

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 2597 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Approved for Reporting	Yes	No

NAMORI HAJIBHAI BUKERA

Versus

STATE OF GUJARAT

Appearance:

MR PM LAKHANI(1326) for the Appellant(s) No. 1

MRS R P LAKHANI(3811) for the Appellant(s) No. 1

MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 21/04/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Being aggrieved and dissatisfied with the judgment and order dated 06.10.2022 passed by the learned Sessions Court, Jamnagar in Sessions Case No.138 of 2016, whereby the appellant-accused No.1 came to be convicted for the offences punishable under Section 302 of the Indian Penal Code (hereinafter referred to as "IPC") and Section 25(1B)(a) of the Arms Act, the appellant – accused No.1 has preferred present appeal against conviction.

2. The appellant-accused No.1 has been sentenced for the offence punishable under Section 302 of IPC, to undergo rigorous imprisonment for life, with fine of Rs.5000/-, in default of which, to undergo 1 year

simple imprisonment. The appellant-accused No.1 has further been sentenced for the offence under Section 25(1B)(a) of the Arms Act, to undergo 2 years simple imprisonment and a fine of Rs.1000/-, in default of which, to undergo 2 months simple imprisonment.

3. The brief facts leading to the filing of the present appeals are as under:

3.1. The prosecution case, in brief, is that on 04.05.2013 at about 22:00 hours, in the sim (outskirt) area of Veraval village, Taluka Jamjodhpur, District Jamnagar, Faruk Ibrahim Pata (hereinafter referred to as “deceased”), a friend of the complainant, had gone to demand money from accused No.1. At that time, accused No.1, knowing fully well that his act was likely to cause death of the deceased, with an intention to cause his death, fired a shot from an unlicensed country-made single barrel gun at the deceased, causing fatal injuries on the right side of his body. Accused No.2 allegedly assaulted the deceased with a stick and caused serious injuries. The incident occurred in violation of the prohibitory order under the Arms Act issued by the District Magistrate, Jamnagar, which was in force at the relevant time and place. Thereby, the accused committed the offences punishable under Sections 302 read with 114 of IPC, Section 25(1B)(a) of the Arms Act and Section 135(1) of the Gujarat Police Act.

3.2. On the basis of the complaint lodged by the complainant, the offence came to be registered. Investigation was carried out. The accused persons were arrested, muddamal articles including the country-made gun and the motorcycle were seized, and sufficient evidence having been found, a charge-sheet was submitted against the accused persons before the learned Judicial Magistrate First Class, Jamjodhpur.

3.3. After committal, the case was made over to the learned Additional Sessions Court, Khambhaliya and thereafter, upon jurisdictional changes, it was transferred to and tried by the learned Sessions Court, Jamnagar as Sessions Case No.138 of 2017. Charge was framed, to which the accused pleaded not guilty and claimed to be tried.

3.4. Upon conclusion of the trial and appreciation of the evidence, the learned Sessions Court, by the impugned judgment and order dated 06.10.2022, convicted the appellant-accused No.1, as stated above. Hence, the present appeal.

4. During the course of the trial, the prosecution examined witnesses and produced documents as detailed below:

~:: Oral Evidence ::~

P.W. No.	Particular (Witness)	Exh. No.
1.	Musabhai Alarkhabhai Shama	19
2.	Hussainbhai Kasambhai Budhani	24
3.	Habibbhai Alibhai Budhani	26
4.	Bhikhabhai Hirabhai	36
5.	Bhupatbhai Ranabhai Vadher	39
6.	Yakub Kasam	41
7.	Kalidas Makanji Joshi	43
8.	Kalpesh Devrajbhai Karotra	44
9.	Prakash Oghadbhai Jatapara	46
10.	Arvind Ramanbhai Godham	50
11.	Amrishbhai Madhabhai Sadiya	52
12.	Merubhai Polabhai Katara	54

P.W. No.	Particular (Witness)	Exh. No.
13.	Dr. Dipak Premjibhai Meghpara	55
14.	Circle Officer - Natvarlal Somajibhai Solanki	65
15.	Ibrahim Ismailbhai Sandhi	71
16.	Scientific Officer - Paresh Babulal Chavda	81
17.	Clerk - Pravin Nanjibhai	85
18.	Alibhai Ismailbhai Sandhi	88
19.	Aamadbhai Kasambhai Pata	92
20.	Ibrahim Valimohammad Pata	93
21.	Hasanbhai Sumarbhai Pata	94
22.	PSO – Bharatsinh Prabhatsinh Chudasama	96
23.	Scientific Officer – Rameshbhai Natvarbhai	101
24.	FSL Officer – Nikunj Narharibhai	120
25.	Altafbhai Gulammohammadbhai Ravkuda	143
26.	Mohammadali Aadambhai Shaikh	145
27.	Kishorsinh Balvantsinh Parmar	146
28.	IO – Manojkumar Venkatrav Batul	153
29.	District Magistrate – Nalin Bhanuprasad Upadhyay	163

