conviction under Section 326 of IPC. Categorically analyzing the evidence of the witnesses, the learned Judge came to the conclusion that the offence under Sections



307, 324, 323, 337 of IPC were not proved against accused nos.3 to 11.

19. The evidence of Dr. Bharatbhai Chavda who had conducted the postmortem of the deceased has referred to two injuries suffered by the deceased as recorded in column no. 17 of the postmortem note, who has very categorically stated that the injuries as referred were not possible by spade. The appellant Vasantben has been attributed with the instrument spade and if the evidence of injured witnesses corroborated by the history given to the treating doctors, and the evidence of doctor PW1 who had conducted the postmortem, if read together, then the injury with the spade does not get proved. The injured Rameshbhai refers to sword, knife, and pipe, the injured Ranjitbhai has referred to pipe, injured Ratanben makes reference of stick, injured Sanjay has given the history of stick and pipe, and injured juvenile, aged about 14 has given the history of injuries suffered with stick. None of the witnesses have made reference of spade in the history before the doctor.

20. In view of this evidence as analyzed, there was no case



against Vasantben and thus, Criminal Appeal no. 527 of 2014 qua Vasantben is **allowed**. The judgment and order of conviction and sentence dated 20.2.2014 passed by the learned 3rd Ad-hoc Additional Sessions Judge, Ahmedabad Rural, Ahmedabad in Sessions Case no.14 of 2010 qua accused-Vasantben Haribhai Babar is set aside. She is ordered to be acquitted of all the charges leveled against her. Bail bond, if any, stands discharged.

21. The evidence has been recorded and analyzed by the learned Sessions Judge. The learned Sessions Judge had come to the conclusion that the complainant, deceased and the injured had actually come to the house of the accused nos.1 and 2 and they were proved to be the aggressors. The learned Judge has observed that accused nos.1 and 2 were defending themselves against the aggressors and in course of commotion, the injury has been observed to have been caused on the deceased with the hoe and when the evidence as shown is that the injury was caused for self-defence and when the aggressors were the complainant, deceased and the witnesses, no intention would be there of accused no. 1 for causing any death of the deceased and



hence, the conviction which has followed under Section 304 Part II is appropriate. However, since the appellant has undergone the sentence and the advocate has not raised any dispute and the conviction under Section 304 Part 1, Section 326 and 324 of IPC has been concurrent and appellant Haribhai undergoing sentence has been released.

22. In view of the analysis of the evidence and the observation of the learned Sessions Judge, Criminal Appeal no.527 of 2014 is allowed qua appellant no.2 and the conviction is set aside upholding the conviction and sentence of appellant no.1. While Criminal Appeal no. 582 of 2014 of the complainant and Criminal Appeal no. 907 of 2014 by the State for conviction of the appellant-accused no.1 and 2 under Section 302 IPC are **dismissed**.

23. In Criminal Appeal no.1216 of 2014, the original complainant has made a prayer for conviction of acquitted accused nos.3 to 11, as has been observed by referring to the facts in connection with Criminal Appeal no.527 of 2014, the genesis of the incident has been suppressed. The cause of the incident as has been noted was because of love affair of the deceased daughter with the accused no.1



son. The injury caused to the deceased was attributed to the accused Ranjit who had already undergone the sentence. The injured Ramesh had alleged the assault by Hareshbhai Mahipatbhai and his two sons on Hareshbhai and two brothers of Hareshbhai. The assault was stated to be with sword, knife, and pipe but the injury which has been recorded was small abrasion and one CLW. The witnesses who were examined was the complainant Ranjitbhai Mansingh and he had referred to the incident with regard to the issue of tempo dashed with the rickshaw and on incitement, the specific allegation was that accused no. 1 and his wife had caused injury to the deceased. The whole of the evidence which came to be recorded was only of the tussle which had occurred with the deceased and the accused nos.1 and 2 and according to the witness Sanjay, he had reached the place only after having known that his uncle Rupsangbhai and Rameshbhai were injured but he could not identify the person who had given the assault. Rameshbhai who was examined as injured witnesses has denied of his Chhakdo being dashed to Haribhai and has also denied of any quarrel and according to him, since there was dash with his vehicle, he got flung out. The



witness who was injured has not supported his own case. The witness has not even supported the history before the doctor. Ranjitbhai stated that he was assaulted by Harishbhai and Batukbhai with the blow of hoe by Harishbhai and Batukbhai had given pipe blow on his left hand. The injured was aged about 16 years. Ranjitbhai was examined as a complainant. His case was with regard to vehicular dash between tempo and rickshaw. The evidence was given with regard to the injury caused by accused nos.1 and 2 to the deceased. The witness Rameshbhai had reached the place only after hearing about the injuries to the deceased and the injuries to his father Rameshbhai. The learned Judge has not believed the witnesses in view of the discrepancy in the description of the weapons alleged to be held by the accused. The discrepancy and the contradiction in the statement of the witnesses and having found the suppression of the genesis of the incident, the learned Judge has not believed the witnesses and had come to the conclusion that the accused nos.1 and 2 had made a counter attack on the ground that the witnesses and the complainant had assaulted. The specific role of all the accused has not been proved by the witnesses.



