IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 153 of 2020

With
R/CRIMINAL APPEAL NO. 2264 of 2024
With
CRIMINAL MISC.APPLICATION (REGULAR BAIL) NO. 6 of 2025
In R/CRIMINAL APPEAL NO. 2264 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
	Yes	

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SUNIL @ PAHELWAN S/O LAXMAN MOHAN PATIL
Versus
STATE OF GUJARAT

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Appearance:
MR KASHYAP R JOSHI(2133) for the Appellant(s) No. 1 in CRA 153 of 2020
MS AKSHITABA SOLANKI for the Appellant in CRA 2264 of 2024
MR RONAK RAVAL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 23/12/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Since, the facts of the case and issue involved in the captioned appeals are identical and arise out of same judgment, the appeals are taken up together and are being disposed of by this common judgment.

2. Vide judgment and order dated 24.10.2019, passed in Sessions

Case No.256 of 2010 and Sessions Case No.191 of 2011, the Additional Sessions Judge at Surat, convicted and sentenced the appellants accused A6 - Kailash Navghare (Sessions Case No.256 of 2010) and A7 - Sunil @ Pahelwan Patil (Sessions Case No.191 of 2011) in the manner stated hereinunder:

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
302 r/w 34 of IPC	Life Imprisonment	Rs. 10,000/-	6 months
394 r/w 34 of IPC	RI for 10 years	Rs. 2,000/-	3 months
397 r/w 34 of IPC	7 years	-	-
327 r/w 34 of IPC	7 years	Rs. 2,000/-	3 months
452 r/w 34 of IPC	3 years	Rs. 1,000/-	2 months
342 of IPC	-	Rs. 500/-	1 month

The sentences referred above, were being ordered to run concurrently.

Hence, these appeals.

3. Case of the prosecution:

The facts leading to the present appeals are as follows:

3.1 The seven accused including the present appellants were tried and prosecuted for the offence of criminal conspiracy, robbery, robbery with murder, house trespass and wrongful confinement. Out of seven

accused, the learned trial court, acquitted five accused of all charges and those accused i.e. A6 and accused Sunil @ Pahelwan Patil who had actively participated in the offence of robbery and murder, have been convicted and sentenced. The date and time of offence was 31.07.2010 between 1:15 to 1:30 noon. The incident took place in the residential area of Surat. On the fourth floor of Hatim Manzil, the deceased Fizabai was residing with her son Moish Daginawala (PW.1). The A1 – Irshadbi Saiyed and A2 – Shabnam Gulamali before the incident, had worked at the house of the deceased as maid and they were aware about the fact that during the noon period, the deceased being an old aged lady, resides alone and there was a substantial cash and ornaments were being kept in the house. The A1 was under heavy debt and in order to get rid of this debt, they planned to rob the deceased and accordingly, the A3 – Saeedabi and A4 – Nishar Shaikh were informed about the conspiracy and they had joined hands with the A1 and A2 and they decided that, whatever amount and things received, will be shared equally and it would also helpful in reducing the debt. In order to execute the object of the criminal conspiracy, the A5 – Deepak Patil was taken into confidence and with his assistance, the A6 – Kailash and A7 – Sunil Patil were being contacted and after a meeting with them held at Sahara Darwaja, Surat, the modus operandi for execution of common object of the conspiracy, being discussed at length and the accused no.A6 and A7 were shown the house of the complainant PW.1 by the A3. In nutshell, all the accused conspired and agreed to do an offence of robbery and as per the plan, appellants-accused - A6 and A7 had to enter into house and execute the plan of

robbery.

3.2 It is further case of the prosecution that, the A6 and A7 – present appellants had managed to enter into the house and in the noon hours, the complainant (PW.1) was in market and deceased was alone. The deceased lady Fizabai on raising alarm, the accused tied her both legs and hands with clothes and plastic strips and killed her by strangulating the deceased to death. In the meantime, the complainant (PW.1) who was having extra key of the house and after entering into the flat, he was caught hold by the appellants– accused and they dragged him and asked him to give them the cash, ornaments, cheque book and ATM Card. The accused beaten him up and under the fear of death, the PW.1 agreed to show the drawer where the cash amount of Rs.35,000/- being kept by him and same had been taken away by the accused and again, with the blunt side of the knife, he was injured on his eye region by the accused and when accused realized that, nothing being extracted from the complainant, they informed that, his mother was in another room and they tied her and she will untied you and in that pretext, the accused fled away.

3.3 It is further case of the prosecution that, the accused looted a cash amount of Rs.35,000/- and Rs.1,200/- from the pocket of the complainant along with one Nokia mobile phone and four gold bangles amounting to Rs.89,200/- from the deceased mother.