~:: Documentary Evidence ::~

Sr. No.	Particular (Document)	Exh. No.
1.	Inquest Panchnama	20
2.	Panchnama of scene of offence	25
3.	Blood sample and clothes seizure panchnama	37
4.	Arrest panchnama	42
5.	Discovery panchnama	45/51
6.	PM note	56
7.	Postmortem form	57
8.	Yadi to perform PM	58
9.	Report of collecting blood sample	59
10.	OPD case	60/61

Sr. No.	Particular (Document)	Exh. No.
11.	Yadi for collecting blood sample	62
12.	Map and forwarding letter	66
13.	Yadi for map	67
14.	Report of investigation of scene of offence	82
15.	Prohibitory order under Arms Act	86
16.	Station Diary	97
17.	Yadi for registration of offence	98
18.	FIR	99
19.	Special report regarding serious offence	100
20.	Muddamal receipt	102
21.	Letter regarding PM note	103
22.	Forwarding letter of muddamal examination	104
23.	Muddamal examination report	105
24.	Yellow tag	106 to 118, 122 to 140
25.	Serology report	121
26.	Complaint	144
27.	Yadi to Executive Magistrate	147
28.	Dead body receipt	148
29.	Yadi for medical examination	155
30.	Yadi for registration of charge-sheet	156
31.	Approval for charge-sheet	157
32.	Dispatch note, jurisdiction certificate, letter	158
33.	Registered A.D. acknowledgment	159
34.	Report regarding sending of segregation certificate	160
35.	Order for register of charge-sheet	164

5. Submissions on behalf of the Appellant

5.1. The learned Advocate for the appellant submitted that the learned

Sessions Court committed a serious error in convicting the appellant only on the basis of the testimony of the complainant witness Altafbhai Gulammohammadbhai Ravkuda (PW-25, Exh.-143) (hereinafter referred to as “complainant”), who is a friend of the deceased and had accompanied him for recovery of money. He pointed out that there is no independent evidence to support the incident and the alleged consistency in the statements of the witnesses Ibrahim Ismailbhai Sandhi (PW-15, Exh.-71), Alibhai Ismailbhai Sandhi (PW-18, Exh.-88), Ibrahim Valimohammad Pata (PW-20, Exh.-93) and Hasanbhai Sumarbhai Pata (PW-21, Exh.-94) has no value because all these witnesses are relatives of the deceased and their evidence is only based on what the complainant allegedly told them after the incident. He submitted that the pan shop owner Mohammadali Aadambhai Shaikh (PW-26, Exh.-145) only stated that he saw the complainant and the deceased at the shop and he has no knowledge about the incident, and the witness Aamadmbhai Kasambhai Pata (PW-19, Exh.-92) reached the place after the alleged firing and his version is also based on what the complainant told him.

- 5.2. He further submitted that the cross-examination of the complainant shows important defects such as absence of tyre marks at the place, failure of the police to seize blood-stained grass, absence of blood on the stick and recovery of pellets by the police without any independent witness.
- 5.3. It is further submitted that the statements of the Scientific Officer Rameshbhai Natvarbhai (PW-23, Exh.-101) and the FSL Officer Nikunj Narharibhai (PW-24, Exh.-120) do not clearly connect the recovered gun with the offence because the gun was test-fired in

the laboratory using laboratory stock powder and pellets, the recovered pellets are of a common type which can be used in any muzzle-loading gun and the blood group 'O' found at the place and on clothes is very common and does not provide conclusive proof.

- 5.4. He submitted that the inquest panchnama supported by the panch witness Musabhai Alarkhabhai Shama (PW-1, Exh.-19) only describes the injuries and does not show who caused them. He therefore submitted that the prosecution has failed to prove the case beyond reasonable doubt and the discovery panchnama also does not prove conscious possession or use of the gun by the appellant. He prayed that the appellant be acquitted by setting aside the conviction under Section 302 of IPC and Section 25(1B)(a) of the Arms Act.

