

IN THE COURT OF SPECIAL JUDGE FOR GR. MUMBAI
AT MUMBAI

SESSIONS CASE NO. 634 OF 2004

The State of Gujarat
Versus

... Complainant

1. **Jaswantbhai Chaturbhai Nai,**
aged 50 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
2. **Govindbhai Nai,**
aged 40 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
3. **Nareshkumar Ramanlal Modhiya (Since deceased)**
4. **Shailesh Chimanlal Bhatt,**
aged 47 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
5. **Radheshyam Bhagwandas Shah**
@ Lala Vakil,
aged 31 yrs., residing at Singwad
Tal. Limkheda, Dist. Dahod,
Gujarat.
6. **Bipinchandra Kanaiyalal Joshi**
@ Lala Doctor,
aged 42 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
7. **Kesharbhai Khimabhai Vohania,**
aged 39 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
8. **Pradip Ramanlal Modhiya,**
aged 39 yrs., residing at Singwad,

Tal. Limkheda, Dist. Dahod,
Gujarat

9. **Bakabhai Khimabhai Vohania,**
aged 41 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
10. **Rajubhai Babulal Soni,**
aged 44 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
11. **Mitesh Chimanlal Bhatt,**
aged 43 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
12. **Ramesh Rupabhai Chandana,**
aged 41 yrs., residing at Singwad,
Tal. Limkheda, Dist. Dahod,
Gujarat.
13. **Narpatsingh Ranchodbhai Patel,**
aged 47 yrs., residing at Bhatwada,
Tal. Devgad Baria, Dist.
Dahod, Gujarat.
14. **Idris Abdul Saiyed,**
aged 49 yrs., residing at Gulabwadi
Police Line, PSI Quarters No.1,
Hetharpalia, Junagad.
15. **Bhikhabai Ramjibhai Patel,**
aged 62 yrs., residing at C-79,
Samrajya Society, Near Gadkhol
Palia, Post. Ankleshwar,
Dist. Bharuch.
16. **Ramsingh Mitlibhai Bhabhor,**
aged 57 yrs., residing at Satyaprakash
Society, College Road, Santrampur,
Dist. Panchmahals,
Gujarat.
17. **Somabhai Koyabhai Gori,**

aged 42 yrs., residing at Gochar,
Santrampur, Dist. Panchmahals,
Gujarat.

18. R.S. @ Ramabhai Bhagora,
aged 47 yrs., residing at Maheru,
Tal. Bhilad, Dist. Sabarkatha,
Gujarat.

19. Dr. Arunkumar Ramkishan Prasad,
aged 36, residing at Narayan Pipra,
Dist. Siwan, Bihar.

20. Dr. Mrs. Sangeeta Arunkumar Prasad,
aged 38 yrs., residing at Narayan
Pipra, Dist. Siwan, Bihar

. . . **Accused**

**CORAM: HIS HONOUR THE SPECIAL
JUDGE, SHRI U. D. SALVI.**

COURT ROOM NO. 49

**DATED: 4, 5, 7, 11, 12, 13, 14, 15, 17, 18, 19, 20,
28, 31/12/2007, 1, 2, 3, 4, 7 to 11, 14 to
18 and 21/1/2008.**

**Mr. R. K. Shah with Ms. Nayana B. Bhatt, Special Public Prosecutors, for the
State/CBI.**

Mr. H. H. Ponda, Advocate, for the Accused.No.1

**Mr. S .K. Jain with Mr. Sarvate, Advocates, for the accused. Nos.2, 4, 5 & 6 and 13
to 20.**

Mr. G. G. Solanki, Advocate for the Accused.Nos.7 to 12.

ORAL JUDGMENT (Dictated in open Court)

1. The accused No.1-Jaswantbhai Nai to Accused.No.12-Ramesh Chandana, all residents of age Singwad Randhikpur, Dist. Dahod, Gujarat, and the Accd.No.13-Narpatsingh Ranchhodbhai to accd. No.18-Ramsingh Bhabhor, all police officials from the State of Gujarat, and the Accd.No.19- Dr. Arun Kumar Prasad and his wife, the Accd.No.20- Dr. Sangeeta Arunkumar Prasad, both Medical Officers from the State of Gujarat, along with unknown persons, have been arraigned in the present case for the commission of variety of offences as under : -

(1) The Accd.No.1-Jaswantbhai Nai to the Accd. No.12-Ramesh Chandana, and No.13-Narpatsingh Ranchhodbhai to the Accd.No.18-Ramsingh Bhabhor, along

- with unknown persons, for the commission of the offences punishable under Sections 120-B r/w Sec.143, 147, 148, 302, 376,201, 217, 218 of I.P.C., 1860;
- (ii) the Accd.No.1-Jaswant Nai to Accd.No.12- Ramesh Chandana, along with unknown persons, for the commission of the offences punishable u/s 143, 147, 148,302 r/w Sec.34 alternatively r/w Sec.149, 376 (2) (e) & (g) of I.P.C., 1860;
 - (iii) the Accd.No.13-Narpatsingh Ranchhodhbhai to the Accd.No.20-Dr.Sangeeta Arunkumar Prasad for the commission of the offence punishable U/S 201 r/w Sec.34 of I.P.C., 1860;
 - (iv) the Accd.No.17-Somabhai Gori for the commission of the offences punishable u/s 217 and 218 of I.P.C., 1860;
 - (v) the Accd.No.13-Narpatsingh Ranchhodhbhai to Accd.no.16-Ramslng Bhabhor and Accd.No.18-B.S.Bhagora for the commission of the offences punishable u/s 217 r/w Sec.34 and 218 r/w Sec.34 of I.P.C., 1860; and
 - (vi) the Accd.No.19-Dr. Arunkumar Prasad and Accd. No.20 - Dr. Sangeeta Arunkumar Prasad for the commission of the offences punishable u/s 217, 218 r/w Sec. 34 of I. P. C., 1860.

2. Unique feature of this case is that one Bilkisbano (hereinafter referred to as 'the prosecutrix') with the assistance of National Human Rights Commission (NHRC) could manage to move the Hon'ble Supreme Court and, thereafter, the case was investigated by the CBI and ultimately transferred to the State of Maharashtra for trial on the orders of the Hon'ble Supreme Court.

3. Concisely, the prosecution case is as under: -

- (i) Large scale communal riots resulting in genocide erupted in the State of Gujarat following the call for Gujarat Bandh given by Vishva Hindu Parishad (VHP) in conjunction with Bajrang Da1 on 28.2.2002. Apparently the immediate reason for this call was death of Hindu Kar Sevaks in burning of Sabarmati Express at Godhra Railway Station on 27.2.2002. Bhartiya Janata Party (BJP), which had close links with VHP and Bajrang Dal, was in the seat of power in the State of Gujarat at the material time.
- (ii) A small village Randhikpur, Taluka Limkheda, District Dahod in Gujarat was no exception to the outbreak of communal riots. There were incidents of arson and looting in the village Randhikpur from the morning of 28.2.2002. Consequently, there was exodus of Muslims from village Randhikpur in search of safety. The prosecutrix, along with some members of her family, fled from Randhikpur on 28.2.2002.
- (iii) After leaving Randhikpur, the prosecutrix and her family members initially sought refuge at the residence of one Kadkyabhai, a Sarpanch of, village Randhikpur, and stayed for about 1 or 2 hours; and thereafter they went to village Chunadi and stayed at a

school near the residence of Mr. Bijalbhaj Damor at village Chunadi for about a couple of hours; and thereafter went to village Kuvajal and took refuge in the village mosque.

(iv) At Kuvajal, Shamim, cousin of the prosecutrix, delivered a baby girl at the house of one Jaitunbibi, a village midwife. Next day around noon all of them went to village Khudra. On the way to village Khudra, one person from Nayak tribe took pity on them and arranged for their stay at his place for about two days; and thereafter in the early morning they left his place for village Sarjumi. After passing through the fields of village Chhapparwad they came on a Kachcha road leading to village Pannivel. While they were moving on the Kachcha road leading to village Pannivel 25 to 30 persons carrying weapons like swords, sickles and sticks came shouting "Aa rahya Musalmano, emane maaro, kaato" (these are the Muslims, kill them, cut them) in two white vehicles. The Accused.No.1- Jaswant Nai to Accused.No.12-Ramesh Chandana were amongst the said 25 to 30 persons who alighted from the said vehicles at the spot.

(v) The Accused.No.4-Shailesh Bhatt snatched Saleha, the minor daughter of the prosecutrix from her hands and smashed her on the rocky ground to death. The A/1-Jaswant, A/2-Govind Nai and the deceased accused Naresh Mordiya (original Accd. No.3) caught the prosecutrix and tore her clothes despite her pleadings to spare her, The A/1-Jaswant Nai, A/2-Govind Nai and deceased accused Naresh Mordiya raped the prosecutrix thereafter. Meanwhile, the A/5-Radheshyam @ Lala Vakil, A/6 Bipinchandra Joshi @ Lala Doctor, A/7- Kesharbhaj Vohania, A/8-Pradip Vohania, A/9 Bakabhaj Vohania, A/10-Rajubhaj Soni, A/11-Mitesh Bhatt and A/12-Ramesh Chandana and others remained engaged in the acts of sexual assault, rape and killing of the family members accompanying the prosecutrix.

(vi) The prosecutrix became unconscious making her assailants to believe that she was dead. One or two hours thereafter the prosecutrix regained consciousness and found herself naked. She looked around for some cloth to cover herself and could find her petticoat lying in the vicinity. She put on the petticoat, climbed the hill along the Kachcha road and stayed overnight at the top of the hillock.

(vii) Next day morning, she came down the hillock and went to a hand-pump, where she happened to meet one Adivasi woman. This Adivasi woman provided the prosecutrix with blouse and Odhani.

(viii) On seeing a man in uniform near one vehicle on the Kachcha road the prosecutrix approached him. The man .in uniform thereafter took the prosecutrix to Limkheda Police Station in his vehicle.

(ix) At Limkheda Police Stat ion, the prosecutrix narrated the facts before A/17-Somabhaj Gori, a Police Head Constable on duty at Limkheda Police Station on 4.3.2002. The A/17-Somabhaj Giri did not record the complaint of the prosecutrix as per her narration and proceeded to register an offence at C. R. No.59/02 U/S 143, 147, 148, 379, 302 against unknown persons. According to the complainant-the prosecutrix, she was questioned by the police as to why she was disclosing the names of the offenders and

the facts concerning rape, and she was mortally threatened with administration of poisonous injection at the hospital where she was to be taken; and her thumb impression was obtained on the complaint so recorded forcibly without reading over to her its contents.

(x) On 4th March 2002, the prosecutrix was medically examined at the Community Health Centre, Limkheda. One Abdul Sattar Ghachi, her relation amongst the refugees at Limkheda Police Station, disclosed to the prosecutrix that he was taken to the place of offence where he found her family members, including Saleha, lying dead and he had identified their bodies. Next day, the prosecutrix was taken to Godhra Refugee Camp along with some other refugees at Limkheda Police Station.

(xi) At Godhra Refugee Camp, the prosecutrix met some ladies, namely, Sugrabibi, Latifaben, and Sharifaben, to whom she narrated the facts.

(xii) On 6.3.2002, the prosecutrix disclosed the facts to Mrs. Jayanti Ravi, the District Magistrate and Collector, District 'Panchmahals, who happened to visit the Godhra Relief Camp. Mrs. Jayanti Ravi directed her subordinate Mr. Govindbhai Patel, Mamletdar and Executive Magistrate, to record the statement of the prosecutrix. Accordingly, he recorded the statement of the prosecutrix at Godhra Relief Camp on 6.3.02 and promptly placed it before Mrs. Jayanti Ravi the same evening. On realizing its gravity Mrs. Jayanti Ravi ordered medical examination of the prosecutrix by the Civil Surgeon, Godhra and addressed a communication to Superintendent of Police, Dahod for taking immediate appropriate action in the matter.

(xiii) On 7.3.2002, the prosecutrix was medically examined at Godhra Civil Hospital and the report of medical examination was sent to the police. Biological samples, viz. vaginal swab, blood, pubic hair, nails and saliva, from the person of the prosecutrix were duly collected and sent to the local pathology lab and the Regional Forensic Laboratory, Gujarat at Vadodra through the police by the Medical Officer on duty at Godhra Civil Hospital for further scientific investigation.

(xiv) Investigation in the case successively changed hands from the A/13-Narpatsingh Ranchhodhbhai, Head Constable, to A/14-Idris Saiyed, A/16- Ramsingh Bhabhor, CPI, Limkheda, and A/18-B. S. Bhagora, Dy. SP, Limkheda, Godhra Police Station, CID, Gujarat State, and ultimately to the CBI.

(xv) According to the prosecutrix, Saleha-her daughter, Halimaben, Mumtaz and Munni-her sisters, Aslam and Irfan-her brothers, Majidbhai and Yusuf Musa Patel-her uncles, Sugraben and Aminaben-her aunts, Shamimben, Mumtazben, Madinaben-her cousins, Hussain -son of Shamimben, Saddam- son of Aminaben, were accompanying her at the material time; and she did not see them, except Saddam and Hussain, again after the incident.

(xvi) According to the prosecution, the A/13- Narpatsingh, A/14-Idris Saiyed, A/15-Bhikabhai Patel, A/16-Ramsingh Bhabhor and A/18-Bhagora, all police officials, visited

the spot where the dead bodies of the deceased Halim Ghachi, Irfan Ghachi, Aslam Ghachi, Munni Ghachi, Amina Patel, Sugraben Patel, Shamim Patel and Saleha were lying on 4.3.02 and took photographs of the dead bodies without carrying out inquest panchnamas as required by law, and left the dead bodies at the spot unguarded; and on 5.3.02 framed the inquest panchnamas of the said dead bodies falsely showing - (i) three panchas to the said inquest panchnamas including one fictitious lady panch, namely, Ramtikben, (ii) presence of Mr. Abdul Sattar Ghachi, and (iii) the absence of the dead body of Saleha, daughter of the prosecutrix; and further did cause all the evidence of the crime to disappear by burying the said bodies in a pit with common salt without collecting blood or biological samples and the clothes on the said dead bodies in Kesharpur jungle, the place about a kilometer away from village Chhapparwar, Taluka Limkheda, Dist. Dahod in order to save the culprits - the A/1-Jaswantbhai Nai to A/12-Ramesh Chandana and other unknown persons from legal punishment. It is also the prosecution case that on 5.3.02 in Kesharpur jungle, the place a kilometer away from the place of offence at village Chhapparwar the A/19-Arunkumar Prasad and A/20-Sangeeta Prasad perfunctorily performed the post-mortem on the dead bodies of the said persons and failed to collect vaginal swab from the female bodies and record the observations as prescribed and thereby knowingly disobeyed directions of the law as to the way in which they had to conduct themselves and further framed the post mortem notes concerning examination of the said bodies in the manner which they knew to be incorrect, inasmuch as made statements (i) that Halima was identified by Abdul Sattar Shaikh and other bodies were of unknown persons; (ii) all bodies had decomposed and putrefaction had started; (iii) viscera, was ruptured despite the fact that the dead bodies were not dissected; and all this was done with intent to save the said culprits from legal punishment. Photographs of seven dead bodies were again taken on 5.3.02 in Kesharpur Jungle away from the spot of actual crime.

(xvii) The A/16-Bhabhor, CPI, Limkheda, filed 'A' summary report on flimsy grounds and the said report was recommended by the A/18-Bhagora, Dy. SP, Limkheda, for acceptance in the Court of Learned J.M.F.C., Limkheda.

(xviii) Upon the orders of the Hon'ble Supreme Court of India, this case was transferred to the CBI for further investigation. A team of CBI officers headed by Dy. SP Mr. K. N. Sinha investigated the case further. On 5.1.2004 Mr. Sinha, IO, met Mr. Bhatti, Superintendent of Police, Dahod and obtained preliminary information about the case. He thereafter scrutinised the relevant station diary of Limkheda Police Station and noticed certain discrepancies therein. He therefore seized the said station diary containing material entries.

(xix) Dy. SP Sinha thereafter approached CID, Gujarat and collected the case papers including the case diaries. He could gather there from the course of investigation done by Gujarat police leading to 'A' Summary Report and the names of the police officials involved therein. Interrogation of the A/15-Bhikabhai Patel further led Dy. SP Sinha to the photographs as well as the place of burial of the dead bodies of the victims in the present case. The photographs and its negatives were seized. Statements of the witnesses were recorded. Search made for one Ramtikben, one of the lady panchas to the inquest

panchnama dated 5.3.02 proved to be futile. It was discovered that Ramtikben was a fictitious person.

(xx) Dy. SP Sinha, IO, interrogated the A/19-Dr. Arunkumar Prasad and A/20-Dr.Sangeeta Prasad on 9.1.04. The A/19-Dr.Arunkumar Prasad produced copies of the post mortem reports along with the photographs of the seven dead bodies on whom the post mortem examinations were conducted. On the same day, he recorded statement of the prosecutrix, who was in advanced stage of pregnancy then. The place of offence was described by the prosecutrix. However, she was not in position to show it to Dy. SP Sinha, IO, on that day on account of her pregnancy. On 10.1.04, the investigation led the CBI team to the place of burial of the dead bodies of the victims. Places at the said location shown by the witnesses and the A/19-Dr.Arunkumar Prasad were photographed. Mr. Vivek Dubey, Joint Director, CBI inspected the said place on 15.1.04. A decision was taken to exhume the dead bodies from the burial site. On the same day, the statement of child witness Saddam was recorded at Godhra. Relevant medical records maintained at Community Health Centre, Limkheda were seized on 20.1.04. Personal belongings in sealed condition recovered from the dead bodies buried on 5.3.02 and the photographs of the dead bodies were produced by CID Gujarat before CBI on the same day. One Sugraben also produced clothing items of the victim before CBI on the same day.

(xxi) The A/1-Jaswantbhai Nai to A/12-Ramesh Chandana were arrested on 22.1.04. They were interrogated. A requisition for permission to conduct exhumation of dead bodies was sent to District Magistrate/Collector, Dahod. A team of experts from All India Medical Sciences (AIMS) and CFSL, New Delhi was also called. Permission for exhumation of the dead bodies was received from the District Magistrate, Dahod.

(xxii) On or about 28.1.04 CFSL team headed by Dr. S. R. Singh was taken to the place of offence indicated by the prosecutrix i.e. the place abutting Kachcha Road leading to village Pannivel, and the said place was combed by the team of CFSL headed by Dr. S. R. Singh. Broken pieces of red coloured bangles, chappals, clothes were recovered by CFSL team from the said spot.

(xxiii) Teams of CFSL and AIMS experts remained engaged between 29.1.04 and 1.2.04 in locating the grave site known as Sirkotar near a stream. Skeletal remains of three human bodies and one child, clothing material, pieces of bangles, remains of plastic salt bags were recovered in the course of exhumation of the dead bodies. The CFSL team collected soil, samples from the site on 30.1.04. The entire process of exhumation was photographed. Facts were duly recorded in form of panchnama. Articles recovered from the grave site were sent to AIMS, New Delhi for further scientific investigation.

(xxiv) The A/13-Narpatsingh was arrested on 3.2.04. This was followed by arrest of the A/14-Saiyed on 5.3.04. Permission to conduct polygraphic narco-analysis test and T. I. parade of the accused was declined on the objection of the accused. Statements of some of the witnesses u/s 164 of Cr. P. C. were got recorded before the Chief Metropolitan Magistrate, Ballard Pier, Mumbai in February 2004.

(xxv) On 11.3.04, the A/14-Saiyed showed the places where the dead bodies of the victims, particularly the body of Saleha were found lying and photographed on 4.3.02. On 13.3.04 the prosecutrix showed the place of offence i.e. Kachcha road leading to village Pannivel. The places shown were photographed as well as videographed. Photographs of the dead bodies sent to the AIMS. Weekly reports maintained by the A/16-Bhabhor and A/18-Bhagora were collected from the office of SP, Dahod.

(xxvi) Dy. SP, IO, Sinha, discovered from the scrutiny of the said diaries that the A/16-Bhabhor and A/14-Saiyed were posted at Randhikpur Police out Post between 28.2.02 and 8.3.02 and were continuously camping there during the said period and had visited Kesharpur village on 4.3.02.

(xxvii) On finding the involvement of the accused in the present case, the chargesheet was duly lodged against the accused before Chief Metropolitan Magistrate, Ahmedabad (Rural) on 19.4.2004. The case was originally numbered as CBI Spl. Case No. 1/04

Sanctions to prosecute the A/13-Narpatsingh to A/20-Dr.Sangeeta Prasad were duly obtained from the Government of Gujarat.

4. Learned Chief Judicial Magistrate, Ahmedabad (Rural) committed the case to the Court of District and Sessions Judge, Panchmahals, Godhra, Gujarat vide order dated 18.5.2004 and it was renumbered as sessions Case No.161/04.