3.4 It is further case of the prosecution that, after the accused ran away from the spot, the complainant (PW.1) managed to contact his

neighbour Idrishbhai by calling him from the window of the house and accordingly, Idrishbhai got key of the flat from one Hamid Shaikh where the extra key was used to kept by the complainant. The door was opened by the neighbours. The deceased mother was found in unconscious state of mind and was having fatal injuries over her neck and other parts of the body. The relatives upon receiving the information, came at the house and accordingly, the deceased was taken to Burhani Hospital, Surat. The complainant (PW.1) due to sustaining of injuries and mental shock which he had suffered, was remained at the home. The police was informed by one Taiyab Chaniwala and accordingly, at about 5 to 5:30 p.m., the police officials of Salabatpura Police Station came at the scene of occurrence. The complainant (PW.1) narrated the entire incident including the description of the accused to the police and his statement in the form of FIR being registered with Salabatpura Police Station.

3.5 During the course of investigation, the I.O. (PW.29) recorded the statements of the witnesses, sent the dead body for the post-mortem, drew the panchnama of scene of offence and collected the necessary samples for forensic analysis, arrested the accused on the basis of their earlier association with the family of the deceased and lastly, the appellants-accused no.A6 and A7 who had executed the entire common object of conspiracy, were being arrested. The I.O. upon due investigation of the case, at the first instance, filed a chargesheet against 6 accused as the accused no.7 was absconding and later on, on the basis of supplementary chargesheet, the case of A7 being committed to the court of sessions.

4. The Sessions Court framed charge against both the appellants-accused and their statements were recorded wherein they did not admit the charge and claim to be tried.

5. In order to prove the charge, the prosecution has examined as many as 29 witnesses and exhibited 44 documents:

Oral evidence -29

PW 1 – Exh.54	Moish Dauji Daginawala
PW 2 – Exh.99	Ashwinbhai Thakorbhai Shah
PW 3 – Exh.106	Anilbhai Sukhlal Birade
PW 4 – Exh.108	Jagdish Jawarhlal Jeswal
PW 5 – Exh.112	Jayvandan Pratapsingh Rajput
PW 6 – Exh.115	Ramulal Maganlal Khatri
PW 7 – Exh.122	Ranjitsingh Pratapsingh Jadav
PW 8 – Exh.142	Harisingh Shambhai Chauhan
PW 9 – Exh.151	Jainil Pratapsingh Parmar
PW 10 – Exh.166	Dr. Nishaben Vinodbhai Chandra
PW 11 – Exh.171	Majid Gafar Shaikh
PW 12 – Exh.180	Idrishbhai Shabirbhai Kallavar
PW 13 – Exh.181	Hamid Yahyabhai Shaikh
PW 14 – Exh.183	Yusufbhai Shabirbhai
PW 15 – Exh.186	Shakeraben Shakh
PW 16 – Exh.187	Mahendrabhai Dalsukhbhai Bhagat
PW 17 – Exh.192	Saiyad Sajidali Goharali
PW 18 – Exh.193	Sultanabhi Nasirali Shaiyad
PW 19 – Exh.204	Jahangirkhan Pathankalu Lal Swaroopji Megva
PW 20 – Exh.210	Shaikh Sahid Shaikh Gafar
PW 21 – Exh.211	Shamabi Shaikh Raju
PW 22 – Exh.233	Taufik Taiyabbhai Kapadvanjwala
PW 23 – Exh.251	Shirin Shabbir Kallawala
PW 24 – Exh.252	Shabbir Faizullabhai Kallawala
PW 25 – Exh.262	Ashokkumar Umedsingh Tapariya
PW 26 – Exh.268	Vinodchandra Mohanlal Anand
PW 27 – Exh.290	Abdul Gafar

PW 28 – Exh.293	Bholabhai Somabhai Mori
PW 29 – Exh.301	Thakorbhai Mathubhai Patel

Documentary evidence – 44

Exh.275	Yadi sent to PSO
Exh.55	Complaint
Exh.98	Inquest Panchnama
Exh.100	Panchnama of scene of offence
Exh.107	Panchnama of discovery of clothes
Exh.110	Panchnama of seizure of articles from the dead body after post mortem examination
Exh.172	Discovery panchnama of accused Isradbi having shown the house of accused Shaikh Nishar
Exh.269	Discovery panchnama of accused Saaedabi having shown the place of incident
Exh.184	Discovery panchnama of accused Nishar Shaikh having shown the place of incident
Exh.113	Arrest and recovery of muddaal panchnama of accused Kailash and Deepakbhai
Exh.188	Panchnama of recovery o bag left by Kailash at the Ashoka Hotel, at the instance o accused Kailash
Exh.116	Discovery panchnama of accused Kailash Navghare having show the place of incident
Exh.139	Test identification parade panchnama of Kailash
Exh.138	Test identification parade panchnama of Nishar
Exh.270	Register of Ashoka Hotel Dt. 27.06.2010 to 24.07.2010
Exh.271	Entry register at Uday Hotel Dt. 27.07.2010 to 30.07.2010
Exh.156	Cause of Death certificate
Exh.155	Postmortem note
Exh.168	Medical treatment certificate of complainant
Exh.272	Notification prohibiting carrying o weapons
Exh.275	FSL officer report of spot inspection
Exh.274	Muddamal send to FSL forwarding letter
Exh.273	Dispatch note
Exh.294	FSL acknowledgment report
Exh.276	Forwarding letter along with the details of FSL report
Exh.277	Forwarding letter of Mudammal sent to FSL
Exh.278	Dispatch note
Exh.279	Receipt received from FSL
Exh.281	Forwarding letter along with the details of FSL report