6. Submissions on behalf of Learned APP for the State

- 6.1. Learned APP for the respondent-State submitted that the learned Sessions Court has correctly convicted the appellant based on the natural, consistent and reliable testimony of the complainant, who gave a clear and detailed account of the entire incident from the pan shop to the firing by the appellant and the escape of both accused. He submitted that the testimony of the complainant is fully supported by the immediate statements given by him to the witnesses Ibrahim Ismailbhai Sandhi (PW-15, Exh.-71), Alibhai Ismailbhai Sandhi (PW-18, Exh.-88), Ibrahim Valimohammad Pata (PW-20, Exh.-93) and Hasanbhai Sumarbhai Pata (PW-21, Exh.-94), who are independent persons having no reason to falsely implicate the accused, and the version given to them is exactly the same as in the complaint and deposition without any change,

exaggeration or contradiction. He further submitted that the presence of the complainant and the deceased at the pan shop is supported by the witness Mohammadali Aadambhai Shaikh (PW-26, Exh.-145) and the arrival of the witness Aamadhbhai Kasambhai Pata (PW-19, Exh.-92) at the place within minutes after the gunshot is clearly supported by his statement, thereby proving the place of incident and sequence of events. It is further submitted that minor discrepancies cannot be the basis to discard the entire oral evidence.

- 6.2. He further submitted that the statements of the Scientific Officer Rameshbhai Natvarbhai (PW-23, Exh.-101) and the FSL Officer Nikunj Narharibhai (PW-24, Exh.-120) clearly show that the country-made gun was in working condition, was used for firing, the pellets recovered from the place contain gunshot residues, are of the same type that can be used in the said gun and the holes found on the clothes of the deceased with signs of close-range firing are consistent with those pellets. He further submitted that the blood group 'O' found on the soil at the place, control soil and clothes of the deceased matches with the blood sample of the deceased and does not match with the blood groups of the accused. It is further submitted that minor delay in FIR cannot be a ground to discard the entire prosecution case.
- 6.3. It is further submitted that the inquest panchnama (Exh.-20) supported by the panch witness Musabhai Alarkhabhai Shama (PW-1, Exh.-19) also supports the gunshot injuries. He therefore submitted that the prosecution has proved beyond reasonable doubt that the appellant fired the fatal shot with an unlicensed gun with intention and knowledge to cause death and the offence under

Section 25(1B)(a) of the Arms Act is also proved as the appellant had no licence and gave no explanation for possession of the firearm. He prayed that the appeal be dismissed and the conviction and sentence be confirmed.

7. Heard the learned advocates for the respective parties and perused the deposition of witnesses as also documentary evidence placed on record as well as the judgment and order passed by the learned Sessions Court.

ORAL EVIDENCE:

8. The complainant witness Altafbhai Gulammohammadbhai Ravkuda (PW-25, Exh.-143) has stated in his deposition that he has been living in Veraval village since birth and earns his livelihood through farming. He stated that on the night of the incident dated 04.05.2013 at about 9 to 9.30 p.m., he had gone to a pan shop, where the deceased, who was his friend came on his motorcycle and asked him to accompany him to recover money from the appellant-accused No.1. The complainant drove deceased's motorcycle while deceased sat behind him, and they proceeded towards Viridi village. On the way, the deceased informed him that they were going to recover money from the bhatha of the appellant-accused No.1. After crossing Viridi village and moving ahead on a kachha road, they saw a motorcycle coming from the opposite direction. The complainant stopped his motorcycle at a distance of 5 to 10 feet. The accused No.2-Aamad Hajibhai Bukera was driving the other motorcycle and the appellant-accused No.1 was sitting behind him. Both accused got down from their motorcycle and the deceased also got down. At that time, the deceased demanded money from the appellant-accused No.1. In response, the appellant-accused No.1 had fired a shot from a country-

made gun he was carrying, which hit the deceased on the side of his body, causing him to fall down. At the same time, the accused No.2 attempted to assault the deceased with a stick he was holding, but the complainant caught hold of the stick. Both accused then fled from the spot on their motorcycle, taking the gun with them, and the accused No.2 left the stick at the spot. Upon hearing the gunshot, Aamad Kasam, who was grazing buffaloes nearby, came to the spot. He called the 108 ambulance and also informed deceased's uncle, Alibhai. The complainant and Aamad Kasam then took the deceased on a motorcycle to a place near Mavjibhai's wadi. In the meantime, the 108 ambulance arrived, and the doctor present examined the deceased and declared him dead, after which the ambulance left. Thereafter, deceased's uncle Alibhai, along with Jumabhai Alarkha and 4 to 5 other persons, arrived and took the deceased to the Government hospital at Jam Jodhpur, and the complainant also accompanied them. The witness further stated that the reason for the incident was that the deceased was demanding money from the appellant-accused No.1. He endorsed his complaint (Exh.-144) by recognizing his thumb impression and also identified both accused persons present in the Court as the same persons involved in the incident. He further identified the country-made gun shown to him as Muddamal Article No.7 'H' as the same gun used by the appellant-accused No.1 to fire the shot, and the stick shown to him as Muddamal Article No.9 'J' as the same stick held by the accused No.2 at the time of the incident.