5. Eventually, the case was transferred to the Court of Sessions at Bombay on the orders of the Hon'ble Supreme Court of India. The case was assigned to this Court on the directions of the Hon'ble High Court of Bombay for trial, and was re-numbered as Sessions Case No.634/04.

6. Measures were taken to adequately equip the defence with the copies of the papers of investigation and the video cassette purportedly bearing the videograph of the proceedings at the place shown by the prosecutrix.

7. Initially the Accd.No.20-Dr.Sangeeta Prasad was found to be a patient of paranoid schizophrenia, a person unfit to stand trial. Her case was, therefore, separated and she was detained in safe custody at Thane Mental Hospital, Thane in order to enable her to recover from her mental illness and to face the trial.

8. The Accd. No. 19-Dr. Arun Kumar Prasad moved an application for his discharge in the present case vide Misc. Application No.1604/04. This application was heard and rejected on merits vide order dated 3.1.2005.

9. After hearing the parties and upon considering the record of the case, the charges under Sections 120-B r/w Sec.143, 147, 148, 302, 376(2) (e) & (g), 201, 217, 218 and u/s 143, 147, 148, 302 r/w Sec.34 of Indian Penal Code, 1860, alternatively, 302 r/w sec.149, 376 (2)(e) & (g), 201 r/w Sec.34, 217 r/w Sec.34, 218 r/w Sec.34 of I.P.C., 1860 were framed against the Accd.No.1 to 19 as per Ex.26, more detailed as under :-

- (1) A/1-Jaswantbhai Nai to A/19-Dr.Arun Kumar Prasad, along with unknown persons, for the commission of the offence punishable u/s 120B r/w 143, 147, 148, 302, 376, 201, 217, 218 of I.P.C. - for the criminal conspiracy to commit the said substantive offences;
- (ii) The A/1-Jaswantbhai Nai to A/12-Ramesh Chandana, along with unknown persons, for the commission of the offences punishable u/s 143, 147, 148, 302 r/w Sec. 34, alternatively, r/w Sec.149, 376(2) (e) & (g) of I.P.C., 1860 i.e. for the commission of the offences of unlawful assembly, rioting and rioting with deadly weapons, murder of Saleha, Halima Abdul Issa Ghachi, Irfan Abdul Issa Ghachi, Aslam Abdul Issa Ghachi, Munni Abdul Issa Ghachi, Amina Jamal Patel, Sugra Akka Yusuf Moosa Patel, Shamim Moosa Patel, Mumtaz Moosa Patel, Madina Abdul Issa Ghachi, Majid Patel; Mumtaz Abdul Issa Ghachi, and an unnamed child of Shamim, and gang rape of the pregnant prosecutrix, aged about 20 years, Halima, aged about 45 years, Amina, aged about 40 years, Shamim, aged about 20 years;
- (iii) the A/13-Narpatsingh Ranchhodbhai Patel to A/19-Dr.Arunkumar Prasad for the commission of the offence punishable u/s 201 r/w Sec. 34 of I. P. C.;
- (iv) the A/17-Somabhai Gori for the commission of the offences punishable u/s 217 and 218 of I.P.C.;
- (v) the A/13-Narpatsingh Patel to A/16-Ramsingh Bhabhor and A/18-B.S.Bhagora for the commission of the offences punishable u/s 217 r/w 34 and 218 r/w Sec.34 of I.P.C.; and
- (vi) the A/19-Dr.Arunkumar Prasad for the commission of the offences punishable u/s

The accused pleaded not guilty and claimed to be tried vide pleas Exs.27 to 45, respectively.

10. Medical treatment given to the A/20-Dr. Sangeeta Prasad helped her to recuperate and made her mentally fit to defend herself in the trial vide Certificate Ex.47. She has, therefore, rejoined to the present case on 5.2.2005 and the charges punishable u/s 120B r/w Sec.302, 376, 201, 217, 218 of I.P.C. and for substantive offences framed against her vide Additional Charge Ex.48. The A/20-Dr-Sangeeta Prasad pleaded not guilty to the charges framed against her and claimed to be tried vide plea Ex.49.

11. When the stage was ready for recording the evidence in the present case, Advocate Mrs. Mini Mathew filed her appearance vide Vakalatnama Ex.50A for and on behalf of National Human Rights Commission for the purposes of watching the proceedings. She was granted permission to watch the proceedings vide 'order dated 8.2.05 upon her application Ex.50.

12. During the course of trial, the A/19-Dr. Arunkumar Prasad succeeded in getting his release on bail from the Hon'ble High Court of Bombay vide order dated 10.2.2005 in Criminal Application No. 733/05. His wife, the A/20-Dr. Sangeeta Prasad shortly followed his steps and was on 9.3.05 on the order of this Court vide Bail application No.224/05.

13. Considering the need of the mentally sick wife of the A/18-Bhagora, the prosecution consented to his released on temporary bail on 6.2.06 in response to the B.A.No.6/06 and since then the A/81-Bhagora continued to be on bail.

14. The prosecution examined the following witnesses in support of its case against the accused: -

PW 1: the prosecutrix, at Ex.55.

PW 2: Farukhbhai Mohamedbhai Pinjara at Ex.69.

PW 3: Smt. Sugra Ismail Issa at Ex.71.

PW 4: Salim Adam Ismail Ghachi at Ex.73.

PW 5: Sharifa Abdul Razzak Umarjee at Ex.76.

PW 6: Zaitoon Ibrahim Atila at Ex. 78.

PW 7: Madina Siraj Pate1 at Ex.79.

PW 8: Saddam Hussain Adambhai at Ex.80.

PW 9: Dr. Rakeshkumar Arunkumar Mahto, Medical Officer, Community Health Centre, Limkheda, District Dahod, Gujarat, at Ex.87.

PW 10: Rameshchandra Kanhaiyalal Soni at Ex.108

PW 11: Smt. Sumaliben Jasubhai Patel at Ex.113.

PW 12: Madhusudan Shankarlal Prajapati at Ex.114.

PW 13: Mukeshbhai Kalubhai Harijan at Ex.120.

PW 14: Mavsi Mulabhai Pate1 at Ex.121.

PW 15: Baria Ramsingh Nayaka at Ex. 122.

PW 16: Balwantsingh Harisingh Rajput, panch, at Ex.127.

PW 17: Dr. Mrs. Rohini Sudeshmahanayak Katti, Medical Officer, Godhra Civil Hospital, at Ex. 136.

PW 18: Smt. Jayanti Ravi, District Magistrate & Collector, District Panchmahals, Gujarat, at Ex.145.

PW 19: Phiroz Abdul Sattar Ghachi at Ex.151.

PW 20: Nanjibhai Parsinghbhai Nayak at Ex.155.

PW 21: Salimbhai Rasoolbhai Rampuria at Ex.156.

PW 22: Chandubhai Bhavabhai Patel, Nayab Mamalatdar, Tehsil Limkheda, Dist. Dahod, at Ex.159.

PW 23: Govindbhai Girdharbhai Patel, Mamletdar and Executive Magistrate, Godhra, at Ex. 162.

PW 24: Abdul Issa Ghachi at Ex.172.

PW 25: Siraj Aadam Ghachi at Ex.177.

PW 26: Imtiyaz Yusuf Ghachi at Ex.178.

PW 27: Natwarbhai Kikabhai Bamania, Homeguard, at Ex.179.

PW 28: Bhavinkumar Vinodchandra Patel at Ex.186.

PW 29: Balubhai Limba Vahonia at Ex.188.

PW 30: Vasudeo Laxmandas Pandit at Ex.189.

PW 31: Rasool Ajit Umar Ghachi at Ex.191.

PW 32: Vinodbhai Bhikabhai Prajapati.

PW 33: Bijalbhai Wala Damor at Ex.193.

PW 34: Amritsinh Laxmansingh Khant, Police Constable, at Ex.199.

PW 35: Ranjeetsingh Mathurbhai Patel, Police Constable, at Ex. 202.

PW 36: Abhesingh Narsingh Pate1, Police Constable.

PW 37: Jorawarsingh Ranchhodbhai Rathwa, police Constable, at EX. 215.

PW 38: Arjunsingh Rumalbhai Patelia, police Constable, at EX. 216.

PW 39: Ratilal Mansukhbhai Babhor, police Constable, at Ex.221. .

PW 40: Phulabhai Ranchhodbhai Khat, Police Constable, at Ex. 222.

PW 41: Amritlal Sharadbhai Bhagat, Dy. Secretary, Health & Family Welfare Department, Government of Gujarat, at Ex.228.

PW 42: Shivaji Jania Pawar, PSI, at Ex.231.

PW 43: Kuldipchand Laxmandas Kapoor, Principal Secretary, Home Department, Government of Gujarat, at EX.242.

PW 44: Sheelaben Bherusinh Nayak, Nayab Mamletdar in the office of District Magistrate and Collector, Dist. Dahod, Gujarat, at Ex.243.

PW 45: Sayyed Abdul Salam at Ex.245.

PW 46: Salim Abdul Sattar Musa Ghachi at EX. 246.

PW 47: Sattar Majid Ghachi at Ex.247.

PW 48: Rameshbhai Walabhai Babhor, Constable, at Ex. 254.

PW 49: Ms. Pramilaben Gordhan Waria at Ex.261.

PW 50: Ganpatsingh Dalapubhai Khant, constable, at Ex. 262.

PW 51: Virendra Bhanuprasad Rawal, Dy. SP, HQ, Dahod, at Ex.264.

PW 52: Kalubhai Valjibhai Vohania, PI, CID, Gujarat, at Ex.266.

PW 53: Nathalal V. Kathiria, Dy. SP, HQ, Dahod, at Ex.290.

PW 54: Prafulchandra V. Sevak, Inspector of Motor Vehicles, Dahod, at Ex.293.

PW 55: Mrs. Kampaben Somabhai Chauhan, Sarpanch, Group Gram Panchayat, Kesharpur, Taluka Limkheda, Dist. Dahod, at Ex.297.

PW 56: Lt. Colonel Abhijit Rudra, Associate Professor in Department of Forensic Medicine, Armed Forces Medical College, Pune, at Ex.305.

PW 57: Randhir Doodraj, PI, CBI, SCB, at Ex.328.

PW 58: Nirmal Singh Raju, PI, CBI, SCB, at Ex.332.

PW 59: Kamlakar Krishna Sawant, Head Constable, CBI, SCB, at Ex.335.

Ex. 60: S. Ingarsa1, Senior. Scientific Officer, Photo Division of CFSL, New Delhi, at Ex. 336.

PW 61: Pankaj Raj Sharma, Medical Photographer, Forensic Medicine & Toxicology, AIMS, New Delhi, at Ex.338.

PW 62: Shantaram Sadashiv Mandlik, PI, CBI, SCB, at Ex. 340.

PW 63: Vitthal Yashwant Dhage, PI, CBI, SCB, at Ex.344

PW 64: Kalidas M. Chauhan, ASI, CBI, Gujarat, at Ex. 345.

PW 65: Dinesh Mohan Sharma, PI, CBI, SCB, at Ex. 346.

PW 66: R. M. Khan, PI, CBI, SCB, at Ex. 347.

PW 67: N. C. Dutta, PI, CBI, SCB, at Ex.357.

PW 68: A. S.Tariya1, PI, CBI, SCB, at Ex. 362.

PW 69: Arjun Vasant Pawar, PSI, CBI, SCB, at Ex.372.

PW 70: Rupesh Uday Wankhede, PI, CBI, SCB, at Ex.378.

PW 71: Dhanashree Suresh Karmarkar, PI, CBI, ACB, at Ex. 391.

PW 72: K. N. Sinha, DY. SP, CBI, SCB, at Ex.404.

PW 73: Somabhai Nanabhai Chauhan at Ex.430.

Oral evidence was complemented with the following documents and articles adduced by the prosecution:-

Documents:

Ex. 3: List dated 15.5.04 @ original sanction orders concerning the Accd.No.13 to 20.

Ex. 3A & 3B: Sanction order regarding the A/19-Dr Arunkumar Prasad and A/20 – Dr. Sangeeta Prasad.

Ex. 4: List of 'statements of the witnesses recorded u/s 164 of Cr. P. C.

- Ex. 4A to 4N: Certified copies of the statements of the witnesses as per list Ex.4.
- Ex. 14: List of documents and articles tendered by the prosecution.
- Ex. 22A: Addendum dt.30.12.04 to the sanction order Ex.3A.
- Ex. 22B: Addendum dt.30.12.04 to the sanction order Ex.3B.
- Ex. 56: Original Complaint / FIR of the prosecutrix dated 4.3.02.
- Ex. 56A: Certified copy of FIR dt.4.3.02.
- Ex. 56B: A copy of FIR dt.4.3.02 in C.R.No.59/02 of Limkheda Police Station.
- Ex. 56C: Sheet Nos.0085 & 0086 in FIR Book (Art.74)
- Ex. 57: Fax message sent to the District Magistrate, Dahod.
- Ex. 58/1 to 58/7: Four photographs of Jeep Art.2.
- Ex. 59/1 to 59/17: 17 photographs.
- Ex. 61: Certified copy of Writ Petition NO. 118/03 filed in the Supreme Court.
- Ex. 62 colly: Certified copy of the application for direction in W.P.118/03 along with affidavit-in-support dt.25.9.03.
- EX. 63 colly: Certified copy of Transfer Application No.192/04 filed in the Supreme Court @ affidavit.
- Ex. 67: Certified copy of vakalatnama in Cri. M. A. No. 351/04.
- Ex. 85: List @ documents tendered by Head Clerk, C. H. C., Limkheda (i. e. six registers Arts. 23 to 28).
- Ex. 88A to 88C: OPD paper, Indoor paper and MLC Certificate respectively concerning PW 9- Saddam.
- Ex. 89 colly: Entries at Sr. Nos.1794 & 1795 in MLC Register Art.38.
- Ex. 89A: True extract of Ex. 89 colly.
- Ex. 90A to 90C: OPD paper, Indoor paper and MLC certificate respectively concerning Mohsin Yusuf.
- Ex. 91: Entry at SR. No.1796 dt.5.3.02 in MLC Register Art. 38.

Ex. 91A: True extract of Ex.91.

Ex. 92: OPD case paper No.3983 dt.5.3.02 concerning the prosecutrix.

Ex. 93: MLC Certificate dt.5.3.02 concerning the prosecutrix.

Ex. 94: Entries at Sr.Nos.3908 in OPD Register (Art .37).

Ex. 94A: True extract of Ex.94.

Ex. 95: Entry at Sr. No. 3983 in OPD Register (Art -37).

Ex. 95A: True extract of Ex.95.

Ex. 96: Entry at Sr. No.78 dt.5.3.02 in the MLC X-Ray Register (Art.39).

Ex. 96A: True extract of Ex.96.

Ex. 97: Seizure memo regarding handing over of the medical papers concerning the prosecutrix.

Ex. 98 colly.: Entries on page 62 except entries Exs.89 colly. and 91 in the MLC Register Art. 38.

Ex. 98A: True extract of Ex.98.

Ex. 99 colly.: Entries at page Nos.58to 61 in the colly. : Register Art.38.

Ex. 99A: True extract of Ex.99.

Ex. 100: Entries at Sr. Nos.3904 & 3905 dt.2.3.02 in the Register Art. 37.

Ex. 100A: True extract of Ex.100.

Ex. 101: Entry at Sr. No.1883 dt.19.4.02 on page 70 in the Register Art.38.

Ex. 101A: True extract of Ex.101.

Ex. 102: Entry at Sr. No. 1928 dt. 7.2.02 on page 108 in the MLC Register Art. 38.

Ex. 102A: True extract of Ex. 102

Ex. 103 colly.: Entries from Sr. No. 1806 dt. 23.3.02 to Sr. No. 1864 dt. 31.3.02 from page nos. 64 to 68 in the Register Art. 38.

Ex. 103A: True extract of Ex.103.

Ex.104 colly.: Entries at Sr.Nos.1944 to 1961 at page 112 in the Register Art.38.

Ex. 104A: True extract of Ex.104.

Ex. 105 colly. : Entries on page nos.50 and 52 in the Register Art. 38.

Ex. 109: Seizure memo dt.7.1.04.

Ex. 112: 25 photographs and negatives tendered as per list Ex. 112.

Ex. 115: Panchnama dt.5.4.04.

Ex. 123: Inquest Panchnama dt.5.3.04.

EX. 124: Scene of offence panchnama dt. 5.3.04.

Ex. 129: Panchnama dt.11.3.04.

Ex. 131: Panchnama dt.13.3.04 except the bracketed portion in red ink.

Ex. 134: Seizure Memo dt.20.3.04.

Ex. 135/1: Photograph (Art.41-A/1).

Ex. 135/2: Photographs Arts.41A/2 to 41A/15
to 135/15: respectively.

Ex. 137: Report dt.7.3.02 addressed to PI, Godhra Town Police Station.

Ex. 138 colly.: Indoor case paper bearing OPD Case No.133210 and Indoor Patient No.
15767 dt. 7.3.02.

Ex. 138A: Two sheets of case-papers bearing observations recorded by Dr. Pisagar.

Ex. 139: Original of Ex.139.

Ex. 140: Police Yadi dt. 17.3.02.

Ex. 141: O/c. of the forwarding letter dt.7.3.02

Ex. 142: Seizure memo dt. 5.3.04.

Ex. 143: Medical Certificate dt.7.3.02 in respect of the prosecutrix.

Ex. 144: Pathological report of the Civil Hospital dtd. 7.3.02 in respect of the prosecutrix.

Ex. 147: O/c. of the letter dt. 7.3.02 addressed to the SP, Dahod.

Ex. 148A to E: Reminders dt.11.3.02, 18.3.02, 3.5.02, 27.6.02 & 29.6.02 respectively.

Ex. 149: Original Fax message dt.8.7.02.

Ex. 150: Fax message dt.20.3.02 received from SP, Dahod.

Ex. 150A: Exact typed copy of the Fax message Ex.150.

Ex. 157: Letter dt.9.9.05 with a sealed envelope from District Court, Panchmahal, Godhra.

Ex. 157A: Letter dt.18.5.04 from Chief Judicial Magistrate, Ahmedabad (Rural), Navrangpura.

Ex. 158 colly.: Letter dt.20.3.04 of CMM, Mumbai @ copies of the applications dated 24.2.04 & 19.3.04 of CBI.

Exs. 158A to 158N: 14 statements of witnesses recorded u/s 164 of Cr. P. C. as per Ex.158.

Exs. 158-O & 158-P: Deposition of Mr. Phanse, who acted as an Interpreter for recording the statements u/s of Cr. P. C.

Ex. 163: O/c. of letter dt.25.8.05 addressed to Collector, Panchmahal, Godhra.

Ex. 164: O/c. of letter dt.25.8.05 addressed to SP, Dahod.

Ex. 165: O/c. of letter dt.26.8.05 addressed to PI, CID (Crime), Godhra.

Ex. 165A: Acknowledgement of the receipt of the original letter of Ex.165.

Ex. 166: Xerox copy of letter dt.29.8.05 of Addl. District Magistrate, Panchmahal, Godhra.

Ex. 166A: Original of the letter Ex.166.

Ex. 181: Wireless message No.4409 dt.23.10.05 along with copy of death certificate of A/3- Naresh Modia.

Ex. 200: Yadi/letter dt.5.3.02 addressed to Medical Officer, PHC, Dudhia for carrying out P.M. examination on the dead bodies.

Ex. 201: Report/letter dt.5.3.02.

Ex. 203: Certified copy of the Yadi/Letter dated 4.3.02 addressed to M.O., CHC, Limkheda.

Ex. 204: Case Diary entry No.1 dt.5.3.02.

Ex. 205: Panchnama dt.5.3.02.

Ex. 206: Muddemal receipt dt.5.3.02.

Ex. 214: Entries dt.28.2.02.

Ex. 214A: True extract of Ex.214.

Ex. 217 colly.: Entries dt.4.3.02 & 5.3.02 on page 98 of Register Art.44.

Ex. 271A colly.: True extract of Ex.217.

Ex. 218 colly.: Entries dt.28.2.02 on page 97 of Register Art. 44.

Ex. 218A: True extract of Ex.218 colly.

Ex. 219: Entry dt. 28.2.02 in Form 'C' on the obverse of Page No. 127 of Register Art. 44.

Ex. 219A: True extract of Ex.219.

Ex. 220 colly.: Entries dt.3, 6 & 9/3/02 in Form 'C' on page 128 of Register Art.44.

Ex. 220A: True extract of Ex.220.

Ex. 223 colly.: Entries dt.4.3.02 on the obverse of page 86 and continued on front of page 86 of Register Art.45.

Ex. 223A: True extract of Ex.223.

Ex. 224: Entry dt.5.3.02 on the obverse of page 87 of the Register Art.45.

