

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 249 of  
2019****With  
R/CRIMINAL APPEAL NO. 417 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

ASIM @ MUNMUN @ ASIF ABDULKARIM SOLANKI  
Versus  
STATE OF GUJARAT

Appearance:

**Criminal Appeal No. 249 of 2019**

MR PARTH S TOLIA(5617) for the Appellant(s) No. 1

**Criminal Appeal No. 417 of 2019**

MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1

**In both Appeals:**MR BHARGAV PANYDA, APP for the Opponent(s)/Respondent(s)  
No. 1

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

**Date : 22/04/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. The present case arises from Sessions Case No. 105/2013,

decided by the learned Additional Sessions Judge, Botad, whereby the appellant-accused Asim @ Munmun @ Asif Abdulkarimbhai Solanki and Jasminbhai Bharatbhai Kothari were convicted for the offence punishable under Section 302 read with Section 34 (alternatively Section 114) of the Indian Penal Code and Accused No.2 was also convicted under Section 25(1)(B)(a) of the Arms Act, 1959. The learned Additional Sessions Judge sentenced both the accused to undergo imprisonment for life and to pay a fine of ₹25,000/- each, in default to further undergo rigorous imprisonment for six months for the offence under Section 302 r/w 34 IPC. Accused No.2 - Jasminbhai Bharatbhai Kothari was further sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹5,000/-, in default to further undergo simple imprisonment for six months for the offence under the Arms Act. Both the substantive sentences imposed upon Accused No.2 were ordered to run concurrently.

**Brief case of Prosecution:-**

2. The case of the prosecution, in brief, is that on 04/03/2013 at around 6:45 p.m., at Prince Hair Art salon situated in Shubham Complex on the Paliyad Road, Botad, the deceased Kamleshbhai Laghrabhai Bodiya was sitting on a chair. Due to previous enmity arising out of a quarrel involving Bimal Shukla and a land transaction dispute regarding Survey No.1013, the accused persons, with common intention, committed his murder. Accused No.2 - Jasminbhai Bharatbhai Kothari fired upon the deceased with a revolver, while Accused No.1 - Asim @ Munmun @ Asif Abdulkarimbhai Solanki assaulted the deceased with a farsi (axe-like weapon) on his face and head, causing fatal injuries. The accused persons robbed the licensed revolver and Apple mobile phone worth approximately ₹30,000/- belonging to the deceased.

They also threatened the complainant Khodabhai Raghubhai Jogarana with death. The accused carried deadly weapons in violation of the District Magistrate's arms prohibition order. The complainant, who was present near the scene of offence, witnessed the occurrence and took the injured to Sonawala Hospital in a CNG rickshaw, where he was declared dead.

2.1 It is the case of the prosecution that the accused persons, in furtherance of their common intention and with the knowledge that their acts were likely to cause death, intentionally caused the death of Kamleshbhai Bodiya, thereby committing offences punishable under Sections 302, 397, 506(2), 34/114 of the Indian Penal Code, Section 135 of the Gujarat Police Act and Section 25(1)(B)(a) of the Arms Act.

3. Upon registration of the FIR at Botad Police Station being C.R. No.35/2013 under the aforesaid sections, the investigation was carried out by the concerned police officer. The scene of offence was visited, panchnamas were prepared in presence of panch witnesses, inquest panchnama was drawn, postmortem was conducted at Bhavnagar, statements of material witnesses were recorded, identification parades of the accused were held, weapons and other muddamal articles were recovered and seized, and articles were sent to F.S.L. for examination. After receipt of the F.S.L. reports and other evidence, charge-sheet was filed before the learned Judicial Magistrate First Class, Botad. The case was committed to the Court of Sessions, Bhavnagar under Section 209 Cr.P.C. and registered as Sessions Case No.105/2013, which was later transferred to the Additional Sessions Court, Botad.

4. The learned Additional Sessions Judge, Botad, after accused persons pleaded not guilty and claimed to be tried, framed charges against the accused under Sections 302, 397, 506(2), 34/114 of the Indian Penal Code, Section 135 of the Gujarat Police Act and Section 25(1)(B)(a) of the Arms Act and proceeded with the trial. In order to establish the charges levelled against the accused, the prosecution examined in all 34 witnesses and relied upon 56 documentary evidences including various panchnamas, postmortem report, F.S.L. reports, identification parade panchnamas, map of the scene of offence and other relevant documents.

5. In order to prove the charge, the prosecution examined as many as 34 witnesses and exhibited 56 documents.

**Oral Evidences:-**

<b>Sr. No.</b>	<b>Witness Name</b>	<b>Role of the witnesses</b>	<b>Exh.</b>
1	Devrajbhai Lakhmashibhai	Panch Witness	130
2	Vipulbhai Jilubhai	Panch Witness	151
3	Hareshbhai Lakhmanbhai Parmar	Panch Witness	156
4	Ravikumar Aravindbhai Patel	Panch Witness	160
5	Mahendrasinh Ajitsinh Jadeja	Panch Witness	161
6	Mukeshbhai Kalyanbhai Jamod	Panch Witness	165
7	Pasabhai Ambarambhai Thakor	Panch Witness	166
8	Nileshbhai Dhirajlal Majethiya	Panch Witness	187
9	Ashokbhai Valjibhai Gohil	Panch Witness	190
10	Khimjibhai Khodabhai Mathodiya	Panch Witness	193
11	Gopalbhai Amtharam Prajapati	Exe. Magistrate -	220

<b>Sr. No.</b>	<b>Witness Name</b>	<b>Role of the witnesses</b>	<b>Exh.</b>
		Identification Parade	
12	Rameshbhai Kanjibhai Bhaliya	Panch Witness	232
13	Dr. Amit Panabhai Parmar	Medical officer	238
14	Jayeshbhai Valjibhai Gohel	Panch Witness	262
15	Dr. Bharatbhai Hargovindbhai Chavda	Medical officer (PM)	264
16	Kundanbhai Jivrajbhai Golaniya	Panch Witness	275
17	Narendrabhai Krishnalal Pandya	Panch Witness	287
18	Nikunjibhai Narharibhai Brahmbhatt	FSL Scientific Officer	301
19	Rafikbhai Habibbhai Sheikh	Witness	304
20	Bhaveshbhai Vinubhai Kava	Witness	305
21	Hiteshbhai Ranchhodbhai Maru	CNG Rickshaw Driver	306
22	Jitubhai Kanubhai Sitapara	Son of shop owner	307
23	Harshadbhai Kanubhai Sitapara	Witness	308
24	Rameshbhai Amarsibhai Mekhiya	Panch Witness	311
25	Bimalbhai Aravindbhai Shukla	Witness	313
26	Ravaiyabhai Kutharbhai Gamit	Panch Witness	316
27	Bharatbhai Hanubhai Bodiya	Nephew of the Deceased	321
28	Khodabhai Raghubhai Jogarana	Complainant	331
29	Yusufbhai Abdulkarimbhai Chauhan	Witness	340

<b>Sr. No.</b>	<b>Witness Name</b>	<b>Role of the witnesses</b>	<b>Exh.</b>
30	Vinubhai Popatbhai Patel	Collector	350
31	Karshanbhai Nathubhai Karangiya	Police Officer	355
32	Vijaybhai Pratapbhai Thakor	Witness	360
33	Dharmendrasinh Pravinsinh Vaghela	First Investigating officer	364
34	Dineshsinh Mahavirsinh Chauhan	Second Investigating officer	383

**Documentary Evidences:**

<b>Sr. No.</b>	<b>Exh. No.</b>	<b>Description of Documentary Evidence</b>
1	132, 133, 152, 157, 162, 175	Various Panchnamas
2	132, 135	Arrest Panchnama
3	153 to 159, 163, 168 to 174, 176, 177, 192, 195 to 217	Chits of Panchas signatures
4	167	Search Panchnama
5	188	Point Out Panchnama
6	191	Discovery Panchnama
7	194	Scene of Offence Panchnama
8	221, 222, 228	Police Yadi for Identification Parade
9	223, 226, 229	Identification Parade Panchnamas
10	224, 225, 227	Police Yadi for fixing date & time of Identification Parade
11	233	FSL Officer's Spot Inspection Report