9. In cross-examination, the complainant stated that on the next day he had taken the police to the spot where the stick used by the accused No.2 was lying and the police seized it. He stated that there was no blood on the stick, but there were 2 to 3 blood stains on the ground near where the stick was lying, and the stick was at a distance of 2 to 3 feet from those blood stains. He also stated that there was blood on the grass where

buffaloes were grazing, but the police did not seize the grass. He further stated that he had not seen any motorcycle tyre marks at the spot, and that the police found pellets at the spot. He denied all suggestions given to him in cross-examination that he was not present at the time of the incident, that he had not gone with the deceased from the pan shop, that no such incident occurred in his presence, that the complaint was filed later as an afterthought, that he had not seen the incident personally, and that the complaint was filed due to enmity with the accused.

10. The learned Sessions Court, after considering the above deposition, observed that the complainant witness has clearly stated on oath that he was present at the time of the incident and had personally seen the occurrence, and therefore his testimony carries weight as he being the sole eyewitness in the case. The learned Sessions Court further observed that to the extent this testimony is found reliable, it supports the prosecution case and proves it accordingly.

11. The witness Ibrahim Ismailbhai Sandhi (PW-15, Exh.-71), father of the deceased, in his deposition has stated that the complainant informed him that he had gone to the pan shop at about 9.30 p.m. where the deceased was present and asked him to accompany him to recover money from the appellant-accused No.1 and gave him his motorcycle. The witness drove the motorcycle with the deceased sitting behind him. When they reached the sim of Viridi village, one motorcycle came from the opposite direction and was stopped. The accused No.2 was driving it and the appellant-accused No.1 was sitting behind him. The complainant also stopped his motorcycle. Both, the accused No.2 and the appellant-accused No.1 got down and the deceased also got down. deceased asked the appellant-accused No.1 to pay the money. At that time, the appellant-accused No.1 had fired from the gun, which hit the deceased on the left

side of his abdomen and the pellet exited from the right side of the abdomen, causing flesh and blood to come out. Both accused then ran away. Thereafter, the witness called Aamad Kasam, who came there, and both of them placed the deceased on the motorcycle and proceeded towards the hospital. When they reached the sim of Ghunda village, they called 108 ambulance, which arrived, and the doctor examined the deceased and declared him dead.

12. The witnesses Alibhai Ismailbhai Sandhi (PW-18, Exh.-88), Ibrahim Valimohammad Pata (PW-20, Exh.-93) and Hasanbhai Sumarbhai Pata (PW-21, Exh.-94), have adhered to the story narrated by the complainant, soon after the incident and therefore, the question as to the exaggerations, omissions and tutoring, as apprehended by the appellant herein does not find a substance.

13. The learned Sessions Court, after considering the above depositions of the complainant witness and the witnesses as stated above, has observed that when the depositions of all these witnesses are read together with the deposition of the complainant, it is clear that the facts stated by the complainant in his deposition are exactly the same as those stated in his complaint and are also the same as those stated by all the 4 witnesses. This shows that the complainant has not made any additions or omissions and has stated the same sequence of events as they actually occurred, and all 4 witnesses have described the incident in the same manner. In other words, there is complete consistency in the version of the complainant regarding the incident, and he has narrated the same facts to all witnesses without any change.

14. The witness Mohammadali Aadambhai Shaikh (PW-26, Exh.-145), who is the owner of the pan shop, has stated that on the day of the

incident at about 8 p.m. The complainant came to his shop and thereafter, the deceased came on his motorcycle and both of them left the shop together, after which he does not know where they went, but later he came to know that the deceased had been murdered.