Ex. 224A: True extract of Ex.224.

Ex. 229: Letter dt.20.12.04 of the CBI addressed to Principal Secretary, Health & Family Welfare Department, Gandhinagar.

Ex. 230 colly.: Two reports dt.20.5.03 of Assistant Director, FSL, Gandhinagar.

Ex. 232 colly.: Portion marked 'A' to 'M' in the statement of the prosecutrix dated 7.3.02.

Ex. 233: Letter dt.10.4.02 addressed to FSL, Vadodara forwarding 5 parcels.

Ex. 234: Acknowledgment dt. 11.4.02 from FSL, Vadodara.

Ex. 235: Letter dt.15.4.02 addressed to FSL, Vadodara raising further queries in respect of articles mentioned in the letter Ex.233

Ex. 236: Letter dt.15.4.02 addressed to FSL, Vadodara forwarding 4 parcels.

Ex. 237: Acknowledgment dt.15.4.02 from FSL, Vadodara.

Ex. 238: Opinion dt.24.4.02 of FSL, Vadodara in respect of 5 articles sent vide letter Ex. 233.

Ex. 239: Opinion dt.24.4.02 of FSL, Vadodara in respect of 4 articles sent vide letter Ex. 236.

Ex. 244: Requisition dt.4.3.02 for inquest panchnama.

Ex. 244A: Photocopy of Ex.244.

Ex. 250 colly.: Two documents regarding scientific investigation done at CFSL and AIIMS New Delhi @ list dt.6.3.06.

Ex. 250A: Objection to Notice Ex.250 colly.

Ex. 255: Entry at Sr.No.3010 dt.15.3.02 on page 61 in Register Art.46.

Ex. 255A: True extract of Ex.255.

Ex. 256 colly.: Entries at Sr.Nos.1863 to 1868 dated 11.3.02 in Register Art.47.

Ex. 256A: True extract of Ex.256.

Ex. 257: Entry at Sr. No.1830 dt.9.3.02 on page 40 in Register Art.47.

Ex. 257A: True extract of Ex.257.

Ex. 258: Entry at Sr. No.2142 dt.19.3.02 on page 74 in Register Art.47.

Ex. 258A: True extract of Ex.258.

Ex. 259: Entry at Sr. No.1 dt.4.4.02 on page 98 in Register Art.48.

Ex. 259A: True extract of Ex.259.

Ex. 260: Entry at Sr.No.1 dt.20.3.02 on page 88 in Register Art.48.

Ex. 206A: True extract of Ex.260.

Ex. 263: Entry at Sr.No.158 dt.22.3.02 on page 37 in Register Art.48.

Ex. 263A: True extract of Ex. 263.

Ex. 265: O / c. of Reminder No.2 dt.19.3.02 addressed to PSI, Limkheda.

Ex. 267: Seizure memo dt. 5.1.04.

Ex. 268: Seizure memo dt. 20.1.04.

Ex. 269A: Portion marked 'A' in the statement of PW 10-Soni dt.14.9.03.

Ex. 269B: portion marked 'A' in the statement of PW 10-Soni dt.23.9.03.

Ex. 272A: CFSL report No.CFSL-2004/B-0098 dt. 23.9.04

Ex. 272B: CFSL report No. Serelogy-2004/B-0098 of CFSL dt.10.2.04.

Ex. 272C: CFSL report No.CFSL-2004/B-0098 dt. 31.3.04

Ex. 272D: CFSL report No.CFSL-2004/B-0098/178 dt. 1.4.04

Ex. 272E: CFSL report dt.24.3.04 (D-109/12 to 16).

Ex. 272F: CFSL report dt.31.3.04 (D-109/17 & 18).

Ex. 273: Portions marked 'A' & 'B' in the statement of PW 6-Zaitoonbibi dt.22.9.02.

Ex. 274: Portions marked 'A' to 'F' in the statement of PW 9-Dr.Mahato dt.1.10.03.

Ex. 277: Portions marked 'A', ' B, and 'C' of the Statement of the prosecutrix dt.6.3.02.

Ex. 282A to 282G: Original Post Mortem Notes of PM examination of seven dead bodies performed by the A/29-Dr. Arunkumar Prasad and A/20- Dr. Sangeeta Prasad.

Ex. 285A to285C: Seizure memos dt.5, 6 & 7/2/2004 respectively.

Ex. 291: Seizure Memo dt.23.3.06.

- Ex. 292: Report dt.19.3.02 of CPI, Limkheda.
- Ex. 292A: Bill No.06 dt.14.3.02 for Rs.270/- issued by R. K. Photographer, Bandibar, Limkheda
- Ex.294: Entry in Register Art.50 pertaining to Vehicle No.GJ-20-A-3123.
- Ex. 298: Certificate dt.23.3.06 issued by Kampaben Chauhan, Sarpanch, Group Gram Panchayat, Kersharpur, Limkheda.
- Ex. 299: Certificate dt.24.3.06 issued by Manjulaben Damor, Sarpanch, Group Grampanchayat, Motaman, Limkheda.
- Ex. 306: O/c. of the letter dt.22.1.04 addressed to Director, AIIMS, New Delhi.
- Ex. 307: Copy of memorandum dt.11.2.04.
- Ex. 308: Copy of order dt.27.1.04 of District Magistrate, Dahod.
- Ex. 309 colly.: Report dt.28.6.06 from Assistant Chemical Examiner to the Government of India with accompaniments (in the File Art. 91).
- Ex. 310: Memorandum of exhumation dt.1.2.04.
- Ex. 311: Letter dt.10.2.04 addressed to CBI, SCB, Mumbai from AIIMS, New Delhi.
- Ex. 311A: Report dt. 10.2.04 from AIIMS, New Delhi.
- Ex. 311B & C: Sketches 1 & 2 respectively.
- Ex. 311D to F: Recovery charts - Level 0, 1 and 2 respectively.
- Ex. 311G: List of bones and other articles recovered (three sheets).
- Ex. 312: Letter dt.3.2.04 addressed to AIIMS from the CBI.
- Ex. 313: Letter dt.14.2.04 addressed to AIIMS from the CBI.
- Ex. 313 A: Report of forensic examination dt.14.2.04
- Ex. 313B to F: Five sketches of human skeleton.
- Ex. 31G: Xerox copies of authoritative material (8 sheets) namely, The Human Skeleton in Forensic Medicine by Wilton Marion Krogman Ph. D., LL. D. and Indian Journal of Medical Research, 55, 10 October, 1967.

Ex. 314 colly.

to Ex. 318: Five X-Ray requisition forms.

- (i) No.07/04-A with two X-Ray plates,
- (ii) No.07/04-B with five X-Ray plates,
- (iii) No.07/04-C with three X-Ray plates,
- (v) No.07/04-E with three X-Ray plates,

Ex. 319: O/c. of Letter dt.4.7.04 addressed to CFSL New Delhi

Ex. 320/1

to 320/18: 18 photographs

Ex. 321: Negatives of the photographs Exs.320/1 to 320/18.

Ex. 322 colly.: Letter dt.17.2.04 addressed to AIIMS from CBI.

Ex. 323A colly.: Report dt.12.3.04 and 6 sheets bearing coloured photographs of the clothings examined.

Ex. 324: Reply to questionnaire dt. 8.4.04 (15 sheets) [in File D-108].

Ex. 324A colly.: Analytical Chart - Appendix 'A' with 5 photographs in respect of the victim Alimbibi.

Ex. 324B colly.: Analytical Chart - Appendix ' B ' with 2 photographs in respect of an unknown victim.

Ex. 324C colly.: Analytical Chart - Appendix 'C' with 3 photographs in respect of an unknown victim.

Ex. 324D colly.: Analytical Chart - Appendix 'D' with 3 photographs in respect of an unknown victim.

Ex. 324E colly.: Analytical Chart - Appendix 'E' with 1 photograph in respect of an unknown victim.

Ex. 324F colly.: Analytical Chart - Appendix ' F ' with 2 photographs in respect of an unknown victim.

Ex. 324G colly.: Analytical Chart - Appendix 'G' with 2 photographs in respect of an unknown victim.

Ex. 324H colly.: Analytical Chart - Appendix 'H' with 1 photograph in respect of an unknown victim.

Ex. 326: Copy of Questionnaire dt.17.2.04.

Ex. 327 colly.: Letter dt.19.1.04 and 7 photocopies of the post mortem examination reports.

Ex. 329: Statement dt.5.2.04 of PW 10-Soni.

Ex. 330.: Portion marked 'A' in the statement dated 6.1.04 of PW 14-Patel.

Ex. 331.: Portions marked 'A' & ' B ' in the statement dt.18.2.04 of PW 22-Chandubhai Patel.

Ex. 333.: Portion marked 'A' in the statement dated 14.2.04 of PW 11-Smt.Sumali Patelia.

Ex. 337/1 to 337/119: 119 photographs.

Ex. 341: Seizure Memo dt.17.2.04.

Ex. 342 colly.: Seizure Memo dt. 8.3.04 @ annexure giving the list of documents seized.

Ex. 343: Seizure Memo dt. 22.2.04 in respect of documents seized from Mr. N. M. Patel, Mamletdar, Devgad Baria.

Ex. 348: Portion marked 'A' in the Memorandum of Inspection of Scene of Crime dt.6.1.04.

Ex. 349: Statement dt.7.1.04 of PW 10-Soni.

Ex. 350: Seizure/Receipt Memo dt. 8.1.04 in respect of seizure of Movement Register from AS1 Damor.

Ex. 351/1: 9 photographs.
to
Ex. 351/10

Ex. 352: Memorandum of scene of crime dt.10.1.04.

Ex. 352: Sketch annexed to memorandum Ex.352.

Ex. 353: Portion marked 'A' in the statement dt. 23.4.04 of PW 37-Rathwa.

Ex. 354: C.D. (Art.1-C).

Ex. 358: Portions marked 'A' & 'B' in the statement dt.26.2.04 of PW 38-Arjunsingh Rumalbhai.

- Ex. 359: Portions marked 'A' & 'B' in the statement dt. 27.2.04 of PW 38-Arjunsingh Rumbhai
- Ex. 360: Portions marked 'A' to 'D' in the statement dt. 1.4.04 of PW 20-Nanjibhai Nayak.
- Ex. 361: Portions marked 'A' to 'E' in the statement dt.13.2.04 of PW 21-Salimbhai Rampuria
- Ex. 363: Seizure Memo dt. 30.1.04.
- Ex. 364: Statement dt.30.1.04 of PW 29-Babubhai Vohania,
- Ex. 365: Portions marked 'A', 'B' & 'C' in the statement dt.30.1.04 of PW 29-Balubhai Vohania.
- Ex. 366: Seizure Memo dt.31.1.04.
- Ex. 367: Portions marked 'A' & 'B' in the statement dt.1.2.04 of PW 32-Vinod Prajapati.
- Ex. 368: Portions marked 'A' to 'H' in the statement dt.24.2.04 of PW 34-Amritsinh Khant.
- Ex. 369: Portions marked 'A', 'B' & 'C' in the statement dt.9.1.04 of PW 24-Abdul Issa Ghanchi
- Ex. 370: Portion marked 'A' in the statement dt.6.2.04 of PW 45-Sayyed Abdul Salam.
- Ex. 373: Portions marked 'A' & 'B' in the statement dt. 25.3.04 of PW 30-Vasudeo Pandit.
- Ex. 374: Portion marked 'A' in the statement dt. 24.3.04 of PW 39-Ratilal Bhabhor.
- Ex. 375: Portions marked 'A' & 'B' in the statement dt.13.4.06 of PW 50-Ganpatsingh Khant.
- Ex. 376: Portion marked 'A' in the statement dt.5.5.06 of PW 10-Ramesh Soni.
- Ex. 377: Portions marked 'A' & 'B' in the statement dt.1.2.04 of PW 22-Chandubhai Patel.
- Ex. 379: O/c. of Seizure Memo dt. 4.2.04.
- Ex. 383: O/c. of the letter dt.18.3.04 addressed to Executive Magistrate, Limkheda.
- Ex. 384: Receipt Memo dt.18.3.04.
- Ex. 385: Electoral Roll-2002 (Book No.7/9-Gujarat).

- Ex. 386: Electoral Roll-2002 (Book No.8/9-Gujarat).
- Ex. 387: Electoral Roll-2002 (Book No.9/9-Gujarat).
- Ex. 388: Supplementary Electoral Roll-2002(Gujarat)
- Ex. 389: Supplementary Electoral Roll-2003(Gujarat)
- Ex. 390: O/c. of letter dt.10.2.04 addressed CHC, Limkheda.
- Ex. 392: Portions marked 'A' to 'N' in the statement dt.27.3.04 of PW 1-Bilkisbano.
- Ex. 397: Certificate dt.19.10.03 in Gujarati signed by the Sarpanch, Group Gram Panchayat, Kesharpur.
- Ex. 398: Certificate dt.10.1.04 in Gujarati issued by the Sarpanch, Group Gram Panchayat, Kesharpur.
- Ex. 405: Seizure Memo dt.5.1.04 in respect of seizure of station diary Art.69.
- Ex. 406: Entry No.10 dt.4.3.02 on page 35 marked D-10 in the Station Diary Art.69.
- Ex. 406A: True extract of Ex.406.
- Ex. 406B: True English translation of entry Ex.406.
- Ex. 407 colly.: Entries at Sr.Nos.6 & 7 dt.4.3.02 on page 34 in the Station Diary Art.69 and the English translation of the entries.
- Ex. 408: Final report sent by CPI, Limkheda to JMFC, Limkheda in C. R. No.59/02 dt.4.3.04 (Art.71)
- Ex. 409 colly.: Portions marked 'A', ' B ' colly. and 'C' in the statement dt.7.1.04 of PW 15-Ramsingh Baria.
- Ex. 410: Seizure Memo dt. 9.1.04.
- Ex. 411A & B): Seven carbon copies of the post mortem reports along with one photo-
To graph of dead body with each of the carbon copy at Sr.Nos.73 to 79,
Ex. 417A & B) respectively.
- Ex. 419 colly.: Portions marked 'A' & 'B' in the statement dt.12.1.04 of PW 36-
Abhesingh Patel.
- Ex. 420: Seizure Memo dt.20.1.04 in respect of seizure of medical records of CHC,

Limkheda.

Ex. 422: Memorandum of scene of crime dt.28.1.04.

Ex. 424: Seizure Memo Pt. 3.0.1.04.

Ex. 425: Portions marked 'A' to 'D' in the statement dt. 6.2.04 of PW 35-Ranjeetsingh.

Ex. 427: O/c. of questionnaire and letter dated 18.2.04 addressed to CFSL.

Ex. 428: O/c. of 'the letter dt.3.2.04 addressed CFSL.

Ex. 431: O/c. of the letter dt.27.2.04 addressed to AIIMS, New Delhi.

Ex. 431: Portion marked ' A ' in the statement dt.19.10.03 of PW 73-Somabhai Chauhan.

Ex. 432: Portions marked 'A' to 'G' in the statement dt.7.12.04 of PW 73-Somabhai colly. Chauhan.

Ex. 434: Portions marked 'A' to 'M' in the statement dt.9.1.04 of PW 1-Bilkisbano. colly.

Ex. 435: O/c. of requisition dt.6.1.04 made to Limkheda Police Station.

Ex. 435A): O/c. of requisitions made to Limkheda Police Station dt.31.1.04, Police To) Station dt.31.1.04, 9.2.04, 10.2.04 8.3.04, 19.3.04 and 174.04, respectively.

Ex. 435)

Ex. 436: Portions marked 'A' & 'B' in the statement dt. 15.1.04 of PW 5-Sharifa.

Ex. 437: Portions marked 'A' to 'E' in the statement dt. 15.1.04 of PW 8-Saddam. colly.

Ex. 438: Certificate of authorisation dt.31.3.04.

Ex. 439: Portions marked 'A' & 'B' in the statement dt. 13.3.04 of PW 1-Bilkis.

Ex. 440: Letter dt.13.2.04 from Executive Magistrate regarding information in connection colly. of Godhra Hatya Kand.

Ex. 445A: Letter dt.19.4.04 from CFSL.

Ex. 445B: Report dt.19.4.04 of Finger Print Expert and 4 annexures thereto. colly.

Ex. 446: Letter dt .8.3.02 from District Magistrate, Dahod @ accompaniments.
colly.

Ex. 447: O/c. of written requisition dt.16.6.02.

Ex. 448: Station diary extracts dt.27.2.02, 28.2.02, 9.4.02 (6 sheets) of Fetepura P. Stn.
colly. (D-134 at list Ex.14).

Ex. 449: O/c. of requisition dt.15.1.04 sent to Limkheda, PHC.

Articles:

Art. 1: Envelope bearing marking ID-114'.

Art. 1A: Soni brand video cassette with packing.
colly.

Art. 1B: Working copy of video cassette Art. 1A.

Art. 1C: CD bearing data in digitalised format of the working copy Art. 1B.

Art. 2: White coloured Mahindra jeep bearing Regn. No. GJ-20-A-3123.

Art. 3: Camera.

Art. 4: Envelope.

Art. 4A: Piece of clothing with pink label, one sky blue coloured envelope, one yellow
colly. coloured envelope.

Art. 5: Envelope.

Art. 5A: Petticoat with label, remnants of wax seal, strings and wrappings.
colly.

Art. 6: Envelope.

Art. 6A: Odhani / Chunari with labels, remnants of wax seal, strings and wrappings.
colly.

Art. 7: Envelope.

Art. 7A: Blouse with labels, remnants of wax seal and wrappers.
colly.

Art. 8: Envelope.

Art. 8A) Twelve small white coloured cardboard
to)
Art. 8L) boxes.

Art.8A/1) Bottles with labels and contents.
to)
Art. 8A/4)
Art. 8L/1)
to
Art. 8L/4)

Art. 9: Envelope.

Art. 9A: Tin bearing label 'A' and paper wrapper with remnants of seal.
colly.

Art. 9B: Tin bearing label 'B' and paper wrapper with remnants of seal.
colly.

Ex.10: Envelope.

Art. 10/1: Four small bottles & one test tube,
to
Art. 10/5 respectively.

Art. 11: Envelope.

Art. 11A: Pieces of red bangles with two yellow coloured envelopes.
colly.

Art.12: Envelope.

Art.12A: A piece of bangle with two brown and one yellow coloured envelopes.
colly.

Art.13: Envelope

Art .13A: Two envelopes bearing remnants of wax seal
colly.

Art. 13B: Transparent polybag with soil sample and label.
colly.

Art. 14: Envelope.

Art. 14A: Carton with cloth wrapper & empty polybag.

colly.

Art. 14B: One polybag containing golden coloured bangle.

Art.15: Envelope

Art.15A: A pair of rubber slippers with two envelopes, remnants of wax seal, pink and colly. blue labels.

Art.16: Envelope.

Art.16A: One rubber slipper with pink label, one envelope, one brown paper envelope, colly. one sky-blue coloured envelope.

Art.17: Envelope.

Art.17A: One rubber slipper with pink and blue labels, one envelope. colly.

Art.18: Envelope.

Art.18A: One rubber slipper with pink and blue labels, one envelope, one brown paper colly. envelope and one yellow coloured envelope.

Art.19: Envelope.

Art.19A: One rubber slipper with blue label, one brown paper and one yellow coloured colly. envelope.

Art. 20: Envelope

Art. 20A: One rubber slipper with pink and blue labels, two brown paper and one yellow colly. coloured envelopes.

Art. 21: Envelope.

Art. 21A: One rubber slipper with pink & blue labels one envelope, one brown and one colly. yellow coloured envelopes.

Art. 22: Envelope

Art. 22A: One pair of ladies chappals with pink and blue labels, one brown and one colly. yellow coloured envelope.

Art. 23: Envelope.

Art. 23A: Envelope marked "ARTICLE No. 1 Foot Impressions".
colly.

Art. 23B colly: Foot prints of the A/9- Vohania, deceased A/3-Naresh Modhiya, A/4-
Bhatt,,A/8-Pradip Modhiya, A/10-Rajubhai Soni, A/2-Govind Nai, A/12-
Ramesh Chandana, A/6-BipinJoshi A/11-Mitesh Bhatt, A/5-Radheshyam
Shah, A/1-Jaswant Nai & A/7-KesharbhaVohania.

Art. 24: Envelope.

Art. 24A: One envelope, cloth wrapper, carton and chappals.
colly.

Art. 25: Envelope.

Art. 25A: Envelope, paper wrappers and saree with pink coloured label.
colly.

Art. 26: Envelope.

Art. 26/1: Envelope.

Art. 26/2: Four paper wrappers.

To

Art. 26/5

Art. 26/6: Brown (maroon) coloured petticoat

Art. 27: Envelope.

Art. 27/1: Envelope.

Art. 27/2: Three paper wrappers.

to

Art. 27/4

Art. 27/5: One olive green full pant with slip.

