NEUTRAL CITATION
2026:GUJHC:25493-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL CONFIRMATION CASE NO. 2 of 2024

With
R/CRIMINAL APPEAL NO. 2812 of 2024
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO. 1 of 2025
In R/CRIMINAL APPEAL NO. 2812 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

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

==========

Approved for Reporting	Yes	No
	Yes	

==========

STATE OF GUJARAT
Versus
BALDEVBHAI BUDHAJI DHULAJI CHAUHAN (THAKOR)

==========

Appearance:
MR L B DABHI, APP for the Appellant(s) No. 1
MR NIRAD D BUCH(4000) for the Respondent(s) No. 1

==========

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

Date : 10/04/2026

ORAL JUDGMENT

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

1. This criminal appeal preferred by the sole accused Baldevbhai Budhaji Dhulaji Chauhan (Thakor), under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against the judgment of conviction and order of sentence dated 10.09.2024 passed by the learned

NEUTRAL CITATION
2026:GUJHC:25493-DB

Additional City Sessions Judge, Ahmedabad in Sessions Case No.467 of 2017 by which the appellant-accused has been convicted under Sections 302 and 201 of the Indian Penal Code and capital punishment.

The break-up of sentence and fine amount is as follows:

Conviction under Section	Punishment	Fine	In default of fine
S.302 of IPC	Capital Punishment	Rs.5,000/-	R.I. of 2 months
S.201 of IPC	R.I. of 2 years	Rs.1,000/-	R.I. of 1 month

2. The death reference (2 of 2024) has come up before this Court for the conference of death sentence.

3. As the death reference as well as the appeal both arise out of the same judgment and order, they have been heard and are being decided together.

Factual aspects:

4. The case of the prosecution leading to the conviction of the appellant accused is as follows:

4.1 The appellant accused was charged and convicted for the offence of double murder and causing disappearance of the evidence.

NEUTRAL CITATION
2026:GUJHC:25493-DB

4.2 An FIR being I-C.R.No.135 of 2017, dated 06.06.2017 for the offences punishable under Sections 302 and 201 of the IPC came to be registered with Odhav Police Station, Ahmedabad against unidentified persons for killing two persons viz. Vipulbhai and Kanchanben who happened to be a son and mother.

4.3 In the year 2017, deceased Kanchanben and Vipulbhai were residing in a rented house no.D-147, situated at Belapark Society, Odhav, Ahmedabad. Deceased Vipulbhai married to one Sujata (PW:30), who originally belongs to the State Maharashtra and was having a daughter Vaishnavi borne out from her earlier marriage.

4.4 The appellant-accused was compounder of the hospital viz. Shriram Hospital situated in the Odhav area. Deceased Kanchanben was used to visit Shriram Hospital for age related treatment, accompanied by witness Sujata -PW:30, as a result, the appellant accused came into contact with witness Sujata. After exchanging their cell number, they got acquainted and they were active on social media. In nutshell, the wife of the deceased Vipulbhai, had an affair with the appellant accused. The deceased husband and mother in law Kanchanben opposed the said relationship and the witness Sujata was asked to leave the house, as a result, she went to house of her sister at Maharashtra. The appellant accused who

NEUTRAL CITATION
2026:GUJHC:25493-DB

used to visit the house of Sujata, had a grudge against the mother in law Kanchanben on the aspect of sending Sujata to Maharashtra at her parental home. In such circumstances, according to the prosecution case on 03.06.2017 in the evening hours, the appellant accused came to house of Sujata where, the deceased Kanchanben found alone in the house. The deceased Vipul husband of Sujata was employed nearby the factory and he was not at home. The appellant accused raising dispute with the deceased Kanchanben about the sending Sujata at parental home, entered into heated exchange of words with the deceased and then, inflicted a fatal blows on the head of the deceased Kanchanben with weapon axe. After the incident, deceased Vipul entered into house and saw that her mother was lying in pool of blood and beside the death body of mother, the appellant was trying to wrap the dead body into polythene bag. The deceased Vipul objected the act of the appellant of killing her mother. The appellant accused got angry and killed the deceased Vipul by inflicting axe blows on his head.

4.5 It is the further case of the prosecution that the appellant accused after killing two persons stayed in the same house upto early morning i.e. 03:00 o’clock and wrapped the dead bodies in the polythene bags and kept it nearby the washroom. The appellant thereafter, tried to remove the bloodstained from the wall and floor of the

NEUTRAL CITATION
2026:GUJHC:25493-DB

house with the help of knife. He had also changed his bloodstained clothes and wore clothes of the deceased Vipulbhai allegedly took out from his cupboard. The accused appellant took with him a weapon axe and knife as well as his bloodstained clothes and left the house at the place of the incident in the early morning at about 3 to 4 a.m. The accused straightway went to Shriram Hospital where he was employed as compounder. The weapon axe and knife were being hidden in the electric box of the hospital. The bloodstained clothes were being burn by the accused near Shriram Hospital.

4.6 It is the further case of the prosecution that after three four days of the incident i.e. on 06.06.2017, the one of the neighbour Mr.Ashok Prajapati PW:14 experienced a bad smell from the house D-147 where the dead bodies were lying in a polythene bags. The witness PW:14 informed the owner of the house Divyesh Modi – PW:23. The one of the neighbours Malkesh Shah PW:20 informed the police by dialing 100.

4.7 It is the further case of the prosecution that the dead bodies of Vipulbhai and Kanchanben in a decomposed condition discovered and found and accordingly, an FIR against unidentified persons came to be filed by Divyesh Modi PW:23. Upon registration of the offence, the I.O. PW:36 N.L. Desai, during the course of investigation, sent

NEUTRAL CITATION
2026:GUJHC:25493-DB

the dead bodies for postmortem, recorded the statement of the witnesses and on next day i.e. 07.06.2017, upon specific input, the appellant accused came to be arrested and was remanded to the police custody. The accused during the police custody, voluntarily in the presence of panchas, pointed out the place of offence, and during the reconstruction, panchnama of crime scene, he narrated the entire sequence of the offence. The I.O. during the course of investigation, discovered and recovered the weapon axe and knife at the instance of the accused in terms of Section 27 of the Evidence Act. The I.O. also obtained the CCTV footages of Shriram Hospital, to prove the conduct of the accused after the incident. In such circumstances, after receiving the report of the FSL and upon completion of the investigation, the I.O. filed the chargesheet against the appellant accused for the offence of murder punishable under Section 302 IPC and the act of causing disappearance of evidence punishable under Section 201 of the IPC before the Judicial Magistrate Court, Ahmedabad.