15. The witness Aamadhbhai Kasambhai Pata (PW-19, Exh.-92), who was grazing buffaloes, has stated that on 04.05.2013 at about 10 p.m., while he was taking his cattle towards the village, he heard a gunshot and went in that direction and saw a motorcycle going away. When he reached near padatal, he saw the complainant present there and the deceased lying on the ground with blood coming out from both sides of his body due to the gunshot and at that time the deceased was not speaking. When he asked the complainant about the incident, the complainant told him that the appellant-accused No.1 had fired from the gun at the deceased and when the accused No.2 tried to attack the deceased with a stick, he had caught hold of the stick, and the complainant also told him that the accused had come there on a motorcycle. Thereafter, he and the complainant placed the deceased on a motorcycle which he drove, and on the way when they reached near Mavjibhai's wadi in the sim of Ghunda village, they called the 108 ambulance and also informed the relatives of the deceased and called his father and uncles. At that time, the 108 ambulance arrived, and the doctor examined the deceased and declared him dead, after which the ambulance left.

16. The learned Sessions Court, after considering the above depositions, has observed that when the deposition of the complainant is examined, it shows that the complainant has stated that he had gone to pan shop and had left with the deceased on a motorcycle, and the same facts have been stated by the witnesses (PW-15, Exh.-71), (PW-18, Exh.-

88) and (PW-21, Exh.-94). Further, the aforesaid fact, is also supported by the deposition of the pan shop owner Mohammadali Aadambhai Shaikh (PW-26, Exh.-145) and also by (PW-19, Exh.-92). Therefore, the facts stated by the complainant in his complaint and deposition about going to the pan shop and leaving with the deceased are the same facts he told the witnesses, and these facts are fully supported by the pan shop owner, and hence there is no reason to disbelieve them. Similarly, the complainant has stated in his deposition that after hearing the gunshot, Aamad Kasam came to the spot, called the 108 ambulance and informed deceased's uncle, and thereafter he and Aamad Kasam carried the deceased on a motorcycle towards Mavjibhai's wadi, where the ambulance met them and the doctor declared deceased as dead, does find substance and leaves no room of doubt for any exaggeration or tutoring.

17. In cross-examination, he stated that Aamad Kasam reached within about 2 to 3 minutes. In this context, the witness Aamadbbhai Kasambhai Pata (Exh.-92), who was grazing buffaloes, has been examined and he has fully supported the facts stated by the complainant in his deposition. Thus, when the depositions of the complainant and Aamadbbhai Kasambhai Pata (Exh.-92) are considered together, it is clear that Aamadbbhai Kasambhai Pata has fully supported the version of the complainant.

SCIENTIFIC (BALLISTIC) EVIDENCE:

18. The Scientific Officer Rameshbhai Natvarbhai (PW-23, Exh.-101) has stated in his deposition that he received the muddamal articles from the police for examination and that their description fully matches with the panchnamas prepared by the seizing officer. After examination, he gave the following opinion: Sample-H is a percussion cap lock type

single barrel muzzle loading shot gun. The barrel wash of Sample-H, taken before test firing in the laboratory, showed the presence of burnt gun powder residues and lead, which indicates that the gun had been used for firing before it was received in the laboratory.

19. During testing in the laboratory, when about 4 grams of gun powder from Sample-I/1 and about 15 grams of lead pellets from laboratory stock were loaded into the barrel with wadding, and a percussion cap was prepared using a piece of aluminium foil from Sample-I/5 filled with a small quantity of orange powder from Sample-I/2 as primer and placed on the nipple of the gun, the gun was successfully fired. This shows that Sample-H is in working condition and if fired at a person, it can cause injury or death. Samples-D and I/4 consist of 9 iron or steel pellets. Sample-I/3-A consists of irregular pieces of lead and Sample-I/3-B consists of small to large spherical iron pellets.

20. On examination, it was found that the pellets of Sample-D contain gunshot residues, which shows that they were fired, and the pellets of Sample-D and Sample-I/4 are of the same type. It was also found that the pellets of Sample-D, Sample-I/4 and Sample-I/3-B and the pieces of Sample-I/3-A can be used as projectiles in a muzzle loading shot gun like Sample-H. Samples-F/1, F/2, K/1, K/2, L/1 and L/2 are clothes.

21. On further examination, no gunshot holes or residues were found on Samples-F/2, K/1, K/2, L/1 and L/2. However, Sample-F/1 showed gunshot residues and 7 holes caused by firearm discharge. Hole No.1 was found to be an entry hole with blackening and burning, indicating close range firing, and Holes No.2 to 7 were exit holes. These holes could be caused by pellets like those in Sample-D, Sample-I/4 and Sample-I/3-B fired from a gun like Sample-H. Sample-I/1 is black gun powder made of

potassium nitrate, sulphur and charcoal, which was found to be active and suitable for use in such a gun. Sample-I/2 is a orange powder which was found to be active and can be used as primer for making a percussion cap. Sample-I/5 is aluminium foil which can be used for making such a cap.