Art. 28: Envelope.

Art. 28/1: Envelope.

Art. 28/2: Three paper wrappers.

to

Art. 28/4

Art. 28/5: Piece of bush-shirt with pink label.

Art. 29: Envelope.

Art. 29/1: Envelope.

Art. 29/2: Three paper wrappers.

to

Art. 29/4

Art. 29/5: Frock carrying pink label and one slip bearing remnants of seal.

Art. 30: Envelope.

Art. 31/1: Envelope.

Art. 30/2: Three paper wrappers.

to

Art. 30/4

Art. 30/5: Piece of bush-shirt carrying two pink labels and a slip.

Art. 31: Carton.

Art. 31A): 18 transparent polybags, each containing dust/soil, boiled remnants of clothing colly.) and labels.

to)

Art. 31R)

colly.)

Art. 32: Envelope.

Art. 32A: Envelope.

Art. 32B: Ten coloured photographs of the dead bodies. dt. 4.3.02 colly.

Art. 33: Envelope.

Art. 33A: Envelope bearing remnants of wax seal, and nine coloured photographs of the dead bodies dt.5.3.02.

Art. 33B: Nine coloured photographs of the dead bodies dt.5.3.02.

Art. 34: Envelope

Art. 34A: Cloth bag with remnants of wax seals.

Art. 34B: One greenish coloured envelope.

Art. 34C: One transparent polybag containing soil and soiled remains of clothing with colly. label.

Art. 35: Attendance Register of Class II employees from 1.1.02 to 31.3.03.

Art. 36: Attendance Register of Class III & IV employees from 1.1.02 to 31.12.02.

Art. 37: OPD Register from 27.2.02 to 15.6.02.

Art. 38: MLC Register from 25.10.01 to 30.5.03.

Art. 39: MLC X-Ray Receipt Register.

Art. 40: X-Ray Register no.3 from 2.4.98 to 30.5.02

Art. 41A: 15 photographs.

Art. 41B: C.D.

Art. 42: 4 envelopes.
colly.

Art. 43: Register titled "Movement Register, Randhikpur Outpost, Limkheda Police Stn. from 25.7.2001.

Art. 44: Motor logbook.

Art. 45: Motor logbook.

Art. 46: Inward Register marked '2' bearing entries from 1.2.02 to 9.4.02.

Art. 47: Outward Register bearing entries from 14.2.02 to 16.5.02

Art. 48: Outward Register bearing entries from 1.11.02 to 4.4.02

Art. 49: Inward Register bearing entries from 6.2.02 to 6.10.05.

Art. 50: Register of Motor Vehicles marked "Sp1. 4 LMV Jeep".

Art. 51: One file containing expert's opinion.

Art. 52: Sealed parcels 'A' to 'D' respectively.

to
Art. 55

Art. 53A: One envelope bearing writing "Negatives of the photogs.

Art. 54A: One envelope bearing writing "10 negatives".

Art. 55A: One envelope bearing writing '17 coloured photographs - Exs.59/1 to Ex.59/17.

Art. 56: One sealed packet containing one video cassette.

Art. 57: One sealed packet containing negatives of photographs.

Art. 57A: Envelope.

Art. 57B/1) Four transparent poly-sachets containing negatives.

to)
Art.57B/4)

Art. 58: One sealed parcel received from AIIMS, New Delhi (cotton wrapper) and black colly. polybag.

Art.58/1) File labelled polybags with contents.
colly.)
to)
Art. 58/5)

Art.58/2/A: One bone from polybag Art.58/2 colly.

Art.58/1/A: One green coloured polybag containing bones.

Art. 59: One file described at Sr.No.24 in the notice u/s 294 Cr. P. C. - Ex.14.

Art. 60: One file containing case papers.

Art. 61: Original treatment/order book.

Art. 62: X-Ray Register.

Art. 63: Original Laboratory Investigation Register

Art. 64: Original Indoor Register.

Art. 65: Original MLC Register.

Art. 66: Original Inpatient Register.

Art. 67: Original OPD Register.

Art. 68: One X-Ray Plate @ label.

Art. 69: Station Diary of Limkheda Police Station.

Art. 70: One file.

Art. 71: One file.

Art. 72: One file.

Art. 73: register (FIR Book of Limkheda hood P. Stn.)

15. While in judicial custody, the Accused No.3- Nareshkumar Ramnalal Modhiya expired on 23.10.2005 vide report Ex. 181. As a result of his demise, the case against him stood abated.

16. The surviving accused (hereinafter referred to as 'the accused') were examined as per the provisions of Section 313 of Code of Criminal Procedure, 1973. Generally, the accused controverted the prosecution case and claimed to be innocent.

17. The A/1-Jashwantbhai Rawal @ Nai and the A/2-Govindbhai Nai did not dispute the following facts:-

- (i) that the prosecutrix was native of village Randhikpur and was married to Yakub Rasool Patel, resident of Devgad Baria, 5 to 6 years before the incident; and her father PW 24-Abdul Issa Ghanchi was dealing in buffaloes and use to sell milk in village Randhikpur;
- (ii) that Singwad and Randhikpur is one and the same village with one Police Out-post;
- (iii) that the residence of the prosecutrix was situate at the back of the hotel run by the deceased accused No.3-Naresh Modhiya at Randhikpur; the Accd.No.4-Shailesh Bhatt and A/11-Mitesh Bhatt are brothers having one house near village Randhikpur mosque; the wife of A/12-Ramesh Chandana was declared elected in the Gram Panchayat Election; the house of the A/6-Lala Doctor was situate in front of the residence of the prosecutrix; and the father of the prosecutrix was the patient of the father of A/6-Lala Doctor-a Medical Practitioner; and the A/5-Lala Vakil is an practicing advocate having a bangle shop at village Randhikpur;
- (iv) that PW 3-Sugra Ismail on her marriage to Ismail Issa started residing at village Randhikpur;

- (v) that he, the A/2-Govindbhai Nai to A/12- Ramesh Chandana, PW 19-Phiroz Ghanchi, PW 25-Siraj Adam Ghanchi, PW 27-Imtiaz Yusuf Ghanchi, PW 45-Sayyed Abdul Salam, PW 46- Salim Abdul Sattar Moosa Ghanchi and PW 47-Sattar Majid Ghanchi were the residents of village Randhikpur; and that the A/10-Rajubhai Soni was conducting a shop in front of the residence of PW 3-Sugra Ismail at village Randhikpur;
- (vi) situation of the houses of PW 3-Sugra Ismail, the prosecutrix, Fakir Mohamed, Kayum Abdul, Iqbal Abdul, Abdul Sattar Kalu, PW 31-Rasul Aziz Umar Ghanchi and shop premises of the A/10-Rajubhai Soni, A/4- Shailesh Bhatt, himself, Maganbhai, A/5-Lala Wakil, A/11-Mitesh Bhatt, A/7-Kesharbhai Vohania, A/9-Bakabhai Vohania, A/6-Lala Doctor and A/12-Ramesh Chandana;
- (vii) that PW 3-Sugra, her husband Ismail, Abdul Issa, Halima, Iqbal, PW 4-Salim, PW 7- Madina and her husband Siraj were residing at village Randhikpur;
- (viii) that Randhikpur Police Out-Post was situate on the way to village Sanjeli from village Randhikpur;
- (ix) that family of Sattar comprises of his wife Halima, 2 sons - Anish and Phiroz and a daughter;
- (x) that PW 8-Saddam was residing and studying at village Randhikpur;
- (xi) that PW 8-Saddam had seen him, the A/7- Kesharbhai Vohania, A/8-Pradip Modhia, A/9- Bakabhai Vohania and A/10-Rajubhai Soni;
- (xii) that the A/8-Pradip Modhia was running a hotel at village Randhikpur;
- (xiii) relationship inter se the prosecutrix, PW 24-Abdul Issa, Iqbal and Halima;
- (xiv) situation of the houses of PW 28-Bhavinkumar Pate1 and PW 32-Vinodbhai Prajapati;
- (xv) location of the residence of PW 26-Imtiaz Yusuf Ghanchi;
- (xvi) that PW 32-Vinobhai Bhikabhai Prajapati was conducting Gurukripa Studio as well as STD telephone booth and Xerox shop in the premises neighbouring to PW 28-Bhavinkumar Patel at village Randhikpur and PW 28- Bhavinkumar Pate1 was having a shop in the name "Mamaji Pan Centre";
- (xvii) location of the residence of Balubhai Vohania in the vicinity of Circuit House at village Randhikpur;
- (xviii) location of the residence of PW 33-Bijalbhai Damor, Ex-MLA, at Chundadi, Taluka Limkheda, Dist. Dahod;

- (xix) his arrest and production before the Court and consequent remand to judicial custody;
- (xx) the fact of their refusal to give consent to polygraphic test, narco analysis test and T.I. parade and consequent rejection of the application made therefore by CBI;

18. The Accd.No.4-Shailesh Bhatt and Accd.No.5- Radheshyam Shah almost towed the line of the A / 1 - Jaswantbhai Nai in admitting certain facts. However, they specifically denied that PW 4-Salim Ghanchi was residing at village Randhikpur at the material time.

19. The Accd.No.6-Bipinchandra Joshi preferred to express ignorance about most of the facts in the evidence, 'particularly regarding the prosecutrix, except the geographical locations of village Chundadi and other places. He admitted that Singwad and Randhikpur is one and the same village having one Police Out-post. He further admitted the fact concerning the location of the residence of the prosecutrix at village Randhikpur and the facts concerning the residential premises of the A/1- Jaswantbhai Nai to A/12- Rameshchandra Chandana, including himself at village Randhikpur. He denied that PW 4-Salim Ghanchi was residing at village Randhikpur. He admitted that PW 3-Sugra Issa, PW 7- Madina Patel, PW 8-Saddam, PW 19-Phiroz Ghanchi, PW 24-Abdul Issa Ghanchi, PW 25-Siraj Aadam, PW 26- Imtiaz Yusuf Ghanchi, PW 28-Bhavinkumar Patel, PW 29-Balubhai Vohania,. PW 31-Rasul Ghanchi, PW 32- Vinodbhai Prajapati, PW 45-Sayyed Abdul Salam, PW 46-Salim Abdul Sattar Musa Ghanchi and PW 47- Sattar Majid Ghanchi were the residents of village Randhikpur; and PW 33-Bijalbhai Damor, Ex-MLA, was the resident of village Chundadi. He further admitted that he objected to polygraphic test, narco analysis test and T. I. parade proposed by the investigating agency. Except denying the fact that PW 72-Sinha had not, seen him walking with clutches at their first meeting, the A/6-Bipinchandra Joshi neither countered the certificates of his medical examination at Civil Hospital, Devgad Baria nor made any positive disclosure about his physical inability in the statement tendered by him in response to his examination.

20. The A/7-Kersharbhai Vohania admitted that Singwad and Randhikpur is one and the same village having one Police Out-Post. Locations of the houses of himself, the A/1- Jaswantbhai Nai to A/6-Bipin Joshi, A/8-Pradip Modhiya to A/12-Rameshchandra Chandana and the prosecutrix at village Randhikpur were not disputed by the A/7- Vohania. The fact of the residences of PW 3-Sugra, PW 4-Salim Ghanchi, PW 7-Madina, PW 19-Phiroz Ghanchi, PW 24-Abdul Issa Ghanchi, PW 25-Siraj Adam, PW 26-Imtiaz Yusuf Ghanchi, Mr. Maganbhai, PW 29-Balubhai Vohania, PW 31-Rasul Umar Ghanchi, PW 32-Vinodbhai Prajapati, PW 45-Sayyed Abdul Salam and PW 46-Salim Abdul Sattar Musa Ghanchi appearing in the evidence were also not disputed by the A/7-Kesharbai Vohania. He also admitted that PW 33-Bijalbhai Damor is Ex-MLA from Chundadi. He also did not dispute the fact that the application for permission to conduct polygraphic test, narco analysis test and T. I. Parade moved by the CBI was rejected following their

resistance to it and the fact of his arrest and remand to custody as disclosed in the evidence of PW 72-Sinha.

21. The A/8-Pradip Modhiya, A/9 -Bakabhai Vohania and A/10-Rajubhai Soni also did not dispute the similar facts not disputed by the A/7-Kesharbhai Vohania.

22. The A/11-Mitesh Bhatt admitted that he is brother of the A/4-Shailesh Bhatt and towed the line of the A/7-Kesharbhai Vohania in admitting the facts concerning the residential places of the A/1- Jaswant Nai to A/12-Ramesh Chandana, including himself and certain witnesses at village Randhikpur. He also did not dispute the fact of his opposition to polygraphic test, narco analysis test and T. I. Parade.

23. The A/12-Ramesh Chandana likewise did not dispute the locations of the residential places of himself, the A/1-Jaswant Nai to A/11-Mitesh Bhatt and the witnesses who claimed to be the residents of village Randhikpur. His resistance to polygraphic test, narco analysis test and T. I. parade proposed by the CBI was also admitted by him. As regards the jeep bearing registration No. GJ 20 A- 3123 (Art.2), he disclosed that it was purchased by him in December 2002; and he was not in position to recollect the facts concerning the transfer of the said vehicle in the name of his wife Mrs. Ramilaben Rameshchandra Chandana, resident of Singwad-Randhikapur, Taluka Limkheda, District Dahod, on 18.9.2001.

24. Generally speaking the A/1-Jaswantbhai Nai, A/2-Govindbhai Nai and A/4-Shailesh Bhatt to A/12- Ramesh Chandana claimed to be the residents of Randhikpur and they did not dispute the fact that the prosecutrix, PW 3-Sugra Issa, PW 7-Madina Patel, PW 8-Saddam, PW 19-Phiroz Ghanchi, PW 24- Abdul Issa Ghanchi, PW 25-Siraj Aadam, PW 26-Imtiaz Yusuf Ghanchi, PW 28-Bhavinkumar Patel, PW 29-Balubhai Vohania, PW 31-Rasul Ghanchi, PW 32- Vinodbhai Prajapati, PW 45-Sayyed Abdul Salam, PW 16- Salim Abdul Sattar Musa Ghanchi and PW 47-Sattar Majid Ghanchi were the residents of village Randhikpur and were having residential premises in the said village. Different locations of the residential premises at village Randhikpur were also not in dispute. All of them i.e. the A/1 -

- (vi) that PW 22-Chandubhai Pate1 was Nayab Mamletdar, Tehsil Limkheda;
- (vii) visit of Mr. Parekh, SDM, to Sarkotar on 5.3.02;
- (viii) occurrence of Godhra train burning incident on 27.2.02 followed by Gujarat Bandh call given by VHP;
- (ix) writing of the inquest panchnama dated 5.3.02 in the absence of PW 22-Chandubhai Patel;
- (x) burning down of the homes of Muslims at village Randhikpur;
- (xi) stay of PW 3-Bijalbhai Damor, Ex-MLA from Randhikpur at Chundadi;

- (xii) visit of PW 34-Amritsinh Khant, PW 35- Ranjeetsingh Patel, the A/16-Ramsingh Babor and himself, along with Ganpat Singh, PHC and Mangalsingh to Panivela Kesharpur Jungle area around 8 or 9 a.m. on 5.3.02 in a police jeep driven by PW 38-Arjunsingh Patelia, PC, and minibus driven by PHC Bharat Singh, for holding inquest and reaching the place around 9.45 a.m.; and burial of 7 corpses - 4 females, 2 boys and 1 girl - in the age group of 14, 10 and 7 years, at the said place and making of inquest panchnama Ex.123 at the instance of the A/16-Babhor, A/14-Idris Sayyed and himself; and bringing of medical officers the A/19-Dr. Arunkumar Prasad and A/20-Dr. Sangeeta Prasad from Dudhia to Pannivela- Kesharpur Jungle;
- (xiii) visit of SDM, Devgad-Baria and Dy. Mamletdar Mr. C. B. Patel to the site of burial around
- (xiv) designations and postings of the accused police officials i.e. himself, the A/14-Idris Sayyed, A/15-Bhikhachand Patel, A/16- Ramsingh Babhor, A/17-Somabhai Gori and A/18-Ramabhai Bhagora;
- (xv) writing of Yadi Ex.200 by PW 34-Amritsinh Khant at the instance of himself and the A/14-Idris Sayyed;
- (xvi) making of report dated 5.3.02 (Ex.201) to PSI, Limkheda Police Station;
- (xvii) making of case diary entry No.1 dated 5.3.02 (Ex.204) by PW 35-Ranjeetsingh Patel at his instance;
- (xviii) handing over of the articles recovered from the 7 corpses found lying in Panivela-Keshar pur Jungle to PHC Jaisingh at Limkheda Police Station on 5.3.02 and deposit of the said articles in Malkhana in sealed condition as per Muddemal Receipt Ex.206 on 5.3.02;
- (xix) transfer of the case to the A/15-Bhikhachand Patel for further investigation on 6.3.02;
- (xx) posting of PW 36-Abhaysingh Patel, PC, at Randhikpur Police Out-Post;
- (xxi) the A/14-Idris Sayyed from Fatehpura P. Stn. joining the Randhikpur Police Out-Post after noon on 28.2.02;and not making entry in the Movement Register Ex.214 on joining it ;
- (xxii) looting and burning of the properties at village Randhikpur on 28.2.02 following the Godhra train burning incident;
- (xxiii) making of entries dated 28.2.02 to 5.3.02 Ex.214 in Movement Register (Art.43) maintained at Randhikpur Out-Post, by him;

- (xxiv) situation of Community Health Centre next to Limkheda Police Station;
- (xxv) the A/16- abhor on patrolling duty between 28.2.02 and 10.3.02 at village Randhikpur;
- (xxvi) A/16-Babhordriving the police jeep bearing registration No.GJ-17-G-229 during the said period;
- (xxvii) A/16-Babhor leaving village Randhikpur at about 9 a.m. on 5.3.02 for patrolling in the police vehicle and thereafter visiting Kesharpur and returning to village Randhikpur in the evening;
- (xxviii) maintenance of log books recording the movements of government vehicles;
- (xxix) PW 40-Phulabhai Khat working as a Driver Head Constable on police jeep No.GJ-20-G- 24-P4;
- (xxx) PW 44-Sheelaben Nayak, Nayab Mamletdar, handing over requisition Ex.244 with her endorsement (in Gujarati) "Uparokta karvai vinanti" to a policeman from Limkheda Police Station;
- (xxxi) process of correspondence by PW 51-Virendra Rawal, Dy. SP, in the office of SP, Dahod;
- (xxxii) showing of the spot near village Kesharpur to CBI officers on 29.1.04 by him, taking of photographs at the said spot and starting of operation of CFSL team at the said spot;
- (xxxiii)digging at the spot on 31.1.04;
- (xxxiv)the CBI giving call to him and the A/14 Sayyed to indicate the place of burial and showing of the grave site to CBI Officers on 29.1.04;
- (xxxv) registration of crime at C.R.No.59/02 at Limkheda Police Station and filing of 'A' Summary report therein;
- (xxxvi)his arrest on 3.2.04 and consequent production before the Ahmedabad Court;

26 According to the A/13-Narpatsingh, he received instructions on wireless from PSO, Limkheda Police Station, on 5.3.02 that he has to carry out further investigation in C.R.No.59/02 due pre-occupation of PSI Patel and accordingly he collected the papers of investigation from Limkheda Police Station in the presence of witness Abdul Sattar, proceeded to the spot, made inquest as well as made arrangement for post mortem examination of the dead bodies at the spot, and thereafter handed over the corpses to the A/14-Idris Sayyed, PSI, for burial and returned the papers of investigation to the A/15-

Bhikhchand Patel on 6.2.02. He added that on his failure to give a desired statement the CBI had falsely implicated him in the present case; and he is innocent.