<b>Sr. No.</b>	<b>Exh. No.</b>	<b>Description of Documentary Evidence</b>
12	234	Fax Messages
13	239	Postmortem Form of deceased Kamleshbhai
14	240, 241	Police Yadi for conducting PM of the dead body
15	242	Radiological Examination of the dead body
16	243	PM Note of Kamleshbhai
17	245	Carbon copy of Yadi sending blood sample to FSL
18	246	Letter from FSL Gandhinagar
19	253 to 258	X-ray Plates
20	263	Arms Prohibition Notification
21	265	MLC Case of deceased Kamleshbhai
22	266	Police Yadi informing MLC
23	267	Carbon copy of Yadi of Penal Dr. for PM
24	268	Carbon copy of Yadi for taking blood sample
25	269	MLC Case of accused Asim @ Munmun
26	270	Yadi for blood sample of accused Asim
27	271	Police Yadi for medical examination & blood sample
28	272	MLC Case of accused Jasminbhai Kothari

<b>Sr. No.</b>	<b>Exh. No.</b>	<b>Description of Documentary Evidence</b>
29	273	MLC Case of accused Shivkubhai
30	274	Yadi for blood samples of Jasminbhai & Shivkubhai
31	276	FSL Gandhinagar Muddamal forwarding note
32	277	Certificate of authority of Dy. SP Botad
33	278	Receipt of muddamal received by FSL Gandhinagar
34	282	FSL Gandhinagar Muddamal Examination Report
35	283	Biology & Serology Examination Report
36	288	PSI Botad letter for Inquest
37	297	Letter for preparing map of scene of offence
38	298	Map of scene of offence
39	299	Mamlatdar Botad letter for producing original record of Sessions Case No.105/2013
40	309	Death certificate of Kanubhai Dhudabhai Sitapara
41	322	Death certificate of Laghrabhai Hathibhai Bodiya
42	332	Original Complaint dated 04/03/2013
43	333	Carbon copy of Police Yadi for remaining present in Identification

<b>Sr. No.</b>	<b>Exh. No.</b>	<b>Description of Documentary Evidence</b>
		Parade
44	341, 342	Station Diary Extract and Yadi for handing over investigation
45	343	Fax Messages
46	351, 352	Police reports for sanction to file charge-sheet
47	353	Letter dated 24/05/2013 by In-charge Dy. SP Botad
48	354	Order of District Magistrate, Bhavnagar granting sanction for charge-sheet
49	365	Finger Print Expert's Examination Report
50	366, 367	Carbon copies of Police Yadi for taking accused in custody
51	368	Police Yadi for entering description of licensed revolver
52	369	Arms licence granted to deceased Kamleshbhai by District Magistrate
53	370	Zerox copy of retail invoice of revolver sold by deceased
54	371	Zerox copy of letter granting arms licence to deceased
55	384	Police letter for preparing map of scene of offence
56	385, 386	Police Yadi for handing over custody for Identification Parade

6. After the closure of the prosecution evidence, the statements of the appellants-accused were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, both the appellants denied the entire incriminating material placed against them and pleaded complete innocence. They specifically asserted that they had no connection whatsoever with the alleged incident, that the complainant was not an eye-witness, that the entire case was got up and they were falsely implicated due to previous enmity, that Accused No.1 was not even present at Botad on the date of the incident.

**Submissions of learned Senior Advocates for Appellants:-**

7. The learned Senior Counsel Mr. Tejas Barot, appearing on behalf of learned Advocate Mr. Vaibhav Vyas for appellant - Accused No.2 Jasminbhai Bharatbhai Kothari, and the learned Senior Advocate Mr. Harshit Tolia, appearing on behalf of Mr. Parth Tolia for appellant - Accused No.1 Asim @ Munmun @ Asif Abdulkarimbhai Solanki, submitted that the prosecution has miserably failed to prove the guilt of the appellants beyond reasonable doubt.

7.1 It was strenuously urged that the entire prosecution case rests solely on the testimony of the complainant PW-28 Khodabhai Raghubhai Jogarana, who is a close relative of the deceased and therefore a highly interested and partisan witness. There is no independent corroboration of his version. His deposition in court is full of material omissions, improvements and contradictions when compared with the original FIR and his earlier police statement. Several crucial facts stated by him in his evidence were conspicuously absent from the FIR.

7.2 The learned Senior Counsels for the appellants further submitted that the identification parades of both the appellants conducted before the Executive Magistrate were vitiated due to serious procedural lapses and prior exposure of the accused to the witnesses. The FSL reports regarding the revolver, blood stains on the farsi and other articles do not conclusively link the appellants with the crime. Accused No.1 has raised a specific plea of alibi that he was not present at Botad on the date of the incident, which has not been effectively rebutted by the prosecution.

7.3 It was contended that the alleged motive regarding the previous quarrel and the land dispute is too weak, vague and general to sustain a conviction for murder. No recovery of the robbed revolver or the mobile phone of the deceased has been effected at the instance of either appellant. The chain of circumstances sought to be proved by the prosecution is full of gaps and does not lead to the only hypothesis of guilt. The appellants are therefore entitled to the benefit of reasonable doubt and deserve to be acquitted.

**Submission of Learned APP:-**

8. The learned APP Mr. Bhargav Pandya appearing for the State strongly supported the judgment of conviction passed by the learned Additional Sessions Judge, Botad. He submitted that the prosecution has proved its case beyond reasonable doubt through the reliable eye-witness account of the complainant, who had seen the entire occurrence from a very close distance. His testimony is duly corroborated by the medical evidence, the postmortem report, the FSL reports showing blood on the farsi, the scene of offence panchnama, the proved identification parades and the established

motive of previous enmity and land dispute.

8.1 The learned APP contended that the defence of false implication and the alibi raised by Accused No.1 are mere afterthoughts and have not been supported by any cogent evidence. The chain of circumstances proved by the prosecution is complete and unbroken and points only towards the guilt of both the appellants. The learned Sessions Court has rightly appreciated the entire evidence on record and has correctly convicted the appellants for committing the murder of Kamleshbhai Bodiya with common intention. He therefore prayed that both the appeals be dismissed.

**Submissions of the Learned Advocate for the Accused no.1:-**

9. The learned Senior Advocate Mr. Harshit Tolia, appearing for appellant - Accused No.1 Asim @ Munmun @ Asif Abdulkarimbhai Solanki, made exhaustive submissions on the plea of alibi raised by his client right from the inception of the case. He submitted that the appellant had consistently maintained, from the time of his arrest itself, that he was not present at Botad on 04/03/2013 at the time of the alleged incident and that he was, in fact, at Anand, which is approximately 200 kilometers away from the scene of offence. The appellant had categorically stated before the Investigating Officer that he had no connection whatsoever with the crime and that he had been falsely implicated due to previous enmity. In order to verify the correctness of this plea, the Investigating Officer had recorded statements of as many as 13 witnesses during the course of investigation. Both the Investigating Officers, PW-33 Dharmendrasinh Pravinsinh Vaghela and PW-34 Dineshsinh Mahavirsinh Chauhan, have unequivocally admitted in

their depositions before the learned sessions court that they had examined the call detail records (CDR) and location details of the mobile phone/SIM card used by the appellant, which clearly indicated his presence at Anand at the relevant time when the offence was committed at Botad.

9.1 It was further contended that the Investigating Officers had recorded detailed statements of 13 independent witnesses who confirmed the presence of the appellant at Anand on the date and time of the incident. These witnesses included police personnel, a vegetable vendor, a press reporter, an advocate, an estate broker, and several other residents and drivers from Anand. Surprisingly, none of these statements were produced along with the charge-sheet, nor were the phone call details and location data placed before the learned Sessions court. This deliberate suppression of material evidence collected during investigation itself casts serious doubt on the fairness of the prosecution. The learned Sessions Judge, however, rejected the plea of alibi solely on the technical ground that the appellant had not examined any independent defence witnesses in support thereof, without appreciating that the prosecution itself had collected cogent material supporting the alibi but chose to withhold the same.

9.2 The learned Senior Advocate for appellant- accused no.1 submitted that even this Hon'ble Court, while rejecting the bail application of the appellant, had observed that the burden to prove the plea of alibi lies upon the accused, without considering that the material in support of the alibi had already been gathered by the Investigating Officers themselves. It was strenuously argued that in a criminal trial, when the prosecution collects evidence which

supports the defence of the accused but suppresses it, the accused cannot be expected to lead defence evidence at his own peril, especially when the burden of proof lies heavily on the prosecution to prove its case beyond reasonable doubt. The appellant had even volunteered to undergo Narco-analysis test to prove his innocence, but the test could not be completed due to his deteriorating health condition. Despite his repeated request before the learned Sessions court for conducting the test again, the same was not effectively pursued. These circumstances clearly demonstrate that the appellant was genuinely attempting to prove his innocence from the very beginning.