Exh.282	FSL report along with forwarding letter Biology department
Exh.284	Serology report
Exh.123	Test Identification parade panchnama of accused Sunil @ Pahelwan
Exh.285	FSL report Serology department along with forwarding letter
Exh.286	FSL report Serology and Biology department
Exh.124	Yadi sent to Executive Magistrate for identification parade of accused Sunil @ Pahelwan
Exh.125	Letter of Executive Magistrate to police confirming Test identification parade of accused Sunil @ Pahelwan
Exh.152	Letter requesting cause of death certificate sent to FSL, Surat
Exh.153	Report forwarded to Civil Surgeon with dead body sent for Post mortem examination
Exh.154	Certificate issued by Burhani Hospital regarding medical condition of complainants mother
Exh.157	Certificate of New Civil Hospital issued after completing post mortem examination
Exh.158	Forwarding letter sent along with samples taken from dead body
Exh.143	Letter requesting appointment of Executive Magistrate for conducting Test Identification parade of accused Nishar Shaikh
Exh.301	Letter requesting the City Mamlatdar to prepare ma of scene of incident
Exh.303	Map of place of incident

6. After closure of the prosecution evidence, the appellants were questioned under Section 313 of the Cr.P.C. to which they denied all allegations leveled against them and stated that, they had been falsely implicated due to political rivalry.

7. Though opportunity was extended, no oral evidence being adduced by the appellants-accused.

8. After hearing the parties and upon appreciation of the evidence, the trial court did not believe the act of criminal conspiracy and the charge of robbery, murder, wrongful confinement and illegal trespass against the A1 to A5 and they have been acquitted of all charges. However, the learned trial court held guilty the appellants-accused A6 and A7 for the offence of robbery, murder, illegal trespass and wrongful confinement. The learned trial court while recording the conviction, held and observed that:

(i) The PW.1 – complainant being an injured, was able to identify the accused in the court as an assailant and his evidence of identification being corroborated by the proceedings of T.I. Parade held by the Magistrate and he was not having any motive to falsely implicate the accused and thereby protecting the actual assailants;

(ii) The testimony of PW.1 appears to be credible, reliable and trust worthy and his conduct was natural and being a victim of the incident, there is a ring of truth in his evidence;

(iii) The presence of the accused on the day of incident was proved and in the absence of PW.1, the accused tied the deceased mother for the purpose of robbery and was strangulated to death when she resisted and when the complainant entered into flat, he was grabbed and tied by the accused and got the input about cash amount of

Rs.35,000/- and after taking away the said amount as well as pocket money of the complainant and other things, they fled away;

(iv) In such circumstances, the accused taking disadvantage of the situation, killed the deceased and assaulted the PW.1 and committed the act of robbery, murder, wrongful confinement and illegal trespass and accordingly, the appellants-accused found guilty with the aid of Section 34 of the Indian Penal Code.

9. Being dissatisfied with the judgment of conviction and order of sentence, the appellants have come up with these appeals.

10. In the present case, the only eye witness of the incident was PW.1 – Moish Daginawala who happened to be son of the deceased Fizabai. It is not in dispute that, on 31.07.2010, in the noon hours, the deceased was alone in her Flat No.401, Hatim Manzil, Surat as PW.1 had gone to the market. It is usual practice of PW.1 to keep extra key of the house with him as well as in the house of neighbour Hamid Shaikh. Thus, before proceeding to appreciate the evidence on record, it would be necessary to briefly narrate the gist of evidence of material prosecution witnesses:

10.1 Moish Daginawala (PW.1): This witness being a son of the deceased and victim of the incident, has stated in his chief examination that, at relevant time, he was staying with his mother at Flat No.401,

Hatim Manzil, Begampura, Surat and his brothers were residing separately. It is stated that, on 31.07.2010, at about 12:00 noon, he went to market and at that time, his mother and maid were at his house. It is further stated that, at around 1 o'clock, he returned to his house and the door of the flat was closed. He further stated that, in all there are four keys of the flat and out of four key, he kept one key with him so that he could enter into the house without disturbing his mother and accordingly, he entered into the house and as and when he entered, two unknown persons grabbed him and dragged into the bedroom and he was tied with a piece of cloth and the persons had asked to show the cash and other valuable things including cheque books and ATM Card and threatened him to kill. It is stated that, he show the key of the drawer of the cupboard in which Rs.35,000/- to 40,000/- being kept by him and same was taken away by the accused and thereafter, he was hit by backside of the knife on his eyes and further demanded the ornaments and other keys. On his sincere explanation, the accused left him, but, before they could leave the house, they tied him on the pretext that, the mother – deceased who was tied by them, will be freed to you and thereafter, they fled away. It is further stated that, he tried to open the window of his house and call his neighbour Idrishbhai and made a request to him to get the key of the flat from neighbour Hamidbhai and open the door. It is further stated that, the door was opened by Idrishbhai after obtaining the key from Hamidbhai. It is further stated that, the key of the bedroom was found in the lock itself. It is further stated that, he went into his mother's room where he found that she was lying in an unconscious state of mind and her both legs