22. The learned Sessions Court, after considering this deposition, has observed that the important question is whether the muddamal seized, including the gun shown by the accused, the pellets found at the place of the incident and other articles discovered at the instance of the accused, are genuine and whether they were used in committing the offence. The Court observed that only an expert can give an opinion on this issue and the FSL officer has clearly explained all facts in his deposition (Exh.-101).

23. On comparing the description of the muddamal with the panchnamas, it is clear that the same articles seized by the police were sent for examination. The expert opinion shows that the gun (Sample-H) had been used for firing earlier and is capable of causing injury or death. The pellets of Sample-D were found to contain gunshot residues, showing that they had been fired, and they are similar to Sample-I/4 and can be used in such a gun. Therefore, it is established that the gun shown by the accused in the discovery panchnama was used for firing and was used in the offence, and thus the discovery panchnama (Exh.-45 & 51) stands proved. Therefore, the submissions as to the gunshot caused from particular distance and possibilities, as to spreading bullets, etc. does not come to the rescue of the appellant-accused.

FSL EVIDENCE:

24. The FSL Officer Nikunj Narharibhai (PW-24, Exh.-120) in his deposition has clearly stated that he received a total of 11 parcels in their original sealed condition for scientific examination and after careful examination the position found was as follows. Parcel-E contained a blood sample. Parcel-F contained 2 samples, namely F-1 pant and F-2 shirt, which on testing were found to contain human blood of group 'O'. Parcel-G contained 2 blood samples, namely G-1 being the blood sample of accused Nagori Haji Sandhi which was human blood of group 'A' and G-2 being the blood sample of the accused No.2 which was human blood of group 'AB'. The remaining parcels included the gun in Parcel-H, different powders, small pellets, steel pellets and silver paper wad in Parcel-I, a wooden stick in Parcel-J, and clothes in Parcels-K and L. It is further stated that on examination of these parcels, human blood of group 'O' was found on the soil collected from the place of offence, on the control soil which was found suitable, on the blood sample of the deceased, and also on the dark green track and shirt of the deceased.

25. The learned Sessions Court, after carefully considering this deposition, found that the soil taken from the place of offence, including gravel and soil with vegetation, contained human blood of group 'O', and the blood sample of the deceased was also of group 'O'. It was also found that the dark green track and shirt of the deceased contained human blood of group 'O', whereas the blood sample of the appellant-accused No.1 was of group 'A' and that of the accused No.2 was of group 'AB'. On this basis, the learned Sessions Court held that the blood found at the place of offence and on the clothes of the deceased was of group 'O', which is the blood group of the deceased, and therefore it clearly proves that the blood found at the place of incident belonged to the deceased and that the place of incident shown by the complainant is the actual place where the

incident occurred, and this fact is proved without any doubt.

DOCUMENTARY EVIDENCE:

26. The inquest panchnama (Exh.-20) prepared by the investigating officer clearly records the condition of the body of the deceased. It states that the deceased was wearing a full-sleeve black-spotted shirt with vertical lining and a brown shirt which was torn on the right side near the armpit, along with a mehendi coloured track pant having a white string and elastic. When the body was turned, one hole of about one inch in diameter was found on the left side from which blood had come out, and another hole of about four inches in diameter was found on the right side of the abdomen from which a lump of flesh was protruding. No other significant marks were found on any other part of the body. This panchnama is fully supported by the deposition of panch witness Musabhai Alarkhabhai Shama (PW-1, Exh.-19), who has stated in his deposition that there was a hole of finger size on the left side and a depression of about 3 to 4 inches on the right side with a lump of flesh visible, and except for these 2 injuries, no other injury marks were seen on the body.

27. The panch witness was cross-examined at length, but nothing useful for the accused could be brought out. On the contrary, he clearly denied the suggestions that he had not taken part in the panchnama or that he had signed the papers only because he knew the deceased or that he was falsely deposing due to good relations with the deceased.

28. The learned Sessions Court, after examining the inquest panchnama (Exh.-20) and the deposition of the panch witness Musabhai Alarkhabhai Shama (PW-1, Exh.-19), held that the nature of the injuries

clearly indicates that they were gunshot wounds and that this is fully supported by the panch witness whose evidence remained reliable in cross-examination.

29. Thereafter, the learned Sessions Court observed that, based on the entire evidence, the testimony of the complainant is fully supported by other witnesses without any major exaggeration or omission. The facts stated by the complainant about the place of incident, the weapons used and the manner of the incident are fully supported by the scene of offence panchnama, the scientific evidence of the FSL Officer, the medical evidence and the statements of other witnesses.