5. As the case was exclusively triable by the Court of Sessions, the same was committed to the City Sessions Court at Ahmedabad.

NEUTRAL CITATION
2026:GUJHC:25493-DB

6. The City Sessions Court, Ahmedabad framed the charges against the appellant accused which he did not admit the charge and claimed to be tried.

7. The prosecution, in order to prove the charge, adduced the following oral as well as documentary evidence in support of its case:

Oral evidence

PW 1 – Exh.10	Padminiben Hasmukhbhai Sharma, panch witness
PW 2 – Exh.15	Kumuchandra Okhabhai Khatri, panch witness
PW 3 – Exh.18	Vasant Pratapji Prajapati, panch witness
PW 4 – Exh.20	Jagdishbhai Ramshankarbhai Joshi, panch witness
PW 5 – Exh.32	Dhhirubhai Ramubhai Bharwad, panch witness
PW 6 – Exh.34	Paraskumar Narayanbhai Mali, panch witness
PW 7 – Exh.37	Ashish Jagdishbhai Luhar, panch witness
PW 8 – Exh.42	Chandresh Vinodray Panchasra, panch witness
PW 9 – Exh.47	Arvindbhai Himmatsinh Parmar, panch witness
PW 10 – Exh.51	Vijaybhai Dineshbhai Jaiswal, panch witness
PW 11 – Exh.54	Kalyanbhai Kamarbhai Sadu, panch witness
PW 12 – Exh.56	Vishnubhai Himmatbhai Thakor, panch witness
PW 13 – Exh.60	Suresh Heeralal Tank, panch witness
PW 14 – Exh.68	Ashok Pratapji Prajapati
PW 15 – Exh.70	Sampatbhai Punaji Thakor, panch witness
PW 16 – Exh.72	Amit Ganeshbhai Rana
PW 17 – Exh.74	Amarsingh Kashmirsingh Bharti
PW 18 – Exh.76	Hobiben Pratapji Prajapati
PW 19 – Exh.78	Vimlaben Amarsingh Bbharti
PW 20 – Exh.80	Malkeshbhai Champaklal Shah
PW 21 – Exh.82	Dr. Yogeshbhai Ramchandra Jain
PW 22 – Exh.84	Rajendrakumar Natwarlal Patel
PW 23 – Exh.86	Divyeshbhai Jayantibhai Modi
PW 24 – Exh.89	Nayankumar Suresshbhai Modi
PW 25 – Exh.92	Priyavadan Arvindbhai Modi
PW 26 – Exh.94	Krishnaben Nayanbhai Modi
PW 27 – Exh.96	Dr. Mustaq Ahmed Gulamrasool Sheikh, pm doctor
PW 28 – Exh.100	Dr. Mustaq Ahmed Gulamrasool Shiekh, pm doctor
PW 29 – Exh.103	Kuldeepkumar Bhagirath Choudhari
PW 30 – Exh.106	Sujata Manatesh Kulkarni

NEUTRAL CITATION
2026:GUJHC:25493-DB

PW 31 – Exh.115	Ranjitsinh Nanjibhai Khant, IO
PW 32 – Exh.116	Kashiben Bharatsinh Rathod, PSO
PW 33 – Exh.120	Jayeshbhai Kodarbhai Patel
PW 34 – Exh.123	Amarsinh Revabhai Gohil
PW 35 – Exh.124	Pradeepsinh Hatisinh Chouhan
PW 36 – Exh.128	Narayanbhai Lalbhai Desai, IO
PW 37 – Exh.152	Mrudulbhai Upendrabhai Bhatt
PW 38 – Exh.165	Hitesh Jayantilal Trivedi

Documentary evidence

Exh.12	Inquest panchnama of Kanchanben
Exh.17	Inquest panchnama of Vipulbhai
Exh.22	Panchnama of place of offence
Exh.22-30	Mudammal article no. 1-8 panch slip
Exh.36	Panchnama of clothes and articles recovered from the body of deceased
Exh.39-41	Mudammal article no. 24(1),(2),(3) panch slips
Exh.44	Panchnama of medical sample collected from accused during medical examination
Exh.49	Panchnama of stating of facts and actions of accused as seen by the panch witnesses
Exh.53	Arrest panchnama
Exh.58	Panchnama of recovering of cctv footage of Shriram Hospital
Exh.59	Mudammal article no.32 panch slip
Exh.62	Panchnama of recovery of weapons
Exh.63-67	Mudammal article no.27-31 panch slip
Exh.88	Original complaint
Exh.98	Police yadi for pm report of Kanchanben
Exh.99	Pm note of deceased Kanchanben Sureshbhai Modi
Exh.101	Police yadi for pm report of Vipulbhai
Exh.102	Pm note of deceased Vipulbhai Sureshbhai Modi
Exh.117	Police report
Exh.118	Special report by PSO to police commissioner
Exh.129	FSL mobile van report
Exh.130	POlice yadi to fingerprints expert
Exh.131	Police yadi to FSL
Exh.132	Mudammal forwarding notes
Exh.133	Receipt by FSL
Exh.134-135	Receipt by FSL
Exh.136	FSL letter and report
Exh.137	Copy of announcement of ban on weapons
Exh.138	Police yadi for map
Exh.139	FSL letter

NEUTRAL CITATION
2026:GUJHC:25493-DB

Exh.140	FSL report
Exh.141	Serological report
Exh.142	FSL letter
Exh.143	FSL physics department report
Exh.149	Call record details report of accused
Exh.153	DoT guidelines dated 21-12-2021
Exh.154	Mobile sim no.93582609 subscribers data record
Exh.166	FSL enhanced photos

8. After closure of the prosecution evidence, the statement of the accused appellant under Section 313 of Cr.P.C. was recorded to which he stated that he is innocent and he has been falsely implicated. He has further stated that, the prosecution failed to prove the facts about on which date and time, the death was occurred. He has further stated that the real culprits of the offence have not been arrested in the present case by the police. He has further stated that it could not be possible to kill two persons at a time by a single person. He has lastly stated that his presence at the place is not proved and established.