and hands were being tied by the accused. It is further stated that, thereafter her mother was taken to Burhani Hospital and he chosen to remain at the home and after arrival of the police, he lodged an FIR and then, got treatment at Civil Hospital. It is further stated that, he did not find four gold bangles of her mother which allegedly taken away by the accused. It is further stated that, he was having suspicion of the involvement of A4 in the said incident. The complainant (PW.1) has further stated that, after the arrest of the accused by the police, he was called upon at the Office of Magistrate for Identification Parade on different dates and in both the Identification Parades, he could identified both the appellants-accused. The witness also identified the accused in the Court and the seized articles.

In the cross-examination, the witness has admitted that, the accused straight away cuffed up his mouth and thereafter, tied his hands and legs. On the issue of locking of the door, the witness had admitted that he had locked the door from outside and it could not be opened without key. It is admitted that, he did not have reported the incident to the police immediately. He also admitted that, the main door of the house was attached with the safety gate. On the aspect of identification of the accused, nothing substantial asked to the witness by the defense. Lastly, the question was asked to the witness that, the deceased died due to age related issue and as such, death was not homicide, nor, committed by the accused herein for which the witness has denied to the suggestion. The witness has denied to the suggestion that before TI Parade, the accused was shown to him by the police. The witness has also denied that, at relevant time, he was not present in the

flat and he had been called after the incident and he did not have sustained the injuries in the course of incident.

10.2 Dr. Jainil Parmar (PW.9): This witness had conducted post-mortem on the body of the deceased Fizabai. He noticed 11 external injuries on the body of the deceased and so far as internal injuries are concerned, he noticed injuries over the neck which is corresponding to the external injuries no.6 and 7. The external injuries no.1 to 3 were in nature of abrasion found over the face, right nostril. The injury no.4 to 11 were in the nature of contusion and abrasion, found on the neck and at both the hands. According to opinion of the doctor, the cause of death was asphyxia due to throttling and the time of the death was between 12 to 24 hours before the commencement of the post-mortem. In the opinion of the doctor, the neck injuries were sufficient in the ordinary course of nature to cause of death. The doctor has denied to the suggestion made in the cross-examination that the death was natural and it was occurred due to old age.

10.3 Idrish Shabbirbhai (PW.12): This witness was residing on the third floor of the building where the incident occurred and according to his version, on 31.07.2010 at about 1:30 noon, he was at his home and had heard the shouting of PW.1–Moish and while seeing him from his window, he was informed to open the lock of the main door with the key which was kept at the house of Hamidbhai. The witness has stated that, he went to the house of Hamidbhai to take extra key of the flat and after taking it, he went to the house of PW.1 and unlocked the

door. The witness has stated that, when he entered into flat, he found that, the hands and legs of Moishbhai were tied and he was having injury on his head. The witness has stated that, he had untied Moishbhai and then, both of them went into another room where the mother Fizabai was lying in unconscious state of mind. The mother was shifted to private hospital for treatment. The PW.1 told him about the facts of robbery and injuries caused to him as well as his mother by the two unknown assailants.

10.4 Dr. Nishaben Chandra (PW.10): This doctor being a Medical Officer of Civil Hospital at Surat had examined the PW.1-complainant who received injuries in the said incident. According to say of the doctor, on 31.07.2010, the witness was brought before her and initial history given by him to the effect that, he was assaulted with posterior wooden part of knife and with fist at about 1:30 p.m. Upon examination, the doctor found a cut wound present over left side of forehead (2x0.5x0.25cm) and linear abrasion present over left side of the chick. The certificate of the examination being produced by the witness at Exh.168.

10.5: Hamid Shaikh (PW.13): This witness being a neighbour and keeper of the key of the flat where incident took place, has supported the version of PW.1 and the neighbour PW.12. In his chief examination, he has admitted that the extra key of the flat used to keep with him by the PW.1. He has also admitted that, on 31.07.2010 at about 1:30 noon, PW.12 (Idrishbhai) came to his house and asked him

to give the extra key of the flat of PW.1 which he had given to him and thereafter, he came to know about the incident.

10.6 Ranjitsingh Jadav (PW.7): This witness in his chief examination has stated that, at relevant time, he was serving as an Executive Magistrate and on the requisition of the I.O. of this case, he conducted TIP on 15.07.2011 of the accused A7 – Sunil Pahelwan and had carried out a procedure as per the norms and in the presence of dummy persons, the PW.1, identified the accused. In the lengthy cross-examination, we could not find the fact that before TI Parade, the identity of the accused being revealed by the police as well as the witness Executive Magistrate.