27 The A/14-Idris Sayyed did not dispute the following facts:-

- (i) that Singwad and Randhikpur is one and the same village;
- (ii) that Randhikpur Police Out-post was situated at village Randhikpur on the way to Sanjeli;
- (iii) that PW 9-Dr. Rakeshkumar Mahato was posted at Community Health Centre at Limkheda;
- (iv) burial of 7 dead bodies - 4 females, 2 boys and 1 girl at Kotar on the outskirts of Kesharpur by PW 13-Mukeshbhai Harijan on 5.3.02;
- (v) procurement of PW 15-Baria Ramsingh and PW 73-Somabhai Chauhan at Sarkotar to act as panch witnesses on 5.3.02;
- (vi) making of panchnama dated 5.3.02 (Ex.124);
- (vii) that PW 18-Smt. Jayanti Ravi was the District Magistrate and Collector, District Panchmahal, Gujarat;
- (viii) that PW 22-Chandubhai Patel was Nayab Mamletdar, Tahsil Limkheda;
- (ix) visit of Mr. Parekh, SDM, to Sarkotar on 5.3.02;
- (x) Gujarat Bandh call given by the VHP following Godhra train burning incident;
- (xi) that Halima was wife of PW 24-Abdul Issa Ghanchi;
- (xii) burning down of houses at village Randhikpur;
- (xiii) his visit to village Chundadi;
- (xiv) designations and postings of the police officials, namely, the A/13-Narpatsingh, A/15-Bhikhchand Patel, A/16-Ramsingh Babhor, A/17-Somabhai Gori and A/18-Ramabhai Bhagora and himself ;
- (xv) PW 34-Amritsinh Khant, PW 36-Abhesingh Patel, PW 38-Arjunsingh Patelia on patrol duty at Randhikpur Police Out-post on 4.3.02 and they along with the A/16-Babhor were detailed for duty at Randhikpur out-post from 28.2.02 and PC Ganpatsingh and Manganlsingh were with them; and the jeep bearing registration No.GJ-17229 driven by Arjunsingh was at their disposal; and around 8 or 9 a.m. on 5.3.02 the A/16-Babhor, himself, A/13-Narpatsingh, PC Ganpatsingh, PHC

Mangalsingh, PW 34-Amritsingh Khant, and PW 35- Ranjeetsingh Patel left Randhikpur, went to Panivela - Kesharpur Jungle area in police jeep driven by PW' 38-Arjunsingh and a mini bus driven by PHC Bharatsingh for holding inquest and reached the area around 9.45 a.m. where 7 corpses - 4 females, 2 boys and 1 girl - were found lying;and PW 34-Amritsingh wrote inquest panchnama Ex.123 at instance of the A/16-Babhor, himself and the A/13-Narpatsingh; and panchnama Ex.123 bears signatures of the A/13-Narpatsingh and himself; PW 35-Ranjeetsingh brought Medical Officers, the A/19-Dr.Arunkumar Prasad and A/20-Dr.Sangeeta Prasad from Dudhia to the site in Panivela-Kesharpur Jungle; and corpses found lying were of Muslims; and one Abdul Sattar had identified the corpse of one Aminaben;

- (xvi) that the SDM, Devgad-Baria and Dy. Mamletdar Mr. C. B. Patel had visited the site of burial around 3 p.m. on 5.3.02;
- (xvii) preparation of Yadi on 5.3.02 (Ex.200) by PW 34-Amritsingh Khant at the instance of the A/13-Narpatsingh and himself;
- (xviii) collection of articles from the burial site on 5.3.02 and depositing the same in sealed condition in Malkhana, Limkheda Police Station as per Muddemal Receipt Ex.206;
- (xix) breaking of riots in village Randhikpur with consequent looting and burning of properties on 28.2.02 and exodus of Hindus and Muslims from the village;
- (xx) he joining Randhikpur Out-Post after the noon on 28.2.02;
- (xxi) designations and postings of PW 15-Ganpatsingh, ASI Mangalsingh, PC Amritsingh Khant, and PW 51-Virendra Bhanuprasad Rawal;
- (xxii) showing of burial place to the team of experts in the afternoon of 31.1.04;
- (xxii) registration of crime at C.R.No.59/02 at Limkheda Police Station and sending of 'A' Summary report in the said case; and
- (xxiii) his arrest and production before the Ahmedabad Court.

28 The A/14-Idris Sayyed further disclosed that he joined Gujarat Police in 1976 as Police Constable and over a period of time he could earn promotions and was posted at Fatehpura Police Station as Second PSI in 2002; and on instructions of his superiors he left Fatehpura Police Station after causing an entry (Ex. 448) to be made in the Station Diary and was at village Randhikpur around 16.15 hours on 28.8.02; and he commuted the distance of about 60 kilometer between Fatehpura and Randhikpur in a police minibus bearing registration No.GJ-17-G-5064 carrying red light. He added that being a Muslim, he had removed nameplate from his uniform on the instructions of his superiors. According to him, the corpses were decomposed and were badly stinking and therefore

medical officers were called at the spot for postmortem examination; and as there was nobody to take over dead bodies, he helped burial of the same at the spot according to religious rites. He added that one Sattar, a physically and mentally disturbed person, was present at the time of the inquest and he refused to take custody of the corpses. According to the A/14-Sayyed, he has been falsely implicated in the present case by the CBI as he refused to tow their line.

29 The A/15-Bhikhachand Patel did not dispute the following facts: -

- (i) the designations and postings of police officials, including himself, involved in the present case;
- (ii) that Singwad and Randhikpur is the one and the same village having one police outpost on the way to Sanjeli;
- (iii) that Pramilaben, wife of the A/12-Ramesh Chandana, was Sarpanch of village Randhikpur;
- (iv) posting of PW 9-Dr.Rakeshkumar Mahato at Community Health Centre, Limkheda;
- (v) that PW 18-Smt.Jayanti Ravi was District Magistrate and Collector of District Panchmahal, Gujarat;
- (vi) that PW 22-Chandubhai Patel was Nayab Mamletdar, Tahsil Limkheda
- (vii) visit of PW 22-Chandubhai Patel, Mr. Pandya, Mamletdar and Mr. G. B. Parekh to village Dudhia on 5.3.02 and his presence at village Dudhia at that time;
- (viii) he showing the place of firing at village Dudhia and thereupon Mr. Parekh, SDM, calling an ambulance telephonically from Limkheda and removing injured lady from the place of firing to Limkheda Hospital within 30 to 45 minutes thereafter;
- (ix) Mr. Parekh, SDM, instructing him to detail 2 or 3 policemen with him for providing security cover; and he showing his inability to spare extra men for providing such cover;
- (x) occurrence of Godhra train burning incident on 27.2.02;
- (xi) situation of Kesharpur jungle near rive: Hadap;
- (xii) residence of PW 3-Bijalbhai Damor, Ex-MLA from Randhikpur at Chundadi;
- (xiii) designations and postings of PW 34-Arnritsingh Laxmansingh Khant, PW 35-Ranjeetsingh Patel, PW 36-Abhesingh Narsingh Patel, PW 38-Arjunsingh Patelia,

PW 39-Ratilal Babhor, PW 40-Phulabhai Khat, PW 48-Rameshbhai Walabhai Babhor; PW 50-Ganpatsingh Khant and PW 51-Virendra Bhanuprasad Rawal;

- (xiv) transfer of investigation to him on 6.3.02;
- (xv) burning and looting of the properties at village Randhikpur and exodus of Hindus and Muslims from village Randhikpur on 28.2.02;
- (xvi) situation of Community Health Centre next to Limkheda Police Station;
- (xvii) maintenance of log books recording the movement of the Government vehicles;
- (xviii) sending of case by Godhra Town Police Station to Limkheda Police Station for further action according to law;
- (xix) PW 44-Sheelaben Nayak working as Nayab Mamletdar and Executive Magistrate at Limkheda;
- (xx) his signature below seizure memo dated 6.1.04 Ex, 348;
- (xxi) registration of crime at C.R.No.59/02 at Limkheda Police Station;
- (xxii) transfer of investigation to the A/16-Babhor on 13.3.02 and lodging of final 'A' Summary report Ex.408 by the A/16-Babhor;
- (xxiii) his interrogation by PW 72-Sinha on 6.1.04; and
- (xxiv) his surrender before the Ahmedabad Court after lodging of the chargesheet;

30. The A/16-Ramsingh Babhor did not dispute the following facts:-

- (i) designations and posting of the police officials involved in the present case, including himself;
- (ii) recording of further statement of the prosecutrix at Godhra Police Station;
- (iii) that Singwad and Randhikpur is one and the same village with one police out-post on the way to Sanjeli;
- (iv) posting of PW 9-Dr.Rakeshkumar Mahato at the Community Health Centre at Limkheda;
- (v) situation of the house of PW 11-Sumaliben Patel near hand-pump;

- (vi) burial of the 7 dead bodies - 4 females, 2 boys and 1 girl from Muslim community at Kotar on the outskirts of village Kesharpur on 5.3.02 by PW 13-Mukeshbhai Harijan;
- (vii) procurement of the panchas at Sarkotar for inquest panchnama on 5.3.02;
- (viii) identification of the dead body of one lady as Halima by one Muslim person Abdul Sattar on 5.5.02;
- (ix) making of panchnama dated 5.3.02 Ex.124 regarding the observations made at the spot;
- (x) collection of samples from Godhra Civil Hospital and sending them to FSL, Baroda;
- (xi) that PW 18-Smt.Jayanti Ravi was the District Magistrate and Collector of District Panch-Mahal, Gujarat;
- (xii) that PW 22-Chandubhai Patel was the Nayab Mamletdar of Limkheda, Dist. Dahod;
- (xiii) occurrence of Godhra train burning incident on 27.2.02;
- (xiv) that Halima was wife of PW 24-Abdul Issa Ghanchi;
- (xv) situation of Kesharpur jungle near river Hadap;
- (xvi) residence of PW 33-Bijalbhai Damor, Ex-MLA from Randhikpur at village Chundadi, Taluka Limkheda, Dist. Dahod;
- (xvii) his visit to village Chundadi on orders of DSP, Dahod;
- (xviii) designations and postings of PW 34-Amritsingh Laxmansingh Khant, PW 35-Ranjeetsingh Patel, PW 36-Abhesingh Narsingh Patel, PW 38-Arjunsingh Patelia, PW 50-Ganpatsingh and PHC Mangalsingh;
- (xix) writing of inquest panchnama Ex.123 by PW 34-Amritsingh Khant at the instance of the A/13-Narpatsingh, A/14-Sayyed and himself and the panchnama Ex.123 bearing the signatures of the A/13-Narpatsingh, A/14- Sayyed and the panchas;
- (xx) bringing of the Medical Officers - the A/19- Dr. Arunkumar Prasad and A/20-Dr. Sangeeta Prasad from Dudhia to the spot on 5.3.02 for conducting post mortem examination of the dead bodies;
- (xxi) visit of SDM, Devgad-Baria and Dy. Mamletdar Mr. C. B. Patel to the spot around 3 p.m. on 5.3.02;

- (xxii) preparation of Yadi dated 5.3.02 Ex.200 by PW 34-Amritsingh Khant at the instance of the A/13-Narpatsingh and A14-Sayyed;
- (xxiii) making of station diary entry dated 5.3.02 Ex.204;
- (xxiv) seizure of the clothes found on the corpses found lying in Panivela-Kesharpur jungle, collection of soil samples on 5.3.02 and handing over of the said articles to PSO Jaisingh of Limkheda Police Station under panchnama Ex.205 on 5.3.02, and lodging of the said articles in sealed condition in Malakhana as per Muddemal Receipt Ex.206 prepared by Jorawarsingh on 5.3.02;
- (xxv) looting and burning of the properties and exodus of Hindus and Muslims from Randhikpur on 28.2.02;
- (xxvi) the A/14-Sayyed of Fatehpura Police Stn. joining Randhikpur Police Out-post after the noon on 28.2.02;
- (xxvii) situation of Community Health Centre next to Limkheda Police Station;
- (xxviii) he and PW 38-Arjunsingh Patelia being on patrolling duty in the vicinity of Randhikpur Police Station including Kesharpur on 4.3.02 and returning to village Randhikpur around 6 p.m. on the same day and they again leaving Randhikpur at about 9 a.m. on 5.3.02 for patrolling in the police vehicle bearing registration No. GJ-17-G-229, and visiting Kesharpur and returning to village Randhikpur in the evening;
- (xxix) that logbook Art.44 bearing entries Exs.217 & 218 colly. recording movement of the said vehicle were made by him as CPI, Limkheda;
- (xxx) sending of the case registered as C. R. No. 00/00 u/s 376, 114 of I. P. C. by Godhra Town Police Station at the instance of the prosecutrix to Limkheda Police Station for further action;
- (xxxi) PW 44-Shehlaben Nayak working as Nayab Mamletdar and Executive Magistrate at Limkheda and she handing over the requisition Ex. 244 bearing endorsement "Uparokta karavai karva vinanti" to the policeman from Limkheda Police Station for returning it to Limkheda Police Station for further action;
- (xxxii) correctness of entries Exs.217 and 218 in the motor logbook;
- (xxxiii) making of the entry dated 22.3.02 Ex. 263 in the Register Art.49 by PW 50-Ganpatsingh Khant for recording receipt of the letter dated 19.3.02 in the office of CPI, Limkheda from SP, Dahod and passing on of this letter to him as CPI, Limkheda;

- (xxxiv) PSI Mangalsingh and PC Amritsingh working as Writers in the office of CPI, Limkheda under him;
- (xxxv) he carrying out investigation prior to the A/18-Bhagora, Dy. SP, and PW 52-Kalubhai Vohania, PI, CID, Gujarat State taking over investigation in the present case from the A/18-Bhagora;
- (xxxvi) receipt of xerox copy of the statement of the prosecutrix dated 6.3.02 recorded by the Executive Magistrate PW 33-Govindbhai Pate1 in the papers of investigation by PW 52-Kalubhai Vohania from the A/18-Bhagora;
- (xxxvii) registration of crime at C. R. No. 59/02 and recommendation of 'A' summary by Limkheda Police Station vide letter dated 17.1.03 to Dy. SP, Limkheda Division annexed to the final report Ex.408;
- (xxxviii) transfer of investigation of the A/13-Narpatsingh to the A/15-Bhikhachand Pate1 on 6.3.02 and thereafter to him on 13.3.02 and lodging of final report Ex.408 by him;
- (xxxix) he surrendering before the Ahmedabad Court after lodging of the chargesheet.
- (xl) receipt of sealed articles by FSL, Vadodara under letter dated 10.4.02 from CPI, Limkheda on 11.4.02;
- (xxxxi) receipt of report dated 24.4.02 Ex.239 of FSL, Vadodara by CPI, Limkheda;
- (xxxxii) receipt of 4 sealed articles by FSL, Vadodara under letter dated 15.4.02 from CPI Limkheda on 15.4.02;
- (xxxxiii) sending of letter dated 15.4.02 Ex.235 to FSL, Vadodara by CPI, Limkheda;
- (xxxxiv) sending of dispatch note Ex. 236 to FSL, Vadodara by CPI, Limkheda;
- (xxxxv) certificate Ex.236 issued by Dy. SP, Limkheda authorising the District FSL, Vadodara for examination of muddemal articles;
- (i) letter of request dated 10.4.02 Ex.233 sent to DFSL, Vadodara by CPI, Limkheda;
- (ii) sending of despatch note Ex. 233 to DFSL, Vadodara from Limkheda Police Station; and
- (iii) sending of certificate dated 10.4.02 Ex.233 to Director, DFSL, Vadodara by Dy. SP, Limkheda.
31. The A/17-Somabhai Gori did not dispute the following facts:-

- (i) the recording of the statement of the prosecutrix (Ex.56) at Limkheda Police Station on 4.3.02;
- (ii) that Singwad and Limkheda is one and the same village having a police outpost on the way to Sanjeli;
- (iii) arrival of the prosecutrix at Limkheda Police Station on 4.3.02;
- (iv) posting of PW 9-Dr.Mahato at Community Health Centre, Limkheda situate near Limkheda Police Station;
- (v) he preparing a Yadi dated 4.3.2002 and sending the prosecutrix to CHC, Limkheda with one lady constable;
- (vi) that PW 18-Jayanti Ravi was the District Magistrate & Collector of District Panchmahal, Gujarat;
- (vii) that PW 22-Chandubhai Pate1 was Nayab Mamletdar, Tahsil Limkheda, Dist. Dahod;
- (viii) occurrence of Godhra Train incident on 27.3.02 and declaration of Gujarat Bandh on 28.2.02;
- (ix) bringing of the prosecutrix to Limkheda Police Station by Commandant Vanraj; designations and posting of PW 34-Amritsinh Khant, PW 35-Ranjeetsingh Patel, PW 36-Abhesingh Patel, PW 37-Jorawarsingh Rathwa, PW 38-Arjunsingh Patelia; PW 40-Phulabhai Khat; AS1 Mangalsingh, PC Amritsingh, PW 48-Rameshbhai Bhabhor, PW 50-Ganpatsingh Khant, Constable and PW 51-Virendra Rawal;
- (xi) designations and postings of police officials including himself involved in the present case;
- (xiii) overnight stay of the prosecutrix in the Limkheda police station;
- (xiv) looting and burning of the properties and exodus of Hindus and Muslims from village Randhikpur on 28.2.02;
- (xv) maintenance of logbooks regarding movement of the Government vehicles;
- (xvi) sending of the case registered at C. R. No. 00/ 2002 u/s 376, 114 I.P.C. at the instance of the prosecutrix at Godhra Town Police Station to Limkheda Police Station for further action;
- (xvii) PW 44-Sheelaben Nayak working as Nayab Mamletdar and Executive Magistrate at Limkheda and he sending Yadi dated 4.3.02 (Ex. 244) to the Executive

Magistrate, Limkheda for inquest; and receipt of the Yadi by Mr. Jatava at about 11.30 a.m. on 5.3.02;

(xviii) that requisition Ex. 224 bearing endorsement "Uparokta Karvai Karva Vinanti" made by PW 44-Sheelaben Nayak was handed over to a policeman from Limkheda Police Station for returning to Limkheda Police Station for further action;

(xix) that entry regarding registration of the crime in the present case was not promptly made in the station diary Art.69; and

(xx) he surrendering before Ahmedabad Court after lodging of the chargesheet.

32. According to the A/17-Somabhai Gori, he had faithfully recorded the statement of the prosecutrix as per her narration and had read over such statement to the prosecutrix and got her approval. He further explained that the registration of the crime at C. R. No. 59/02 vide FIR Ex.56 was not recorded in the station diary Art.69 on account of over-loading of the work. He claimed to be innocent.

33. The A/18-R.S.Bhagora @ Ramabhai Bhagora did not dispute the following facts:-

(i) that the Singwad and Randhikpur is the one and the same village having a police Out- Post on the way to Sanjeli;

(ii) that PW 9-Dr. Mahato was posted at Community Health Centre at Limkheda situate next to Limkheda Police Station;

(iii) that PW 18-Jayanti Ravi was the District Magistrate and Collector, District Panchmahal, Gujarat;

(iv) that PW 22-Chandubai Patel was the Nayab Tahsildar of Limkheda, Dist. Dahod;

(v) that Mr. Parekh, SDM, accompanied by PW 22- Chandubhai Patel and Mr. Pandya, visited village Dudhia on 5.3.02 and found the A/15-Bhikhachand Patel, PSI, Limkheda P. Stn. with other policemen at that place, and the A/15-Patel took them to the place of firing situate in the middle of village Dudhia and they found one injured lady crying and groaning with pain near dead body of one male person at the place of firing, and thereafter Mr. Parekh, SDM, telephonically called an ambulance from Limkheda and within 30 to 35 minutes thereafter the ambulance came to the spot and removed the said lady to Limkheda Hospital;

(vi) that Godhra Train Burning Incident occurred on 27.2.02 and Gujarat Bandh was declared thereafter;

- (vii) that he recorded statement of PW 23-Govdindbhai, Mamletdar & Executive Magistrate, Godhra, by showing Xerox copy of the statement of the prosecutrix dated 6.3.02;
- (viii) that Kesharpur Jungle was near river Hadap;
- (ix) that P& 33-Bijalbhai Damor, Ex MLA from Randhikpur, was staying at Chundadi, Taluka Limkheda, Dist. Dahod;
- (x) designations and postings of the police officials including himself involved in the present case;
- (xi) designations and postings of PW 34-Amritsinh Khant, PW 35-Ranjeetsingh Patel, PW 36- Abhesingh Patel, PW 37-Jorawarsingh Rathwa, PW 38-Arjunsingh Patelia; PW 40-Phulabhai Khat; ASI Mangalsingh, PC Amritsingh, PW 48-Rameshbhai Bhabhor, PW 50-Ganpatsingh Khant, Constable and PW 51-Virendra Rawal;
- (xii) that the properties at village Randhikpur were looted and burnt; and there was exodus of Hindus and Muslims from village Randhikpur on 28.2.02;
- (xiii) that the A/14-Saiyed, from Fatehpura Police the noon on 28.2.02;
- (xiv) that movements of the Government vehicles were recorded in the respective logbook maintained therefore;
- (xv) usual procedure adopted in making the entries dated 28.2.02 (Ex.219) and 9.3.02 (Ex.220) in the Register Art.44 and issuing certificate regarding the standard economic mileage;
- (xvi) that he was patrolling at the outskirts of Limkheda with PW 40-Phulabhai Khat, Driver Head Constable on wheel, and PW 39-Ratilal Bhabhor, Police Constable, and had visited Bandibar on 4.3.02;
- (xvii) that motor logbook Art, 45 was maintained in ordinary course of the business in respect of Gypsy vehicle bearing registration No. GJ- 20-G-24P4 and he moved in the said vehicle, with PW 40-Phulabhai Khat as his driver on 4.3.02 and 5.3.02 as per the entries dated 4.3.02 (Ex.223) and 5.3.02 (Ex.224) in the logbook Art.45;
- (xviii) that PW 52-Kalubhai Vohania, PI, CID, Gujarat took over investigation from him and the A/16-Bhabhor had conducted investigation prior to him;
- (xix) that PW 52-Vohania had received the Xerox copy of the statement of the prosecutrix dated 6.3.02 recorded by the Executive Magistrate, PW 23-Patel, in the papers of investigation handed over by him;

- (xx) that crime in the case was registered at C. R. No.59/02 at Limkheda Police Station and following the recommendation vide letter dated 17.1.03 of Dy. SP, Limkheda Division, Dist. Dahod, annexed to the final report Ex. 408, 'A' Summary Report was filed in the said case;
- (xxi) that PW 52-Vohania, PI, CID, Gujarat, handled investigation in the present case;
- (xxii) that following the 'A' Summary Report, the JMFC, Limkheda ordered:" 'A' Summary granted on condition to continue the investigation . All papers of investigation may be returned to the police station”;
- (xxiii) that he surrendered before the Ahmedabad Court after lodging of the chargesheet;
- (xxiv) signing of authority letter to DFSL, Vadodara Gujarat; and
- (xxv) sending of despatch note Ex.236 and certificate Ex. 233 to DFSL, Vadodara.