9. Though opportunity was extended, no oral evidence being adduced by the appellant accused.

10. Trial Court's Findings:

After hearing the parties and upon appreciation of the material evidence, the accused held guilty for the offence of murder and awarded death sentence. While

NEUTRAL CITATION
2026:GUJHC:25493-DB

recording the conviction and sentence, the trial Court relied upon the following circumstances as proved:

(i) the appellant accused had an affair with the wife of deceased Sujata and he was used to come to the house of deceased Vipulbhai and on this aspect, there was matrimonial dispute between the husband and wife;

(ii) on 03.06.2017, at about 7-00 pm, the appellant accused entered into house known as ‘D-147’, Bela Park Society, Ambika Nagar, Odhav, Ahmedabad, and raised dispute with the deceased Kanchanben with respect to sending Sujata to her parental home, killed the deceased with weapon axe.

(iii) on the same day at about 8-00 o’clock when deceased Vipul entered into his house, he saw her mother lying in pool of blood with the severe head injuries and there was verbal spat between deceased Vipul and appellant accused, as a result, the deceased Vipul killed by the appellant accused by inflicting several axe blows on his head.

(iv) the appellant accused after the incident stayed in the house upto late night and at about 3-00 am. He wrapped both the dead bodies in the plastic

NEUTRAL CITATION
2026:GUJHC:25493-DB

bag and put the dead bodies near washroom of the house. The appellant accused thereafter put the weapons axe and knife as well as blood stained cloths in a plastic bag and with the plastic bag, he left the house in the early morning and at that time, the neighbour Amit Rana – PW-16 saw him.)

(v) The appellant accused thereafter, went to the Shri Ram Hospital situated in the Odhav area, nearby place of incident, where he was employed as compounder. He managed to hide the weapons in the electric box of the hospital and burnt the cloths nearby the hospital.

11. Being dissatisfied and aggrieved wit the judgment of conviction and order of death sentence, the appellant-accused has come up with the present appeal.

12. Evidence adduced by the prosecution :

(1) Dr. Mustak Ahmed Shaikh (PW-27):

This witness being a Medical Officer, Civil Hospital, Ahmedabad, had conducted Postmortum on the body of the deceased Vipul Modi and Kanchanben Modi. He received both the dead bodies in a blue and gray colour plastic sheets tide with orange plastic string and both the dead bodies found in a decomposed condition. The doctor

NEUTRAL CITATION
2026:GUJHC:25493-DB

has first examined deceased Kanchanben and during the examination, he noticed the following internal and external injuries mentioned in the PM report Exh. 99.

Deceased Kanchanben
External Injuries

(1) One chop wound of size 4X1.5cm present over Lt. parietal region of head in sagittal plane & scalp deep & brawnish red in colour & 5cm above from Lt ear

(2) One chop wound of size 4x1.5 cm & scalp deep present over Rt. posterior pavietal region of head in the coronal plane 10 cm above from Rt. ear & 2 cm Rt. To midline & brawnish - red in colour.

(3) One chop wound of size 4x1.5 cm & scalp deep present over Rt. Frontal region of head in coronal plane 6 cm above from Rt. Eyebrow & 5 cm away from midline & brawnish red in colour.

(4) One chop wound of size 2x0.5 cm & scalp deep present over middle of pavietal region in the coronal plane in midline, 12 cm above from illegible & brawnish red in colour.

(5) contusion of size 10x10 cm present over Rt. Side of head involving Rt. Frontal temporal & xyzometric region & black brawn in colour.

(6) Contusion of size 6x5 cm present over Lt.fronts temporal region of head 7 black brawn in colour.

Internal injuries

1. Under skin contusion present over the whole head.

NEUTRAL CITATION
2026:GUJHC:25493-DB

2. One 8 cm Rt. Temporal vertical lineation present 4 cm posterior to Rt. zygometic inch & 10 cm right to parietal lineation adjoining the above going posterior medially towards midline.

3. Illegible intact Brain is Liquified & converted into Reddish greyish paste like material mixed with blood clots.

According to opinion of the doctor, the cause of death of Kanchanben was shock and hemorrage due to head injury. He also opined that, the injuries could be possible with the seized weapon axe. It is further opined that the injuries referred were sufficient in ordinary course of nature to cause the death.

On the same day, after completion of PM of Kanchanben, the witness has also conducted the PM on the body of deceased Vipulbhai. The witness has noticed the following internal and external injuries mentioned in the PM report Exh. 102.

Deceasd Vipulbhai
External injuries

(1) One chop wound of size 6X1.5cm scalp deep present over the Rt pavietal region of head in the sagittal plane, 13 cm above from Rt.ear & 1 cm Rt. To midline & brawnish red in colour.

(2) One chop wound of size 4x1.5 cm & scalp deep present over Lt pavietal region of head in sagittal plane 12 cm above from Lt.ear & 3 cm Lt. to midline & brawnish - red in colour.

NEUTRAL CITATION
2026:GUJHC:25493-DB

(3) One chop wound of size 4x1.5 cm present over the occipital region of head over midline in the coronal plane & 5 cm above from external occipital protuberance brawnish red colour.

Internal injuries

1. Under skin contusion present over the whole head.
2. Multiple communted present over Rt. Fronto-pavietal & Lt pavietal bone with multiple fragements.
3. Dura tear over Rt. & Lt parietal lobe.
4. Brain is liquified & converted into Reddish greyish paste like material mixed with blood clots.

According to opinion of the doctor, the cause of death of Vipulbhai was shock and hemorrhage due to head injury. He also opined that, the injuries could be possible with the seized weapon axe. It is further opined that the injuries referred were sufficient in ordinary course of nature to cause the death.

In the cross-examination, the witness has stated that, the death was caused before 3 to 5 days from 07.06.2017. The Doctor has also admitted that the axe blade had no edge. It is denied that the injuries mentioned in both the PM reports could not be possible by the weapon axe.

(2) In order to prove the inquest panchnama of both the deceased (Exh. 12 & 17), the witnesses Padminiben Sharma PW-1 and Kumudchandra Khatri PW-2 have been

NEUTRAL CITATION
2026:GUJHC:25493-DB

examined. So far as panchnama Exh. 12 is concerned, the witness Padmini Sharma has stated the contents of inquest panchnama in her deposition, whereas, PW-2 of another inquest panchnama did not have supported the case of the prosecution and another witness of the said panchnama Vasant Prajapati PW-3 has supported the case of the prosecution.

(3) Jagdish Joshi (PW.4):

This witness was cited as a panch witness of the panchnama of scene of offence (Exh.22). This witness has been declared hostile, as he did not have supported to the case of the prosecution. The another witness of the said panchnama namely Dhirubhai Bharwad, PW-5 has also not supported to the case of the prosecution.

(4) The appellant accused was arrested on 07.06.2017 and thereafter he was referred to Civil Hospital for medical examination and his blood sample was collected by the doctor concerned and same had been seized by way of panchnama Exh. 44. Both the panch witnesses have not supported to the case of the prosecution.

(5) Arvind Himmatsinh Parmar (PW-9):

This witness was the panch witness of the reconstruction panchnama of scene of crime (Exh. 49). It is the case of the prosecution that during the police

NEUTRAL CITATION
2026:GUJHC:25493-DB

remand, the accused appellant voluntarily pointed out the place of offence and under the reconstruction of scene of crime, he had narrated and confessed how he had killed deceased Kanchanben and Vipulbhai. The entire confession being incorporated in the panchnama Exh. 49 by the IO. However, the this witness i.e. Arvind Parmar has not supported to the case of the prosecution and he has been declared hostile and during the cross-examination, he has not admitted the contents of the panchnama and confession of the accused.

(6) Vishnubhai Thakore (PW-12) & Sampatji Punaji Thakore (PW-15):

On 10.06.2017, during the investigation the IO had took visit of Shri Ram Hospital, run by Dr. Yogesh Jain, as at relevant time the appellant accused was serving as a Compounder in the hospital and after the incident, in the early morning, he came to the hospital and hide the weapons and destroyed the cloths and the entire act on the part of the accused came to be recorded in the CC TV footage of the hospital. The said CC TV footage being transmitted in one pen drive and was being produced by Dr. Yogesh Jain (PW-21) and the IO seized the said pen drive in presence of independent panchas by drawing the panchnama (Exh. 58). Both witnesses have not supported to the case of the prosecution and in the cross-

NEUTRAL CITATION
2026:GUJHC:25493-DB

examination, they have denied the contents of the panchnama and recovery of pen drive.

(7) Suresh Hiralal Tank (PW-13):

This witness was cited as a panch witness of panchnama (Exh. 62). This panchnama is the discovery and recovery of the weapon axe, knife and burnt cloths. According to prosecution case, on 08.06.2017, when the accused was in police custody, had voluntarily made a disclosure statement that he intend to point out the place where he had hide the weapon axe and knife and the place where he had burnt the cloths. After drawing the preliminary panchnama under Section 27, the appellant accused in the presence of two independent witnesses, on the basis of discovery statement, pointed out the place where he had kept the weapons and the place where he had burnt the clothes. On the basis of his disclosure statement, the police discovery and recovered the weapon axe and knife from the electric box of Shri Ram Hospital and half burnt clothes nearby the hospital. However, fact remains that the witness Suresh Hirabhai in his chief-examination, has not stated the contents of first part of the discovery panchnama nor stated the later part of the panchnama. The witness in his chief-examination, has identified the weapon axe and knife allegedly shown him from the case records.

NEUTRAL CITATION
2026:GUJHC:25493-DB

(8) Ashok Pratapji Prajapati (PW-14):

This witness is the neighbour of deceased Vipulbhai and Kanchanben. This witness found foul smell from the house of the deceased and had informed the owner of the house namely Divyesh Modi and after half an hour, the people from the vicinity gathered near the house and the Odhav Police came at the place of offence. The witness in his chief-examination has stated that how the police found decomposed dead body of Vipulbhai and Kanchanben from the house. On the aspect of extra marital affairs of wife of Vipulbhai, the witness has stated that he came to know from the people gathered over there.

(9) Amit Rana (PW-16):

This witness is the neighbour of deceased Vipulbhai and his house number is D-149, whereas the house number of deceased is D-147. According to prosecution case, on 04.06.2017, in the early morning at about 4-00 o’clock, when he wake up for urinal, he saw the appellant accused, leaving the house of the deceased Vipulbhai carrying with him a plastic bag. The police has recorded his statement, wherein, he disclosed the said facts before the police. However, when he stepped into witness box, he did not supported to the case of the prosecution, as a result, he has been declared hostile and in the cross-examination, he has not admitted the contents of the

NEUTRAL CITATION
2026:GUJHC:25493-DB

police statement. In nutshell, the witness has not supported on the material aspect of the prosecution case. In the cross-examination, the witness has admitted that on 03.06.2017, he had not heard any screaming from the house of the deceased.

(10) Amarsingh Bharti (PW-17), Hobbyben Prajapati (PW-18), Vimlaben Bharti (PW-19), Malkeshbhai Champaklal Shah (PW-20):

All these witnesses being neighbours of the deceased, were being examined to prove the issue of extra marital affairs and presence of the accused at the scene of offence. The witnesses have not thrown any light on the aspect of extra marital affairs and presence of the accused.

(11) Dr. Yogesh Ramchandra Jain (PW-21):

This witness has been examined to prove the facts that the appellant accused at the time of incident was working as a compounder in the Shriram Hospital. Witness is the owner of the hospital and has admitted that, the appellant was working in the hospital as a daily wager. He also identified the accused in the court. He has stated in the chief-examination that, the pen driver containing the CC TV footage, showing that on 04.06.2017 in early morning, the appellant came at the hospital. The witness

NEUTRAL CITATION
2026:GUJHC:25493-DB

has identified the pen drive from the seized articles. In the cross-examination, the witness has admitted that, the recording of CC TV footage was not seized in his presence.

(12) Rajendrakumar Patel (PW-22):

This witness was examined to prove the fact that at the time of incident, the deceased Vipulbhai was working in his factory and the working hours was from morning 8-00 to evening 8-00.

(13) Divyesh Modi (PW-23):

This witness is the owner of house of No.D-147, which was let out to the deceased Vipulbhai on monthly rent of Rs.2500/-. This witness after receiving the message from the neighbour Mr. Prajapati, immediately came to the spot and lodged an FIR before the Odhav Police against the unidentified person.

(14) Nayankumar Modi (PW-24):

This witness is the brother of deceased Vipul Modi and son of deceased Kanchanben. The prosecution has examined this witness to prove that, the wife of the deceased Vipul had an affair with some one and on this count, there was a matrimonial dispute and she was compelled to leave the house. On this aspect the witness has stated that, before the incident, when he at the house

NEUTRAL CITATION
2026:GUJHC:25493-DB

of Vipulbhai, the deceased Kanchanben told him that, Sujata had an affair with some one who belonged to Thakore community and on this count, there was a dispute between husband and wife and she was sent to her parental home.

(15) Krishnaben Nayanbhai Modi (PW-26):

This witness is the wife of PW-24 and has stated on the line of her husband Nayan Modi.

(16) Priyavadan Modi (PW-25):

This witness is the distant relative of the deceased and has not stated any material facts proving the involvement of the appellant accused herein.

(17) Sujata Kulkarni (PW-30):

This witness is the wife of deceased Vipulbhai and daughter in law of deceased Kanchanben. This witness has not admitted her relation with the appellant accused and also did not have admitted that on account of her relation with the accused, there was a dispute in the family. She has been declared hostile and in the cross-examination, she has denied to the contents of the police statement. The trial court by exercising discretion under Section 165 of the Evidence Act, asked some questions in search of truth but nothing material things being surfaced.

NEUTRAL CITATION
2026:GUJHC:25493-DB

(18) Naranbhai Lalbhai Desai (PW-36):

This witness, at the time of incident, was serving as a Senior Police Inspector with Odhav Police Station and upon receiving the vardhi, he went to the place of incident and recorded the complaint of Divyesh Modi PW-23 and after registration of the offence, he was entrusted with the investigation. The witness has stated on oath that, after preparing the inquest of both the dead bodies, he sent it for PM at the Civil Hospital and thereafter, prepared a panchnama of scene of offence. The witness has further stated that from the reliable sources, he was having suspicion that the appellant accused was involved in the offence and after preliminary inquiry, on 07.06.2017, he came to be arrested. The witness has further stated that, during the remand period, at the instance of the appellant accused the weapon axe and knife discovered and recovered from the electric box of Shri Ram Hospital. The witness has further stated that during the examination of doctor Yogesh Jain, he came to know that the movement of the accused after the incident, was recorded in the CC TV of the hospital and the pen drive containing the recording of CC TV footage was being seized and recovered. The witness has further stated that he had recorded the statements of Sujata, wife of Vipul and other independent witnesses including neighbours of the

NEUTRAL CITATION
2026:GUJHC:25493-DB

deceased which revealed that the appellant accused had an affair with the wife of deceased and on 03.06.2017, he had killed the deceased Vipul and Kanchanben at their home and he was seen by the neighbour Amit Rana when he was leaving the house after alleged incident. The witness has further stated that, he had sent the seized articles for forensic analysis and after due investigation of the case, he filed the chargesheet before the court concerned.

(19) Hitesh Trivedi (PW-38):

This witness being Scientific Officer, serving with Forensic Science University, Gandhinagar had examined the CC TV footage of the pen drive containing the movement of the accused at Shri Ram Hospital. The witness had examined recording of the pen drive which was forensically analysed and 13 frames were extracted from the video files present in the pen drive, which was produced with the report Exh. 166.

13. Submissions:

Mr. Nirad Buch, learned counsel appearing for and on behalf of the appellant-accused made the following submissions:

(A) The judgment of conviction and order of sentence being based on circumstantial evidence and there being

NEUTRAL CITATION
2026:GUJHC:25493-DB

no eye witness to the incident, the complete chain of events leading to the involvement of the appellant in the crime in question has not been established.

(B) The case is one of the circumstantial evidence and the onus to prove the case by leading cogent, appropriate and linking evidence is on the prosecution. The manner in which the evidence has been considered by the trial court is patently illegal and the judgment has led to grave miscarriage of justice, as the trial court failed to appreciate the evidence in its right perspective.

(C) That, according to prosecution case, on 03.06.2017, at about 7:00 p.m. evening, the appellant-accused entered into the house of the deceased and raising dispute with the deceased Kanchanben about sending Sujata (wife of Vipulbhai) to her parental home at Maharashtra, she was inflicted repeated axe blows on her head by the accused and thereafter, when deceased Vipul later on came at about 8 o’ clock into the house, there was verbal spat about killing of deceased Kanchanben, as a result, deceased Vipul also killed with the axe by the accused and then in the midnight at about 4 o’ clock, the accused left the house and went to the Shriram Hospital and concealed the weapons in the electric box of the hospital and destroyed the clothes.

It is in these background facts, it was submitted that;

NEUTRAL CITATION
2026:GUJHC:25493-DB

(a) No witnesses have deposed that on the early morning, they had seen the appellant-accused leaving the place of incident carrying with him a plastic bag filled with the clothes and weapons. The neighbours examined, have no knowledge about it, nor they deposed against the accused. Despite of this, the trial court by misreading their oral evidence, held and observed that, the accused was lastly seen by Amit Rana (PW.16). The findings of the trial court, based on the statement of witnesses recorded by the police under Section 161 Cr.P.C. and same is not sustainable in eye of law.

(b) Motive is not established as the near relative of the deceased did not have disclosed the name of the appellant herein stating that, the appellant had an affair with Sujata. None of the witnesses pointing finger towards the accused that he used to come to the house of the deceased.

(c) That, the CCTV footage to prove the presence of the appellant-accused at the hospital on 04.11.2017 in the early morning, has no evidentiary value and cannot read in evidence as the certificate as mandated under Section 65-B(4) has not been produced. Thus, to prove the presence of the accused at the hospital carrying a bag of weapons is not proved and established as a certificate under Section 65-B(4) is a condition precedent to the

NEUTRAL CITATION
2026:GUJHC:25493-DB

admissibility of pen drive (electronic records) and oral evidence cannot be substitute for a certificate under Section 65-B(4) **(*Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal ((2020) 7 SCC 1)*.**

(d) That, the discovery and seizure of the weapons like axe and knife as well as burnt clothes in terms of Section 27 of The Evidence Act has not been proved as per the procedure prescribed in the law. The panch witnesses of discovery of weapons and clothes (Sureshchandra Tank (PW.13 and Kalpesh Dhirubhai) have not supported to the case of prosecution. The contents of discovery panchnama (Exh.62) has not been proved by the Investigating Officer (PW.36). In other words, neither the panchas, nor the I.O. has stated the exact words spoken by the accused about his willingness to show the place where the weapons concealed by him and the place where the clothes had been burnt. In support of this contention, reliance has been placed on the case of ***Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh (2022 SCC OnLine SC 1396)***.

(e) That, the trial court mainly relied upon the disclosure statement of the accused in the form of confession of the guilt made before the police when by way of reconstruction of scene of crime. By referring the reconstruction panchnama (Exh.49), it was submitted that, the panchas have not supported to the case of

NEUTRAL CITATION
2026:GUJHC:25493-DB

prosecution. The confession before the police is hit by Sections 24 and 25 of The Evidence Act. As such there is no provision to drew the reconstruction panchnama of scene of crime. Thus, the evidence of I.O. in this regard cannot be read in evidence as substantial evidence to prove the complicity of the accused in the crime.

(f) There was no bloodstain found on the weapons axe and knife. The blood on the clothes and the polythene bag was “disintegrated” or “inconclusive”. The evidence dog trackers does not implicate the appellant-accused.

14. In such circumstances as referred above, Mr. Nirad Buch, learned counsel submitted that, the prosecution has failed to prove its case beyond reasonable doubt by adducing cogent, acceptable and trustworthy evidence. The trial court has convicted the accused on the basis of suspicion, surmises and conjectures and it is settled position of law that the prosecution in the case of circumstantial evidence must establish each instance of incriminating circumstances by way of reliable and clinching evidence and circumstances so proved must form a complete chain of events and in any case if there is a snap in the chain, the conviction on the basis of missing link would be fatal to the prosecution. Thus, it is prayed that, there being merits in the appeal and same may be allowed by setting aside the judgment of conviction and order of sentence.

NEUTRAL CITATION
2026:GUJHC:25493-DB

15. On the death sentence, alternatively it was submitted that, the present case does not fall in the category of rarest of rare case. Trial court failed to assign special reasons of awarding death sentence for satisfying the criteria that life sentence is rule and death sentence is exception and life sentence would be completely inadequate and would not met end of justice. There is nothing on record to indicate that the appellant-accused would be menace to the society and there is no possibility of reformation and rehabilitation and on this aspect, no material was sought, nor provided by the State to determine the possibility of reformation of the accused. The conviction and death sentence recorded on the same day without calling for a report on the mitigating circumstances which is contrary to the settled preposition of law. **(*Manoj & Ors. Vs. State of Madhya Pradesh ((2023) 2 SCC 353)*.** Thus, alternatively, it was prayed that, the sentence of capital punishment, having regard to the facts of the present case is unwarranted and having been imposed contrary to the settled principle of law and same is not maintainable in the eye of law.

16. On the other hand, learned State Counsel Mr. L.B. Dabhi has opposed the submissions made by learned counsel for the appellant and supported the findings recorded by the trial court and prayed that, the conviction deserves to be confirmed more so, looking to the heinous

NEUTRAL CITATION
2026:GUJHC:25493-DB

offences of two murders committed by the appellant-accused. Mr. Dabhi, learned State Counsel further submitted that, the appellant-accused had an affair with the wife of the deceased and was used to visit her house and on this issue, there was a matrimonial dispute and on account of said illicit relationship, the wife Sujata left the matrimonial home and at relevant time, she was at Maharashtra. The appellant-accused taking revenge of the leaving of Sujata, went to the house of deceased Kanchanben – mother-in-law and after heated exchange of words with her, she was done to death with the weapon axe and thereafter, deceased Vipul who had come to house from his workplace, was done to death because he came to know that his mother was killed by the appellant and at that time, the appellant was present in the house. In such circumstances, the State Counsel has submitted that, during the reconstruction of scene of offence, the accused had voluntarily confessed his guilt and same is proved by the prosecution in the evidence of I.O. (PW.36). It was further submitted that, after the incident, the accused went to his hospital where he had concealed the weapons and destroyed the bloodstained clothes and the entire incident captured in the CCTV footage of the hospital and during the investigation, the pen drive containing the recording was being produced by Dr. Jain. The accused by his voluntary disclosure, pointed out the place where the weapons were concealed by him as well

NEUTRAL CITATION
2026:GUJHC:25493-DB

as the place where the clothes were burnt. The said aspect being properly deposed by the I.O. (PW.36). In such circumstances, the incriminating circumstances as referred above have been proved beyond reasonable doubt and the prosecution has been able to prove the complete chain of events and the circumstances which established the complicity of the accused and none else.

17. In such circumstances, Mr. L.B. Dabhi would urge that, the prosecution has proved beyond reasonable doubt the charge against the accused for killing two innocent persons. So far as sentence part is concerned, the learned State Counsel urged that, the capital punishment needs no interference as the manner in which the two persons brutally killed by the accused, imposing any other punishment (life) would be completely inadequate and would not met the end of justice. Thus, it is prayed that, there being no merits in the appeal and same may be dismissed.

18. We have heard learned counsel for both the parties and perused the case records and findings of conviction and order of sentence recorded by the trial court.

Analysis & findings

19. In our opinion, the following facts are not in dispute:

NEUTRAL CITATION
2026:GUJHC:25493-DB

(1) the death of both the deceased namely Vipul Modi and Kanchan Modi were homicidal in nature.

(2) On 03.06.2017, between 7:00 p.m. to midnight, the death was occurred and as per the expert evidence, the death was occurred prior to 3 to 4 days from the date of post-mortem i.e. 07.06.2017.

(3) On the day of incident, the witness Sujata (PW.30) was not at the house where the incident occurred as prior to the incident, she had left the matrimonial home.

(4) The dead bodies were found from the House No.D-147, Bela Park Society, Ambika Nagar, Odhav, Ahmedabad.

20. In the present case, the entire prosecution case rests on the circumstantial evidence and there is no eye witness to the incident. The law in respect of circumstantial evidence is extremely well settled by series of judgments of Hon'ble Supreme Court as well as this Court. Reference of two of which would be relevant for the purpose of present consideration;

(1). The Hon'ble Supreme Court in the case of ***Hanumant Govind Nargundkar vs. State of M.P. ; (1952) 2 SCC 71*** *has held as under :-*

NEUTRAL CITATION
2026:GUJHC:25493-DB

"12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

(2). In ***Sharad Birdichand Sarda vs. State of Maharastra ; (1984) 4 SCC 116****, the Hon'ble Supreme Court laid down the Panchsheel Principles governing the circumstantial evidence which reads as under :-*

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

NEUTRAL CITATION
2026:GUJHC:25493-DB

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

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

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

NEUTRAL CITATION
2026:GUJHC:25493-DB

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

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

(3). Very recently, the Hon'ble Supreme Court in the cases of ***Thammaraya vs. State of Karnataka ; (2025) 3 SCC 590 and Kattavellai @ Devakar vs. State of Tamil Nadu ; 2025 SCC OnLine SC 1439****, has reiterated the said principles. It is also a well established principle of criminal jurisprudence that the conviction on the charge of murder can be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutable towards the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than guilt of the accused. The gap between 'may be guilty' and 'must be guilty' is significant, separating uncertain speculations from definitive conclusions. Thus, it is*

NEUTRAL CITATION
2026:GUJHC:25493-DB

the duty of the prosecution to elevate its case from realm of 'may be true' to 'must be true'. Every piece of relevant fact needs to be sewn via the golden thread of circumstantial evidence in order to fabric the guilt."

21. The facts of this case are to be considered on the touchstone of the law, which has been laid down by the Apex Court.

22. Having regard to the evidence on record, the prosecution has relied upon the following circumstances:

(i) The accused was lastly seen in the early morning carrying with him a plastic bag filled with the weapons and clothes by PW.16 – Amit Rana.

(ii) Discovery and recovery of the weapons and evidence of CCTV footages of the hospital. - The accused thereafter, went to Shriram Hospital where he was employed as Compounder and concealed the weapons in the electric box and burnt the clothes.

(iii) Reconstruction of crime scene and during the police custody, the accused voluntarily disclosed the facts about how he had killed two persons by weapon axe and what was the motive for killing them.

NEUTRAL CITATION
2026:GUJHC:25493-DB

23. In such circumstances, the only question that arises for our consideration is as to whether the circumstances as referred above are cogently and firmly established and the said circumstances, if taken cumulatively, would form a chain so complete that the accused was the author of crime and none else.

24. The first circumstance – reconstruction of crime scene (demonstration panchnama – Exh.49).

The witnesses of the panchnama namely Arvind Parmar and Bhikhaji Vihol have not stated anything about the voluntary statement made by the appellant-accused narrating the incident and how he had executed the murder. In our opinion, the confessional statement incorporated in the panchnama (Exh.49) would hit by Sections 25 and 26 of The Evidence Act which says that, a confession made to a police officer is prohibited and cannot be admitted in the evidence and no confession made by any person while he is in police custody of a police officer, shall be proved against such person. In such circumstances, no reliance can be placed on the evidence of I.O. (Exh.36) to prove that the accused-appellant for taking revenge of Sujata, killed the deceased Kanchanben and thereafter, deceased Vipulbhai because in eye of law, as such there is no provision to demonstrate the reconstruction of scene of offence. The said procedure including the statement of the accused cannot be

NEUTRAL CITATION
2026:GUJHC:25493-DB

accepted as substantial evidence. It is relevant to note that, so as to connect the appellant-accused, nothing being recovered or discovered during the reconstruction of scene of crime. Thus, the circumstances of reconstruction of scene of crime cannot be read in evidence against the accused as substantial evidence.

25. The another circumstance relied upon by the prosecution is that, the accused was lastly seen by Amit Rana (PW.16). On careful reading of the testimony of the witness, nothing being stated by the witness that on 03.06.2017, in the early morning, he had seen the appellant-accused, leaving the house of the deceased carrying with him a plastic bag. On the contrary, the witness has not supported to the case of prosecution and he has been declared hostile. In the cross-examination, he has neither supported to the case of prosecution, nor, admitted the facts of the police statement recorded under Section 162 of the Cr.P.C. It is relevant to note that, the learned trial court while relying upon the testimony of the I.O. (PW.36) who has recorded the statement, having been considered as substantial evidence and recorded the conviction. In other words, the oral version of the I.O. (PW.36) is being considered. However, the fact remains that, he is not the witness of the incident. In our opinion, the statements under Section 161 and 162 Cr.P.C. are not admissible in evidence except for the limited purpose as

NEUTRAL CITATION
2026:GUJHC:25493-DB

provided in Section 157 of the Evidence Act and same may be used for contradicting the witness in the manner provided under Section 145 of the Evidence Act and the courts cannot use such statements as a corroboration of the statement made in the court. ***(Kali Ram vs. State of H.P. (1973) 2 SCC 808)*** and ***R. Shaji vs. State of Kerala ((2013) 14 SCC 266).***

> *"In Rajendra Singh Vs. State of U.P. ((2007) 7 SCC 378), it was held that, a statement under Section 161 is not substantial piece of evidence. In the case before the Supreme Court, the Allahabad High Court relied upon the statement of six witnesses recorded by the I.O. under Section 161 Cr.P.C. to enter a finding that, the respondent could not have been present at the scene of crime as he was present in the meeting of Nagar Nigam at Allahabad. It was unequivocally held that, a statement under Section 161 is not substantial piece of evidence and it can be used only for limited purpose of contradicting the maker thereof in the manner laid down in the proviso of Section 162 Cr.P.C. Recently, the Supreme Court in the decision of* ***Renuka Prasad vs. State represented by Assistant Superintendent of Police ((2025) 7 S.C.R. 160)****, on the evidentiary value of police statement recorded under Sections*

NEUTRAL CITATION
2026:GUJHC:25493-DB

161 and 162 Cr.P.C., in para-26 of the judgment, clearly laid down thus:

> *"26. The statements made by the IOs regarding the motive, conspiracy and preparation comes out as the prosecution story, as discernible from the Section 161 statements of various witnesses who were questioned by the police during investigation; which statements are wholly inadmissible under Section 162 of the Cr.P.C. Merely because the IOs spoke of such statements having been made by the witnesses during investigation, does not give them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission or instances from which conspiracy could be inferred as also the preparation, established beyond reasonable doubt. We are unable to find either the motive, the conspiracy or the preparation or even the crime itself to have been established in Court, at the trial through the witnesses examined before Court. The witnesses had turned hostile, for reasons best known to themselves. The only inference possible, on the witnesses turning hostile is that either they have been persuaded for reasons unknown or coerced into resiling*

NEUTRAL CITATION
2026:GUJHC:25493-DB

from the statements made under Section 161 or that they had not made such statements before police officers. Merely because the story came out of the mouth of the IO, it cannot be believed and a legal sanctity given to it, higher than that provided to Section 161 statements under Section 162 of the Cr.P.C."

Thus, the circumstances of lastly seen of the accused by the witness (PW.16) is not proved and established.

26. The third circumstance relied by the prosecution is the discovery and recovery of weapons as well as the CCTV footage of Shriram Hospital. In order to prove the said circumstance, the prosecution has mainly relied upon the testimony of the I.O. (Exh.36). The panch witness of discovery panchnama (Exh.62) have not supported to the case of prosecution.