9.3 It was pointed out that the Hon'ble Supreme Court, while disposing of Criminal Appeal No.184 of 2020 arising out of SLP (Cri.) No.8087 of 2019 vide order dated 28/01/2020, had specifically directed this Hon'ble High Court to hear the application under Section 391 Cr.P.C. for leading additional evidence in support of the plea of alibi at the earliest. Pursuant to the said direction, this Hon'ble Court had allowed the application and directed the learned Sessions Judge to record the additional evidence of the 13 witnesses as well as the electronic evidence relating to the mobile phone and SIM card of the appellant. The additional evidence so recorded clearly establishes that the appellant was present at Anand at the time of the incident and therefore could not have participated in the commission of the alleged offence at Botad.

9.4 The following witnesses were examined by the Investigating Officer in support of the plea of alibi of the appellant:

<b>Sr. No.</b>	<b>Name of Witness</b>	<b>Occupation</b>
1	Kiritsinh Narendrasinh Chudasama	SOG Police Constable
2	Hiteshkumar Rughnathbhai Brahmbhatt	LCB Police Sub-Inspector
3	Sanjaykumar Dayarambhai Parmar	LCB Police Constable
4	Jigarbhai Maganbhai Khoja	Vegetable Vendor, Anand
5	Mahendrabhai @ Bindu Nandkishor Bhati	Resident of Anand
6	Ashok Dharmanand Parshuram	Press Reporter
7	Samadbhai Usmanbhai Vora	Estate Broker
8	Maheshbhai Dhulabhai Makwana	Advocate
9	Ravindrabhai Shashikantbhai Parmar	Businessman
10	Riyajbhai Ibrahimbhai Vora	Businessman
11	Inayat Iliyasbhai Multani	Student
12	Idrishmiya Ahmedmiya Sheikh	Driver
13	Aabidbhai Mehboobbhai Solanki	Driver

9.5 The learned Senior Advocate for accused no.1 prayed that the plea of alibi raised by the appellant be accepted in its entirety and he be acquitted on this ground alone, as his presence at a distant place stands proved by the very material collected by the prosecution during investigation as well as by the additional evidence recorded pursuant to the orders of this Hon'ble Court and the Hon'ble Supreme Court.

9.6 It was further submitted that the plea of alibi raised by Accused No.1 is not a feeble or belated defence, but one that was

consistently taken from the very beginning of the investigation. The fact that the Investigating Officers themselves recorded statements of 13 witnesses and collected CDR/location data confirming the appellant's presence at Anand, and yet suppressed this material while filing the charge-sheet, demonstrates a serious lapse on the part of the prosecution. The learned sessions court committed a grave error in discarding this plea merely on the ground that the appellant did not lead defence evidence, especially when the prosecution itself had gathered evidence in support of the alibi but deliberately withheld it from the Court.

9.7 The learned Senior Advocate emphasized that the appellant had gone to the extent of volunteering for a Narco Analysis test during the course of investigation in order to substantiate his innocence and plea of alibi. Though the test was initiated, it had to be terminated midway due to the appellant's deteriorating health condition. Despite the appellant's repeated request before the learned sessions court to conduct the test afresh, and even after an order was passed in that regard, the same was not effectively carried out. This conduct of the appellant further strengthens his bona fide plea of alibi and shows his eagerness to prove that he was nowhere near the scene of offence at the relevant time.

9.8 It was urged that in view of the directions issued by the Hon'ble Supreme Court in Criminal Appeal No.184 of 2020 and the subsequent order passed by this Hon'ble High Court allowing the application under Section 391 Cr.P.C., the additional evidence recorded by the learned Sessions Judge clearly establishes the presence of the appellant at Anand on 04/03/2013. The cumulative effect of the statements of the 13 witnesses, the CDR/location

details, and the additional evidence now on record leaves no room for doubt that the appellant could not have been present at Botad at the time of the alleged incident. Therefore, the conviction of Accused No.1 based on the identification by the complainant and the alleged common intention is unsustainable and deserves to be set aside on the ground of proved plea of alibi alone.

9.9 In light of the above submissions, the learned Senior Advocate prayed that the appeal preferred by Accused No.1 be allowed, his conviction and sentence recorded by the learned Additional Sessions Judge, Botad be quashed and set aside, and he be acquitted of all the charges levelled against him.

10. The learned Senior Advocate Mr. Harshit Tolia, appearing for the appellant - Accused No.1 Asim @ Munmun @ Asif Abdulkarimbhai Solanki, made detailed and exhaustive submissions contending that the prosecution has miserably failed to prove the guilt of the appellant beyond reasonable doubt. He submitted that the entire case of the prosecution is built upon the shaky foundation of the solitary testimony of the complainant PW-28 Khodabhai Raghubhai Jogarana at Exh.331, who is example of a chance witness, a related witness, and a highly interested and partisan witness. His presence at the scene of offence itself is doubtful and his testimony is unreliable, untrustworthy, and full of material contradictions and improvements.

10.1 It was submitted that immediately after the incident, the complainant had shifted the deceased Kamleshbhai in a CNG rickshaw to Sonawala Hospital, Botad, and his own clothes were heavily stained with blood. However, astonishingly, the blood-

stained clothes of the complainant were never seized by the police nor produced before the Court during the entire trial. This conduct is highly unnatural and creates serious doubt about the credibility of the complainant. The complainant being a chance witness, his evidence requires strict and careful scrutiny. In support of this submission, reliance was placed upon ***Bhimappa v. State of Karnataka (2006) 11 SCC 323, Khima Vikamshi v. State of Gujarat (2003) 9 SCC 420 and Vanravan Anandji v. State of Gujarat (2001) 2 GLH 570.***

10.2 The learned Senior Advocate for appellant- accused no.1 further submitted that the complainant is a highly unreliable and untrustworthy witness. He has clearly admitted in his cross-examination that he did not know the name of Accused No.1 (Asif @ Munmun) at the time of the incident and only mentioned him as unidentified man and did not give any sort of explanations as to his appearance and had not identified him. The name of Accused No.1 was later told to him by Budhabhai @ Vashrambhai, who was accompanying the complainant at the time of the incident and had also helped in shifting the deceased to the hospital. However, the prosecution has deliberately not examined this crucial witness Budhabhai @ Vashrambhai, which creates a major lacuna in the prosecution case.

10.3 There are material contradictions and improvements in the evidence of the complainant, particularly with regard to the weapons used, the sequence of events, and the role attributed to Accused No.1. His version regarding the weapons is inconsistent and self-contradictory. The complainant was examined at a highly belated stage on 20.12.2017 as PW-28 and his evidence was

completed only on 12.01.2018. This belated examination raises strong suspicion that his evidence was improved and tailored subsequently to make it consistent with the prosecution case and to ensure the conviction of the accused. The learned sessions Judge has also noted the existence of contradictions in the complainant's evidence.

10.4 It was pointed out that the incident occurred in broad daylight in a thickly populated area of Botad near Shubham Complex, where several shops, offices, and public places are situated and a large number of people had gathered. Despite this, the prosecution has not examined even a single independent witness. The total absence of independent corroboration is fatal to the prosecution case. Even Hanubhai, a close relative of the deceased who was present at the hospital along with the complainant, has not been examined by the prosecution.

10.5 The learned Senior Advocate for Appellant- Accused no.1 submitted that the manner of incident as projected by the prosecution is highly improbable and unnatural. The genesis of occurrence and the manner in which the incident is alleged to have taken place cannot be believed. The prosecution story does not inspire confidence looking to the evidence, circumstances and facts of the case. Reliance was placed on **Anjali Singh v. State of Uttar Pradesh 2026 INSC 3**, wherein the Hon'ble Supreme Court has held that when the manner of incident projected by the prosecution appears to be unnatural, improbable and not in consonance with the normal course of human conduct, the Court must be extremely cautious before relying upon such evidence.

10.6 The learned Senior Advocate for Appellant- Accused no.1 further submitted that the charge of robbery (looting of revolver and mobile phone) has been disbelieved by the learned sessions Judge himself. No recovery of the alleged looted articles has been made from the appellant. The FSL reports further falsify the prosecution story. No blood stains of the appellant were found on any weapon. The blood group found on the farsi does not match with the blood group of the appellant. No blood stains were found on the gupti. These scientific findings completely demolish the case of the prosecution.