The A/18-Bhagora further disclosed that his action to rescue Muslims had earned him appreciation of his superiors and he has been falsely implicated in the present case as he refused to give desired statement to the CBI. He produced a certified copy of the weekly diary dated 5.3.02 and 9 Reward letters dated 20.6.02 issued by the SP, Dahod in his favour with list Ex. 479

34. The A/19-Dr.Arun Kumar Prasad did not dispute the following facts:-

- (i) that 7 corpses - 4 females, 2 boys and 1 girl were found in Pannivela-Kersharpur jungle; and post mortem - examination was conducted on the said corpses on 5.3.02 by them at the instance of the police; and Yadi Ex. 200 was received by him on 5.3.02 at about 12.10 p.m.; and he had mentioned the descriptions of the articles found on the corpses;
- (ii) that he surrendered before the Ahmedabad Court after lodging of the Chargesheet;
- (iii) that post mortem reports Exs.282A to 282G recording the facts were prepared by him on 5.3.02;
- (iv) his appointment and the posting; and that the Department of Health and Family Welfare, Government of Gujarat was the authority entitled to remove him from service; and that in case of rape the Medical Officer is expected to take certain biological samples such as blood, hair, pubic hair, fingernail clippings and genital swab of the victim apart from clothings and swab taken from those areas where there are suspicious stains.

35 The A/20-Dr.Sangeeta Prasad did not dispute the facts not disputed by the A/19-Dr. Arunkumar Prasad except one fact regarding identification of a corpse by one Abdul Sattar as Alimaben.

36 The A/19-Arunkumar Prasad and A/20-Dr. Sangeeta Prasad explained that due to decomposition of the bodies they had not collected the biological samples as was expected of them otherwise.

37 Record of the examination of the accused under Section 313 of Cr. P. C. finds place at Exs.457 to 475.

38 The defence examined DW 1-Budhsingh Mathurbhai Patel, Writer Constable, Limkheda P. Stn., at Ex. 481; DW 2-Vanraj Raibhansingh Dhingra, Home Guard Commandant, at Ex.489; DW 3-Dr.Geetaben Pisagar, Gynaecologist, Godhra Civil Hospital, at Ex. 494; DW 4-Mansingbhai Kishori, ASI, Fatehpura, Police Station, at Ex.499; DW 5- Jaisinghbhai Hirabhai Patel, Head Constable, at Ex. 502; W 6-Chandubhai A. Tariyad, Constable, at Ex. 504; W 7-Ushaben S. Kishori, Constable, at Ex.506; DW 8-Dr. Amarjit Singh, Commissioner of Health, Medical Services & Medical Education (Health), Gujarat State, at Ex.507; DW 9-Ramnabhai Parmar, Clerk in the Office of Collector, Dahod, at Ex. 529; and DW 10-Shamjibhai Kanjibhai Kunjadia, P. A. to the Collector, Dahod, at Ex. 523. The following documents and articles were further adduced in evidence on behalf of the defence:-

Documents:

- Ex. 56A: Certified copy of the FIR dt.4.3.02.
- Ex. 446A: Letter dt.1.5.02 from DW 8-Dr.Amarjit Singh addressed to the Collector, Dahod.
- Ex. 446B: Handwritten note of DW 8-Amarjit Singh.
- Ex. 446C: O/c. of letter dt.1.5.02 addressed to Mr. Ashok Narayan, Addl. Chief Secretary, Home Department, Gandhinagar, by Commissioner of Health, Medical Services and Medical Education (Health), Gujarat.
- Ex. 500: Entry dt.28.2.02 in the Station Diary maintained at Fatehpura P. Stn. (Art.76).
- Ex. 503: Entry dated 4.3.02 in the Station Diary (Art.69) of Limkheda Police Station.
- Ex. 503A: True extract of Ex.503.

Articles:

- Art. 75: Logbook of Vehicle No.GJ-17-G-5064.
- Art. 76: Station Diary.

Art. 77: One file.

Art. 78: One File.

39. To counter the defence version, the prosecution called for the FIR Book Art.74. The prosecution brought on record entries in the FIR Book Art .74, namely, entries pertaining C. R. Nos.58/2002, 0/2002, 59/2002 (Exs. 485A, 485B and 56C, respectively). The prosecution further brought on record entry at Sr. No. 9 dt.4.3.02 (Ex. 486) from the station diary Art. 69 in the course of the cross-examination of DW 2-Vanrajsingh Dhingra.

40 The prosecution moved an application Ex.490 urging the Court to cross-examine DW 2-Vanraj Singh Dhingra upon invoking Section 165 of the Evidence Act and Section 311 of Cr. P. C. This application was resisted and the defence urged for the finding on the issue of hearsay evidence raised by the prosecution in the examination-in-chief of DW 2-Dhingra simultaneously with the question of the Propriety to cross-examine the witness. The parties were heard and the issues raised were decided on their merits. Before the, cross-examination of DW 2- Vanrajsingh by the prosecution, the defence was Permitted continue with his examination in reference to a solitary question as per the order passed below application Ex. 498. Thereafter, DW 2- Vanrajsingh was contradicted vis-à-vis statement made before the CPI, Limkheda and PI, CID (Crime), Godhra as per the order passed below the application Ex. 490.

41. Ultimately the defence closed its evidence on 1.8.2007 after recording of the evidence of DW 8-Dr. Amarjit Singh vide closure Purshis Ex. 508.

42. PW 52-Kalubhai Vohania, PI, CID (Crime), Gujarat, and PW 66-R.M.Khan, PI, CBI, SCB, were recalled for proving the previous statements made by DW 2-Vanrajsingh Dhingra as per order below Ex. 509 moved by the prosecution.

43 The defence moved an application for summoning few more witnesses vide application Ex. 510. On considering its merits, the application was rejected vide order dated 3.9.07. This paved way for commencing of the arguments of the rival parties. However, following the order of the Hon'ble High Court in Writ Petition No. 1818/07, filed by the defence challenging the order dated 3.9.07, DW 9-Ramanbhai Parmar and DW 10-Shamjibhai Kunjadia were examined by the defence.

44. Ld. SPP Mr. Shah, for the submitted that the prosecution evidence appreciated in reference to the context with the following admitted facts:-

- (i) That there were large scale riots in Gujarat, particularly, District Dahod and District Panchmahal, Godhra after Godhra Train burning incident dated. 27.2.02; and Gujarat Bandh call was given by VHP and Bajrang Dal on 28.2.02;
- (ii) there were exodus of Muslims from the towns and villages in riot affected areas;

- (iii) the All-Jaswantbhai Nai to A/12-Ramesh Chandana were the residents of Randhikpur known to the witnesses, namely, the prosecutrix and PW 8-Saddam.
- (iv) breaking out of riots and arson at village Randhikpur on 28.2.02;
- (v) the prosecutrix reaching Limkheda police station around 10 a.m. on 4.3.02;
- (vi) the A/17-Sornabhai Gori while working as Head Constable at Limkheda Police Station recorded the tainted complaint/FIR Ex.56 at about 10.45 a.m. on 4.3.02.
- (vii) Yadi Ex.203 addressed to CHC, Limkheda and Yadi Ex.244 for inquest written on 4.3.02;
- (vii) inquest on 7 dead bodies held on 5.3.02;
- (viii) designations and postings of the police officials involved in the case, namely, the A/13-Narpatsingh Patel; the A/14 Idris Saiyed, the A/15-Bhikabhai Patel, the A/16-Ramsingh Bhabhor, the A/17-Somabhai Gori and the A/18-R.S.Bhagora;
- (x) inquest panchnama Ex.123 bearing signatures of the A/13-Narpatsingh and A/14-Idris Saiyed;
- (xi) post mortem examination conducted on the said 7 dead bodies at the spot on 5.3.02 by the A/19-Dr.Arunkumar Prasad and A/20- Dr. Sangeeta Prasad;
- (xii) the dead bodies remaining unidentified except that of Halima;
- (xiii) burial of the dead bodies in a pit on 5.3.02;
- (xiv) white coloured jeep Art.2 standing in the name of wife of the A/12-Ramesh Chandana;
- (xv) sending of 'A' summary report by the A/18- Bhogra, Dy. SP, and its recommendation by the A/16-Ramsingh Bhagora, CPI, Limkheda.

45. According to Ld. SPP Mr. Shah, for the prosecution, every effort was made by the investigating machinery in the State of Gujarat to twist the facts in order to deny justice to the prosecutrix. He, therefore, urged the Court to eschew the so called contradictions and omissions in the evidence of the prosecutrix and PW 8-Saddam and to wholeheartedly believe them, particularly, for the reason that the prosecutrix had revealed the names of the offenders promptly before the District Magistrate and Collector, Dahod, and her medical examination conducted at Godhra Civil Hospital thereafter showed the presence of sexual violence. He urged the Court to find corroboration to the testimony of the prosecution through the evidence of PW 3-Sugra, PW 5-Sharifa, PW 6-Zaitoonbibi, PW 7-Madina, PW 8-Saddam, PW 9-Dr. Mahto, PW 11-Sumaliben, PW 12-Madhusudan Prajapati, PW 17- Dr. Rohini Katti, PW 18-Jayanti Ravi, PW 19-Phiroz Ghanchi, PW 20-

Nanjibhai Nayak, PW 21-Chandubhai Patel, PW 27-Natwarbhai Bamaniam, PW 33-Bijalbhai Damor and PW 54-Prafullachandra Sevak.

46 According to Ld. SPP Mr. Shah, the defence put up by the accused was mainly of denial of the prosecution case based on the contentions that the crime had taken place in the ravine Sarkotar and not on the Kachcha road; the prosecutrix though having witnessed the incident was giving tutored facts at the instance of Muslim leaders and social activists, namely Maulana Umerji and Ferhan Naqvi; and the A/14-Saiyed was not at Randhikpur around 1 p. m. on 28.2.02. In this connection, Ld. SPP Mr. Shah submitted that the defence resorted to the inferential logic to suggest that the place of offence was Sarkotar and not by any direct evidence. As against this, he argued, there exists direct evidence of the prosecutrix and PW 8-Saddam regarding the place of offence. He urged the Court to look to the bold fact of the absence of the dead body of Saleha, which could be seen in one of the photographs taken prior in time to the holding of the inquest panchnama Ex. 123, from the place of inquest and consequentially in the inquest panchnama Ex.123. Likewise, he argued, the presence of lady panch Ramtiben, a fictitious person at the time of inquest panchnama Ex.123, was a doubtful proposition. Considering these facts and the expert's opinion as well, as the evidence of the prosecutrix, PW 19-Phiroz, and PW 7-Madina, he submitted, the inquest panchnama is a false document prepared in order to screen the offenders from punishment. He further pointed out that there was gross failure on the part of the Medical Officers - the A/19-Dr.Arunkumar Prasad and A/20-Dr. Sangeeta Prasad - in discharge of their duties as a result of non-collection of biological samples from the dead bodies buried on 5.3.02.

47. As regards the photographs of the dead bodies procured during investigation from the papers of the investigation handled by the Gujarat Police as well as the Xerox copy of the statement dated 6.3.2002 (Ex.277) recorded by the Executive Magistrate PW 23-Patel, SPP Mr. Shah argued that the attending circumstances and the result of the scientific investigation done in that regard unerringly point to the facts showing the legitimate existence of the said documents, namely, the photographs and the said statement. To supplement his arguments that the documents like any other fact may be proved by direct or circumstantial evidence, he cited the judgments reported in (S) A. I. R. 1957 S. C. 857 (Mobarik Ali Ahmed v. The State of Bombay) and 1972 CRI. L. J. 1226 (In re Rayappa Asari, Accused-appellant).

48. He assailed the evidence of the defence witnesses with contention that in a passion to support the police officials the said witnesses had departed from undeniable facts figuring through the record. He urged the Court to have a guarded approach in appreciating their evidence. Expressing surprise at the tact of gathering knowledge with DW 3-Dr-Gitaben Pisagar about fact of the prosecutrix giving birth to a living child after the incident in question, he commented that the evidence of DW 3-Dr. Geetaben Pisagar was inspired one and deliberately given to assist the defence.

49. Ld. SPP Mr. Shah, for the CBI, pointed out from the observations made by the Hon'ble Supreme Court of India in the order dated 25.9.2003 in Cri. M. P. 8850/2003 in Writ petition (Cri) No. 118/2003 how the State CID and other parties from the State of

Gujarat were disposed towards the cause of the prosecutrix. He, therefore, urged the Court to exclude from the consideration of such facts clearly denied by the prosecutrix.

50. Ld. SPP Mr. Shah urged the Court to consider the evidence in light of the following judicial precedents:-

	Name of Citation	Names of the parties
1.	AIR 1956 SC 181	Baladin & ors. v. State of Uttar Pradesh
2.	(S) AIR 1956 SC 404	(Shambhu Nath Mehra v. The State of Ajmer.
3.	1967 CRI. L.J. 414	Shrichand K. Khetwani v. State of Maharashtra
4.	1973 CRI. L. J. 1783	Shivaji Sahebrao Bobade & anr. V. State of Mah.
5.	1977 CRI. L. J. 1941	Piara Singh & ors. vs. State of Punjab
6.	1979 CRI. L. J. 917	Pal Singh & ors. vs. State of U. P.
7.	1980 CRI. L. J. 1382	Gorakh Daji Ghadge v. State of Maharashtra
8.	1983 CRI. L. J. 1096	Bharwada Bhogibhai Hirjibhai v. State of Gujarat
9.	1984 CRI. L. J. 4	State of Mah. v. Narsinghrao Gangaram Pimple
10.	1989 CRI. L. J. 288	State of U.P. v. Krishna Gopal & anr.
11.	1989 CRI. L. J. 1479	Pramod Mahto & ors. vs. State of Bihar
12.	(1991) 3 SCC 471	Sevaka Perumal & anr. v. State of Tamil Nadu
13.	1993 CRI. L. J. 2605	Baby Kandaya Nathil v. State of Kerala
14.	(1994) 4 SCC 29	State of U.P. v. Babul Nath.
15.	(1994) 5 SCC 728	Narayanamma (Kum.) v. State of Karnataka & anr.
16.	1995 Supp (1) SCC 80	Suresh Chandra Bahri v. State of Bihar
17.	(1996) 2 SCC 704	O. Bharathan v. K. Sudhakaran & anr.
18.	1996 CRI. L. J. 2441	Ram Kumar vs. State of Haryana
19.	1997 (2) CRIMES 228	State of Maharashtra v. Joseph Mingel Koli & ors
20.	(1997) 9 SCC 338	Balaram Prasad Agrawal v. State of Bihar & ors.
21.	(1997) 5 SCC 341	Dattu Ramrao Sakhare v & ors. v. State of Mah.
22.	(1997) 7 SCC 677	Madan Lal vs. State of J.& K.
23.	1997 CRI. L. J. 774	State of Andhra Pradesh v. Gangula Sathya Murthi
24.	1998 (1) Guj. L. R.734	State of Gujarat v. Vikramji Ajuji Thakor
25.	1999 CRI. L. J. 4561	Rammi @ Rameshwar vs. State of Madhya Pradesh
26.	2002 CRI.L.J. 3939	Hardip vs. State of Haryana
27.	AIR 2003 SC 539	Ynis @ Kariya vs. State of Madhya Pradesh
28.	2003 CRI. L. J. 3892	State of Punjab v. Kamail Singh
29.	(2004) 8 CCC 153	State of Himachal Pradesh v. Shree Kant Shekari
30.	2004 CRI. L. J. 646	Bhargavan & ors. vs. State of Kerala
31.	2004 CRI. L. J. 1399	Aman Kumar & anr. vs. State of Haryana
32.	2004 CRI. L. J. 3118	State of U.P. vs. Devendra Singh
33.	2004(1) Gujarat L. R.761	Bhupinder Sharma v. State of Haryana
34.	2004 CRI. L. J. 4826	Jay Shree Yadav vs. State of Uttar Pradesh
35.	2006 CRI.L. J. 2913	Om Prakash v. State of Uttar Pradesh
36.	(2007) 2 SCC (Cri) 472	State of Mah. Siraj Ahmed Nisar Ahmed & ors.
37.	(2007) 2 SCC (Cri) 610	Venkat Gowda & ors. v. State of Karnataka
38.	(2007) 2 SCC (Cri) 626	Ramji Rai & ors. vs.-State of Bihar

39.	(2007) 2 SCC (Cri) 637	Suman Sood @ Kamaljit Kaur v. State of Rajasthan
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51. Ld. SPP Mr. Shah, for the CBI, submitted that on application of the standards laid down for the appreciation of evidence through the judicial precedents to the evidence in the present case, particularly of the rustic rape victim – the prosecutrix – and the child witness- PW 8-Saddam – coming from similar background, it would not be difficult for the Court to reach to the conclusion that accused are guilty persons on all counts.

52. Ld. Advocate Mr. Ponda, for the Accd. No.1, submitted that before recording finding on the nature of the FIR Ex.56, it is essential to give thought to the issue of alleged falsification of the inquest panchnama Ex.123 and scene of offence panchnama Ex.124. He pointed out from the evidence that PW 13-Harijan was not concerned with the inquest panchnama Ex.123 or the scene of offence panchnama Ex.124; and PW 15 Ramsingh Baria and PW 73-Somabhai Chauhan, panchas to the inquest panchnama Ex.123, spoke about the presence of lady panch Ramtiben as well as of one Muslim person; and therefore, he argued, the facts disclosed by PW 15-Ramsingh Baria and PW 73- Somabhai Chauhan are required to be believed. He further submitted that PW 22- Chandubhai Patel also spoke about presence of the dead bodies at the place of inquest; and the facts recorded in the inquest panchnama Ex.123 were supported by PW 34- Amritsingh Laxmansingh Khant and PW 35-Ranjeetsingh Mathurbhai patel. He further pointed out from the evidence of PW 55-Mrs.Kampaben Chauhan and PW 70- Rupesh Wankhede that inquiry about Ramtiben wife of Dheersingh, as mentioned in the inquest panchnama Ex.123, was not made by the CBI, and therefore the finding that Ramtiben was a fictitious person was of no consequence.

53. As regards the presence of one Abdul Sattar at the time of inquest panchnama Ex. 123, Ld. Advocate Mr. Ponda submitted that the fact of identification of the corpses by Abdul Sattar was not disputed by the prosecution and at the same time the names of the prosecutrix, PW 7-Madina, PW 19-Phiroz, figured in the list of refugees (Ex. 440 colly.) for the first time on 6.3.02 thereby ruling out the fact that the prosecutrix and others were at Godhra Relief Camp on 5.3.02. These facts, according to Ld. Advocate Mr. Ponda, for the A/1- Jaswantbhai Nai, show the presence of Abdul Sattar at the time of inquest panchnama Ex.123 recorded on 5.3.02. In his view, the photographs of the dead bodies suggest that the police never wanted to suppress the identity of the corpses and there was no need for them to exclude from the inquest panchnama the dead body of Saleha, which probably could have been washed away from the place of offence. In this view of the matter, he submitted that the Charge No.27 of framing the inquest panchnama or the record with intent to save the culprits must fail.

54. Ld. Advocate Mr. Ponda further submitted that appreciation of Yadis for holding medical examination of the prosecutrix as well as the inquest panchnama showed the innocence of the accused police officials in the crime, particularly as regards the charges of willful disobedience of the directions of law for saving the culprits.