30. The learned Sessions Court further held that on 04.05.2013 at about 22-00 hours in the sim area of village Viridi, the appellant-accused No.1, fired a shot from an unlicensed gun at the deceased, causing serious injuries which resulted in his death. The Court further held that this act was done with the intention and knowledge that such injury would cause death. Accordingly, the appellant-accused No.1 was held guilty of the offence under Section 302 of IPC and Section 25(1B)(a) of the Arms Act.

31. We find that the deposition of the complainant witness (PW-25, Exh.-143) is natural, consistent, and trustworthy, as he has given a clear and detailed account of the entire sequence of events from the pan shop to the incident and the escape of the accused after the firing and attempted assault. He has clearly identified both accused persons in Court as the persons involved in the incident and has also identified the country-made gun and the stick used in the offence. His cross-examination does not create any doubt on important aspects, and he has firmly denied all contrary suggestions put forth by the defense. The presence of blood stains on the ground and grass at the spot, as stated by him, also supports

his presence at the place of the incident. Therefore, we find that the testimony of this sole eyewitness is fully reliable and trustworthy, and the learned Sessions Court has correctly relied on it while recording the finding as to the guilt against the accused. We find no reason to reject or doubt this testimony.

32. We find that the deposition of the complainant witness (PW-25, Exh.-143) is fully supported by the immediate statements made by him to the witnesses Ibrahim Ismailbhai Sandhi (PW-15, Exh.-71), Alibhai Ismailbhai Sandhi (PW-18, Exh.-88), Ibrahim Valimohammad Pata (PW-20, Exh.-93) and Hasanbhai Sumarbhai Pata (PW-21, Exh.-94), who are independent persons and have no reason to falsely involve the accused. The version given by the complainant to these witnesses is the same in all important aspects as the version given in his complaint and in his deposition before the Court. There are no improvements, exaggerations or contradictions. Such immediate and consistent disclosure of the incident by the sole eyewitness to his relatives and others soon after the incident gives strong support to the truth and reliability of his testimony. Therefore, the learned Sessions Court has correctly held that there is full consistency in the version of the complainant, and we find no reason to take a different view. The testimony of the complainant witness is thus fully supported and is reliable.

33. We find that the deposition of the complainant witness (PW-25, Exh.-143) is fully and consistently supported on all important points by independent witnesses who had no reason to falsely involve the accused. The fact that the complainant went to the pan shop at night and left with the deceased on a motorcycle is supported not only by the statements made by him to his relatives and others immediately after the incident but also by the direct evidence of the pan shop owner Mohammadali

Aadambhai Shaikh (PW-26, Exh.-145), who has confirmed that both the complainant and the deceased were present at his shop and left together. Similarly, the fact that Aamad Kasam reached the spot within minutes after the gunshot, and that the deceased was then taken on a motorcycle and later examined by the 108 ambulance doctor, is fully supported by the deposition of Aamadhbhai Kasambhai Pata (PW-19, Exh.-92), who was present nearby and has described the same sequence of events without any material difference. Such immediate and consistent support from multiple independent sources on key facts, including the complainant's presence at the pan shop, his accompanying the deceased, the occurrence of the incident and the arrival of Aamad Kasam at the spot, removes any doubt about the truth of the complainant's version.

34. We find that the deposition of the Scientific Officer Rameshbhai Natvarbhai (PW-23, Exh.-101) is clear, consistent and based on proper scientific examination, and his opinion after detailed chemical and microscopic analysis fully supports the version of the complainant witness (PW-25, Exh.-143) that the appellant-accused No.1 had fired from the country-made gun at the deceased. The FSL report clearly shows that the seized gun (Sample-H) was in working condition, had been used earlier, and functioned properly when test fired in the laboratory. The pellets recovered from the spot (Sample-D) contain gunshot residues and are of the type that can be used in the said gun. Importantly, the clothes of the deceased (Sample-F/1) show 7 gunshot holes, including 1 entry hole with signs of close range firing and 6 exit holes, and these are consistent with the pellets recovered. This scientific evidence clearly proves that the gun shown by the accused is the same weapon used in the offence and that the pellets recovered were fired from that gun. Therefore, the learned Sessions Court has rightly held that the discovery panchnama is proved and that the muddamal was used in the offence. We find no reason to

reject the expert opinion or to take a different view. The scientific evidence fully supports the prosecution case and the finding of guilt recorded by the learned Sessions Court.