10.7 Harisingh Chauhan (PW.8): This witness was serving as Executive Magistrate and on the requisition of the I.O., had conducted the TI Parade on 11.08.2010 and 12.08.2010. The panchnama of both the TI Parade being produced at Exh.138 and 139. The TIP was conducted for the identity of the accused A6 – Kailash and A4-Nishar. The PW.1 according to version of the witness, has identified the accused Kailash and Nishar and opportunity was given to him to identify the accused which was standing in the line of dummy persons. In the cross-examination, we could not find any irregularities or procedural defect in conducting the proceedings.

10.8 Vinodchandra Anand (PW.26): This witness being a P.I. of the concerned police station, after recording the complaint, had sent the

dead body for post-mortem and upon registration of the offence, he was entrusted with the investigation and as a part of investigation, he drew the panchnama of place of incident, recorded the statements of the witnesses and during the course of investigation, the fact revealed that the A1 and A2 were employed as a "maid" by the complainant and they were in the heavy debt and to come out from the situation, they decided to rob the deceased and in order to execute the said plan, the accused no.A6 andA7 being hired by the accused and thereafter, he arrested the accused-appellant Kailash as his involvement in the crime being surfaced during the investigation and on the basis of transfer warrant, the accused came to be arrested on 11.08.2010. The witness has stated that, he requested the concerned Executive Magistrate for conducting TI Parade of accused Kailash and Nishar and after taking all precautions and without revealing the identity of the accused to anyone, the TI Parade came to be conducted and at the end, he filed the chargesheet against the A1 to A6 and later on, after arrest of the accused-appellant A7- Sunil, Investigating Officer Mr. A.H. Khan filed the chargesheet against him.

10.9 Bholabhai Somabhai Mori (PW.28): This witness had investigated the case and the investigation transferred to him by P.I. V.M. Anand. In the chief examination, he has stated that, during the course of investigation, by way of transfer warrant, he arrested the accused Sunil Laxman Patil on 01.07.2011 and during the remand period, the proceedings of TI Parade being undertaken by him.

11. Submission of the parties:

11.1 Ms. Akshitaba Solanki and Mr. Kashyap Joshi, learned advocates appearing for the appellants while assailing the judgment of conviction and order of sentence, have made following submissions:

11.2 That, the learned Sessions Judge grossly erred while convicting the appellants-accused without appreciating the evidence in the right prospective. The prosecution case rests on the evidence of sole witness PW.1 – Moish Daginawala and according to his version, in his absence, as per the conspiracy, the appellants-accused entered into flat to take away the valuables in the form of cash and ornaments etc. and in that process, the deceased Fizabai was strangulated to death and when the PW.1 with the extra key entered into flat, he was assaulted by the accused and then, tied with the plastic strings and clothes and he was compelled to show the cash amount of Rs.38,000/- allegedly lying in the drawer of the cupboard and again, he was injured by the accused and looted his pocket money and Nokia phone and later on, it revealed that, four Gold Bengals of the deceased being taken away by the accused. The case of the prosecution as witnessed by the PW.1 is highly improbable and his presence as claimed, is doubtful. It is nowhere coming on record that, how the accused get entry into the flat. In absence of such evidence of the entry of the accused in the flat, the story projected by PW.1 has no any basis and cannot be accepted as gospel truth. According to say of the witness, the accused used a deadly weapon and caused him injury. However, no any weapon being found from the accused. The second abnormality in the prosecution

case would be the theory of extra key. The PW.1 was having one key in his pocket and the key which was allegedly kept in the house of neighbour, is not at all believable. The PW.1 stated that, from the window of his flat, he called by shouting PW.12 Idrishbhai. This aspect is also doubtful because at relevant time, the witness was tied with the strings and clothes and how he managed to call Idrishbhai from the window, is not at all convincing and believable. Thus, in order to prove the presence of PW.1, there is no sufficient evidence to show his presence and the theory of loot allegedly done by the accused. That, the conduct of PW.1 was not natural conduct of human being because despite of serious injuries sustained by his mother, he did not accompanied to her at the hospital and remained at the house and that too, without any intimation to the police. Thus, considering the improbable story and conduct of PW.1, the trial court could not have convicted the accused only on the sole evidence of PW.1.

11.3 That, the identity of the accused in the crime is not proved and established. The accused belong to Maharashtra State. According to prosecution case, they were hired by the accused no.1 and 2. After the incident, the A6 and A7 came to be arrested on 08.08.2010 and 01.07.2011 respectively. The TI Parade of both the accused held on different dates namely 11.08.2010 and 15.07.2011. The I.O. of the case failed to explain about how he could get the input of involvement of the accused in the crime and why there is a delay in conducting the TI Parade and on that ground, the possibility of the accused having been revealed before the TI Parade cannot be ruled out and on this count, the

proceedings of TI Parade is vitiated and the dock identification of the accused after a considerable time, cannot be accepted. Thus, the evidence of PW.1 on the aspect of identification of the accused, is not trustworthy, reliable and acceptable and the prosecution failed to prove the complicity of the accused in the crime by adducing cogent and acceptable evidence beyond reasonable doubt.