10.7 Regarding the Test Identification Parade at Exh.223 of Accused No.1 conducted on 11.03.2013, it was submitted that the same is wholly unreliable and vitiated. The appellant was arrested on 06.03.2013 and was taken to various places including Vallabhipur Civil Hospital, Anand, and Ahmedabad Civil Hospital during the remand period without being kept in baparda. There was every possibility of the complainant seeing the appellant before the TI Parade. The description of dummies is not mentioned in the panchnama. The panchas of the TI Parade have not been examined. There is also a delay of 7 days in holding the TI Parade. The evidence of TI Parade is not substantive evidence and carries no weight in law. Reliance was placed on several judgments including ***State of Gujarat v. Ramsevak Geyadin Pandit, Rakeshsing Jagjyotsing Christian v. State of Gujarat and State of Maharashtra v. Syed Umar Sayed Abbas (2016) 4 SCC 735.***

10.8 The learned Senior Advocate for Appellant- Accused no.1 submitted that the evidence of the Investigating Officers PW-31 PSI

Karangiya at Exh.355, PW-33 Shri Vaghela at Exh.366, and PW-34 Shri Chauhan at Exh.383 further falsifies the prosecution case regarding the presence of the appellant at the scene of offence. The complaint was recorded at 11:00 pm, nearly four hours after the incident. Till then, the names of the culprits were not disclosed by anyone. Even the history of the incident was not narrated to the police. The inquest panchnama was prepared before recording the complaint. All these circumstances clearly show that the complaint is a got-up and concocted document prepared at a belated stage.

10.9 It was emphatically submitted that the appellant has successfully proved his plea of alibi. At the time of the incident on 04/03/2013, the appellant was very much present at Anand, which is around 200 km away from Botad. This plea was raised from the very inception. The Investigating Officers had recorded statements of 13 witnesses and collected CDR/location data confirming his presence at Anand. However, this material was deliberately suppressed by the prosecution. Pursuant to the orders of the Hon'ble Supreme Court and this Hon'ble High Court, additional evidence has been recorded which clearly establishes the plea of alibi. The appellant had even volunteered for Narco Analysis test, but the same was not properly conducted. Reliance was placed on ***Jyantibhai Bhenkarbhai v. State of Gujarat (2002) 8 SCC 165 and Jagdish Gond v. State of Chhattisgarh (2025 INSC 460)***.

10.10 In conclusion, the learned Senior Advocate for Appellant-Accused no.1 prayed that in view of the aforesaid submissions, the appeal preferred by Accused No.1 be allowed, the judgment and order of conviction and sentence passed by the learned Additional

Sessions Judge, Botad be quashed and set aside, and the appellant be acquitted of all the charges levelled against him by granting him the benefit of doubt.

**Submissions of the Learned Advocate for the Accused no.2:-**

11. The learned Senior Counsel Mr. Tejas Barot, appearing on behalf of learned Advocate Mr. Vaibhav Vyas for appellant - Accused No.2 Jasminbhai Bharatbhai Kothari, submitted that the prosecution has miserably failed to prove the guilt of Accused No.2 beyond reasonable doubt. He contended that the entire prosecution evidence is of extremely poor quality, lacks credibility and trustworthiness, and is wholly insufficient to sustain the conviction of the appellant under Section 302 read with Section 34 IPC and under the Arms Act.

11.1 It was strenuously urged that the prosecution has relied entirely upon the testimony of the complainant PW-28 Khodabhai Raghubhai Jogarana, who is a chance witness, a related witness and a highly interested and partisan witness. The presence of this solitary eye-witness at the place of incident itself is highly doubtful and suspicious. The genesis and manner of incident as projected by the prosecution is unnatural, improbable and does not inspire any confidence. In the absence of any cogent, reliable and independent evidence, the accused cannot be convicted on such shaky and unreliable evidence and is entitled to the benefit of doubt. Reliance was placed on ***Arshad Hussain v. State of Rajasthan (2013) SCC 104 and Pankaj v. State of Rajasthan (2016) 16 SCC 192.***

11.2 The learned Senior Counsel submitted that even if the

prosecution case is taken at its highest, there is no cogent, credible or legally acceptable evidence to connect Accused No.2 with the actual commission of the offence or his presence at the scene of incident. The prosecution has alleged that Accused No.2 fired upon the deceased with a revolver. However, the revolver allegedly used in the offence has never been recovered during the entire investigation despite permission for further investigation being granted by this Hon'ble Court. It is a settled principle of law that mere recovery of a weapon or article cannot be the sole basis of conviction in the absence of any cogent evidence connecting the appellant to the commission of the offence or the scene of incident. Reliance was placed on ***Govind v. State of Haryana***, wherein the Hon'ble Supreme Court has held that in the absence of any cogent evidence to connect the accused with the commission of the offence or the scene of incident, mere recovery of the weapon cannot form the sole basis of conviction.

11.3 It was further contended that the prosecution has miserably failed to establish that the alleged recovery distinctly relates to the commission of the offence or that the weapon so recovered was the same which was used to commit the murder. The chain of recovery linking the seizure, storage, sealing, forwarding and deposit of the material exhibits remains incomplete and was not duly proved by the prosecution. Though the FSL report indicates that the pistol and cartridges recovered correlate with the bullets found in the body of the deceased, such evidence by itself is not sufficient to establish the appellant's guilt in the absence of any proof that the recovered pistol was indeed used in the commission of the offence. The link between the recovered weapon and the actual user by the appellant is totally missing. The prosecution has not been able to prove beyond reasonable doubt that the pistol allegedly recovered

was the same weapon which was used by Accused No.2 in the commission of the crime.

11.4 The learned Senior Counsel submitted that the FSL report and the ballistic expert's opinion cannot be read in isolation. Scientific evidence can only corroborate other reliable evidence. In the present case, there is no reliable ocular evidence or any other corroborative circumstance connecting Accused No.2 with the actual firing or his presence at the scene of offence. In the absence of any trustworthy direct or circumstantial evidence, the scientific evidence regarding the pistol and cartridges loses its probative value and cannot form the basis of conviction. The prosecution has failed to prove the complete chain from the alleged use of the weapon by the appellant to its recovery and subsequent opinion by the ballistic expert.

11.5 It was emphasized that the entire prosecution story suffers from serious infirmities, contradictions and improbabilities. The manner in which the incident is alleged to have occurred does not stand to reason. The evidence on record does not inspire confidence and creates reasonable doubt in the mind of the Court. When two views are possible on the evidence on record, the view which is favourable to the accused must be adopted. The appellant is entitled to the benefit of doubt on every count.

11.6 In conclusion, the learned Senior Counsel prayed that in view of the aforesaid submissions and the judgments relied upon, the appeal preferred by Accused No.2 be allowed, the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Botad be quashed and set aside, and the appellant

be acquitted of all the charges levelled against him by granting him the benefit of doubt.

**Submissions of learned APP:-**

12. The learned APP Mr. Bhargav Pandya strongly supported the judgment and order of conviction passed by the learned Additional Sessions Judge, Botad. He submitted that the prosecution has proved its case beyond reasonable doubt through the trustworthy and reliable eye-witness account of the complainant PW-28 Khodabhai Raghubhai Jogarana, who had seen the entire occurrence from a very close distance.

12.1 It was submitted that the recovery of the weapon used in the commission of the offence is not a sine qua non for conviction. The accused can be convicted even in the absence of recovery of the weapon, if there is direct and reliable evidence in the form of an eye-witness. In the present case, the complainant is an eye-witness to the actual incident and has clearly deposed about the overt acts committed by both the accused. Reliance was placed on ***State through The Inspector of Police v. Laly @ Manikandan & Another***, wherein the Hon'ble Supreme Court has held that recovery of the weapon used in the commission of offence is not essential for conviction. The accused can be convicted on the basis of direct evidence of an eye-witness even in the absence of recovery of the weapon.

12.2 The learned APP further contended that merely because there are some contradictions with respect to the timing of lodging of the FIR or minor inconsistencies in the evidence, the same

cannot be a ground to discard the testimony of the eye-witness. When the prosecution case is primarily based upon the deposition of a trustworthy and reliable eye-witness, the Court can base conviction on such evidence. In the present case, there is no reason to doubt the credibility and reliability of PW-28 - complainant. He had no enmity with the accused and had no reason to falsely implicate them. His presence at the scene of offence is natural and probable.

12.3 It was emphasized that the evidence of the complainant is duly corroborated by the medical evidence, the postmortem report showing fatal injuries, the FSL reports, the scene of offence panchnama and the proved motive. The chain of circumstances is complete and points only towards the guilt of both the appellants. The defence of false implication and the plea of alibi raised by Accused No.1 are mere afterthoughts and have not been supported by any cogent or reliable evidence. The learned sessions court has rightly appreciated the entire evidence on record and has correctly convicted both the appellants for committing the murder of Kamleshbhai Bodiya with common intention.

12.4 The learned APP therefore prayed that both the appeals deserve to be dismissed and the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Botad be confirmed.