24. The challenge is given to the acquittal.
25. In the case of *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 it was held as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear



in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

26. The other accused were arrayed by invoking Section 149 IPC. In the case of *Waman v. State of Maharashtra, (2011) 7 SCC 295*, it was held as under:

“40. ...Section 149 creates a specific offence and deals with punishment of the offence. The only thing is that whenever the court convicts any person or persons of any offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence disclosed must show not only the nature of the common object but also that the object was unlawful. In order to attract Section 149 it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly. It must be within the knowledge of the other members as one likely to be committed in prosecution of



common object. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same under Section 149."

27. In the case of *Dani Singh v. State of Bihar*, (2004) 13 SCC 203 : 2005 SCC (Cri) 127 : 2004 SCC OnLine SC 316 at page 211, it has been observed as under:-

"11. The emphasis in Section 149 IPC is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word



"object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

12. "Common object" is different from a



"common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 149, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one, comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot *eo instanti*.



13. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word "knew" used in the second branch of the section implies something more than a



possibility and it cannot be made to bear the sense of "might have been known". Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object, would be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See *Chikkarange Gowda v. State of Mysore* [AIR 1956 SC 731 : 1956 Cri LJ 1365]."

28. The common object of the rest of the acquitted accused no.3 to 11 could not be proved. The assembly was not found to be unlawful since the complainant, deceased and the witnesses were found to be aggressors and no specific



injuries by rest could not be proved and if the case of self defence is believed then the injuries of the witnesses are minor hence no case can be proved of any intention of accused no.3 to 11.

29. Criminal Appeal no.1051 of 2014 is filed by the State against three out of 9 accused who have been acquitted in Sessions Case no.14 of 2010 by the learned 3rd Ad-hoc Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad, where the trial against the accused was under Sections 143, 147, 148, 323, 324, 337, 504 of the IPC and Section 135 of the Gujarat Police Act. The complainant was Haribhai. It was the case of the complainant that on the suspicion of daughter of Rupabhai having a love affair with the son of the complainant, after forming an unlawful assembly, they had assaulted them with deadly weapons and had come to the house of the complainant and had caused injuries by pelting stones and by throwing chilly powder. It was the case that on 13.8.2008 at about one in the afternoon, all the accused had come near the house of the complainant Haribhai and on the public road armed with iron pipes, Dharia, sword, stick, Bhala and chilly



powder and by abusing them in public, had even thrown chilly powder, while the rest of the accused had assaulted and given incessant blows with the deadly weapons and had caused injuries to witnesses. Ranjitbhai had caused injury on the head of witness Vasantben with the hind side of the sickle and Rameshbhai had injured Maheshbhai at the back with Bhala, while the right hand thumb of Jayeshbhai was injured. The learned Judge has observed that one of the persons from the accused side died during the incident and the complainant refers to injuries to the witnesses. However, the complainant side could not satisfactorily explain the facts and had created doubts on the case. Learned Judge had also referred to the evidence of the witnesses though stated to have been injured had not proved the injury, by way of producing blood stained clothes. The place of offence was found to be proved but the fact of throwing chilly powder could not be proved by seizure of any material and the learned Trial Court Judge thus came to the conclusion that though the unlawful assembly would be considered to be proved, the witnesses could not prove the fact that the members of the unlawful assembly had caused any injuries. The learned Judge has



found the case of assault on the basis of the allegation of love affair, but the defence raised all the disputes with regard to vehicular dash of Chhakdo rickshaw with tempo was not believed by the Judge the reason to gather at the house of the complainant could not be proved, the learned Judge thus had not found any case against the accused to consider the criminal intention of the unlawful assembly and thus, had acquitted them.

30. Mr. Manan Mehta, learned APP submitted that the case was of the accused approaching the house of the complainant, which is an undisputed fact. The panchnama was drawn to prove the place, and the evidence of the complainant and the witnesses had proved that the accused had come with the weapons in their hands with the very intention to cause injury and the evidence of Vasantben proved the injury on the head and this fact got proved by Dr. Pandey through his evidence and when the presence of the accused is not doubtful, the case was required to be believed and the punishment ought to have been followed.
31. Countering the arguments, learned advocate Mr. Shirish Patel submitted that the injured Vasantben had not given



any history before Dr. Pandey with regard to her injury. She had stated all the injuries sustained by stout stick, however, she could not name the person who caused the injury and in absence of the details and when the allegations of pelting stones could not be proved, the mere observation of all the accused having come there with the weapon itself would not prove the intention, where according to learned advocate Mr. Patel, such weapons are agriculture instruments which would be with every agriculturist in their hand and thus, submitted that the learned Judge has rightly not believed the complainant and the witnesses.

32. Having heard both the sides, it is required to be appreciated that the complaint which had been given by Haribhai was with the fact of accused having approached the house and on the public road armed with iron pipes, sickle, sword, stick, Bhala were abusing the complainant and his wife and by pelting stones and throwing chilly powder had caused the assault. Ranjitbhai had injured witness Vasantben and accused Rameshbhai had caused injury to witness Maheshbhai could not be proved by way of



history before the doctor and the facts of commotion from both the sides has been recorded and when no injury has been proved having been caused by the accused to the witnesses, the acquittal is just and proper.

33. In view of the same, we do not find any reason to interfere with the judgment. Criminal Appeal nos. 1051 of 2014 and 1216 of 2014 are **dismissed**. Registry is directed to send the record and proceedings, if any, back to the concerned Trial Court forthwith.

(GITA GOPI,J)

(L. S. PIRZADA, J)

Maulik