11.4 That, the accused alleged to have committed the offence of robbery by entering into the flat. In order to prove the charge of robbery, it is require to be established by the prosecution that while committing the offence, the accused caused or attempted to cause injuries to the witnesses and took away the booty. In the facts of the present case, no such theft articles being found from the accused-appellants. The only evidence is recovery of Rs.38,000/- from the accused Kailash (A6). The recovery panchas of the amount have not supported. How Rs.38,000/- was being kept for a month or more by the accused, was not explained by the prosecution. That, nothing being found from the A7. Thus, the necessary ingredients to prove the offence of robbery read with Section 34, are not proved and established and in absence of any admissible evidence to this effect, the conviction of robbery, is unsustainable in eye of law.

11.5 That, the accused alleged to have committed the murder of the deceased Fizabai and the trial court convicted the appellants for the offence of murder. Admittedly, the sole witness – PW.1 was not present when the offence alleged to have been committed by the

accused. The accused did not have taken the PW.1 in the room of the deceased. Thus, in absence of any cogent evidence to establish the complicity of the accused in the commission of murder, the trial court on the basis of suspicion, surmises and conjectures, convicted the accused. That, the nature of injuries ruled out the possibility of homicidal death and on that count also, the conviction under Section 302 is unsustainable.

11.6 In such circumstances referred to above, it was submitted by learned advocates appearing on behalf of the accused that, prosecution has failed to prove its case beyond reasonable doubt and as such, the judgment is liable to be set aside as the findings of the trial court are not in consonance with the evidence and settled principle of law and the conviction cannot be allowed to sustain.

11.7 In alternate, by relying upon the decision of Apex Court delivered in case of ***Rajindar vs. State of Haryana (2006) SCR 5***, it was submitted that, the prosecution failed to prove the intention to cause death on the part of the appellants-accused and considering the nature of injuries, the case of the appellants would not fall in any of the clauses of Section 300 of the Indian Penal Code and therefore, in the absence of intention to cause death and such bodily injury which likely to cause death, the offence at the most, could be said to have been committed under Section 304 Indian Penal Code punishable for the act of culpable homicide not amounting to murder and having regard to the period of incarceration, the conviction may be converted and reduced.

12. Opposing the appeals, learned State Counsel Mr. Ronak Raval contended that, the trial court has not committed any error while relying on the sole testimony of PW.1. That, the PW.1 and his deceased mother were living alone in the flat and due to the age of the deceased, the PW.1 made arrangement of extra keys for any emergency and nothing wrong in keeping the extra key with the neighbours. The PW.1 was assaulted and while assaulting by the accused and demanding the cash amount and valuables, the considerable time being passed and in that period, the PW.1 had an ample opportunity to recognize the faces and characteristics of the accused and therefore, the evidence of identification of the accused in the court, corroborated by the proceedings of TI Parade and there was no any lacuna or discrepancies found in the proceedings and thus, there is no reason to discard the evidence f identity of the accused allegedly proved by examining PW.1. So far as presence of PW.1 is concerned, his conduct was found natural and there is no reason for him to falsely implicate the accused and let go the real assailants. The PW.1 was injured witness and except him, no one had seen the incident and therefore, the corroboration to the evidence of PW.1 would not be possible. That, there are no major contradictions, improvements found in the evidence of PW.1 on the aspect of incident and role played by the accused. The PW.1 himself sustained injuries in the cause of occurrence and testimony of such witness is generally considered to be very reliable as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare the actual

assailants. The trial court has considered this aspect while relying on the testimony of PW.1 and also assigned reasons on the aspect of his not attending his mother at the hospital when she was taken after the incident. Thus, the sole testimony of PW.1 is wholly reliable and nothing adverse found in the cross-examination to discard his evidence. That, the TI Parade of the accused was being conducted in a reasonable time after the arrest of the accused and nothing brought on record to suggest that, the necessary norms of the TI Parade either breached or not followed by the Executive Magistrate and before the TI Parade, the accused being shown to the witness or in any manner, their identity being disclosed. The act of the accused would fall under definition of murder and considering the medical evidence, it would be established that, the death was homicidal and it is an admitted fact that, when the first incident of causing injuries to the deceased was occurred, no one was present at the place of occurrence and after causing fatal injuries to the deceased, the complainant (PW.1) had entered into flat. In such circumstances, the prosecution proves that, the bodily injuries were present and the injuries were sufficient in ordinary course of nature to cause death and the accused intended to inflict fatal injuries on the vital part for causing death and causing such bodily injury which was likely to cause death.

13. In such circumstances, as referred to above, the learned Additional Public Prosecutor prays that, there being no merits in the appeals and the same may be dismissed.