**Evaluation of ocular evidence in nutshell:-**

13. The prosecution has examined in all 34 witnesses, whereas the accused persons did not examine any witness in their defence. As

discussed in the presiding paragraphs, the entire case of the prosecution rests solely upon the testimony of the sole and prime eye-witness, namely Khodabhai Raghubhai Jogarana, who has been examined as PW-28 at Exh.331. He is not only the complainant but also claims to be the sole eye-witness to the incident. As per his deposition, on 04/03/2013 at around 6:30 to 6:45 p.m., while he was proceeding towards Gurudattatreya Ashram along with his friend Budhabhai @ Vashrambhai on a motorcycle, he heard two gunshots near Shubham Complex on the Paliyad Road, Botad. Upon reaching Prince Hair Art salon, he saw the deceased Kamleshbhai Laghrabhai Boliya sitting on a chair in a heavily bleeding condition. Accused No.2 Jasminbhai Bharatbhai Kothari was standing there holding a revolver/pistol in his hand, while Accused No.1 Asim @ Munmun @ Asif Abdulkarimbhai Solanki was holding a farsi. The deceased was pleading with the accused persons for mercy. According to the complainant, Accused No.2 Jasminbhai fired at the deceased from a close range and also threatened the complainant by saying that he would be killed if he raised any alarm. Thereafter, both the accused dragged the injured Kamleshbhai outside the salon, where Accused No.1 Asim @ Munmun inflicted multiple severe blows with the farsi on the face and head of the deceased. The accused persons then allegedly robbed the licensed revolver and Apple mobile phone of the deceased and fled from the scene in a white car. The complainant immediately took the injured Kamleshbhai with the help of Budhabhai in a CNG rickshaw to Sonawala Hospital, Botad, where the doctor declared him dead.

13.1 In his cross-examination, the complainant admitted several important facts which have a material bearing on the credibility of his testimony. He admitted that he is a close relative of the deceased. He further admitted that Budhabhai @ Vashrambhai,

who was accompanying him at the time of the incident and had also helped him in shifting the injured to the hospital, has not been examined by the prosecution. He conceded that he did not know the name of Accused No.1 (Asim @ Munmun) prior to the incident and that the name was disclosed to him by Budhabhai @ Vashrambhai. He also admitted that several important facts which he has stated in his court deposition were not mentioned in the original FIR. Significantly, he admitted that though his own clothes were heavily stained with blood when he took the deceased to the hospital, those blood-stained clothes were never seized by the police nor produced before the Court during the trial.

14. As per the deposition of PW-27 Bharatbhai Hanubhai Bodiya at Exh.321, nephew of the deceased, deposed that on 04/03/2013 at around 7:00 p.m., while he was at his cable office, he received a phone call from the complainant informing him that Kamleshbhai had been attacked at Prince Hair Art salon. He immediately rushed to Sonawala Hospital and saw multiple injuries on the head, face, right chest, right shoulder and left shoulder of his uncle. The complainant narrated to him that Jasminbhai had fired with a revolver and Accused no.1 - Asim @ Munmun had assaulted with a farsi. He also stated that there was previous enmity between the accused and the deceased on account of a quarrel involving Bimal Shukla and a land transaction dispute. In cross-examination, he admitted that he had no personal knowledge of the incident except what was told by the complainant.

15. As per the deposition of PW-21 Hiteshbhai Ranchhodbhai Maru at Exh.306, the CNG rickshaw driver, deposed that on the evening of 04/03/2013, while he was near Shubham Complex, the

complainant stopped him and asked him to take the injured to the hospital. He saw Kamleshbhai being placed in the rickshaw. The complainant and another person accompanied the injured. He drove them to Sonawala Hospital. He stated that the clothes of the complainant and the injured were stained with blood. In cross-examination, he admitted that he knew the complainant and the deceased from before as they belonged to the same community.

16. As per the deposition of PW-33 Dharmendrasinh Pravinsinh Vaghela at Exh.364, the first Investigating Officer, deposed that upon receiving information of the incident, he reached Sonawala Hospital, recorded the complaint of Khodabhai, prepared the inquest panchnama, visited the scene of offence, seized the blood-stained farsi, revolver holster and other articles, recorded statements of witnesses, arranged identification parades of the accused and forwarded the muddamal to FSL. He admitted in his cross-examination that the appellant Asim @ Munmun had raised the plea of alibi from the very beginning, that he had recorded statements of 13 witnesses from Anand confirming the presence of the appellant at Anand at the relevant time, and that he had also collected CDR details showing the location of the appellant's mobile phone at Anand.

17. As per the deposition of PW-34 Dineshsinh Mahavirsinh Chauhan at Exh.383, the second Investigating Officer who filed the charge-sheet, deposed that after taking over the investigation, he recorded further statements, arranged identification parades, collected FSL reports and submitted the charge-sheet. In his cross-examination, he admitted that during the course of investigation, statements of 13 witnesses from Anand were recorded who had

stated about the presence of Accused No.1 at Anand on the date of the incident, and that CDR details of the appellant's mobile phone also showed his location at Anand. He further admitted that these statements and CDR details were not produced along with the charge-sheet.

18. As per the deposition of PW-18 Nikunjibhai Narharibhai Brahmbhatt at Exh.301, the FSL Scientific Officer, deposed that he examined the muddamal articles sent by the police. He found human blood of Group 'O' on the farsi which matched the blood group of the deceased. He also examined the revolver holster, bullets and other articles. In cross-examination, he admitted that no blood stains of the blood group of the appellants were found on any article and that the farsi did not contain any blood stains.

19. As per the deposition of DW.-01 Ravindrabhai Shashikantbhai Parmar a resident of Anand and a construction businessman, deposed that he had known Accused No.1 Asim @ Munmun @ Asif Abdulkarimbhai Solanki since the year 2013 and that both of them were business partners in a construction firm for the last five years prior to the incident. He stated that on 04/03/2013, he had spoken with Asim on the telephone on 5 to 6 occasions during the day. At around 3:00 p.m., when he had to go to the Court, he met Asim at the LCB Office in Anand. Thereafter, at around 6:00 p.m. in the evening, he again met Asim near Mahakali Temple situated adjacent to the LCB Office in Anand. At that time, several other persons including Ashokbhai Dharmanand - Press Reporter, Retired Dy.S.P. Brahmbhatt, Najubhai - Advocate, Samatbhai Vora - Estate Broker, Police Constable Kiritsinh Chudasama and others were also present at the said place. He remained there for about 30 to 45

minutes and thereafter returned to his house. He further deposed that the police had come to Anand and recorded his statement regarding the presence of Asim on the date of the incident and that he had identified Asim in the Court as the same person. The sum and substance of the deposition of the aforesaid witness where plea of alibi culminatively states that all the witnesses have been examined by the Special public prosecutor.

19.1 In the cross-examination conducted by the learned Special Public Prosecutor, all the alibi witnesses fairly conceded that some of them had a very close and personal relationship with the appellant - Asim @ Munmun @ Asif Abdulkarimbhai Solanki, while others had business relations with him for several years. It further transpires from their cross-examination that these witnesses were fully aware that Asim @ Munmun was involved in a murder case registered at Botad. They also admitted that during the course of inquiry and investigation, their statements were recorded by the police in the presence of Asim @ Munmun himself. However, when suggestions were put to them by the learned Special Public Prosecutor that they were giving false statements and false evidence in order to save the appellant, all the witnesses stoutly denied the same. They reiterated that whatever they had stated in their evidence was true and correct.

20. We have heard the learned Senior Counsels and the learned APP for the State at length. We have meticulously gone through the entire oral and documentary evidence on record, the impugned judgment and order dated 03/11/2018 passed by the learned Additional Sessions Judge, Botad, the original record and proceedings of the trial court, and the additional evidence recorded

pursuant to the order under Section 391 Cr.P.C.

20.1 The prosecution case primarily rests upon the testimony of the solitary eye-witness PW-28 Khodabhai Raghubhai Jogarana. After a careful and thorough scrutiny of his deposition, we find that his presence at the scene of offence is natural and probable. He has given a vivid, consistent and detailed account of the entire occurrence. He claimed to have identified both the accused persons in the Court and has attributed specific overt acts to each of them firing by Accused No.2 Jasminbhai with a revolver and multiple *farsi* blows by Accused No.1 Asim @ Munmun on the face and head of the deceased. His evidence finds substantial corroboration from the medical evidence, the postmortem report showing multiple firearm and incised injuries, the FSL reports, the scene of offence panchnama, and the proved motive only to the extent of role attributed to the Accused no. 2, the relevancy of which is discussed as under.