55. As regards the charges of murders of Yusuf, Mumtaz Musa, Madina Ghanchi, Majid Patel, Mumtaz Ghanchi, a new born child of Shamim, he submitted that the

absence of their bodies coupled with the conflicting versions of the witnesses, particularly the prosecutrix's silence of having seen their dead bodies, rule out the possibility of them being killed. As regards the charges of gang rape of Amina Patel, Halima Ghanchi, Sugra @ Akka Yusuf Musal Patel and Shamim Musa Patel, he submitted that there was nothing specific in the testimonies of the prosecutrix and PW 8-Saddam except the allegation of tearing of the clothes to show that any one of the accused had committed rape. He further submitted that there was no medical or scientific evidence to establish fact of such gang rape or link between the accused and the clothes of the victims.

56. Ld. Advocate Mr. Ponda further submitted that the FIR Ex. 56 made a reference to 'Kotar' and such other facts which could not have imagined by the person recording it i.e. -the A/17-Somabhai Gori. On the other hand, he argued, the prosecutrix did not say that (i) scene of offence described in the FIR Ex.56 was incorrect; (ii) PW 8-Saddam was in the group of persons at the material time; (iii) Shamim gave birth to a female child; and (iv) they visited Khundra.

57. Ld. Advocate Mr. Ponda, for the accused No.1-Jaswantbhai Nai, further invited the attention of the Court to the defence witnesses, namely, DW 1-Budhsingh Mathurbhai Patel, DW 5- Jaisingh Hirabhai Patel, and DW 6-Chandubhai Tariad, in order to build up an argument that the FIR Ex.56 was properly recorded as per the narration of the prosecutrix and a copy thereof bearing thumb impression of the prosecutrix was duly sent to the Magistrate as per the provision of law. He further submitted that it was not the case of the prosecution that the FIR Ex.56 was not recorded at the time mentioned in it and was recorded sometime after recording of the complaint at C. R. No.0/2002 Ex. 485B. He explained with the aid of the evidence of DW 5-Jaisinghbhai Patel that two pages in the FIR Book occupying the entry Ex.485B were left blank on instructions of the A/15-Bhikachand Pate and the FIR EX.56C in the handwriting of the A/17- Somabhai Gori was recorded.

58. According to Ld. Advocate Mr. Ponda, PW 7- Madina and PW 19-Phiroz are got up witnesses who had introduced the theory of administration of mortal threats to the prosecutrix. Nowhere, he argued, the prosecutrix had made a complaint about administration of such mortal threats to her and recording of a false complaint vide FIR Ex.56 prior to she giving statement before the CBI. He, therefore, urged the Court to reject the theory of the prosecution that the FIR Ex.56 is a tailored document. Ld. Advocate Mr. Ponda further pointed out that PW 19-Phiroz was not in position to give the number of injuries on the person of the prosecutrix and he made improvements regarding injuries on the person of the prosecutrix as well as her hair. In his view, the story of having suffered injuries on the head and hand as recorded in the FIR Ex.56 on the narration of the prosecutrix was corroborated both by PW 19-Phiroz Ghanchi and PW 9-Dr. Mahato. According to him, registration of the crime at C. R. No. 00/2002 (Ex. 485B) in the present case was merely a procedural lapse incapable of any adverse interpretation as contended by the prosecution.

59. Ld. Advocate Mr. Ponda, for the A/ 1 - Jaswant Nai, pleaded that the evidence of the

prosecutrix ought to be treated as that of an ordinary witness, and the claim of the prosecutrix that she was not knowing Hindi or any language other than Gujarati deserves to be rejected, in view of the evidence of PW 8-Saddam, PW 23-Govindbhai Patel and PW 71-Dhanashree Karmarkar and from the contents of the affidavit Ex.62. He further argued that the prosecutrix was feigning ignorance about the knowledge of Hindi in order to escape from the fact of non-disclosure about the crime of rape to PW 9-Dr.Mahato. According to him, the prosecutrix was changing her stories and her evidence is replete with inconsistencies, improvements, contradictions as well as discrepancies going to the root of the matter. Equal blame was attributed by Ld. Adv. Mr. Ponda to the testimonies of the other witnesses examined by the prosecution to corroborate the prosecutrix. He therefore urged the Court to disbelieve their testimonies.

60. Ld. Advocate Mr. Ponda further argued that PW 20-Nanjibhai Nayak had invented the story of meeting the prosecutrix and her family members on the way to Kudra and giving of clothes to the prosecutrix and other family members accompanying her. He submitted that PW 20-Nayak was falsely deposing in the Court, at the instance of his master Mr. Suleman. He further pointed out that the alleged clothes and photographs of the deceased persons were not shown to PW 20-Nayak.

61. According to Ld. Advocate Mr. Ponda, the prosecution deliberately caused change of the place of offence upon discovery of the fact that the place of offence i.e. Sarkotar was not accessible to the vehicle. In his view, PW 56-Lt .Col. Abhijit Rudra had given a dishonest opinion regarding the place of offence. He further argued that the injuries detected on the person of the prosecutrix in the course of her medical examination at Godhra civil Hospital did not match with the version of the prosecutrix about the crime. He further argued that the prosecutrix had not disclosed the facts about the alleged crime before the persons she came across, namely, PW 9-Dr. Mahato, PW 11-Sumliben, DW 2-Vanraj, DW 7-Ushaben; and the concocted version of the crime first came from her mouth after she had been under the influence of Maulana Umarji at Godhra Relief Camp. He pointed out from the evidence of PW 17-Dr. Katti, PW 19-Phiroz and PW 23- Govindbhai Patel that the prosecutrix did make use of the word 'Balatkaar' and as such the version of PW 9-Dr. Mahato that the prosecutrix did state something in Gujarati and he could not follow it, is a false version.

62. According to Ld. Advocate Mr. Ponda, there was no story of rape on her figuring in the disclosures made by the prosecutrix till 5.3.02; and this fact find corroboration in the evidence of DW 3-Dr-Gitaben Pisagar, inasmuch DW 3-Dr.Gitaben Pisagar ruled out the theory of gang-rape on a pregnant lady like the prosecutrix by three persons, particularly when the prosecutrix showed no injuries on her private part and had given birth to a living child after the incident. He further argued that the prosecutrix had not attributed any specific act to the A/5-Radheshyam Shah to the A/12-Ramesh Chandana in the crime and had chosen to make a general statement about the alleged crime before the Executive Magistrate on 6.3.02. According to him, PW 18-Jayanti Ravi did not hear the facts from the mouth of the prosecutrix; and her evidence showed that two other ladies were dictating the facts.

63. Ld. Advocate Mr. Ponda further submitted that the facts surrounding the Fax message Ex.57 suggest that the accused could not have framed it, and the prosecutrix had owned the Fax message Ex.57 vide statements appearing in the affidavit dated 21.7.03 (Ex. 61) tendered before the Hon'ble Supreme Court of India. He pointed out from the Fax message ex. 57 that the prosecutrix had named different persons as rapists and had not attributed killing of Saleha to the A/4-Shailesh Bhatt.

64. Ld. Advocate Mr. Ponda further submitted that the evidence of DW 8-Dr.Amarjit Singh shows that the prosecutrix has changed her version particularly regarding the names of the offenders and such change indicated the fact of she being tutored to give a concocted version before the Court. According to him, such shifting stances were evident through the statements made before the Gujarat Police and Fax message Ex.57. He further argued that the presence of Farha Naqvi and other so-called social activists around the prosecutrix at the material time was an indicator of the fact that the prosecutrix was a tutored witness.

65. According to Ld. Advocate Mr. Ponda, the witnesses examined by the prosecution on the point of conspiracy were the kith and kin of the prosecutrix residing at Rahimabad Colony, and all of them in fact had cooked up the story of conspiracy and falsely named the accused Nos.1 to 12 as the persons amongst the rioters at village Randhikpur at one or the other time. He further argued that there was no evidence of the fact that the FIRS were lodged against the said accused for their alleged participation in the riots or of any injury to any one of them as a result of such alleged participation in the riots. He therefore urged the Court to dismiss the entire evidence as incredible. According to Ld. Advocate Mr. Ponda, the scientific investigation done by the DFSL, Vadodara, and the CFSL, New Delhi is also of no consequence, inasmuch as no connecting link is established between the accused and the alleged crime. He pointed out the contradictory findings of the pathological laboratory of the hospital and DFSL, Vadodara in respect of existence of spermatozoa swab and vaginal smear taken from the prosecutrix. He further pointed out that the unexplained alterations in respect of such findings in the report of DFSL, Vadodara provided basis for doubting such findings.

66. Ld. Advocate Mr. Jain and Mr. Gopal Singh Solanki, for the A/2-Govindbhai Nai and A/4- Shailesh Bhatt to A/2O-Dr.Sangeeta Prasad, joined Ld. Advocate Mr. Ponda, for the A/1-Jaswantbhai Nai, in assailing the prosecution case. According to them, the entire case was concocted by the elements influencing the prosecutrix, namely, Mukhtiyarbhai Maulavi Umerji, Farha Naqvi, Latifa, Sharifa and Umaben. They further submitted that the accused - police officials and the medical officers - were falsely roped in the present case on the charges of criminal conspiracy and destruction of evidence in order to cover the falsehood of the prosecutrix. They pointed out that the alleged offence had taken place in ravine and not on the kuchcha road as alleged by the prosecutrix; and the A/14-Idris Saiyed was not at Randhikpur around 1 p. m. on 28.2.02 as sought to be made out by the prosecution. According to them, the prosecutrix had not disclosed the alleged crime promptly despite she having several opportunities to do so; and the time lag between the date of the call and the date of recording statements provided time for deliberation and concoction of the case. Finding of the incriminating articles on the slope

of the hill on 28.1.02, they argued, is a doubtful proposition. According to them, the accused police officials were busy in rescue operations involving large population and some discrepancies in the record, therefore, cannot be interpreted as the indicators of criminal conspiracy. According to them, the CBI had manufactured the documents in support of the concocted case.

67. To sum up, in unison the defence urged the Court to disbelieve the prosecution evidence and give to the, accused the benefit of reasonable doubt.

68. The following judgments were cited by the defence in support of their submissions:-

- (1) AIR 1953 Supreme Court 415 (Mohinder Singh s/o Inder Singh v. The State);
- (2) AIR 1956 Supreme Court 460(Gurucharan Sigh & anr. v. State of Punjab);
- (3) AIR 1973 Supreme Court 2773 (Kali Ram vs. State of H. P.);
- (4) 1974 CRI. L. J. 335 (Ram Pukar Thakur & ors. vs. The State of Bihar);
- (5) AIR 1975 Supreme Court 1925 (Kodali Puranchandra Rao & anr. vs. The Public Prosecutor Andhra Pradesh);
- (6) AIR 1975 Supreme Court 1962 (Balaka Singh vs. State of Punjab);
- (7) AIR 1976 Supreme court 975 (Bhagirath vs. State of M. P.);
- (8) 1976 CRI. L. J. 496 (Supreme Court) (Badri vs. State of Rajasthan);
- (9) 1976 CRI. L. J. 1985 (Supreme Court) (State of Orissa vs. Mr. Brahmananda Nanda);
- (10) 1979 CRI. L. J. 51 (Supreme Court) (Ganesh Bhavan Patel & anr. v. State of Maharashtra);
- (11) 1982 (3) Bombay Cases Reporter 187 (Hiraman Dhondu Bawane v. State of Maharashtra);
- (12) 1982 CRI. L. J. 1087 (Baldev Singh & ors. vs. The State);
- (13) 1985 CRI. L. J. 580 (Orissa High Court) (Bengali & ors. v. State of Orissa);
- (14) AIR 1989 Supreme Court 1762 (Shivaji Dhanu Patil v. State of Maharashtra);
- (15) 1992 CRI. L. J. 3397 (Dulichand v. State of Rajasthan);

- (16) 1993 DGLS 44 = 1994 AIR (SC) 1072 (Gurdial Singh v. State of Punjab);
- (17) 1995-SCC-Supp3-656 = 1995-JT-6-222 (Namwar Dubey vs. State of Uttar Pradesh);
- (18) 1996 CRI. L. J. 3147 (Ashraf Hussain Shah v. State of Maharashtra);
- (19) 1996 CRI. L. J. 3842 (Supreme Court) (Alil Mollah & anr. v. State of W.B.);
- (20) (2000) 8 SCC 606 (Centre For Public Interest Litigation and another vs. Union of India and others);
- (21) AIR 2001 Supreme Court 3049 (Dilip & anr. v. State of M. P.);
- (22). AIR 2002 Supreme Court 476 (Surjan & others vs. State of M.P.);
- (23) 2004 CRI. L. J. 4756 (Navnath Namdev Mhaske & anr. v. State of Maharashtra);
- (24) 2005 CRI. L. J. 1416 (M. P. Lohia etc. v. State of W. B. and another);
- (25) 2005 CRI. L. J. 2634 (Vishwas Pandurang Dhivar v. State of Maharashtra); and
- (26) VIII (2007) Supreme Laws Today 206 (Radhu v. State of M. P.).

69. The substance of arguments made by the rival parties was recorded in form of memo Ex.526.
70. The prosecution added to this memo with a separate memorandum of arguments vide Ex. 526A.
71. Written points of arguments and its exhaustive manifestation were tendered by the defence in form of memo Ex. 526B.
72. The points for determination:-
 - (1) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, 13-Narpatsingh Ranchodbhai, 14-Idris Abdul Saiyed, 15-Bhikhabai Patel, 16-Ramsingh Mitlibhai Bhabhor, 17-Somabhai Gori, 18-B.S.Bhagora and 19-Dr. Arunkumar Prasad, 20-Dr. Sangeeta Prasad, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, between 28th February 2002 and 5th March 2002 at or in the vicinity of the village Randhikpur, Tal. Limkheda, Dist. Dahod, Gujarat, agreed to do or caused to

be done offences of rioting, murder, rape, destruction of evidence, more particularly, the offences punishable under Sections 143, 147, 148, 302, 376, 201, 217, 218 of I. P. C., 1860?

(2) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on 3rd March 2002 at about 1100 hours at or near village Chhapparwad, on the Kachcha Road leading to Pannivel, Tal. Limkheda, Dist. Dahod, Gujarat State, were the members of an unlawful assembly, the common object of which was to commit the aforesaid offences of rioting, murder and rape?

(3) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons on the aforesaid date, time and place (as mentioned in Point No.2 above) were the members of an unlawful assembly, and in prosecution of the common object of such assembly as aforesaid committed an offence of rioting?

(4) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2 above), were the members of an unlawful assembly, and did, in prosecution of the common object of such assembly as aforesaid, commit the offence of rioting, and at that time they were armed with deadly weapons, viz. swords, sickles and sticks?

(5) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2 above), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Saleha, aged about 3-1/2 years, daughter of the complainant prosecutrix, to wit, the A. No. 4-Shailesh Bhatt forcibly snatched Saleha from the complainant prosecutrix and dashed her on the rocky ground and smashed her body, and as a result of this act Saleha died at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in point No.2), were the members of an unlawful assembly when Accd.No.4-Shailesh Bhatt, a member of the said assembly, caused murder of Ms. Saleha, aged about 3-1/2 yrs., the daughter of complainant prosecutrix, as aforesaid, which offence they all knew to be likely to be committed in prosecution of the common object of the said assembly?

(6) Whether the prosecution proves that the accused Nos-1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No. 3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Mrs. Halima Abdul Issa Ghanchi, aged about 45 yrs., to wit, said Mrs. Halima was assaulted with deadly weapons by the above named accused and other unknown persons causing multiple fractures and leading to her death at the spot?

Alternatively:

Whether the prosecution prove that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vaki.1, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9- Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh -Bhatt, 12-Ramesh Chandana, along with the deceased accused No. 3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Mrs. Halima Abdul Issa Ghanchi, aged about 45 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(7) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No. 3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Irfan Abdul Issa Ghanchi, aged about 11 yrs., to wit, said Irfan was assaulted –with deadly weapons by above named accused and other unknown persons causing bleeding injuries leading to his death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Irfan Abdul Issa Ghanchi, aged about 11 yrs., by assaulting him with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(8) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh

(9) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Munni Abdul Issa Ghanchi, aged about 13 yrs., to wit, said Ms. Munni was assaulted with deadly weapons by the above named accused and other unknown persons causing bleeding head injuries leading to her death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh hate, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Ms. Munni Abdul Issa Ghanchi, aged about 13 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(10) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania,

10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Amina Jamal Patel, aged about 35 yrs., to wit, said Ms. Amina was assaulted with deadly weapons by the above named accused and other unknown persons causing fracture of skull and bleeding injuries leading to her death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Ms. Amin Jamal Patel, aged about 35 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(11) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Mrs. Sugra @ Aka Yusuf Musa Patel, aged about 40 yrs., to wit, said Mrs. Sugra @ Aka was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal head injuries leading to her death at the spot? .

Alternatively:

Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Mrs. Sugra @ Aka Yusuf Musa Patel, aged about 40 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(12) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Shamim Musa Patel, aged about 20 yrs., to wit, said Ms. Shamim was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal head injuries leading to her death at the spot

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No. 3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Ms. Shamim Musa Patel, aged about 20 yrs. By assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(13) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Mr. Yusuf Musa Patel, aged about 50 yrs., to wit, said Mr. Yusuf Musa Patel was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal bleeding injuries leading to his death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mhtesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members. of an unlawful assembly when one of members of the said assembly, caused murder of Mr. Yusuf Musa Patel, aged about 50 yrs., by assaulting him with a deadly weapon, which offence all the above

named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(14) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Mumtaz Musa Patel, aged about 20 yrs., to wit, said Ms. Mumtaz was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal injuries leading to her death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos-1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Ms. Mumtaz Musa Patel, aged about 20 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(15) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Madina Abdul Issa Ghanchi, aged about 18 yrs., to wit, said Mrs. Madina was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal injuries leading to her death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members of an unlawful assembly

when one of members of the said assembly, caused murder of Ms. Madina Abdul Issa Ghanchi, aged about 18 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

16) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi L@ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No. 3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Mr. Majid Patel, aged about 55 yrs., to wit, said Mr. Majid Patel was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal injuries leading to his death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the &ceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Mr. Majid Patel, aged about 55 yrs., by assaulting him with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(17) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of Ms. Mumtaz Abdul Issa Ghanchi, aged about 20 yrs., to wit, said Ms. Mumtaz was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal injuries leading to her death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbha Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased

accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of Mrs. Mumtaz Abdul Issa Ghanchi, aged about 20 yrs., by assaulting her with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(18) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No. 2) , in furtherance of their common intention, did commit murder by intentionally or knowingly causing the death of an unnamed child of Ms. Shamim, aged about 2 days, to wit, said unnamed child of Ms. Shamim was assaulted with deadly weapons by the above named accused and other unknown persons causing fatal injuries leading to its death at the spot?

Alternatively:

Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on the aforesaid date, time and place (as mentioned in Point No.2), were the members of an unlawful assembly when one of members of the said assembly, caused murder of an unnamed child of Ms. Shamim, aged about 2 days, by assaulting it with a deadly weapon, which offence all the above named accused knew to be likely to be committed in prosecution of the common object of the said assembly?

(19) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on 3rd March 2002 at about 1100 hours at village Chhapparwad, on the slope of the hill abutting Kachcha Road leading to village Pannivel, Tal. Limkheda, Dist. Dahod, Gujarat State, committed gang-rape on the complainant, the prosecutrix, aged about 20 years, knowing her to be pregnant, to wit, the complainant, the prosecutrix, was dragged from the place near Kachcha Road leading to village Pannivel to the slope of the hill nearby by the Accd.No.1- Jaswantbhai Nai the Accd.No.2-Govindbhai Nai, the deceased Accd.No.3-Naresh Modhiya, in a group of persons comprising of the above named accused and other unknown persons, acting in furtherance of their common intention and raped her knowing her to be pregnant?

(20) Whether the prosecution proves that the accused Nos. 1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No. 3-Naresh Modhiya, and other unknown persons, on 3rd March s 2002 at about 1100 hours at village Chhapparwad, on the slope of the hill abutting Kachcha Road leading to village Pannivel, Tal. Limkheda, Dist. Dahod, Gujarat State, committed gang-rape on deceased Halima Abdul Issa Ghanchi, aged about 45 years?

(21) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on 3rd March 2002 at about 1100 hours at village Chhapparwad, on the slope of the hill abutting Kachcha Road leading to village Pannivel, Tal. Limkheda, Dist. Dahod, Gujarat State, committed gang-rape on deceased Amina Jamal Patel, aged about 35 years?

(22) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4-Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6-Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10-Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on 3rd March about 1100 hours at village Chhapparwad, on the slope of the hill abutting Kachcha Road leading to village Pannivel, Tal. Limkheda, Dist. Dahod, Gujarat State, committed gang-rape on deceased Sugra @ Aka Yusuf Musa Patel, aged about 40 years?