14. Before dealing with the rival contentions of the parties, we deem it fit to refer the settled law on the aspect of evidence of sole eye witness and Test Identification Parade as well as the testimony of the injured witness:

14.1 Sole eye witness:

The Hon'ble Supreme Court in its various judgments has consistently held that, as a general rule, the court can and may act on the testimony of single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But, if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but, the quality that is material. The principal is that, the evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. It is therefore open to a competent court to fully and completely rely on the solitary witness and record conviction. Conversely, it may acquit the accused inspite of testimony of several witnesses if it is not satisfied about the quality of the evidence ***(Vadivelu Thevar vs. State of Madras AIR 1957 SC 614*****: *****Sunil Kumar Vs. State of Governement of NCT of Delhi (2003) 11 SCC 367*****: *****Namdeo Vs. State of Maharashtra (2007) 14 SCC 150*** **and** ***Bipin Kumar Mondal vs. State of West Bengal (AIR 2010 SC 3638*****)**

14.2 TI Parade:

TIP belongs to the stage of investigation by the police. It assures

that the investigation is proceeding in the right direction. It is rule of prudence which is require to be followed in cases where the accused is not known to the witness or complainant. The evidence of TI Parade is admissible under Section 9 of Indian Evidence Act. However, it is not a substantive piece of evidence, but it is used to corroborate the evidence given by the witnesses before court of law at the time of trial. The object of TI Parade is three fold: (i) to enable the witness to satisfy himself that the accused whom he suspect, is really the one who was seen by him in connection with the crime; (ii) to satisfy the investigating authorities that the suspect is the real person whom the witness had seen in connection with the said occurrence and (iii) to test the witness' memory based on the first impression and enable the prosecution to decide whether all of any of them could be cited as eye witnesses to the crime and thus, it is a matter of great importance both for investigating agency and the accused that TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the identification parade. However, if circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. It is for the prosecution to prove that the TI Parade was conducted in a fair manner and that all necessary measures and precautions were taken before conducting TIP. **(*Gireesan Nair Vs. State of Kerala (2023) 1 SCC 180*)**.

14.3 Injured witness:

The question of the weight to be attached to the evidence of

witness that was himself injured in the course of occurrence has been extensively discussed by the Supreme Court in its various judgments. Where the witness to the occurrence has himself being injured in an incident, the testimony of such witness is generally considered to be very reliable, as he is a witness that comes with inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailants, in order to falsely implicate someone and convincing evidence is required to discredit an injured witness. **(*State of U.P. vs. Kishan Chand (2004) 7 SCC 629*)**.

15. The facts of this case are to be considered on the touchstone of law which has been laid down by the Apex Court. It is equally require to be bear in mind that the suspicion however great it may be, is no substitute of proof in criminal jurisprudence and it is the duty of the prosecution to prove its case beyond all reasonable doubts and it cannot be relieved of its duty by creating suspicion in the mind of the court.

16. Discussion and analysis:

17. The case of the prosecution rests on the sole testimony of PW.1 Moish Daginawala. We have carefully scrutinized and reanalyzed his evidence. It is no doubt true that, on 31.07.2010, when PW.1 left his flat, the deceased was alone. The A1 and A2, before the incident, they were employed as a maid by the complainant. The PW.1 after returning back from the market, unlocked his flat by the keys which he used to

kept with him and immediately he was caught and assaulted by the accused. He was tied up and asked to handover the valuables and under the fear of death, he pointed out the key of the drawer wherein cash amount of Rs.38,000/- was lying and same was taken away by the accused. He was again assaulted with the backside of the knife. The injuries being treated and mentioned by Dr. Chandra in her deposition. In such circumstances, the version of PW.1 on the aforesaid aspect does inspire confidence and nothing contradictory adverse to the prosecution case is being found so as to discredit his evidence. Merely on his not attending the hospital with his mother would not be a ground to raise any doubt on the aspect of his presence and incident of assault and robbery. The witness had disclosed the description and character of the accused who were unknown to him and for a considerable time, he had an opportunity to recognize them and therefore, the person who had suffered physical and mental agony at the hands of the accused, prudently, it is difficult to wipe out the act of the accused and their faces in the mind of the sufferer. Much emphasize is being given on the behavior of PW.1 as he did not accompanied to his mother at the hospital and remained at home. We do not find any unnatural conduct on this aspect because for a considerable time, the accused under the fear of death, with intention to execute the robbery, remained in the flat and naturally, when other persons already there for taking care of his mother, only remaining at home by the witness would not be a ground to create a suspicion in the version whatever he has stated with respect to loot and murder allegedly demonstrated by the accused. We may take note of the fact that, the PW.1 has sustained injuries in the

occurrence and his injuries being examined by Dr. Chandra and within reasonable time, he was referred for medical treatment and therefore, his presence at the place cannot be doubted and there is no reason for him to spare the actual assailants and falsely implicate the accused or anyone. On the aspect of identification of the accused is concerned, he had disclosed the description of the accused in the FIR and had opportunity to recognize the accused because in a daylight, the accused stayed in the house for a considerable time and therefore, even otherwise, if TI Parade would have not conducted, then also, the identification in the court by the witness could be possible and his evidence can be acted upon. In the instant case, we do not find any discrepancies or irregularities in the proceedings of TI Parade and accused were identified by PW.1 and before identification, the identity of the accused was not revealed to the witness. The TI Parade of A7 was held after 10 to 12 days of his arrest, but, that would not be said to be an unreasonable delay in conducting the TI Parade and as such, during the said period, there is nothing to show that, the identity of the accused is revealed to the witness by the police.