21. In the above context, Accused No.1 - Asim @ Munmun @ Asif Abdulkarimbhai Solanki has raised a specific, consistent and plausible plea of alibi from the very inception of the case. He has asserted that on 04/03/2013 he was not present at Botad but was at Anand, nearly 200 km away. Both the Investigating Officers PW-33 Dharmendrasinh Pravinsinh Vaghela and PW-34 Dineshsinh Mahavirsinh Chauhan have categorically admitted in their cross-examination that during the course of investigation they had recorded statements of 13 witnesses from Anand who confirmed the presence of the appellant at Anand at the relevant time. They had also collected CDR and location details of the appellant's mobile phone which showed his presence at Anand. Surprisingly,

none of these statements or CDR details were produced along with the charge-sheet. This deliberate suppression of material evidence collected by the prosecution itself creates serious doubt about the fairness and completeness of the investigation.

**Plea of Alibi:-**

22. The Latin word alibi means “elsewhere,” and the term is used for convenience when an accused takes the defence that, at the time of the occurrence, he was so far away from the place of incident that it is highly improbable for him to have participated in the crime.

22.1 Keeping in mind the principle governing the plea of alibi, the same is required to be appreciated having regard to the material placed on record. It is pertinent to note that the plea of alibi is not a part of the general exceptions under the IPC; rather, it is a rule of evidence under Section 11 of the Indian Evidence Act, 1872.

22.2 It is further required to be placed on record that merely because the plea of alibi is taken, it does not lessen the burden of the prosecution to prove that the accused was present at the scene of the offence and had participated therein. Thus, the sum and substance of the aforesaid is that the plea of alibi is to be considered only after the prosecution has satisfactorily discharged its burden.

22.3 Moreover, when a plea of alibi is raised, a heavy burden is cast upon the person asserting it to establish the same by leading cogent and satisfactory evidence, or by referring to material on

record, including the investigation papers, so as to completely exclude the possibility of the presence of the accused at the place of occurrence. In short, a standard of "strict scrutiny" is required when such a plea is raised.

22.4 In continuation of the aforesaid, as emerging from the case of the prosecution, it is an admitted fact that the complainant, namely prosecution witness Khodabhai Raghubhai Jogarana, has deposed that at the place of occurrence, accused No. 2 fired upon the deceased, resulting in his death, and was accompanied by an unknown person. The said witness has claimed that he could not identify but had only recognized the said person. However, according to the witness, the information regarding the identity of the appellant-accused No. 1 was received from another prosecution witness, namely Budhabhai @ Vashrambhai, who allegedly disclosed the name of the appellant-accused No. 1.

22.5 It further emerges that, on the basis of such information, the accused came to be arrested. However, from the very inception, accused No. 1 has raised the plea of alibi, asserting his absence from the scene of offence, which led to the recording of statements of several witnesses from Anand, where the appellant-accused No. 1 was residing.

22.6 It also transpires that the test identification parade conducted by the Investigating Officer appears to have been carried out at a belated stage, after the appellant-accused No. 1 had already been shown. The appellant has contended that the possibility of prior disclosure of his identity cannot be ruled out, and therefore, such identification exercise must be treated as

doubtful and unreliable.

22.7 It further transpires that, except for the complainant, none of the witnesses have been examined to establish the presence of the appellant-accused No. 1 at the scene of offence. Nor does it appear that the Investigating Officer made any effort to verify or scrutinize the presence of the accused by examining persons residing in the vicinity of the place of occurrence.

22.8 The most crucial issue that arises for determination in these appeals is the plea of alibi raised by Accused No.1 - Asim @ Munmun @ Asif Abdulkarimbhai Solanki. The plea of alibi is a rule of evidence embodied under Section 11 of the Indian Evidence Act, 1872 and not a general exception under the Indian Penal Code. The Supreme Court has consistently held that taking a plea of alibi does not dilute the burden of the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution must first discharge its primary burden of proving that the accused was present at the scene of crime and participated in the offence. Only thereafter does the court examine the defence plea of alibi.

22.9 After careful appreciation of the said additional evidence along with the cross-examination of the two Investigating Officers, we find that the plea of alibi raised by Accused No.1 has been sufficiently established on the touchstone of preponderance of probabilities. The prosecution has not been able to lead any cogent, reliable or independent evidence to rebut the same. The additional evidence clearly demonstrates that the appellant no.1 was present at Anand at the time of the incident. In view of the proved plea of alibi, the presence of Accused No.1 at the scene of offence becomes

highly doubtful.

22.10 The identification of Accused No.1 by the complainant, therefore, becomes unreliable and unsafe to base a conviction upon.

22.11 Thus, in view of the aforesaid discussion in detail and in consideration of the evidence of the witnesses examined, the 13 witnesses produced by the defence have clearly established the plea of alibi raised by the appellant-accused No.1. Their statements were subjected to detailed cross-examination by the prosecution. However, nothing contrary to the said plea has been brought on record by the prosecution so as to create any doubt regarding the plea of alibi of the appellant No.1. We, therefore, find considerable force in the submissions advanced on behalf of the accused No.1 with regard to the plea of alibi, which, as discussed above, stands duly established.

22.12 The plea of alibi raised by the accused No.1 is not only supported by the deposition of the Investigating Officer, who admitted in his evidence that he had recorded the statements of the 13 independent witnesses, but the said statements were not placed on record by him despite the said admission. These 13 witnesses included police personnel, vegetable vendors, businessmen and other persons from Anand. The failure of the Investigating Officer to place the material evidence collected during the course of investigation on record amounts to a serious dereliction of duty and raises grave doubt about the fairness of the prosecution.

22.13 Be that as it may, it must also be placed on record that not only the Investigating Officer but also the learned Public Prosecutor/Special Public Prosecutor, who represented the prosecution, remained a silent spectator even though the said fact was clearly reflected in the deposition of the prosecution witness. Even the learned Sessions Court, during the trial, when the complete absence of the appellant-accused No.1 from the scene of occurrence was disclosed in the deposition, acted as a mere spectator instead of directing the concerned parties to place the said material on record so as to enable the Court to arrive at a just and proper conclusion.

22.14 The same aspects has been dealt in ***Kamal Prasad v. State of Madhya Pradesh (2023 (SC) 891)***, ***Pappu Tiwary v. State of Jharkhand (2022 SC 107)*** and in ***Jagdish Gond v. State of Chhattisgarh (2025 (SC) 409)***.

22.15 In the present case, Accused No.1 raised the plea of alibi from the very inception of the case. Both the Investigating Officers have admitted that they recorded statements of 13 witnesses from Anand and collected CDR/location data showing the appellant's presence at Anand at the relevant time. This material was, however, deliberately suppressed and not produced with the charge-sheet. Pursuant to the directions of the Hon'ble Supreme Court and this Court, additional evidence has been recorded. After appreciating the same, we find that the plea of alibi stands sufficiently established on the touchstone of preponderance of probabilities. The prosecution has failed to rebut it. Accused No.1 is, therefore, entitled to the benefit of doubt and acquittal.

23. The evaluation of the evidence has been made and discussed in detail in the preceding paragraphs and to avoid the repetition the same has been dealt with as per the relevancy.

23.1 So far as Accused No.2 - Jasminbhai Bharatbhai Kothari is concerned in context as discussed in the foregoing paragraphs after evaluating the evidence of in all 34 witnesses, on which the whole case of the prosecution rest upon sole testimony of the Khodabhai who has been examined again at the cost of repetition to narrate and describe as deposed by this witness who has been examined as PW-28 at Exh.331. He is not only the complainant but also claims to be the sole eye-witness to the incident. As per his deposition, on 04/03/2013 at around 6:30 to 6:45 p.m., while he was proceeding towards Gurudattatreya Ashram along with his friend Budhabhai @ Vashrambhai on a motorcycle, he heard two gunshots near Shubham Complex on the Paliyad Road, Botad. Upon reaching Prince Hair Art salon, he saw the deceased Kamleshbhai Laghrabhai Boliya sitting on a chair in a heavily bleeding condition. Accused No.2 Jasminbhai Bharatbhai Kothari was standing there holding a revolver/pistol in his hand, while Accused No.1 unidentified person was holding a farsi. The deceased was pleading with the accused persons for mercy. According to the complainant, Accused No.2 Jasminbhai fired at the deceased from a close range and also threatened the complainant by saying that he would be killed if he raised any alarm. Thereafter, both the accused dragged the injured Kamleshbhai outside the salon, where Accused No.1 unidentified person inflicted multiple severe blows with the farsi on the face and head of the deceased. The evidence of the complainant clearly and consistently attributes the role of firing with a revolver to him. He has stated that Jasminbhai fired at the deceased from a close distance. This ocular evidence is duly corroborated by the

medical evidence showing firearm injuries, the FSL reports, the scene of offence panchnama, and the proved motive arising out of previous enmity and the land dispute.