35. We find that the scientific evidence given by the FSL Officer Nikunj Narharibhai (PW-24, Exh.-120) is clear, reliable and supports the place of incident as stated by the complainant. The blood group 'O' found on the soil at the place of incident, on the control soil, and on the clothes of the deceased exactly matches with the blood sample of the deceased and does not match with the blood groups of the accused persons. This scientific matching, done after proper examination of sealed parcels, clearly shows that the blood stains at the place of incident and on the clothes of the deceased came from the deceased himself. Therefore, we fully agree with the learned Sessions Court that this strong scientific evidence proves the correctness of the place of incident as stated by the complainant and also supports the statement of the complainant, thereby proving this part of the prosecution case beyond reasonable doubt.

36. We find that the inquest panchnama (Exh.-20) along with the consistent and reliable deposition of the panch witness Musabhai Alarkhabhai Shama (PW-1, Exh.-19) provides strong and trustworthy documentary and oral evidence regarding the external injuries of the deceased. The clear description of the 2 holes, one on the left side and the other on the right side of the abdomen with protruding flesh, and the absence of any other injuries strongly supports the case that the injuries were caused by a firearm. We agree with the learned Sessions Court that this evidence is reliable and is an important link in proving that the cause of death was gunshot injury.

37. We find that this appreciation by the learned Sessions Court is

proper and based on correct evaluation of the evidence on record. The consistent and supporting nature of the oral, documentary and scientific evidence leaves no doubt that the complainant's version is true, reliable and acceptable.

38. The record shows that the accused was in possession of a firearm and had fired from it, which caused death of the deceased. The accused has not taken any defence that he had a valid government license to possess the firearm. Also, in his additional statement, he has not given any explanation as to how the firearm came into his possession. Therefore, the learned Sessions Court rightly held that the prosecution has proved the offence under Section 25(1B)(a) of the Arms Act against the accused.

39. The fact that the accused had no license for the firearm, gave no explanation for possessing it, and that the gunshot fired by him caused the death of the deceased is clearly proved. The time, place and motive of the incident are fully supported by consistent oral, medical, documentary and scientific evidence, as to the fact of the appellant-accused No.1 having fired the fatal shot with intention and knowledge, thereby committing murder under Section 302 of IPC and the offence under Section 25(1B) (a) of the Arms Act. The conviction and sentence against the said accused does not warrant any interference. Thus, all the issues and contentions raised herein, while referring and taking us to the depositions of several witnesses, so also the documentary evidence followed by the conclusion arrived at by the learned Sessions Court, it transpires that the same has been arrived at by the learned Sessions Court is in consonance with the ocular as well as the documentary evidence. Therefore, several contentions including the discrepancies in the injuries, likely to be caused by a different weapon, while citing entry wounds and exit wounds,

followed by the recovery of the weapon, as much has been stressed upon by the learned Advocate for the appellant-accused that, even the recovery of the gun at the instance of the co-accused cannot be used against the appellant-accused, does not find a substance, simply because the panchas have turned hostile. At this juncture, it would be apt to note that the said exercise carried out by the investigating officer has been endorsed, rather supported therein. Not only that, the opinion of the experts, so also the way in which the injuries have been caused followed by the opinion of the Doctors, as detailed in the preceding paragraphs, do not come to the rescue of the appellant-accused, so as to meet with the aforesaid contentions.

40. In the aforesaid view of the matter, it would be apt to place reliance on the decision of the Hon'ble Supreme Court in the case of ***Goverdhan and Anr. Vs. State of Chhattisgarh in Criminal Appeal No.116 of 2011***, wherein, the Hon'ble Supreme Court has observed that non-recovery of crime weapon is not fatal to prosecution case, if there are direct reliable witnesses. The relevant paragraphs are as under:

“70. It is now well settled that non recovery of the weapon of crime is not fatal to the prosecution case and is not sine qua non for conviction, if there are direct reliable witnesses as held in Rakesh v. State of U.P., (2021) 7 SCC 188, wherein it was observed as follows:

“12. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the

recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 — eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1 and PW 2.”

41. To meet with the several contentions raised herein, at this juncture, it would be apt to place reliance on the observations made in the case of **Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra** reported in **(2000) 8 SCC 457**:

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the

earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

42. In view of the foregoing reasons, the conviction appeal is hereby dismissed and the judgment and order dated 06.10.2022 passed by the learned Sessions Court, Jamnagar in Sessions Case No.138 of 2016, whereby the appellant-accused No.1 came to be convicted, is upheld. The records be transmitted to the learned Sessions Court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP