custody and is ordered to be set at liberty forthwith, if not required in any other offence. However, fine paid by the accused shall not be refunded. Records and proceedings shall be sent back to the courts below forthwith.

Result:- Criminal Appeal allowed.

ABC 2016 (II) 461 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(G.B. Shah, J.)

Criminal Appeal No. 348 of 2002 with Criminal Misc. Application No. 6232 of 2016 with Criminal Misc. Application No. 8820 of 2016 with Criminal Misc. Application No. 8822 of 2016 with Criminal Misc. Application No. 13850 of 2016

Decided on 13 October, 2016

ALPESH LALBHAI PANCHAL & ANR. ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 336, 337 & 338 — Conviction under — Death by cylinder burst — Use of domestic cylinder for industrial purpose — allegation of — Eye-witnesses as well as the panch witness are not in a position to say exactly as to whether the burst cylinder was the domestic or the industrial gas cylinder — Accused were already having the industrial gas connection since long — Held, there was no question of use of domestic gas bottle — Held, it is very difficult to come to a specific conclusion that the burst cylinder was meant for domestic purpose in the absence of any reasonable proof — Benefit of doubt — Acquittal. (Para 5.4)***

(B) Indian Penal Code, 1860 — Sections 336, 337 & 338 r/w 435 & 304-A — Essential Commodities Act, 1955 — Section 7 — Conviction under — No mischief and/or intention on the part of the accused — accused also injured in the incident in question — Held, if there would be any ill-intention or otherwise behind the incident, they would not have been injured in the incident— Expert — non-examination of — No competent person from the department of civil

supplies examined — the investigation suffers from material illegality and lapses — acquittal. (Para 5.5.1)

(C) Essential Commodities Act, 1955 — Section 3 & 7 — Framing of additional charge under — with the aid of repealed order —Held, the prosecution has wrongly invoked the Order 1988 while preferring the application for framing of additional charge under the EC Act — Conviction set aside. (Para 5.3)

(D) Essential Commodities Act, 1955 — Section 3 & 7 — Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 — Clause 7 — Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1993 — Clause 11 — Powers as to entry, search & seizure — Held, aforesaid clauses require an officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by the government or any other officer as described in the aforesaid clauses — nothing on record to show that such a provision has been complied with while invoking the provisions of the EC Act and thereby — failure to — is failure to comply the mandate of the law — Conviction is vitiated with material illegality — Conviction set aside. (Para 5.3)

(E) Criminal trial — Material witness — Non-examination —no serious attempt made by the trial Judge or APP for securing his presence — led to wrongful conclusion of guilt — fatal to prosecution. (Para 5.3)

(F) Indian Penal Code, 1860 — Section 435— Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees — invoking of — Held, there should be an act of mischief by fire or any explosive substance intending to cause, or knowing it to be likely that a person, will thereby cause, damage to any property to the amount of one hundred rupees or upwards. (Para 5.5.1)

(G) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Conduct of accused — On realizing that the cylinder was leaking the accused did not run away for safety — but they attempted to stop the leakage — knowingfully well the consequences that cylinder may catch fire and may blast, causing fatal injuries to themselves also — establishing innocence of the accused — Indian Penal Code, 1860 — Section 435. (Para 5.5.1)

(H) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Ownership — Accused were the owner of the factory and no wise person himself would think of damaging his own property—

endangering the others' lives—Indian Penal Code, 1860 — Section 435. (Para 5.5.1)

(I) Indian Penal Code, 1860 — 304-A — Death by negligence —Safety measures were taken — Safety equipments & the first-aid kit used to be kept handy for immediate response to any casualty — Negligence not proved. (Para 5.5.1)

(J) Code of Criminal Procedure, 1973 — Section 293 — FSL Report — tendered by prosecution —Objection by defence — objections kept by Court & fixed for hearing but not decided— Without giving any opportunity of hearing or cross-examine to the accused — & without calling the expert —the Court below considered the said FSL report — Held, the aforesaid facts are suggestive of breach of such a legal position — Fatal to prosecution. (Para 5.6)

(K) Criminal Jurisprudence — Principle of natural justice — violation of — Held, as a Court of law one cannot act in violation of the rights of the accused. (Para 5.6)

Facts:- *As per the prosecution case, the present appellants - original accused Nos. 2 and 3 were the owners of an industry engaged in manufacturing of textile goods the original accused No. 1 was an employee thereof. It was alleged that all the accused together, with the other workers, were engaged in the work, the original accused Nos. 1 and 2 allegedly used LPG cylinders for industrial purpose, which, in fact, were earmarked and specified to be used for domestic purposes, more particularly, for cooking. Due to some malfunctioning in the regulators attached to the cylinder, the cylinder leaked and hence, the present appellants tried to rectify the leak in a manner that was negligent and without taking any care and caution as to human life and safety, which caused gas leakage and cylinder blast and firebreak, which resulted into large scale destruction in the factory premises and severe burn injuries to the workers, causing deaths of two. Thus, the appellants - accused, thus, committed the alleged offence for which, a complaint came to be lodged against them. The learned Sessions Judge convicted the accused for the offences punishable u/ss 336, 337 and 338 r/w. 435 and 304-A. IPC and Section 7 of the Essential Commodities Act, giving rise to prefer the present appeal.*

It was observed by the honourable High Court that the prosecution has failed to prove the case against the accused beyond reasonable doubt. Accused persons were acquitted.

Law of relief:- ***Not making serious attempt by the trial Judge or APP for securing the presence of material witness can lead***

to wrongful conclusion of guilt of the accused & is fatal to prosecution.

Held:- Accordingly, I have gone through the said Orders 1988, 1993 and 2000. A perusal of the Order 1993 reveals that the same was in force when the incident in question had occurred i.e. on 17/12/1998. As referred herein above, by application exh. 22, dated 12/06/2001, the prosecution had requested for framing of additional charge under Order 1988 r/w. Sections 3 and 7 of the EC Act, however, a perusal of the Order 1993, it is revealed that the Order 1988, was not in force at the relevant time as was repealed by Order 1993 much prior i.e. on 03/08/1993. Clause 14 of the Order 1993, referred to above, states that, 'the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 is hereby repealed except in respect of things done or omitted to be done under that order before the commencement of this order. Thus, it appears that the prosecution has wrongly invoked the Order 1988 while preferring the application for framing of additional charge under the EC Act. For the sake of argument if the invocation of Order 1988 is believed to be the right one, then the question comes whether the mandate of Clause 7, which describes the powers as to entry, search and seizure, has been fulfilled or not. Referring to said Clause 7 of the Order 1988 and corresponding provision, Clause 11, in the Order 1993, both the aforesaid clauses require an officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by the government or any other officer as described in the aforesaid clauses, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying himself that his Order and any Order made thereunder, has been complied with. Based upon this, if the case on hand is considered, there appears nothing on record to show that such a provision has been complied with while invoking the provisions of the EC Act and thereby, framing of additional charge thereunder, under Order 1988 for the offence under EC Act, it appears that the prosecution has failed to comply with the aforesaid provisions of law, besides, the learned trial Judge has failed to consider this material aspect and has failed to comply the mandate of the law and accordingly, in the considered opinion of this Court invocation of EC Act without following aforesaid is bad in law and accordingly, the conviction thereunder, is vitiated with material illegality, which requires to be rectified at the hands of this Court. It is important to

note at this juncture that application at exh. 23 was given by the learned APP to call the officer of the Gujarat Essential Commodities and though the Witness Summons was issued twice i.e. on 21/05/2001 and 31/05/2001 containing instructions to remain present with notification, the said witness was not produced before the Court and it appears that neither the learned APP nor the learned Presiding Officer had made any serious attempt for securing his presence and as such, without going through the earlier order, in a mechanical manner, the learned Special Judge had passed the order below exh. 24 to frame the additional Charge under Section 3 of the LPG (RSD) Order, 1988 r/w. Section 3 of the EC Act r/w. Sections 3 and 7 on 18/10/2001 and thus, it appears that the said omission on the part of the learned trial Judge to decide the said application exh. 23 has caused serious miscarriage of justice. It further appears that the learned APP as well as the learned trial Court (Special) had very casually dealt with the trial which appears obvious non- application of mind to the record of the case, which led to the wrongful conclusion of guilt of the appellants leading to conviction and in my view, on this sole ground, the conviction appears to be bad in law. (Para 5.3)

Now, so far offence under the IPC for which, the present appellants - accused are convicted and sentenced are concerned, the accused are convicted and sentenced for the offences punishable under Sections 336, 337 and 338 of the IPC. It is alleged that the accused were using the domestic gas cylinder for the industrial purpose. in this regard, I have perused the depositions of PW-1 Bhavshibhai Mafabhai Patel at exh. 11, PW-2 Chandrakant Chandulal Panchal at exh. 16, PW-3 Dashrat Kalabhai Solanki at exh. 17, PW-4 Bharatbhai Revabhai Solanki at exh. 18, the eye-witnesses to the incident in question and the deposition of PW-5 Kahubhai Kalabhai Solanki at exh. 20, the panch witness as well as the deposition of PW-6 Harishchandra Umapati Pande, the complainant cum IO at exh. 35. On going through the depositions of PW-1 to PW-5, there appears nothing to substantiate beyond reasonable doubt that the accused were using the domestic gas cylinder for industrial purpose. Nothing such could be inferred from the depositions of PW-1 and PW-2, whereas, the PW-3 and PW-4 have stated the fact of 'red' coloured gas bottle was in use, however, they were not sure as to whether it was a domestic gas cylinder or the industrial one. in this regard, the learned advocate for the accused has placed on record the photograph as to

identification of various gas cylinders i.e. domestic and the industrial. On going through, the same, it appears that it is only since August 2006, to identify a cylinder meant for the industrial purpose, blue colour along with the red colour, was started being used and till then, only red coloured gas bottles, both for the domestic and the industrial gas, were in use and accordingly, at the relevant time, it was very difficult to identify a cylinder to be meant for domestic purpose or the industrial. Moreover, the learned advocate for the accused has also produced the papers as the industrial gas connection and has also put the case that there was no question of use of domestic gas bottle when the accused were already having the industrial gas connection since long. The said assertion of the learned advocate for the appellants - accused appears to be true for the reason that the so-called eye-witnesses of the incident in question as well as the panch witness are not in a position to say exactly as to whether the burst cylinder was the domestic or the industrial gas cylinder. The PW-3 and PW-4 have only stated about the red coloured cylinder like the cylinder used for the domestic purpose. As it is observed earlier, before August 2006, only red coloured gas cylinders were provided for both, domestic and the industrial purpose. in the circumstances, it is very difficult to come to a specific conclusion that the burst cylinder was meant for domestic purpose and for want of any reasonable proof in that regard, the accused could not have been convicted and sentenced for such offence and accordingly, they are required to be given benefit of doubt, more particularly, because after 03/08/1993 i.e. after the Order 1993, 'Parallel Marketeer' and 'Parallel Marketing System' had been introduced, which were not there in the Order 1988 as discussed herein above. (Para 5.4)

Reading of the section itself is suggestive of the fact that for invoking this section, there should be an act of mischief by fire or any explosive substance intending to cause, or knowing it to be likely that a person, will thereby cause, damage to any property to the amount of one hundred rupees or upwards. From the entire oral as well as the documentary evidence on record, there appears nothing to show any mischief and/or intention on the part of the accused behind such an incident. Moreover, it is sans any dispute that the accused herein were also injured in the incident in question and hospitalized for more than 40 days. On realizing that the cylinder was leaking, it appears that the appellants did not run away for safety but they attempted to stop the leakage knowingfully well the consequences

that cylinder may catch fire and may blast, causing fatal injuries to themselves also, which itself suggests that if there would be any ill-intention or otherwise behind the incident, they would not have been injured in the incident. Besides, they were the owner of the factory and no wise person himself would think of damage his own property, endangering the others' lives. Besides, from the evidence of the PW-1, the eye-witness, it has come on record that as a part of safety measures, the factory owned the fire extinguishers and the first-aid kit used to be kept handy for immediate response to any casualty and accordingly, it cannot be said that it was the negligence of the accused which led such an incident, when no such alleged negligent act is proved by any evidence. Moreover, it is also a fact that the document viz. FSL Report had come on record vide application exh. 41 dated 28/01/2002 and though the said application exh. 41 was ordered to be 'fixed for hearing', without giving any opportunity and without hearing, it was considered. Moreover, no competent person from the department of civil supplies has been examined and accordingly, the investigation suffers from material illegality and lapses. (Para 5.5.1)

Drawing attention on the record and proceedings of the case, more particularly, the proceeding sheet as well as the Further Statements of the appellants - accused, recorded under Section 313 of the Code, it has been submitted that by the learned advocate for the accused that the same appears to have been recorded on 23/01/2002. He, then, drawing attention on the application, exh. 41 dated 28/01/2002, which was filed by the learned APP praying for to exhibit the FSL Report dated 29/04/1999, on which, serious objections had been raised by the learned advocate for the accused and accordingly, the Court had kept the said application passing the order, "fixed for hearing". Referring the entire record, it is silent on the point that whether hearing had taken place or not and as such, no order is found. The learned advocate for the appellants - accused has submitted that, in fact, no order has been passed and in spite of the same, the Court has taken cognizance of the same in the impugned judgment and order. Drawing attention of this Court on Section 293 of the Code, he has submitted that though the reports of certain Government Scientific Officers may be used in evidence and the Court may, if it thinks fit, summon and examine any expert as to the subject matter of the report but so far as the case on hand is concerned, after fixing the application exh. 41 for hearing, the learned Court below has neither given any opportunity to the accused of hearing and without calling the expert

and without giving any opportunity to cross-examine, had considered the said report. in my view, there is substance in the submission of the learned advocate for the accused and I am of the view that as a Court of law one cannot act in violation of the rights of the accused and the aforesaid facts are suggestive of breach of such a legal position, which also can be said to be an adding factor for setting aside the impugned judgment and order. (Para 5.6)

Counsel:- ***For Appellant(s):*** *Mr V M Trivedi, Advocate.*

For Respondent(s): *Mr. K.L. Pandya, APP .*

Cases Referred:-

1. *Kanubhai Kantibhai Patel Vs. The State of Gujarat, 1998 (1) GLH 924. (Para 3.7)*
2. *Megha Singh Vs. State of Haryana, 1995 (0) GLHEL-SC 17518 = AIR 1995 SC 2339. (Para 3.7)*
3. *Rabindra Kumar Dey Vs. State of Orissa, 1976 (0) GLHEL-SC 22213 = AIR 1977 SC 170. (Para 3.7)*
4. *Pratap Singh Vs. State of Haryana, 1990 (0) GLHEL- SC 21370 = 1991 (Suppl) SCC 409. (Para 3.7)*
5. *Zahira Habibullah Shaikh Vs. State of Gujarat, 2004 (0) GLHEL-SC 34895 = AIR 2004 SC 3114. (Para 3.7)*
6. *Zahira Habibullah Shaikh Vs. State of Gujarat, 2004 (0) GLHEL-SC 36990 = AIR 2006 SC 1367. (Para 3.7)*
7. *State of Gujarat Vs. Patel Ashwinkumar Ranchhodbhai, 2008(0) GLHEL-HC 220169 = 2008 (2) GLR 1748. (Para 3.7)*
8. *State of Gujarat Vs. Patel Maheshbhai Ranchhodbhai, 2008 (0) GLHEL-HC 220239 = 2008 (3) GLR 2566. (Para 3.7)*
9. *Meghabhai Motibhai Vs. State of Gujarat, 1984 (0) GLHEL-HC 207641 = 1985 (2) GLR 793. (Para 3.7)*
10. *State of Gujarat Vs. Yogendrakumar B. Setalvad, 1993 (0) GLHEL-HC 212577 = 1993 (2) GCD 430. (Para 3.7)*
11. *Lilubha Mahobatsinh Vs. State of Gujarat, 1990 (0) GLHEL-HC 206891 = 1991 (1) GLR 266. (Para 3.7)*
12. *State of Gujarat Vs. Dineshbhai Mehta, 1993 (0) GLHEL-HC 211893 = 1994 (1) GCD 304. (Para 3.7)*
13. *Sawal Das Vs. State of Bihar, 1974 (0) GLHEL-SC 25660 = AIR 1974 SC 778. (Para 3.7)*
14. *Bava Hajee Vs. State of Kerala, 1974 (0) GLHEL-SC 3047 = AIR 1974 SC 902. (Para 3.7)*
15. *Mohinder Singh Vs. State, 1950 (0) GLHEL-SC 18087 = AIR 1953 SC 415. (Para 3.7)*
16. *Kali Ram Vs. State of Himachal Pradesh, 1973 (0) GLHEL-SC 13703 = AIR 1973 SC 2773. (Para 3.7)*
17. *Noor Aga Vs. State of Punjab and Anr., 2008 (3) GLH 43. (Para 3.7)*

18. *Anantray Lalji Pandya Vs. The State of Gujarat, 1982 GLH 472. (Para 3.7)*
19. *Syad Akbar Vs. State of Karnataka, 1979 (0) GLHEL- SC 31311 = AIR 1979 SC 1848. (Para 3.7)*
20. *Thulia Kali Vs. State of Tamil Nadu, 1972 (0) GLHEL- SC 31979 = AIR 1973 SC 501. (Para 3.7)*
21. *State of Gujarat Vs. Himatbhai Rambhai Vaghsia, 2013 (0) GLHEL-HC 229950 = 2013 (3) GLR 2528.(Para 3.7)*

JUDGMENT

G.B.SHAH, J.: - 1. Challenge in the present appeal, filed under Section 374 of the Code of Criminal Procedure, 1973 (for brevity, 'the Code') by the appellants - original accused Nos. 2 and 3, is the judgment and order dated 19/02/2002, passed by the learned Additional Sessions Judge, Court No. 9, City Sessions Court, Ahmedabad in Sessions Case No. 107 of 2000, whereby, while acquitting the original accused No. 1 from all the charges levelled against him, the appellants herein - original accused Nos. 2 and 3 came to be convicted for the offences punishable under Sections 336, 337 and 338 r/w. Section 435 and Section 304-A of the Indian Penal Code, 1860 (for brevity, 'the IPC') and Section 7 of the Essential Commodities Act, 1955 (for brevity, 'the EC Act') and sentenced as under, which were ordered to be run concurrently:

Offence	Sentence
336 IPC	Fine of Rs.250/- each i/d. RI for one month.
337 IPC	Fine of Rs.250/- each i/d. RI for one month.
338 IPC	Fine of Rs.500/- each i/d. RI for one month.
435 IPC	RI for six months with fine of Rs.2,500/- each i/d. RI for two months.
304-A IPC	RI for one year with fine of Rs.1,500/- each i/d. RI for two months.
7 of EC Act	RI for six months with fine of Rs.250/- each i/d. RI for one month.

1.1 Whereas, Criminal Misc. Application No. 6232 of 2016 has been filed by the applicants - appellants - accused for providing typed copy of papers from R&P, Criminal Misc. Application no. 8820 of 2016 has been filed praying to call for medical papers from Shardaben

Hospital, Criminal Misc. Application No. 8822 of 2016 has been filed seeking inspection of Muddamal and the Criminal Misc. Application No. 13850 of 2016 has been filed for issuance of summons to the material witnesses.

2. Filtering unnecessary details, the facts of the prosecution case are that the present appellants - original accused Nos. 2 and 3 were the owners of M/s. Valco Industries, situated at the Krishna Estate, Odhav, Ahmedabad engaged in manufacturing of textile goods namely reeds, whereas, the original accused No. 1 was an employee thereof. As a part of manufacturing process, the reeds were required to be cleaned by giving heat. That on 17/12/1998 at about 15:30 hours, all the accused together with the other workers, when were engaged in the work, the original accused Nos. 1 and 2 allegedly used LPG cylinders for heating the reeds, which, in fact, were earmarked and specified to be used for domestic purposes, more particularly, for cooking. Due to some malfunctioning in the regulators attached to the cylinder, the cylinder leaked and hence, the present appellants - original accused Nos. 2 and 3 together with the accused No. 1 tried to rectify the leak in a manner that was negligent and without taking any care and caution as to human life and safety, which caused gas leakage and cylinder blast and firebreak, which resulted into large scale destruction in the factory premises and severe burn injuries to the workers, causing deaths of two. Thus, the appellants - accused, thus, committed the alleged offence for which, a complaint came to be lodged against them.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the City Sessions Court, Ahmedabad.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 in order to bring home the charge against the accused, the prosecution has examined as many as following witnesses and also produced several documentary evidence, as under:

	ORAL EVIDENCE	
S/n.	**Name of Witness**	**Exh.**
1	PW1 Bhavsinhbhai Mafabhai Patel	11

2	PW2 Chandrakant Chandulal Panchal	16
3	PW3 Dashrathbhai Kalabhai Solanki	17
4	PW4 Bharatbhai Revabhai Solanki	18
5	PW5 Kanubhai Kalabhai Solanki	20
6	PW6 Harishchandra Umapati Pande, complainant	35
	DOCUMENTARY EVIDENCE	
S/n.	**Document**	**Exh.**
1	Inquest Panchnama of Anilkumar Bhavsar	12
2	Inquest Panchnama of Mevjibhai Devjibhai Parmar	13
3	PM Report of Mevjibhai	14
4	Injuries Certificates of 22 injured persons	15
5	Panchnama of scene of incident	21
6	Report filed by the complainant for registration of offence	36
7	Complaint	37
8	FSL Report	38
9	PM Note of Anilkumar	39

2.4 At the end of the trial, Further Statements of the accused under Section 313 of Code was recorded in which they denied the evidence forthcoming on the record and stated that a false case has been filed against them. Thus, after recording above-referred Further Statements and hearing the arguments on behalf of prosecution and the defence, the learned Sessions Judge convicted the accused as aforesaid by impugned judgment and order, giving rise to prefer the present appeal.

3. Heard Mr. V. M. Trivedi, the learned advocate for the appellants - original accused Nos. 2 and 3 and Mr. K. L. Pandya, the learned Additional Public Prosecutor, for the respondent - State. For the sake of convenience, the parties are hereinafter referred to as per their original status.

3.1 Mr. Trivedi, the learned advocate for the accused, submitted that the trial Court has committed a grave error in convicting the accused as the impugned judgment and order of the

trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole ingredients of the offence alleged against the present accused. He submitted that the learned trial Judge has acquitted the accused No. 1 and the same ratio would have applied qua the present appellants, however, the learned trial Judge has concluded against the present appellants putting different yardstick qua them, which is contrary to the evidence on record and against the settled position of law. He further submitted that the person i.e. the complainant, the Police Inspector of the Odhav Police Station, who had lodged complaint in question, himself had conducted the investigation, which is violative of the principles of fair trial and investigation as has been held by the Hon'ble Apex Court and accordingly, the case of the prosecution being suffering from material illegality, was not at all tenable under the law and the said material aspect, the learned trial Judge having failed to consider in its true and proper perspective, the impugned judgment and order cannot sustain. The learned advocate for the accused further contended that vide exh. 22, the prosecution had filed an application before the trial Court praying for framing of additional charge under L.P.G. (R.S.D.) Order, 1988 (for brevity, 'the Order 1988') r/w. Sections 3 and 7 of the EC Act and vide application exh. 23, another application for examining a competent person from the department of the Essential Supplies as a witness was filed, however, both these applications, which ought to have been a part of the paper-book, are not there. The said application exh. 22 had been decided by order dated 12/06/2001 against the present accused, without application of mind and causing miscarriage of justice, however, the said order dated 12/06/2001 is also not a part of the paper-book. He submitted that before passing of the order dated 12/06/2001, the learned trial Judge was expected to call upon the prosecution to produce the Order 1988 and considered the same, which is not the case and accordingly, the order dated 12/06/2001 being inconsistent, perverse and illegal, deserves to be set aside. He submitted that the Order 1988 came into effect w.e.f. 21/04/1988 by publishing the same by the Central Government in the Government Gazette. The said Order 1988 came to be repealed by declaring another law being L.P.G. (R.S.D.) Order, 1993 (for brevity, 'the Order 1993') on 03/08/1993 and the said Order 1993 stood repealed by another Order viz. L.P.G. (R.S.D.) Order, 2000 (for

brevity, 'the Order 2000') on 26/04/2000, thus, on 05/06/2001, that is the day on which, the prosecution filed the aforesaid applications exhs. 22 and 23, the Order 2000 and while the incident had occurred, the Order 1993, were prevailing, however, the prosecution invoked and sought to apply the Order 1988, which had already been repealed much in prior i.e. on 03/08/1993 and such action of the prosecution was violative of Fundamental Rights of the accused guaranteed under Article 20(1) of the Constitution of India and accordingly, also the order dated 12/06/2001, passed by the learned trial Judge is utterly illegal and bad in law and deserves to be set aside as there was no violation of the Order 1988 at all and accordingly, there was no requirement of trial to be conducted by a specially constituted Court under the EC Act. He submitted that allowing of application exh. 22 has immensely prejudiced the fair trial to the accused and the entire trial by the Special Court is vitiated and whole trial is required to be declared illegal and unconstitutional and the appellants deserve to be acquitted.

3.2 The learned advocate for the accused further submitted that by virtue of aforesaid illegal order dated 12/06/2001, the matter was placed before the Special Court, who, framed the Charge against the accused on 18/10/2001, which is absolutely illegal as before framing the charge, the learned Judge ought to have called upon the Order 1988, however, neither the regular Sessions Court nor the Special Court had done so and accordingly, it is sans application of mind and without any jurisdiction. He submitted that under the constitutional obligations as well as by the principle laid down in catena of judgments of the Hon'ble Apex Court, the application of penal law retrospectively is hold to be barred and in the case on hand, there is a sheer violation of the aforesaid clear position of law and the charge for the offence under Sections 3 and 7 of the EC Act could not have been framed. Even otherwise, under the provisions of the Oder 1988, the Investigating Officer (IO) has no jurisdiction to investigate the alleged violation of the Order 1988 and Sections 3 & 7 of the EC Act and only an officer of the Department of Food and Civil Supplies or any other person named in the said Act is authorised. Moreover, the material seized by such an authorised person is required to be produce before the Collector under the provisions of Section 7 of the EC Act, however, nothing of this kind was done by the IO and accordingly, the whole investigation being perverse and illegal, the consequent trial also stands illegal.

3.3 The learned advocate for the accused further submitted that now, at this stage, even this Court is restrained under the constitutional provisions to treat the charge, already framed by the trial Court, as under the Order 1993 or the Order 2000.

3.4 The learned advocate for the accused further submitted that the prosecution had preferred the aforesaid two applications being exh. 22 for framing the charge under the EC Act and exh. 23 to call an officer of the Gujarat Essential Commodities Department, before the regular Sessions Court and the said Court had kept both the applications for hearing, however, decided only one application i.e. exh. 22 and the application, exh. 23 was directed to be placed before the Court specially assigned to deal with the cases under the EC Act. On being placed the said application exh. 23, which was for examining a competent person from the department of essential supplies as a witness, the Sessions (Special) Court did not pass any order, which further caused the miscarriage of justice. Moreover, the said Special Court granted application exh. 40, whereby, the evidence of the prosecution was closed and thereby, has committed a grave error in not examining all the witnesses like any competent officer from the Department of Civil Supplies and the competent person from the FSL and the expert doctor in support of the Post Mortem Notes to substantiate the factum of the deaths occurred.

3.5 The learned advocate for the accused also submitted that the said Sessions (Special) Court did not give any hearing on exh. 41, an application for exhibiting the FSL Report, on which, vide order dated 28/01/2002, the Court had fixed the hearing and did not pass any order on the same, however, then straightway exhibited the FSL Report despite specific order dated 28/01/2002 fixing the application, exh. 41 for hearing.

3.6 The learned advocate for the accused also submitted that the learned APP before the trial Court has misled the Court by producing repealed Order 1988 and thereby, caused to frame the charge under the provisions of a law, which was not in force at the relevant time. Moreover, he purposefully did not produce any competent officer from the Department of Civil Supplies, which has proved to be fatal to the case of the present appellants - accused. Moreover, there are material lapses in the investigation and the conduct of the IO appears to be prejudicial to the accused inasmuch as, material witnesses were not examined and their statements were

not recorded during the investigation. No statement of the competent officer from the department of the Civil Supplies has been recorded and/or examined during trial. The IO has bypassed the provisions of EC Act as under the provisions of the said Act, he has no jurisdiction to investigate the case. Moreover, the FSL expert as also the medical and forensic experts have not been examined. Moreover, it is important to note that the IO in the case on hand himself is the complainant and accordingly, there are all chances of the said situation having caused prejudice to the case of the appellants - accused. He by drawing attention of the Court to the depositions of the so-called eye-witnesses, submitted that none of these witnesses have stated that the present appellants - accused had been responsible for the fire and blast. Moreover, though statements some of the eye-witnesses namely, Dhanjibhai Rupen Navinchandra, Jayantibhai Ramabhai and Ramanbhai Ishwarbhai had been recorded during the investigation, they had been dropped by the prosecution and relied upon the evidence of PW-1 Bhavsinhbhai Mafabhai, exh. 11, PW-2 Chandrakant Chandulal, exh. 16, PW-3 Dashrathbhai Kalabhai, exh. 17 and PW-4 Bharatbhai Revabhai, exh. 18, who are, as such, not the eye-witnesses yet the learned trial Judge has treated them to be the eye-witnesses and accordingly, wrongly appreciated and evaluated their evidence. Moreover, it is also a fact that the present appellants - accused also had received the serious burn injuries and were hospitalized and accordingly, no conclusion as to rash and negligence for the offence punishable under Section 304-A of the IPC could have been drawn against them. Besides, for want of evidence as to damage to the Government properties, the learned trial Judge has also wrongly concluded against the appellants - accused for the offence punishable under Section 435 of the IPC, more particularly, when the factory premises and the gas cylinders were owned by the appellants - accused and not by the Government and when the accused were having industrial gas connection. Moreover, the learned trial Judge has also committed an error of law in appreciating the facts and law as, if there is conclusive proof of the appellants - accused having committed the offence punishable under Section 435 of the IPC then question of applying Section 304 of the IPC does not arise and the sentence for the offence punishable under Section 435 and 304 of the IPC both cannot be sustained. Moreover, the presence of the present appellants - accused is not proved at all and all the witnesses have named one Ghanshyambhai as a person who was doing any activity with the gas bottles and accordingly, there is nothing on record to link

the appellants - accused with the act of fire and blast. Moreover, there is material contradictions as to the number of bottles as some witnesses have stated 'two' while some have 'one' and accordingly, the lapses on the part of the investigating agency become apparent. Besides, it has also not been proved that the gas bottle which was blasted was a residential cooking gas bottle or the industrial gas bottle and it appears that keeping in mind the only fact that the present appellants - accused having been the owner of the factory, the learned trial Judge has come to the aforesaid conclusion, which deserves to be turned down by this Court. Making above submissions, the learned advocate for the appellants - accused requested this Court to allow the present appeal, quashing and setting aside the impugned judgment and order.

3.7 in support, the learned advocate for the appellants - accused has relied several decisions as under:

3.7.1 Kanubhai Kantibhai Patel Vs. The State of Gujarat, reported in 1998 (1) GLH 924;

3.7.2 Megha Singh Vs. State of Haryana, reported in 1995 (0) GLHEL-SC 17518 = AIR 1995 SC 2339;

3.7.3 Rabindra Kumar Dey Vs. State of Orissa, reported in 1976 (0) GLHEL-SC 22213 = AIR 1977 SC 170;

3.7.4 Pratap Singh Vs. State of Haryana, reported in 1990 (0) GLHEL- SC 21370 = 1991 (Suppl) SCC 409;

3.7.5 Zahira Habibullah Shaikh Vs. State of Gujarat, reported in 2004 (0) GLHEL-SC 34895 = AIR 2004 SC 3114;

3.7.6 Zahira Habibullah Shaikh Vs. State of Gujarat, reported in 2004 (0) GLHEL-SC 36990 = AIR 2006 SC 1367;

3.7.7 State of Gujarat Vs. Patel Ashwinkumar Ranchhodbhai, reported in 2008(0) GLHEL-HC 220169 = 2008 (2) GLR 1748;

3.7.8 State of Gujarat Vs. Patel Maheshbhai Ranchhodbhai, reported in 2008 (0) GLHEL-HC 220239 = 2008 (3) GLR 2566;

3.7.9 Meghabhai Motibhai Vs. State of Gujarat, reported in 1984 (0) GLHEL-HC 207641 = 1985 (2) GLR 793;

3.7.10 State of Gujarat Vs. Yogendrakumar B. Setalvad, reported in 1993 (0) GLHEL-HC 212577 = 1993 (2) GCD 430;

3.7.11 Lilubha Mahobatsinh Vs. State of Gujarat, reported in 1990 (0) GLHEL-HC 206891 = 1991 (1) GLR 266;

3.7.12 State of Gujarat Vs. Dineshbhai Mehta, reported in 1993 (0) GLHEL-HC 211893 = 1994 (1) GCD 304;

a

3.7.13 Sawal Das Vs. State of Bihar, reported in 1974 (0) GLHEL-SC 25660 = AIR 1974 SC 778;

3.7.14 Bava Hajee Vs. State of Kerala, reported in 1974 (0) GLHEL-SC 3047 = AIR 1974 SC 902;

b ***3.7.15 Mohinder Singh Vs. State, reported in 1950 (0) GLHEL-SC 18087 = AIR 1953 SC 415;***

3.7.16 Kali Ram Vs. State of Himachal Pradesh, reported in 1973 (0) GLHEL-SC 13703 = AIR 1973 SC 2773;

c ***3.7.18 Noor Aga Vs. State of Punjab and Anr., reported in 2008 (3) GLH 43;***

3.7.19 Anantray Lalji Pandya Vs. The State of Gujarat, reported in 1982 GLH 472;

3.7.20 Syad Akbar Vs. State of Karnataka, reported in 1979 (0)
d ***GLHEL- SC 31311 = AIR 1979 SC 1848;***

3.7.21 Thulia Kali Vs. State of Tamil Nadu, reported in 1972 (0) GLHEL- SC 31979 = AIR 1973 SC 501;

3.7.22 State of Gujarat Vs. Himatbhai Rambhai Vaghsia, reported in 2013 (0) GLHEL-HC 229950 = 2013 (3) GLR 2528.

e 4. Per contra, Mr. Pandya, the learned Additional Public Prosecutor for the respondent - State, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has successfully proved the case against
f the accused beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper and accordingly, it is requested that this Court should not interfere in appeal. He took the Court through the relevant oral as well as documentary evidence on record
g and submitted that most of the prosecution witnesses are the eye-witnesses to the incident in question, besides panch witness and the complainant and IO and almost all the witnesses have supported the case of the prosecution and nothing substantial had come from the cross- examination of these witnesses and accordingly, the learned trial
h Judge has, after duly appreciating and evaluating the oral as well as the documentary evidence on record, rightly convicted the accused

considering the gravity of the offence, dealing with each and every aspect of the matter, giving elaborated and plausible reasons for the same, which requires no interference at the hands of this Court. He submitted that the domestic gas cylinder was being used for the industrial purpose, that too, without taking any safety measures and without following the mandate of the law, leading to such an untoward incident, in which two lives had been lost, besides serious injuries to the several persons. Moreover, the contention relating repeal of the Order 1988 and invoking provisions of Sections 3 and 7 of the EC Act, were very much available to the appellants - accused as the same, as it is stated, was repealed by declaration of Order 1993 on 03/08/1993 and was available to the defence. Moreover, thereafter, as is stated, the said Order 1993 also came to be repealed by Order 2000 on 26/04/2000, but for the reasons best known to them, the same has not produced before the trial Court. Accordingly, for the own wrong or lacuna, the defence cannot take the benefit out of the same if at all there is any illegality or perversity. Moreover, though it is a fact that in the case on hand, the complainant himself is the IO, however, only for that reason, the investigation and/or his version, cannot be discarded, which is otherwise supported by the other prosecution witnesses and this aspect, the learned trial Judge has dealt with in detail. Moreover, he submitted that merely for some technicalities, the entire case of the prosecution, which is otherwise has undergone the test of the trial and proved beyond reasonable doubt, cannot be thrown away. Eventually, he requested to dismiss the present appeal confirming the impugned judgment and order.

5. I have considered the above-referred rival submissions made by the learned advocates for the parties and also gone through the evidence on record and re-appreciated and re-evaluated the same on the touchstone of the latest decisions of the Hon'ble Apex Court. I have also gone through the impugned judgment and order so also the decisions relied upon by the learned advocate for the accused.

5.1 The main contention which has been raised by the learned advocate for the accused is to the effect that, at the relevant point of time, the Order 1988 was not in force as it was already repealed by Order 1993 on 03/08/1993 and accordingly, the act of invoking the provisions of EC Act based on the Order 1988 and consequent, conviction and sentence of the accused for the offence under the EC Act, is bad in law. The comparative chart of the relevant portion of the LPG (RSD) Orders, 1988, 1993 and 2000 is extracted hereunder:

	LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
a	MINISTRY OF PETROLEUM NATURAL GAS	MINISTRY OF PETROLEUM NATURAL GAS	MINISTRY OF PETROLEUM NATURAL GAS
	ORDER 8th March, 1988	ORDER 3rd August, 1993	ORDER 26th April, 2000
b	G.S.R. 475(E)- In exercise .of the powers conferred by Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order, namely :	G.S.R. 475(E)- In exercise .of the powers conferred by Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order, namely :	G.S.R. 475(E)- In exercise .of the powers conferred by Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order, namely :
c	(1) This Order may be called the **Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988**.	(1) This Order may be called the **Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1993**.	(1) This Order may be called the **Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000**.
	2. **DEFINITIONS-**	2. **DEFINITIONS-**	2. **DEFINITIONS-**
	—-Not in this Order—-	(a) '**Chief Controller of Explosives**' shall have the same meaning assigned to it in the Explosives Act,1884(4 of 1884)	(a) '**Chief Controller of Explosives**' shall have the same meaning assigned to it in the Explosives Act,1884(4 of 1884)
d	(d) "**distributor**" means a person, firm, association of persons, company, institution, organization or a cooperative society engaged in the business of purchase, sale, or storage for sale of liquefied petroleum gas in cylinders on the basis of an agreement an Oil Company, **whether or not in conjunction with any other business., his representatives, employee, agent or commission agent, but does not include an Oil Company;**	(e) "**distributor**" means a person, firm, association of persons, company, institution, organisation or a cooperative society **appointed by a Government Oil Company or parallel marketeer and** engaged in the business of purchase, sale, or storage for sale of liquefied petroleum gas in cylinders **to consumers** on the basis of an agreement with **a Government** Oil Company **or a parallel marketeer, as the case may be;**	(e) "**distributor**" means a person, firm, association of persons, company, institution, organisation or a cooperative society **appointed by a Government Oil Company or parallel marketeer** and engaged in the business of purchase, sale, or storage for sale of liquefied petroleum gas in cylinders to consumers on the basis of an agreement with **a Government Oil Company or a parallel marketeer**, as the case may be;
e			
f	(h) "**Oil Company**" means, **any of the following Oil Companies, namely**;	"**Government Oil Company**" means,	(g) "Government Oil Company" means,
g	(i) Indian Oil Corporation Limited, (ii) Bharat Petroleum Corporation Limited (iii) Hindustan Petroleum Corporation Limited, (iv) IBP Company Limited, (v) Oil and Natural Gas Corporation Limited, (vi) Gas Authority of India Limited (vii) Oil India Limited,	(i) Indian Oil Corporation Limited, (ii) Hindustan Petroleum Corporation Limited, (iii) Bharat Petroleum Corporation Limited (iv) IBP Company Limited, (v) Oil and Natural Gas Corporation Limited, (vi) Gas Authority of India Limited (vii) Oil India Limited,	(1) Bharat Petroleum Corporation Limited (2) Bongagaigaon Refinery and Petrochemicals Limited (3) Cochin Refineries Limited (4) Gas Authority of India Limited (5) Hindustan Petroleum Corporation Limited, (6) Indian Oil Corporation Limited,
h	(viii) any other Government Company or a statutory body or a company or a firm, declared as such by notification in the Official	(viii) any other Government Company or a statutory body or a company or a firm, declared as	(7) IndoBharma petroleum Company Limited, (8) Chennai Petroleum Company Limited, (9) Numaligarh Refinery Limited,

LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000	
Gazette, to be a "Government Oil Company by the Central Government, for the purposes of this Order;	such by notification in the Official Gazette, to be a "Government Oil Company by the Central Government, for the purposes of this Order;	(10) Oil India Limited, (11) Oil and Natural Gas Corporation Limited, or (12) any other Government Company or a statutory body or a company or a firm, declared as such by notification in the Official Gazette, to be a "Government Oil Company by the Central Government, for the purposes of this Order;	a b
—-Not in this Order—-	(h) "**liquefied petroleum gas** (or **LPG**)" means a mixture of light hydrocarbons which may include propane, isobutene, normal butane, butylene etc., which are gaseous at normal ambient temperature and atmospheric pressure but may be condensed to liquid state at normal ambient temperature by the application of pressure and which conforms to Indian Standard specification number IS 4576;	(i) "**liquefied petroleum gas** (or **LPG**)" means a mixture of light hydrocarbons which may include propane, isobutene, normal butane, butylene etc., which are gaseous at normal ambient temperature and atmospheric pressure but may be condensed to liquid state at normal ambient temperature by the application of pressure and which conforms to Indian Standard specification number IS 4576;	c d
—-Not in this Order—-	(k) "parallel marketing system" means the system other than the public distribution system, under which a parallel marketer carries on any or all of the business of importing, storing, bottling, distribution or selling in bulk or in retail, packed or filled in cylinder, liquefied petroleum gas under his own arrangement;	(k) "**parallel marketing system**" means the system other than the public distribution system, under which a parallel marketer carries on any or all of the business of importing, storing, bottling, distribution or selling in bulk or in retail, packed or filled in cylinder, liquefied petroleum gas under his own arrangement;	e
—-Not in this Order—-	(l) "**public distribution system**" means the system of distribution, marketing or selling of liquefied petroleum gas by a Government Oil Company at the Government controlled or declared price through a distribution system approved by the Central or a State Government;	(l) "**public distribution system**" means the system of distribution, marketing or selling of liquefied petroleum gas by a Government Oil Company at the Government controlled or declared price through a distribution system approved by the Central or a State Government;	f
(1) "**transporter**" means a person authorised by an Oil Company or a distributor for transportation of liquefied petroleum gas in cylinders and empty cylinders **from the supply point of an Oil Company to its own storage point or to that of another Oil Company, or to and from any of the cylinder repairing or cylinder reconditioning unit engaged by an Oil Company or**	(q) "**transporter**" means a person authorised by a **Government** Oil Company **parallel marketeer** or a distributor for transportation of LPG in **bulk or in** cylinders and also of empty **or defective** cylinders.	(q) "**transporter**" means a person authorised by a Government Oil Company parallel marketeer or a distributor for transportation of LPG in bulk or in cylinders and also of empty or defective cylinders.	g h

	LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
a	**to and from the storage point of an Oil Company to the distributor, or to and from the Oil Company storage to the premises of a consumer.**		
b	**3. Restriction on possession, and consumption of liquefied petroleum gas:**	**3. Restriction on unauthorised possession, supply and consumption of liquefied petroleum gas:**	**3. Restriction on unauthorised possession, supply and consumption of liquefied petroleum gas:**
c	(1) No person shall be granted by an Oil company or a distributor **more than one connection** for consuming liquefied petroleum gas.	**(1) Where a person has been granted a connection for liquefied petroleum gas under the public distribution system "then" he shall not :**	**(1) A person having a connection for liquefied petroleum gas under the public distribution system, shall not –**
	(2) No person shall possess or use liquefied petroleum gas filled in cylinders or in bulk form unless he has received supply thereof from a distributor or from an Oil Company.	(a) possess more than one connection of liquefied petroleum gas granted under the public distribution system:	**(a) possess more than one connection of liquefied petroleum gas granted under the public distribution system:** Provided that the Central Government or the Chief Executive Officer of a Government Oil Company, may sanction more than one connection of liquefied petroleum gas under the Public Distribution System in favour of any person, keeping in view the difficulty and hardship experienced by such person in obtaining supplies of the LPG;
d	(3) **No person shall use liquefied petroleum gas except for cooking or for such other purpose** as may be declared by a general or special order by the Central Government.	(b) possess or use liquefied petroleum gas filled in cylinder or in bulk, unless he has received that supply from **a Government Oil Company** or a distributor authorised by **Government** Oil Company;	(b) possess or use liquefied petroleum gas filled in cylinder or in bulk, unless he has received the supply from a Government Oil Company or a distributor authorised by such Company;
e	(4) No distributor shall supply liquefied petroleum gas filled in cylinders to any person other than a consumer possessing a valid authorisation from an Oil Company.	**(c) use liquefied petroleum gas for any purpose other than for cooking:** Provided that the Central Government may by a general or special order permit the use of liquefied petroleum gas for such other purposes it may specify in that order.	**(c) use liquefied petroleum gas for any purpose other than for which the consumer is registered with the distributor of a Government Oil Company:** Provided that the Central Government may by a general or special order permit the use of liquefied petroleum gas for such other purposes as, it may, by order, specify.
f	(5) No person shall fill any cylinder with liquefied petroleum gas or fill liquefied petroleum gas from one cylinder to another or from one container to another unless authorised to do so by the. Chief Controller of Explosives to the Government of India.	**(2) No distributor of a Government Oil Company shall supply liquefied petroleum gas filled in cylinders to any person unless he holds a valid authorisation from the Government Oil Company.**	**(2) The supply of liquefied petroleum gas to domestic category consumers shall be made in 14.2 Kg capacity cylinder and to those falling under nondomestic category shall be made in 19 Kg/47.5 capacity cylinder, or in such capacity**
g		*(3) No person shall fill any cylinder with liquefied petroleum gas or transfer liquefied petroleum gas from one cylinder to another cylinder or from one container to another container unless authorised by the Chief Controller of Explosives.*	
h		**(4) No transporter or delivery person shall deliver or cause to be delivered liquefied petroleum gas either in cylinders or**	

LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
	in bulk to any person other than the consumer for whom the liquefied petroleum gas is meant for.	**cylinders as may be notified, by the Central Government from time to time.** *(3) No Distributor of a Government Oil company shall supply liquefied petroleum gas filled in cylinder to any person unless he (a) has been registered and granted a connection for liquefied petroleum gas under the Public Distribution System, or (b) holds a valid authorisation from the Government Oil company.* **(4) No distributor of a Government Oil Company or a parallel marketeer, as the case may be, shall commit or cause to commit any of the activities prohibited herein including those specified in Schedule 1.**
—-Not in this Order—-	**10. Maintenance of records and furnishing of information by parallel marketeer:** (a) Every parallel marketer before commencing the import, transportation, bottling, marketing, distribution or sale of liquefied petroleum gas shall intimate to the Central Govt. in the Ministry of Petroleum and Natural Gas his intention to engage in all or any one of the above activities specifying therein capability to do so, and other relevant particulars. (b) The parallel marketeer of liquefied petroleum gas shall submit a monthly return before the 15th day of the following month giving details of liquefied petroleum gas imported portwise, to the Central Government in the Ministry of Petroleum & Natural Gas. (c) The parallel marketeer shall furnish to the Central Government in the Ministry of Petroleum and Natural Gas, or to such authority as may be specified by that government in this regard, such other information as may be required.	**12. Maintenance of records and furnishing of information by parallel marketeer:** (a) Every parallel marketer before commencing the import, transportation, bottling, marketing distribution or sale of liquefied petroleum gas shall intimate to the Ministry of Petroleum and Natural Gas all or any of the above activities which he intends to undertake, specifying therein capability to do so, and any other relevant particulars. (b) The parallel marketeer shall ensure that the quality checks are carried out and the liquefied petroleum gas meets the BIS specification number IS 4576, in all respects before the imported liquefied petroleum gas is discharged into the storage infrastructure at the port. (c) The parallel marketeer shall ensure that the liquefied petroleum gas meets the BIS specification number IS 4576 before it is sold to any consumer. (d) The parallel marketeer of liquefied petroleum gas shall submit a monthly return before the 15th day of the following month giving details of liquefied petroleum gas produced and or imported port wise, to the Ministry of Petroleum and Natural Gas.

	LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
a			(e) The parallel marketeer shall furnish to the Ministry of Petroleum and Natural gas, or to such authority as may be specified by the Central Government, such information as may be required.
b c d e f g h	**7. Power of entry, search and seizure—** (1) An officer of the Department of Food and Civil Supplies of the Government below the rank of an Inspector authorized by such Government and notified by the: Central Government, or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of . this Order, for the purpose of satisfying himself that this Order or any Order made thereunder has been complied with — (a) stop and search any vessel or vehicle which the officer has reason to believe has been, or is being; or is about to be used in the contravention of this Order; (b) enter or search any place with such aid or assistance as may be necessary; (c). **seize and remove** with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, along with the vehicles, vessels or any other conveyances used in carrying such stock if he his reason to suspect that any provision of this Order has been or is being or is about to be contravened in respect of such stock and thereafter take or authorize the taking of all measures necessary **for securing the production** of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the collector having jurisdiction under the provisions of section of the Essential	**11. Power of entry , search and seizure:** (a) An Officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by the Central Government or any Officer authorised and notified by the Central Government or any Officer not below the rank of a Sales Officer of a Government Oil Company authorized by the Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying himself that his Order or any Order made thereunder has been complied with, (i) stop and Search any vessel of vehicle which the Officer has reason to believe has been, or is being or is about to bo used in the contravention of this Order; (ii) enter or search any place with such aid or assistance, as may be necessary; and (iii) **seize and remove** with such aid or assistance, as may be necessary books registers and other records pertaining to liquefied petroleum gas business, filled and empty cylinders, cylinder valves and pressure regulators alongwith the vehicle, vessel or any other conveyance used for carrying such stock. If he has reason to believe that any provision of this Order has been or is being or is about to be contravened and thereafter take or authorise the taking of all measures necessary for **securing the production of the liquefied petroleum gas filled or empty cylinders, cylinder valves, pressure regulators, at the office of the Government Oil Company and the vehicle,**	**13. Power of entry , search and seizure:** (1) Any Officer of the Central or the State Government not below the rank of Inspector duly authorised by a general or a special order, by the Central Government or the State Government , as the case may be or any officer of a Government Oil Company not below the rank of Sales Officer , authorised by the Central Government, may, with a view to securing due compliance of this order or any other order made thereunder; (a) Stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product, (b) enter and search any place, (c) seize stocks of liquefied petroleum gas along with container and/or equipment, such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this Order has been , or is being, or is about to be made. (2) The sales officer of a Government Oil Company shall be authorised to secure compliance of this order by the distributors appointed under the public distribution system and or by the consumer registered by them.

LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
Commodities Act, 1955 (10 of 1953), and for their safe custody pending such production. (2) The provisions of Sec. 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, so far as may be apply to searches and seizures under this Order.	**vessel or other conveyance so seized before the Collector having jurisdiction under the provisions of the Essential Commodities Act, 1955 (10 of 1955), for their taking action against all concerned.** (b) The provisions of section 100 of the Code of Criminal Procedure, 1972 (2 of 1974) relating to search and seizure shall, so far as may be apply to,	
8. Provision of the Order to prevail over previous. Orders of State Government, etc. The provisions of this Order shall have effect notwithstanding anything to the contrary contained in any Order made by a State Government or Union Territory or by an officer of such State Government or Union Territory before the commencement of this Order except as respects anything done or omitted to be done thereunder before such commencement.	**12. Overriding effect of the Order.** The provisions of this Order shall have overriding effect notwithstanding anything contained in any Order made by a State Government or a Union Territory by an Officer of such State Government or Union Territory before the commencement of this Order, except as regards of anything done or omitted to be done thereunder before such commencement.	**14. Overriding effect of the Order.** The provisions of this Order shall have overriding effect notwithstanding anything contained in any Order made by a State Government or a Union Territory Administration.
—-Not in this Order—-	**14. Repeal and savings:** (1) The Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 is hereby repealed except in respect of things done or omitted to be done under that order before the commencement of this order, (2) Notwithstanding such repeal anything done or any action taken under the said Order shall be deemed to have been done or taken under the corresponding provisions of this Order.	**16. Repeal and savings:** The Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1993 is hereby repealed: Provided that such repeal shall not effect: (a) the previous operation of the said Order or anything duly done or suffered therein; or (b) any right , privilege, obligation or liability acquired, accrued or incurred under the said Order; or (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Order; or (d) any investigation, legal proceedings or remedy in respect of any such right, privilege , obligation, liability, penalty forfeiture or punishment as aforesaid, (d) any investigation, legal proceedings or remedy in respect of any such right, privilege , obligation, liability, penalty forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be

	LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
a			instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said Order had not been repealed.
b	*—-Not in this Order—-*	*—-Not in this Order—-*	**SCHEDULE 1** **[see clause 3 (4)]** **Prohibited Activities (for Government Oil Companies)** 1. Forced sale of Stove/Hotplates to the consumers. 2. Recovery of unauthorised charges from applicant at the time of registration/release of new connection. 3. Supply of partially used cylinder/pilfering product from cylinder/cylinders with pilfered product to LPG consumer. 4. Unauthorised and/or out of turn release of new LPG connections. 5. Unauthorised diversion of domestic cylinder for nondomestic use of LPG. 6. Acceptance of fake documents including Termination Vouchers and Transfer Termination Vouchers. 7. Possession of spurious LPG equipment. 8. Induction of spurious LPG equipment and/or replacement by a spurious equipment. 9. Manipulation of mandatory records. 10. Nonhome delivery of LPG refill supplies to consumer and/ or not giving rebate on nonhome delivery to LPG consumer. 11. Overcharging by distributor on LPG refill supplies, installation charges, mechanic charges and/ or any other charges authorised by the Government Oil Company. 12. Refusal to register requests for new connection and/or double bottle connection. **Prohibited Activities (for Parallel Marketeers)** 1. Forced sale of Stove/Hotplates to the consumers. 2. Supply of partially used cylinder/pilfering product from cylinder/cylinder with pilfered product to LPG consumer.
c			
d			
e			
f			
g			LPG in the cylinder.
h			

LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000	
		3. Possession of spurious LPG equipment. 4. Induction of spurious LPG equipment and/or replacement by a spurious equipment. 5. Manipulation of mandatory records.	a
Schedule [See clauses 5] **Standard· weight of liquefied petroleum gas in cylinder** Capacity of Cylinder Weight of LPG Gas **4.0 kg** The weight of ·the liquefied petroleum gas **5.0 kg** contain in a cylinder shall not be less by **11.2 kg** more than 1.5% of the capacity of the 14.2 kg respective cylinder indicated at column (a); 19.0 kg 47.5 kg **50.0 kg**	**Schedule – A** [See clauses 4 & 5] Standard size and Specification of liquefied petroleum gas cylinders shall conform to IS 3196 — and Colour Code specification IS 4379 Int. dia. of cylinder Net weight of LPG in the cylinder. 314.0 mm 14.2 kg 330.1 mm 19.0 kg 368.3 mm 47.5 kg **390.0 mm 100.0 kg** NOTE: 1. The weight of the liquefied petroleum gas contained in a cylinder shall not vary by a difference of 1.5 % of the net weight of the respective cylinder as indicated on it by the Government oil company. 2. Standard size and specification of Gas Cylinder Valve under the public distribution system shall conform to IS 8737, Part II specifications having an outlet collar diameter of 25.6 mm. 3. Pressure regulator shall conform to IS 9798 specification having an inlet diameter of 25.6 mm,	**Schedule – II** [See clauses 4 (1)(e) & 5] Applicable to distributors of a Government Oil Company Standard size and specification of Liquefied Petroleum Gas Cylinders shall conform to IS 3196 (Part I), 1992 Colour code specification IS 4379 and the following: Int. dia. of cylinder Net weight of 314.0 mm 14.2 kg 330.1 mm 19.0 kg 368.3 mm 47.5 kg NOTE: 1. Standard size and specification of Gas Cylinder **Valve** under the **Public distribution system** shall conform to IS 8737 Part II specifications having an **outlet collar diameter** of **25.6 mm**. 2. **Pressure regulator** shall conform to IS 9798 specification having an **inlet diameter** of **25.6 mm**.	b c d e
—-Not in this Order—-	**Schedule–B** [See clauses 4 & 5] (**Applicable to Parallel Marketing System**) A parallel marketeer under the parallel marketing system may deal with— (a) cylinder of any size, shape, design and weight other than those specified in Schedule 'A' conforming to Indian Standard specifications, without however any restriction on water capacity. (b) Gas cylinder valve conforming to IS specification 8737, Part II specification but the outer collar diameter size should be different than 25.6 mm. (c) Pressure regulators conforming to Indian Standard specification	**Schedule – III** [See clauses 4 (1) (e) & 5) (**Applicable to Parallel Marketing System**) A Parallel marketeer under the parallel marketing system shall deal with and use: (a) Cylinder of any size, shape, design and weight other than those specified in Schedule 'II' conforming to Indian Standard Specifications. (b) Gas cylinder valve conforming to IS specification 8737, Part II of any size having an outlet collar dia. of 22.0mm. (c) Pressure regulator conforming to IS specification 9798 of any size and having an inlet dia. …….	f g h

LPG (RSD) ORDER, 1988	LPG (RSD) ORDER, 1993	LPG (RSD) ORDER, 2000
	9798 of any size and having an inlet diameter other than of 25.6 mm.	other than of 22.0mm. NOTE: 1. The cylinder used by a parallel marketeer shall be provided with a valve protection ring different in shape from that in the cylinder used by a Government Oil Company. 2. The cylinder used by a parallel marketeer shall be clearly marked with Colour Band and Logo of their respective company, firm or person marketing liquefied petroleum gas, as approved by the Chief Controller of Explosives. 3. Maximum permissible error on net quantities declared by weight or by volume shall be as below:

5.2 Referring the above chart, the learned advocate for the appellants has mainly submitted as under:

5.2.1 in the Orders 1993 and 2000, the definition of 'Chief Controller of Explosives' is added, which was not there in the Order 1988 and thus, it was expressly pointed out by the Government that so far as Orders 1993 and 2000 are concerned, Explosives Act, 1884 and Gas Rules, 1981 are applicable.

5.2.2 Same way in the Orders 1993 and 2000, besides definition of LPG (Liquefied Petroleum Gas), the definitions of "Parallel Marketeer" and "Parallel Marketing System" were added and thus, a policy departure made by the Government from 1993 to ease the shortage of gas cylinders and its availability to consumers.

5.2.3 Moreover, the definition of "Public Distribution System" was also introduced from 1993 by which, it was provided that the EC Act and its restrictions will apply only to the cylinders sold through the "public distribution system".

5.2.4 He further submitted that vide Order 2000, in Clause 3(c), the word "cooking", which was existed in the Orders 1988 and 1993, was dropped for the reason that wider use of LPG was permitted since 1993.

5.2.5 He then submitted that by the Orders 1993 and 2000, by virtue of Clause 10, the restrictions as to maintenance of records and furnishing of information to any authority are only upon the "parallel

marketeers" and no restrictions have been imposed upon the consumers.

5.2.6 He also submitted that by virtue of Clause 12 of the Order 1993, the LPG Order 1988 stands repealed and even if it is held that it still applies, then the LPG Order 1993 has the overriding effect over the LPG Order 1988.

5.2.7 The learned advocate for the appellants further submitted that by Schedule-B to the Order 1993, the Government has taken care to provide different size of cylinders for the "parallel marketing system" and the "public distribution system" so that it can be easily detected whether the cylinder was originated from which source.

5.3 Accordingly, I have gone through the said Orders 1988, 1993 and 2000. A perusal of the Order 1993 reveals that the same was in force when the incident in question had occurred i.e. on 17/12/1998. As referred herein above, by application exh. 22, dated 12/06/2001, the prosecution had requested for framing of additional charge under Order 1988 r/w. Sections 3 and 7 of the EC Act, however, a perusal of the Order 1993, it is revealed that the Order 1988, was not in force at the relevant time as was repealed by Order 1993 much prior i.e. on 03/08/1993. Clause 14 of the Order 1993, referred to above, states that, 'the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 is hereby repealed except in respect of things done or omitted to be done under that order before the commencement of this order. Thus, it appears that the prosecution has wrongly invoked the Order 1988 while preferring the application for framing of additional charge under the EC Act. For the sake of argument if the invocation of Order 1988 is believed to be the right one, then the question comes whether the mandate of Clause 7, which describes the powers as to entry, search and seizure, has been fulfilled or not. Referring to said Clause 7 of the Order 1988 and corresponding provision, Clause 11, in the Order 1993, both the aforesaid clauses require an officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by the government or any other officer as described in the aforesaid clauses, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying himself that his Order and any Order made thereunder, has been complied with. Based upon this, if the case on hand is

considered, there appears nothing on record to show that such a provision has been complied with while invoking the provisions of the EC Act and thereby, framing of additional charge thereunder, under Order 1988 for the offence under EC Act, it appears that the prosecution has failed to comply with the aforesaid provisions of law, besides, the learned trial Judge has failed to consider this material aspect and has failed to comply the mandate of the law and accordingly, in the considered opinion of this Court invocation of EC Act without following aforesaid is bad in law and accordingly, the conviction thereunder, is vitiated with material illegality, which requires to be rectified at the hands of this Court. It is important to note at this juncture that application at exh. 23 was given by the learned APP to call the officer of the Gujarat Essential Commodities and though the Witness Summons was issued twice i.e. on 21/05/2001 and 31/05/2001 containing instructions to remain present with notification, the said witness was not produced before the Court and it appears that neither the learned APP nor the learned Presiding Officer had made any serious attempt for securing his presence and as such, without going through the earlier order, in a mechanical manner, the learned Special Judge had passed the order below exh. 24 to frame the additional Charge under Section 3 of the LPG (RSD) Order, 1988 r/w. Section 3 of the EC Act r/w. Sections 3 and 7 on 18/10/2001 and thus, it appears that the said omission on the part of the learned trial Judge to decide the said application exh. 23 has caused serious miscarriage of justice. It further appears that the learned APP as well as the learned trial Court (Special) had very casually dealt with the trial which appears obvious non- application of mind to the record of the case, which led to the wrongful conclusion of guilt of the appellants leading to conviction and in my view, on this sole ground, the conviction appears to be bad in law.