23.2 The medical evidence in this case assumes significance and deserves to be discussed in detail. PW-15 Dr. Bharatbhai Hargovindbhai Chavda at Exh.264, who conducted the post-mortem examination on the dead body of the deceased, has categorically deposed that the deceased had sustained one firearm entry wound with corresponding exit wound on the right side of the chest, which had pierced through vital organs. In addition, the deceased had sustained multiple incised wounds on the face, head, right shoulder and left shoulder caused by a sharp cutting weapon like a farsi. According to the Post-Mortem Note at Exh.243, the cause of death was opined as “**Haemorrhagic shock due to multiple injuries to vital organs caused by firearm and sharp cutting weapon**”.

23.3 The doctor has further clarified in his deposition that the firearm injury was grievous and fatal in nature and could have been caused from a close range. He has also stated that all the injuries were ante-mortem in nature and were individually as well as collectively sufficient in the ordinary course of nature to cause death. The nature, number and location of the injuries described by the doctor are in complete consonance with the ocular testimony of the complainant PW-28, who has stated that Accused No.2 fired a revolver at the deceased and Accused No.1 inflicted multiple severe blows with a farsi on the face and head of the deceased.

23.4 The medical evidence is further strongly corroborated by the scientific evidence in the form of FSL Reports. The Ballistic

Expert's Report at Exh.282 clearly opines that the bullet recovered from the body of the deceased was fired from the revolver seized in this case. The Biology and Serology Examination Reports at Exh.283 confirm the presence of human blood of Group 'O' on the seized farsi, which matches the blood group of the deceased Kamleshbhai. The FSL Scientific Officer PW-18 Nikunjibhai Narharibhai Brahmbhatt at Exh.301 has fully supported these reports in his deposition and has stood firm even in the cross-examination. He has categorically stated that no blood stains of the blood group of either of the accused persons were found on any of the articles sent for examination.

23.5 The two Investigating Officers, PW-33 Dharmendrasinh Pravinsinh Vaghela and PW-34 Dineshsinh Mahavirsinh Chauhan, have duly proved the complete chain of custody of the muddamal articles right from the time of their seizure from the scene of offence till they were properly sealed, packed and forwarded to the FSL. There is no break in the chain of custody. The scene of offence panchnama, the recovery panchnama of the farsi, and the forwarding letters have all been proved by the prosecution.

23.6 Thus, the ocular evidence of the complainant, the medical evidence in the form of post-mortem report and the deposition of Dr. Bharatbhai Chavda, and the scientific evidence in the form of FSL reports read together unerringly and conclusively point towards the active and specific role played by Accused No.2 Jasminbhai Bharatbhai Kothari in the commission of the offence.

23.7 We, therefore, hold that the prosecution has proved beyond reasonable doubt that Accused No.2, in furtherance of common

intention, committed the murder of Kamleshbhai Laghrabhai Bodiya by firing a revolver at him. The ocular, medical and scientific evidence are consistent, cogent, reliable and inspire full confidence. Accordingly, the conviction of Accused No.2 under Section 302 read with Section 34 of the IPC is fully justified and does not call for any interference by this Court.

23.8 So far as Accused No.2 - Jasminbhai Bharatbhai Kothari is concerned, the prosecution has consistently and repeatedly alleged that he is the person who actually fired the revolver at the deceased Kamleshbhai Laghrabhai Bodiya from a close range. After a detailed, meticulous, thorough and comprehensive appreciation of the entire oral as well as documentary evidence on record, we find that the prosecution has been able to prove the guilt of Accused No.2 beyond reasonable doubt for the offence of murder with common intention.

23.9 However, we find that the prosecution has failed to prove the charge of robbery under Section 397 IPC against Accused No.2 beyond reasonable doubt. The learned Sessions Judge himself has disbelieved the allegation of looting of the revolver and mobile phone. No recovery of the alleged looted articles has been made from either of the accused. The conviction under Section 397 IPC is, therefore, not sustainable and deserves to be set aside.

24. Considering the peculiar facts and circumstances of the case, as discussed in the preceding paragraphs, it appears that the Investigating Officer had conducted the investigation and recorded statements in relation to the plea of alibi raised by Accused No. 1. However, he deemed it fit not to place or produce the same before

the Court. Despite the repeated plea of alibi raised by Accused No. 1, neither the Public Prosecutor/Special Public Prosecutor nor anyone else has taken the pain to place the same before the Court, nor did the Court consider this aspect. Hence, this aspect has constrained us to deal with the aforesaid aspect.

**Purpose for Trial = Means Fair Trial:-**

25. It is apposite to quote the observations of **Chinnappa Reddy, J. in Ram Chander V. State of Haryana, (1981) 3 SCC 191:-**

*"2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.*

**Conjoined duties of the Investigating officer, Public prosecutor/Special Public prosecutor and Court:-**

26. The Hon'ble Supreme Court in **Sovaran Singh Prajapati Vs. The State of Uttarpradesh 2025 INSC 225**, while analyzing the concept of fair Trial, has deduced the following principles:

*“7. It is important to restate the purpose of trial. A trial, of course, is a fact-finding exercise wherein both parties, i.e., the prosecution and defence, after investigation by the competent authorities, present their versions of events and the role and duty of the Court to determine the truth. While undertaking such determination, the Court is not only to look at the evidence at hand but also ensure that all consideration balances the demand for justice and the rights of the accused. The American Jurisprudence 2nd Ed. 2007, in the following terms, captures the purpose of a trial:*

*“The purpose of trial is to determine the validity of the allegations. The objective is to secure a fair and impartial administration of justice between the parties to the litigation and not the achievement of a hearing wholly free from errors. Once a civil action has been instituted and issue is joined upon the pleadings, there must be a trial on the issue before a judgment may be rendered. Trial is not a contest between lawyers but a presentation of facts to which the law may be applied to resolve the issues between the parties and to determine their rights. It is also not a sport; it is an inquiry into the truth, in which the general public has an interest.”*

*Fair Trial - A guarantee under Article 21 of the Constitution of India*

*10.1 A Three-Judge Bench of this Court in Vinubhai Haribhai Malaviya v. State of Gujarat, held as under:*

*18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.”*

10.2 In the well-known 'Best Bakery Case' titled *Zahira Habibulla H. H. Sheikh v. State of Gujarat*, the Court, detailing various aspects of fair trial, observed as under:

"35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as *persona non grata*. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned.

*There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.*

xxx.

*38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny."*

*"10.6 From a studied analysis of the above decisions, the following principles as to the meaning and import of fair trial, can be illustratively deduced:*

- (1) *Fair and Just investigation is the starting point of the fair trial process.*
- (2) *This process is a triangulation of the rights of the accused, the victim and the community that acts through the state and prosecuting agencies.*
- (3) *Process of investigation and trial must be completed with promptitude.*
- (4) *The trial Judge has to play an active role in the search for truth, which a trial, undoubtedly has to be.*
- (5) *Bias of all nature, against the accused, the victim, the witnesses; or the cause of/at trial, has to be eliminated.*
- (6) *The process of fair trial is to be done to maintain public confidence & uphold the majesty of law.*
- (7) *The atmosphere in which a trial is to be conducted in a fair manner has to be in an atmosphere of 'judicial calm'.*
- (8) *Unfair prolongation of trial is an affront to the ideal of fair trial.*
- (9) *The ideal of fair trial has protection in the Constitution and in the international legal framework, as a basic human right.*
- (10) *The centripodal purpose of fair trial is to ensure that injustice is avoided as far as possible, but equally 'fair trial' is not leveraged to a point which would hinder the established procedure of Cr.P.C. In other words, the command of the Code cannot be ignored at the behest of the prosecution or defence, in the name of fair trial."*

### **(a) Duty of the Trial Court**

15. *On numerous occasions, this Court has highlighted the duty of a Trial Court to be an active participant to seek out the truth in a given set of circumstances ensuring that a balance is struck between the role and responsibility of prosecution as also the rights of the accused. It would be helpful to refer to certain pronouncements:*

15.1 This Court in **Pooja Pal v. Union of India**, observed :

*"54...It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator*

*and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community..."*

xxx

15.3 In **Bablu Kumar v. State of Bihar**, this Court observed :

*"22. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the court, it can irrefragably be stated that the court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. The law does not countenance a "mock trial". It is a serious concern of society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses."*

**(b) Duty of Prosecutor**

*20. In a criminal trial, unless the law otherwise requires, the onus of proof never shifts. It is always on the prosecution. The*

*job of the prosecution is to drive home the guilt of the accused beyond reasonable doubt, but at the same time, the prosecutor cannot forget that his first and foremost duty is, that of an officer of the Court. The prosecuting agency carries the role, primarily, till the time the matter enters the Court. They have a responsibility to examine all possible angles, collect all relevant evidence and then produce the same before the Court for determination/of guilt or lack thereof. The following extracts of judgments underscore the indispensable role of the prosecutor.*

20.1 In **Bablu Kumar (supra)**, it was held that:

*"The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial."*

27. Ours is an adversarial system of trial and it is a settled principle that the burden lies solely upon the prosecution to prove its case against the accused beyond reasonable doubt. The accused cannot be compelled to speak, and any benefit of doubt must necessarily enure to his advantage. A crime against an individual is, in essence, a crime against society. Therefore, the Investigating Officer, the Public Prosecutor/ Special Public Prosecutor, and the Presiding Officer of the Court are all under a duty to discharge their respective functions with utmost diligence so as to arrive at a just and fair conclusion. The trial must proceed impartially, affording reasonable opportunity to all concerned to present their case. None of these stakeholders can afford to remain remiss or adopt a lackadaisical approach. Each must perform their duties independently, without reservations or external constraints.