The issue arise for our consideration is as to whether the prosecution has been able to prove and establish the discoveries of the weapons and half burnt clothes in accordance with the law i.e. in terms of Section 27 of The Evidence Act?

In the facts of the present case, the incident of murder occurred on 03.06.2017. The FIR came to be registered against unidentified on 06.06.2017. The

NEUTRAL CITATION
2026:GUJHC:25493-DB

accused came to be arrested on 07.06.2017. It is the case of prosecution that, when he was in police custody, the accused made a disclosure statement that on his own free will and volition, he would lead to the place where he had hidden the weapons of the offence and the site where he had burnt the clothes. The witnesses of the discovery panchnama (Exh.49) have not supported to the prosecution case. The manner of proving the disclosure statement under Section 27 of The Evidence Act has been subject matter of consideration by the Supreme Court in various judgments.

In the case of ***Mohd. ammad Abdul Hafeez vs. State of Andhra Pradesh ((1983) 1 SCC 143)***, the Supreme Court in para-5 of the decision, held as follows:

> *"5.... if evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the investigating officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."*

In the case of ***Subramanya vs. State of Karnataka (2022 SC OnLine Supreme Court 1400)***, the Supreme Court elaborately explained how the information received from the accused can be proved in

NEUTRAL CITATION
2026:GUJHC:25493-DB

terms of Section 27 of the Evidence Act. Para-83 and 84 are relevant to refer which reads as under:

> *83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.*
>
> *84. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should*

NEUTRAL CITATION
2026:GUJHC:25493-DB

be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

NEUTRAL CITATION
2026:GUJHC:25493-DB

Similar view was taken by the Apex Court in the case of ***Ramanand @ Nandlal Bharti (supra)*** that, mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.

Reverting back to the facts of the present case, if we peruse the evidence of I.O. (PW.36), he has not stated the exact words of voluntary disclosure made by the accused in the first part of discovery panchnama. In such circumstances, the requirement as mandated to prove the disclosure statement leading to the discovery of the weapons, has not been proved by the I.O. We may with profit refer the observations of the Supreme Court made in the case of ***Ramanand @ Nandlal Bharti (supra)*** wherein the Apex Court did not have accepted the evidence of discovery on the ground that the investigating officer in his oral evidence has not said about the exact words uttered by the accused in the police station and failed to prove the contents of discovery panchnama. The Supreme Court in para-56 of the judgment observed that, “the requirement of law needs to be fulfilled before accepting the discovery by proving the contents of the panchnama and the I.O. in his deposition obliged in law to

NEUTRAL CITATION
2026:GUJHC:25493-DB

prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of discovery panchnama in accordance with law, then, in that case, the prosecution may be justified in relying upon such evidence and trial court may also accept the evidence.

In light of the settled position of law and having regard to the evidence on record, the prosecution has not been able to prove and establish the discovery in accordance with the law and the evidence regarding disclosure statement to connect the accused in crime.

27. The circumstance of CCTV footage produced in the form of secondary evidence i.e. pendrive to prove the fact that, in the early morning i.e. next day of the incident i.e. 04.06.2017, the appellant-accused had gone to the hospital where he was working and concealed the weapons and thereafter, nearby the hospital, burnt the clothes. In our opinion, this evidence of pendrive containing the CCTV footages and evidence of FSL examining the pendrive, cannot be admitted in the evidence because neither the I.O., nor, the owner of the hospital Dr. Jain had produced the mandatory certificate as provided under Section 65-B(4) of The Evidence Act along with the pendrive and therefore, the secondary evidence in the form of electronic evidence cannot be used and read against the evidence.

NEUTRAL CITATION
2026:GUJHC:25493-DB

28. The other circumstances of illicit relationship with Sujata of the accused is concerned, none of the close relatives of the deceased as well as the neighbours have stated that the accused-appellant was in relation with Sujata – wife of deceased Vipul and used to come at the place of offence to meet her. In such circumstances, the motive as projected by the prosecution for the murder is not proved and established.

29. For the reasons aforementioned, we are of the considered opinion that, the prosecution failed to prove all incriminating necessary circumstances by reliable and clinching evidence which would constitute a complete chain without any gap, pointing to the guilt of the accused. The prosecution failed to prove the charge against the appellant accused by adducing reliable and truthful evidence beyond reasonable doubt. We are conscious about the seriousness of the offence, as there is a charge of double murder. However, it is one of the fundamental principles of criminal jurisprudence that the accused is presumed to be innocent till he is proved to be guilty and the burden to prove the guilt is on the prosecution and same is require to be proved by legal, reliable and unimpeachable evidence and prosecution to stand on its own legs and not to drive support from the witness of the defense. In the present case, the prosecution has failed to prove a charge against the

NEUTRAL CITATION
2026:GUJHC:25493-DB

accused. We are constrained to observe here that the trial court on the basis of suspicion, surmises and conjectures, held guilty the accused without appreciating the evidence in its true perspective and in utter disregard to the settled principle of law and criminal jurisprudence, which says that, the when the case rests on circumstantial evidence, the circumstances howsoever strong, cannot take place of proof and conviction is not permissible on the basis of suspicion. It is in this context, we may profitably refer the observations made by the Supreme Court in the case of ***Surendra Kohli vs. State of U.P. (2025 LawSuit SC 1479)*** wherein while acquitting the accused, it was observed that, when the proof fails, the only lawful outcome is to set aside the conviction even in a case of involving horrific crimes.

30. Accordingly, the appeal challenging the conviction is allowed. The judgment of conviction and order of death sentence dated 10.09.2024 passed by the Additional Sessions Judge, City Court, Ahmedabad in Sessions Case No.467 of 2017 is set aside. In view of disposal of the criminal appeal, the Death Reference (Criminal Confirmation Case No.2 of 2024) has not been accepted and accordingly, disposed of. In view of disposal of Criminal Appeal No.2812 of 2024, Criminal Misc. Application (For Suspension of Sentence) No.1 of 2025 would not survive and stands disposed of accordingly. The

NEUTRAL CITATION
2026:GUJHC:25493-DB

appellant-accused is in jail. He shall be released forthwith, unless his custody is necessary in any other case. Fine amount, if paid, be refunded to the appellant-accused. The Registry shall send the R & P to the concerned court.

Sd/-

(ILESH J. VORA,J)

Sd/-

(R. T. VACHHANI, J)

TAUSIF SAIYED