5.4 Now, so far offence under the IPC for which, the present appellants - accused are convicted and sentenced are concerned, the accused are convicted and sentenced for the offences punishable under Sections 336, 337 and 338 of the IPC. It is alleged that the accused were using the domestic gas cylinder for the industrial purpose. in this regard, I have perused the depositions of PW-1 Bhavshibhai Mafabhai Patel at exh. 11, PW-2 Chandrakant Chandulal Panchal at exh. 16, PW-3 Dashrat Kalabhai Solanki at exh. 17, PW-4 Bharatbhai Revabhai Solanki at exh. 18, the eye-witnesses to the incident in question and the deposition of PW-5 Kahubhai Kalabhai

Solanki at exh. 20, the panch witness as well as the deposition of PW-6 Harishchandra Umapati Pande, the complainant cum IO at exh. 35. On going through the depositions of PW-1 to PW-5, there appears nothing to substantiate beyond reasonable doubt that the accused were using the domestic gas cylinder for industrial purpose. Nothing such could be inferred from the depositions of PW-1 and PW-2, whereas, the PW-3 and PW-4 have stated the fact of 'red' coloured gas bottle was in use, however, they were not sure as to whether it was a domestic gas cylinder or the industrial one. in this regard, the learned advocate for the accused has placed on record the photograph as to identification of various gas cylinders i.e. domestic and the industrial. On going through, the same, it appears that it is only since August 2006, to identify a cylinder meant for the industrial purpose, blue colour along with the red colour, was started being used and till then, only red coloured gas bottles, both for the domestic and the industrial gas, were in use and accordingly, at the relevant time, it was very difficult to identify a cylinder to be meant for domestic purpose or the industrial. Moreover, the learned advocate for the accused has also produced the papers as the industrial gas connection and has also put the case that there was no question of use of domestic gas bottle when the accused were already having the industrial gas connection since long. The said assertion of the learned advocate for the appellants - accused appears to be true for the reason that the so-called eye-witnesses of the incident in question as well as the panch witness are not in a position to say exactly as to whether the burst cylinder was the domestic or the industrial gas cylinder. The PW-3 and PW-4 have only stated about the red coloured cylinder like the cylinder used for the domestic purpose. As it is observed earlier, before August 2006, only red coloured gas cylinders were provided for both, domestic and the industrial purpose. in the circumstances, it is very difficult to come to a specific conclusion that the burst cylinder was meant for domestic purpose and for want of any reasonable proof in that regard, the accused could not have been convicted and sentenced for such offence and accordingly, they are required to be given benefit of doubt, more particularly, because after 03/08/1993 i.e. after the Order 1993, 'Parallel Marketeer' and 'Parallel Marketing System' had been introduced, which were not there in the Order 1988 as discussed herein above.

5.5 So far as conviction for the offence punishable under Section 435 and 304-A of the IPC are concerned, it is also an

undisputed fact that from the scene of incident, the particles of gas cylinder could be gathered and as per the prosecution, due to rashness and negligence of the accused, the cylinder blasted and several persons had injured out of which, two had died. in this regard, Section 435 of the IPC would be beneficial to reproduced and accordingly, extracted hereunder:

"435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards a [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

5.5.1 Reading of the section itself is suggestive of the fact that for invoking this section, there should be an act of mischief by fire or any explosive substance intending to cause, or knowing it to be likely that a person, will thereby cause, damage to any property to the amount of one hundred rupees or upwards. From the entire oral as well as the documentary evidence on record, there appears nothing to show any mischief and/or intention on the part of the accused behind such an incident. Moreover, it is sans any dispute that the accused herein were also injured in the incident in question and hospitalized for more than 40 days. On realizing that the cylinder was leaking, it appears that the appellants did not run away for safety but they attempted to stop the leakage knowingfully well the consequences that cylinder may catch fire and may blast, causing fatal injuries to themselves also, which itself suggests that if there would be any ill-intention or otherwise behind the incident, they would not have been injured in the incident. Besides, they were the owner of the factory and no wise person himself would think of damage his own property, endangering the others' lives. Besides, from the evidence of the PW-1, the eye-witness, it has come on record that as a part of safety measures, the factory owned the fire extinguishers and the first-aid kit used to be kept handy for immediate response to any casualty and accordingly, it cannot be said that it was the negligence of the accused which led such an incident, when no such alleged negligent act is proved by any evidence. Moreover, it is also a fact that the document viz. FSL

Report had come on record vide application exh. 41 dated 28/01/2002 and though the said application exh. 41 was ordered to be 'fixed for hearing', without giving any opportunity and without hearing, it was considered. Moreover, no competent person from the department of civil supplies has been examined and accordingly, the investigation suffers from material illegality and lapses.

5.6 Drawing attention on the record and proceedings of the case, more particularly, the proceeding sheet as well as the Further Statements of the appellants - accused, recorded under Section 313 of the Code, it has been submitted that by the learned advocate for the accused that the same appears to have been recorded on 23/01/2002. He, then, drawing attention on the application, exh. 41 dated 28/01/2002, which was filed by the learned APP praying for to exhibit the FSL Report dated 29/04/1999, on which, serious objections had been raised by the learned advocate for the accused and accordingly, the Court had kept the said application passing the order, "fixed for hearing". Referring the entire record, it is silent on the point that whether hearing had taken place or not and as such, no order is found. The learned advocate for the appellants - accused has submitted that, in fact, no order has been passed and in spite of the same, the Court has taken cognizance of the same in the impugned judgment and order. Drawing attention of this Court on Section 293 of the Code, he has submitted that though the reports of certain Government Scientific Officers may be used in evidence and the Court may, if it thinks fit, summon and examine any expert as to the subject matter of the report but so far as the case on hand is concerned, after fixing the application exh. 41 for hearing, the learned Court below has neither given any opportunity to the accused of hearing and without calling the expert and without giving any opportunity to cross-examine, had considered the said report. in my view, there is substance in the submission of the learned advocate for the accused and I am of the view that as a Court of law one cannot act in violation of the rights of the accused and the aforesaid facts are suggestive of breach of such a legal position, which also can be said to be an adding factor for setting aside the impugned judgment and order.

5.7 in the above backdrop, I am of the view that the prosecution has failed to prove the case against the accused beyond reasonable doubt and the learned trial Judge has failed to consider the aforesaid aspects of the matter in true and proper perspective so also

the evidence on record and has wrongly convicted and sentenced the present appellants - accused for the offences in question, which cannot be ratified and such an error is required to be rectified by this Court, by quashing and setting aside impugned judgment and order. Moreover, the learned Additional Public Prosecutor for the respondent - State is also not in a position to show anything to take otherwise view than the above.

6. in view of the aforesaid discussion, present appeal succeeds and the impugned judgment and order dated 19/02/2002, passed by the learned Additional Sessions Judge, Court No. 9, City Sessions Court, Ahmedabad in Sessions Case No. 107 of 2000, is hereby quashed and set aside. The appellants - original accused Nos. 2 and 3 are acquitted of the charges for which, they are convicted and sentenced. The appellants - accused are reported to be on bail. They need not to surrender to custody, except they require so in any other case and their bail bonds shall stand cancelled accordingly. Registry to return the R&P to the trial Court forthwith. in view of main appeal is allowed, no orders are required to be passed on the Criminal Misc. Applications filed by the appellants and accordingly, they are disposed of.

***Result*:-** Appeal allowed.

ABC 2016 (II) 493 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(Paresh Upadhyay, J.)

Criminal Misc. Application (For Anticipatory Bail) No. 26936 of 2016

19 October, 2016

SUJAN AZAD PARIKH ***- Appellant(s).***

Versus

STATE OF GUJARAT & ANR. ***- Respondent(s).***

Law Covered*:-** ***Code of Criminal Procedure, 1973 — Section 438 — Anticipatory Bail — concession of — Indian Penal Code, 1860 — Section 465, 466, 467, 468 & 471 — Offences under — Property dispute — Complainant & accused are blood relatives — Held, grievance, prima facie appears to be that, that arrangement has not worked to the expectation of the complainant sister — Ad-interim