27.1 The relationship between the prosecuting agency and the judiciary forms the very cornerstone of the criminal justice system. The Public Prosecutor/Special Public Prosecutor, while conducting the prosecution, is duty-bound to place before the Court all relevant material, including that which may favour the accused, thereby assisting the Court in its quest for truth. The objective is not merely to secure a conviction, but to ensure that justice is done on the basis of the material placed before the Court.

27.2 It is equally incumbent upon the Court to arrive at the truth and subserve the ends of justice. The Court cannot act as a mere passive recorder of evidence or a silent spectator of the proceedings. Rather, it must adopt a participatory role in the trial. Even where the prosecution is remiss or lethargic, the Court must effectively control the proceedings to ensure that the ultimate objective, discovery of truth is achieved.

27.3 The trial Judge must remain vigilant against any dereliction of duty on the part of the prosecuting agency, including indifference or an attitude of aloofness. In such circumstances, the Court is empowered to exercise its wide powers to elicit all necessary material by actively engaging in the process of evidence. The Judge may put questions to witnesses, call for relevant material, and ensure that no crucial evidence is suppressed or overlooked.

27.4 Thus, the Judge is expected to play an active role in the trial by eliciting relevant facts from witnesses in appropriate contexts, wherever necessary for reaching a correct conclusion. The Court possesses ample authority to intervene where it perceives errors,

omissions, mischief, or delaying tactics, and must address such issues in accordance with law.

27.5 In sum, while the Presiding Officer must maintain the role of a neutral arbiter akin to a referee or umpire he cannot remain a mere spectator. The trial is a contest between the prosecution and the defence, but the Court must ensure that this contest is conducted fairly, without deviation, and ultimately directed towards the discovery of truth and the administration of justice.

28. At this juncture, it would be a failure of justice if it were to ignore the lapses and infirmities in the investigation as well as the dereliction of duty on the part of the prosecuting agency, etc. It is not only the duty of the Investigating Officer but also of the Public Prosecutor/Special Public Prosecutor and, more importantly, of the Court itself to ensure that a just and fair conclusion is reached. The Court is duty-bound to see that no innocent person is punished and that every accused is not deprived of his legitimate right to put forward his defence effectively. It is a well-settled principle that a criminal trial is not merely a battle between the prosecution and the defence, but a quest for truth. The Court cannot remain a mere silent spectator.

28.1 We must also record our concern regarding the duties of the Court, the Public Prosecutor/Special Public Prosecutor, and the Investigating Agency in criminal trials.

28.2 As observed by the Hon'ble Supreme Court in **Munna Pandey v. State of Bihar 2023 INSC 793**, neither the defence counsel, nor the Public Prosecutor/Special Public Prosecutor, nor

the Presiding Officer of the Trial Court, and unfortunately, even the High Court, thought it fit to examine the aforesaid aspect of the matter and make an effort to arrive at the truth. It was the duty of the defence counsel to confront the witnesses with their police statements so as to prove contradictions in the form of material omissions and bring them on record. The lapse on the part of the Public Prosecutor/ Special Public Prosecutor is also most unfortunate. The Public Prosecutor/ Special Public Prosecutor was aware that the 13 witnesses had deposed in terms of their statements recorded under Section 161 of the CrPC; however, the learned Public Prosecutor/ Special Public Prosecutor failed to place the same before the Court. Nor did the Court appear to take adequate pains to assign reasons while considering the claim of accused No. 1. The Presiding Officer of the learned Sessions Court also remained a mute spectator.

28.3 In view of the above and in a nutshell, such procedural lapses may lead to a very serious crime going unpunished. Any crime committed against an individual is a crime against the entire society. In such circumstances, neither the public prosecutor/ Special Public Prosecutor nor the presiding officer of the trial court can afford to remain remiss or lackadaisical in any manner. The relations between the Public Prosecution Service and the judiciary are the very cornerstone of the criminal justice system. The public prosecutors who are responsible for conducting prosecutions and may appeal against the court decisions, are one of judge's natural counterparts in the trial proceedings. A criminal case is built upon the edifice of evidence that is admissible in law. Free and fair trial is the very foundation of the criminal jurisprudence.

28.4 The learned Sessions judge also has a vital role. The judge is

expected to actively participate in the trial, elicit necessary materials from the witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during the chief examination or cross-examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain it. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process rather expecting fair Trial and exchange of duties by all concerned.

29. It is well settled that while applying the principle of *falsus in uno, falsus in omnibus*, the Court is required to separate the truthful part of the evidence from the falsehood. In the present case, such segregation is not only possible but has been appropriately undertaken. Upon such scrutiny, the prosecution case does not stand proved beyond reasonable doubt against accused No.1, and the benefit of doubt arising from the plea of alibi deserves to be extended to him. However, so far as accused No.2 is concerned, the prosecution case stands proved. Therefore, the impugned judgment warrants interference only to the extent of accused No.1, while no interference is called for qua accused No.2.

29.1 The maxim *falsus in uno, falsus in omnibus* is merely a rule of caution. Where witnesses are found unreliable on certain aspects, such as exaggeration regarding the involvement of other accused, the Court is duty bound to carefully scrutinize the remaining evidence and may rely upon those portions which are found to be credible and duly corroborated. In the present case, the exaggerations regarding conspiracy and involvement of accused No.1 have rightly been discarded, particularly in light of the

plausible plea of alibi raised by him, which creates a reasonable doubt entitling him to acquittal. However, the core substratum of the prosecution case, the fatal firearm injuries attributed to accused No.2 stands firmly established through cogent and corroborative evidence, including medical evidence, forensic reports, and recovery.

30. At this juncture, it is apposite to observe that, despite the plea of alibi having been raised by Accused No.1 from the very inception of the case, neither the Investigating Officer, nor the learned Public Prosecutor/special Public Prosecutor, nor the Presiding Officer of the trial Court thought it fit to properly examine or place on record the material collected during the investigation concerning the said plea, thereby failing to make efforts to reach at the truth.

31. In a nutshell as far as Accused No.2 - Jasminbhai Bharatbhai Kothari is concerned, the evidence of the complainant clearly and consistently attributes the role of firing with a revolver to him. His testimony is corroborated by the medical evidence showing firearm injuries, the FSL reports confirming the use of a firearm, the scene of offence panchnama, and the proved motive arising out of previous enmity and the land dispute. After a detailed and meticulous appreciation of the entire evidence on record, we find that the prosecution has been able to prove the guilt of Accused No.2 beyond reasonable doubt for the offence of murder with common intention. We find no reason to interfere with the conviction recorded by the learned Sessions Judge under Section 302 read with Section 34 IPC. The appeal filed by Accused No.2 is, therefore, dismissed.

32. In view of the above discussion, appreciation of evidence, and the principles laid down by the Hon'ble Supreme Court on the plea of alibi and the duties of the stakeholders in a criminal trial, we hold that the appeal filed by Accused No.1 - Asim @ Munmun @ Asif Abdulkarimbhai Solanki deserves to be allowed and he is entitled to acquittal on the ground of proved plea of alibi and accordingly the appeal stands allowed.

32.1 The appeal filed by Accused No.2 - Jasminbhai Bharatbhai Kothari is dismissed. His conviction and sentence under Section 302 read with Section 34 IPC as well as under Section 25(1)(B)(a) of the Arms Act, as recorded by the learned Additional Sessions Judge, Botad, stands confirmed.

**(ILESH J. VORA, J)**

**(R. T. VACHHANI, J)**

Kaushal Rathod