18. In such circumstances as referred above, the presence of the PW.1-complainant is believable and considering the ailment of his mother, he would be only person who had to remain with the mother for taking care of her 24X7 and therefore, in absence of anything inherent, improbable or unreliable on the aspect of incident, we have no doubt on the reliability and credibility of the testimony of PW.1 and reading the evidence as a whole, it appears to have a ring of truth in the version of PW.1 about the incident and role attributed to the present

appellants in the commission of crime. Thus, we do not find any merits on the contention that the presence of PW.1 is doubtful and he was not a witness of the incident.

19. The next is the submission that, the identify of the accused is not being proved and established. It is relevant to note some dates. The incident occurred on 31.07.2010. On 08.08.2010, the A6 – Kailash came to be arrested and his TI Parade conducted on 11.08.2010. So far as A7 is concerned, he was arrested on 01.07.2011 and his TI Parade was conducted on 15.07.2011. The PW.1 in his deposition has stated everything about the procedure of TI Parade and identification of accused by him in the court as well as TI Parade. The witness had sustained injuries in the occurrence. He had opportunity to recognize the accused. The evidence of officer who had conducted the TI Parade is trustworthy as he being a neutral person, had conducted the proceedings of TI Parade after following the rules and mandatory guidelines. Nothing being brought on record to show that before TIP, the identity of the accused being disclosed or revealed to the witness by the police. The procedure adopted for holding the TI Parade, would seems to be reasonable and proper. Thus, the delay of 3 days in conducting the TI Parade of the accused Kailash, cannot be said to be fatal to the prosecution. So far as A7 is concerned, TIP was held after 14 days, but, at the same time, nothing brought on record to show that, the accused A7 before TI Parade, was shown to the witness or his identity being revealed by the police in the media or to the witness. There is no as such timeline for conducting TI Parade, but, to rule out

the possibility of revelation of the identity, it must be conducted as far as possible expeditiously. In such circumstances, so far as identity of the accused is concerned, the oral evidence of PW.1 has got support from the proceedings of TI Parade and considering the time spent by the PW.1 with the accused, it reaffirm further that he could recognize the accused and that is why he easily identify the accused in the court at the time of recording of his evidence. Thus, we do not find any substance in the contention that the prosecution failed to establish the identity of the accused in the crime.

20. The net result of the aforesaid discussion would establish that on 31.07.2010, the accused-appellants barged into the flat of the complainant and tied up his mother–deceased Fizabai and ransacked the flat and also assaulted him and caused serious injuries to deceased Fizabai for the purpose of carrying away the cash amount and gold jwellery as well as Nokia phone and wrongfully confined the witness under the fear of death.

21. The accused alleged to have committed a murder of deceased Fizabai. Admittedly, at relevant time, no one was present in the flat and subsequently, after the murder, the PW.1 entered into flat. We have carefully examined the evidence of PW.1. It is specifically stated by the witness that, after taking away the cash amount and when the accused realized that, nothing could be recovered, he was tied by the accused and told that, his mother was tied by him and she will free you. Thus, the accused were knowing about the presence of the

deceased in one of the room of the flat. The medical evidence of the injuries shows that the cause of death was strangulation and the injuries around the neck would further prove that the death was not natural, but it was homicidal. Thus, the death of the deceased was homicidal in nature and according to opinion of the doctor, the injuries were sufficient in the ordinary course of nature to cause death. The accused in their 313 statement, except defense of denial nothing being explained by them about the death of the deceased. The deceased was tied by the clothes and strings. The accused soon after the death found in the flat and the said facts being proved by PW.1. Thus, the legitimate inference would be raised that, the accused were the author of the crime and before taking away the ornaments, there might be a resistance on the part of the deceased and on safer side, after tying the deceased, she was done to death by strangulation. Thus, therefore, the act of strangulation being done with the intention of causing death and the injuries were found sufficient in the ordinary course of nature to cause death and the accused knew that, the act of strangulation in all probability would cause death. Thus, in our opinion, the prosecution able to prove that the act of the accused would fall under clause thirdly and fourthly of Section 300 which defines the “murder”.

22. In view of the aforesaid discussions, after reanalysis and reappreciation of the evidence and on perusal of the impugned judgment of conviction and order of sentence, we are satisfied that, prosecution has proved the charge against the accused with sufficient oral documentary evidence beyond all reasonable doubts that the accused were the author of the crime and the trial court has rightly

found them guilty for the offences as referred in para-2 of this judgment. Hence, we do not find any scope for interference with the findings of conviction and sentence recorded by the trial court.

23. In the result, the conviction appeals deserve to be dismissed and are hereby dismissed. The accused are behind the bar. The R & P, if any, be sent back to the trial court henceforth.

24. In view of dismissal of the appeals, the cause for filing Criminal Misc. Application No.6 of 2025 in Criminal Appeal No.2264 of 2024 would not survive and the said application stands disposed of accordingly.

25. The accused-appellant A7 – Sunil @ Pahelwan Patil is on bail. He is directed to surrender before the jail authority. The bail bond is cancelled and surety is discharged.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 23/12/2025 13:22:42