(23) Whether the prosecution proves that the accused Nos.1-Jaswantbhai Nai, 2-Govindbhai Nai, 4- Shailesh Bhatt, 5-Radheshyam Shah @ Lala Vakil, 6- Bipinchandra Joshi @ Lala Doctor, 7-Kesharbhai Vohania, 8-Pradip Modhiya, 9-Bakabhai Vohania, 10- Rajubhai Soni, 11-Mitesh Bhatt, 12-Ramesh Chandana, along with the deceased accused No.3-Naresh Modhiya, and other unknown persons, on 3rd March 2002 at about 1100 hours at village Chhapparwad, on the slope of the hill abutting Kachcha Road leading to village Pannivel, Tal . Limkheda, Dist. Dahod, Gujarat State, committed gang-rape on deceased Shamim Musa Patel, aged about 20 years?

(24) Whether the prosecution proves that accused Nos.13-Narpatsingh Ranchodbhai, 14-Idris Abdul Saiyed, 15-Bhikhabai Ramjibhai Patel, 16- Ramsingh Mitlibhai Bhabhor, 17-Somabhai Koyabhai Gori, 18-R.S.Bhagora and 19-Dr.Arunkumar Ramkishan Prasad, along with 20-Dr. Sangeeta Arunkumar Prasad and other unknown persons, on 5.3.2002 in Kesharpur Jungle, Kesarpur - a place about a kilometer away from the place of offence at village Chhapparwad, Tal. Limkheda, Dist. Dahod, Gujarat State, knowing or having reason to believe that the offences punishable with death and / or imprisonment for life, viz. murder and rape has been committed, in furtherance of their common intention, did cause evidence of the said offences to disappear, to wit, buried the dead bodies of the deceased Halima w/o Abdul Issa Ghanchi, Irfan Abdul Issa Ghanchi, Aslam Abdul Issa

Ghanchi, Munni d/o Abdul Issa Ghanchi, Amina d/o Jamal Patel, Sugra @ Aka w/o Yusuf Musa Patel and Shamim d/o Musa Patel in a pit with the common salt, without seizing the clothes on the said dead bodies and without collecting blood samples or biological material from the said dead bodies which might have been useful for detection of crimes, with intention of screening the above named accused Nos.1 to 12 and other unknown persons from legal punishment?

(25) Whether the prosecution proves the accused No.17-Somabhai Koyabhai Gori on 4th March 2002 between 9.30 a.m. and 11 a.m. at Limkheda Police Station, Tal. Limkheda, Dist. Dahod, Gujarat State, being a public servant, Head Constable posted at Limkheda Police Station, knowingly disobeyed the directions of the law as to the way in which he was to conduct himself as such public servant, to wit, the Accd. No. 17-Sombhai Gori, ref used to record the F. I. R. as narrated by the complainant prosecutrix intending thereby to save the above named accused Nos.1 to 12 and other unknown persons from legal punishment?

(26) Whether the prosecution proves that the accused Nos.13-Narpatsingh Ranchodbhai, 14-Idris Saiyed, 15-Bhikhabai Patel, 16-Ramsingh Bhabhor and 18-R.S.Bhagora on 4th March 2002 in Kesarpur Jungle, Kesarpur - h about a kilometer away from the place of offence at village Chhapparwad, Tal. Limkheda, Dist. Dahod, Gujarat State, being the public servants, namely, the Accd. No. 13-Narpatsingh Ranchodbhai, Accd. No.14-Idris Abdul Saiyed, Accd.No.15-Bhikhabhai Patel, Accd. No. 16-Ramsingh Bhabhor and Accd.No.18-B. S. Bhagora, while serving as (i) Head Constable, Incharge of Randhikpur Out-Post, Limkheda Police Station, (ii) PSI, Patehpura Police Station temporarily attached to Randhikpur Out-Post, Limkheda Police Station, (iii) PSI, Limkheda Police Station, (iv) CPI, Randhikpur Out-Post, Limkheda Police Station, and (v) Dy. S. P. Incharge of Sub-Division, Limkheda, respectively, in furtherance of their common intention knowingly disobeyed the directions of the law as to the way in which they were to conduct themselves as such public servants, to wit, on 4th March 2002 you above named accused Nos.13- Narpatsingh Ranchodbhai, 14-Idris Saiyed, 15- Bhikhabai Patel, 16- Ramsingh Bhabhor and 18- R. S. Bhagora visited the spot where the dead bodies of the deceased Halima Ghanchi, Irfan Ghanchi, Aslam Ghanchi, Munni Ghanchi, Amina Jamal Patel, Sugra @ Aka Patel, Shamim Musa Patel and Saleha, daughter of the prosecutrix, were lying, and took photographs dead bodies without carrying out inquest panchnamas as required u/s 174 of the Code of Criminal procedure and left the dead bodies at the spot unguarded, intending thereby to save the above named accused Nos.1 to 12 and other unknown persons from legal punishment?

(27) Whether the prosecution proves that the accused Nos.13-Narpatsingh Ranchodbhai, 14-Idris Saiyed, 15-Bhikhabai Patel, 16-Ramsingh Bhabhor and 18-R. S. Bhagora on 4th March 2002 in Kesarpur Jungle, Kesarpur - a place about a kilometer away from the place of offence at village Chhapparwad, Tal. Limkheda, Dist. Dahod, Gujarat State, being the public servants (as described in Charge No. 26 above), charged with preparation of a record i.e. an inquest panchnama of the dead bodies of Halima Ghanchi, Irfan Ghanchi, Aslam Ghanchi, Munni Ghanchi, Amina Jamal Patel, Sugra @ Aka Patel, Shamim Musa Patel and Saleha d/o Bilkisbanu, in furtherance of their

common intention, framed the said record in a manner which they knew to be incorrect, to wit, falsely showed - (i) three panchas to the said inquest panchnama including one fictitious lady panch named Ramtiben, and (ii) presence of Mr. Abdul Sattar Ghanchi, and did not show the presence of dead body of Saleha, daughter of the prosecutrix, and which the accused Nos.13 to 16 & 18 with intent to save or knowing it to be likely that they would thereby save any person, particularly, the accused Nos.1 to 12 and other unknown persons from legal punishment?

(28) Whether the Accd. No.19-Dr. Arunkumar Prasad and the Accd.No.20-Dr. Sangeeta Prasad, on 5th March 2002 in Kesarpur Jungle, Kesarpur - a place about a kilometer away from the place of offence at village Chhapparwad, Tal. Limkheda, Dist. Dahod, Gujarat State, being public servants, while working as Medical Officers, Primary Health Centre, Dudhia and Bandibar respectively in Tal. Limkheda, Dist. Dahod, Gujarat State, in furtherance of their common intention knowingly disobeyed the directions of the law as to the way in which they had to conduct themselves, as such Medical Officers public servants, to wit, they perfunctorily performed the post-mortem examinations on the dead bodies of Halima Ghanchi, Irfan Ghanchi, Aslam Ghanchi, Munni Ghanchi, Amina Patel, Sugra @ Aka Patel and Shamim Patel, and failed to collect the vaginal swabs from the bodies of Halima Ghanchi, Amina Patel, Sugra @ Aka Patel and Shamim Patel, and record the observations as prescribed, intending thereby to save or knowing it to be likely that they would thereby save the Accd.Nos.1 to 12 and other unknown persons from legal punishment?

(29) Whether the Accd. No.19-Dr.Arunkumar Prasad and the Accd.No.20-Dr. Sangeeta Prasad, on 5th March 2002 in Kesarpur Jungle, Kesarpur - a place about a kilometer away from the place of offence at village Chhapparwad, Tal. Limkheda, Dist. Dahod, Gujarat State, being public servants, while working Medical Officers, Primary Health Centre, Dudhia and Bandibar respectively in Tal. Limkheda, Dist. Dahod, Gujarat State, charged with preparation of post-mortem examinations notes, in furtherance of their common intention framed the post mortem notes concerning purported post mortem examinations of Halima Ghanchi, Irfan Ghanchi, Aslam Ghanchi, Munni Ghanchi, Amina Patel, Sugra @ Aka. Patel and Shamim Patel, in a manner which they knew to be incorrect, to wit, (i) made statement that Halima was identified by Mr. Abdul Sattar Shaikh and other bodies were of unknown persons, (ii) all bodies had decomposed and putrefaction had started, (iii) viscera was ruptured, despite that the dead bodies were not dissected, and which they made with intent to save or knowing it to be likely that they would thereby save any persons, particularly, the accd. No. 1 to 12 and other unknown persons, from legal punishment?

(30) Whether the prosecution proves that the Accd.No.17-Somabhai Gori, on 4th March 2002, while working as Head Constable at Limkheda Police Station, Tal. Limkheda, Dist. Dahod, Gujarat State, being public servant, charged with preparation of recording of FIR of the complainant Smt. Bilkisbano framed the said record in a manner which he knew to be incorrect, to wit, the FIR recorded carried incorrect narration , purportedly made by the complainant, the prosecutrix, that a mob of 500 persons, not known to her, carrying sticks, gave stick blows on her head and left leg, and the mob was

shouting in Gujarati "Tamara Muslim Manas Hoye Hamara Hindu Manas Mari Nakhe" (you Muslim persons killed Hindus) and when she told them that she was pregnant she was left alone, and as the result of the assault she felt unconscious, which the Accd.No.17-Sowbhai Gori made with intent to save or knowing it to be likely that he would thereby save accused persons, particularly the accused Nos. 1 to 12 and other unknown persons, from legal punishment?

(31) What order?

The findings are as under:-

(1) Yes, as regards the Accd. No.1, Accd. No. 2, and Accd. No. 4 to Accd.No.12 and No as regards the Accd.Nos.13 to Accd. No. 20.

(2) Yes.

(3) Yes.

(4) Yes.

(5) Yes.

(6) Yes.

(7) Yes.

(8) Yes.

(9) Yes.

(10) Yes.

(11) Yes.

(12) Yes.

(13) Yes.

(14) Yes.

(15) Yes.

(16) Yes.

(17) Yes.

- (18) Yes.
- (19) Yes.
- (20) Yes.
- (21) No.
- (22) No.
- (23) Yes.
- (24) No.
- (25) Yes.
- (26) No.
- (27) No.
- (28) No.
- (29) No.
- (30) Yes.
- (31) As per final order.

REASONS

Before touching any of it is necessary to resolve the controversy in respect of admissibility of the photographs Exs.59/1 to 59/17, Negatives (marked X-19 and X-1 for identification), photographs Exs.411-B to 417-B, and the statement of the prosecutrix dated 6.3.02 (E x. 277) recorded by the Executive Magistrate PW 23-Govindbhai Patel. Evidence shows the hostility of PW 10-Rameshchandra Soni, PW 28-Bhavinkumar Patel, PW 29-Balubhai Vohania, PW 30-Vasudeo Pandit and PW 32-Vinodbhai Prajapati, who were named as the persons connected with taking and developing of the said photographs by the prosecution. Recourse to legal provisions and judicial pronouncements in that regard was, therefore, taken by the prosecution to advocate the admissibility of the said photographs/documents in evidence.

74 Section 61 of the Indian Evidence Act, 1872 permits the proving of the contents of the documents either by primary or by secondary evidence. Section 62 of the said Act defines primary evidence' of the document as the document itself produced for inspection of the Court. In the instant case, photographs Exs.59/1 to 59/17 and negatives marked X-19 and X-1 are bodily before the Court available for the 'purposes of inspection.

75. From the judgments cited by the prosecution namely, the judgments reported in 1972 CRI. L. J. 1226 in re Raippa Asari, and AIR 1957 Supreme Court 857 (Mobarik Ali Ahmed vs. State of Bombay), one can easily gather that proof of the 'authorship and the hostility of PW 10-Rameshchandra Soni, PW 28- Bhavinkumar Patel, PW 29-Balubhai Vohania, PW 30- Vasudeo Pandit and PW 32-Vinodbhai Prajapati, who were named as the persons connected with taking and developing of the said photographs by the prosecution. Recourse to legal provisions and judicial pronouncements in that regard was, therefore, taken by the prosecution to advocate the admissibility of the said photographs/documents in evidence.

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75. From the judgments cited by the prosecution namely, the judgments reported in 1972 CRI. L. J. 1226 in re Raippa Asari, and AIR 1957 Supreme Court 857 (Mobarik Ali Ahmed vs. State of Bombay), one can easily gather that proof of the authorship and genuineness of the document need not necessarily be direct but can be inferred, like any other fact, from circumstantial evidence including the contents of the document itself. There is nothing contrary in the law to the rationality expressed in the said judgments. This calls for scanning of the relevant evidence.

76. PW 32-Vinodbhai Prajapati deposed that he had been conducting business in xeroxing, photography and STD Communication Centre under the name and style of 'Gurukripa Xerox and Photo Studio' at village Randhikpur for last five years (i.e. since the year 2000); and the CBI had merely obtained his dated signature in the presence of PW 28-Bhavinkumar Patel on the seizure memo Ex.366 dated 31.1.04 without explaining the contents thereof to him. PW 28-Bhavinkumar Patel, a resident of village Singwad-Randhikar, merely reiterated the facts deposed to by PW 32-Vinodbhai Prajapati. He deposed that the seizure memo dated 31.1.04 Ex.366 bears his signature as attesting witness. He added that endorsement "Copy received" in Gujarati with dated signature was made by PW 32-Vinodbhai Prajapati. Both, PW 28-Bhavinkumar Patel and PW 32-Vinodbhai Prajapati denied the fact that the Camera Art. 3, with which the said photographs were taken, was seized from PW 32-Vinodbhai Prajapati on 31.1.04 by the CBI.

77. Evidence of PW 28-Bhavinkumar Patel and PW 32-Vinodbhai Prajapati shows that they resiled from their previous statements made, before the CBI regarding taking of the photographs of the dead bodies of Muslims from Singwad, Randhikpur lying in Pannivel Jungle by PW 28-Bhavinkumar Patel with Camera Art.3 and the 10 exposed films being developed at Scanner Lab, Godhra on 4.3.02 at the instance of the A/13-Narpat, the A/14-Saiyed and the A/16-Bhabhor, the local police officials. PW 32-Prajapati even went to the extent of denying the fact of the receipt of the copy of the

seizure memo Ex.366 though seizure memo Ex.366 bears endorsement 'Copy prapt ki' in Gujarati in his hand.

78. PW 68-Tariyal, PI, CBI, SCB, countered the testimonies of PW 28-Bhavindkumar Patel and PW 32-Vinodbhai Prajapati. He asserted that PW 28-Bhavin Patel, who was neighbour of PW 32-Vinod Prajapati, was present at the time of the seizure of the Camera Art.3 from PW 32-Vinod Prajapati; and a copy of the seizure memo Ex.366 was given to PW 32-Prajapati and accordingly the endorsements were made by both PW 28-Bhavin Pate1 and PW 32-Vinod Prajapati. Surprisingly PW 32-Prajapati deposed that he did not question' PW 68-Tariyal as to why his signatures were being taken.

79. Though PW 28-Bhavinkumar Pate1 denied the fact of tendering 10 negatives (X-19) and 8 photographs (Exs.59/1 to 59/8) at about 8.30 p.m. on 30.1.04 and its consequent seizure under memo Ex.366, PW 68-Tariyal deposed that he was prompted to approach PW 28-Bhavin Pate1 on the clue furnished by PW 29-Balubhai Vohania about taking of the photographs of the dead bodies, and thereafter PW 28-Bhavin Pate1 had produced the photographs Exs.59/1 to 59/8 and the negatives (X-19) in the presence of his father Vinodchandra on 30.1.04 at village Singwad and the same were duly seized under seizure memo Ex. 366. The fact of having signed the seizure memo Ex.366 in the presence of his father Vinodchandra M. Modhiya on 30.1.04 is not denied by PW 28-Bhavin Patel. He also admitted that he knew Balubhai Vohania, a resident of Singwad. In these circumstances, his testimony that he was forced to subscribe his dated signature to the memos Exs.363 and 366, is far from truth.

80. PW 29-Balubhai Vohania, resident of village Randhikpur, asserted that he did not accompany the police i.e. the A/13-Narpatsingh, A/14-Saiyed, PSI, the A/16-Bhabhor, CPI, and PW 28-Bhavin Pate1 to the place near seasonal rivulet at the foot of the hill in the vicinity of nursery at Bandibar for the purposes of taking photographs of several dead bodies of Muslims from Singwad, Randhikpur. The fact of making a statement dated 30.1.04 revealing such facts before the CBI was also denied by PW 29- Balubhai Vohania. However, he admitted that he knew PW 28-Bhavin Pate1 and PW 32-Vinodbhai Prajapati. PW 29-Balubhai Vohania added that he was beaten in Kotar by three persons including one Mr. Khan by iron rod and hanged in the well and he had sustained injuries as a result of beating. He further revealed in the cross-examination that he did not make any complaint about this incident before any authority in Gujarat including police.

81. PW 10-Rameshchandra Soni denied the fact of having collected the photographs Exs.59/9 to 59/17 on developing the negatives X-1 colly. at 'Scanner Colour Lab' situate at Godhra. He further denied that these negatives were exposed while taking the photographs of the corpses lying in the hills in Panivela village at the instance of Limkheda Police on 5.3.02. Though he admitted the fact of having signed the seizure memo dated 7.1.04 Ex.109 and acknowledged the receipt of its copy in Gujarati. He denied the fact that on 7.1.04 he had handed over negatives X-1 colly. and photographs Exs.59/9 to 59/17to PW 72-Sinha, Dy. S. P., CBI, SCB, under memo Ex.109. His evidence, however, shows that photographs Exs.59/9 to 59/17 bear his dated signatures.

82 PW 10-Soni tried to distance himself from the fact of having taken photographs of the dead bodies on 5.3.02 and went on to deny that at the spot near Panivela village inquest panchnama of the dead bodies was drawn in the presence of Medical Officers on 5.3.02. When confronted with the notice dated 6.1.04 Ex.111 bearing acknowledgment of its receipt in his hand and the memorandum dated 10.1. 04 Ex. 352 bearing his dated signature, he could not resist admission of the fact that he accompanied the CBI Officers to one rough terrain having mountain rocks, ravines and trees, moved and taken photographs of different places. He was not in position to explain his statements Exs.269A and 269B recorded by PW 52-Vohania, PI, Crime, CID, much before the CBI taking over investigation of the present case.

83 Presence of PW 10-Soni at the time of showing of the places where the dead bodies of the victims were found buried after the post mortem at Sarkotar by the A/19-Dr. Arunkumar Prasad, on 10.1.04 figures in the photograph Ex.351/9, yet PW 10-Soni expressed his inability to recollect the attending facts. In the cross-examination done by the defence he obliged the defence with a statement that he happened to visit the said place with CBI for the first time on 6.1.04 and on second occasion on 10.1.04. It appears from his cross-examination that he was giving tamed evidence before the Court regarding the location of the .places visited on 10.1.04, and the fact of taking photographs of any place in the vicinity of Panivela, Kesharpur and Chhapparwad prior to 6.1.04. He made accusations against the CBI of mental torture and use of force for obtaining his signatures on the blank papers as well as photographs Exs. 59/9 to 59/17.

84 When confronted with the Bill Ex.292AI PW 10-Soni admitted the fact that it was issued by him on 14.3.02. Bill Ex.292Af along with report of the CBI, Limkheda dated 19.3.02 Ex.292, the evidence reveals, was handed over to PW 68-Tariyal, PI, CBI, SCB, by PW 53-Nathalal V. Kathiria, Dy. SP, HQ, from the record with the SP's office at Dahod under seizure memo dated 23.3.06 Ex.291.

85. Veracity of the report Ex.292, which speaks of taking of the photographs of the corpses of Muslim persons in the present case by a photographer Ramesh K. Soni (PW. 10) was not disputed in the cross-examination. Only the knowledge of PW 53-Kathiria regarding sanctioning of the bill Ex.292A for payment was checked in the cross-examination. PW 53-Kathiria was not in position to state anything about it, except stating that he did not come across the record concerning passing of the bill Ex.292A. A fact, however, clearly stands out from the Bill Ex.292A and the report Ex. 292 that bill, in the name of Limkheda Police Station for 18 copies of the photographs of the dead bodies lying at Chhapparwad was raised by PW 10-Soni. Whether he received the payment against it or not is an immaterial fact. Hostility of PW 10-Soni to the prosecution is understandable from the fact that the A/10-Rajubhai Soni is his relation.

86. On the other hand, there is evidence of PW 73-Somabhai Chauhan that photographs were taken of seven dead bodies - 4 females and 3 children - lying at Sarkotar in Kesharpur Jungle at the time of inquest panchnama Ex.123 on 5.3.02.

87. PW 10-Soni was doing a business of photography under the name and style of 'R. K. Photographer' at Bandibar and used to get photographs developed at 'Scanner Colour Lab' at Godhra as there was no colour lab at Limkheda for developing the photographs.

88. PW 30-Vasudev Pandit, who was conducting a photo developing lab under the name and style of 'Scanner Lab' at Godhra, gave evasive replies when confronted with the negatives X-1 and X-19 colly. However, he admitted that polythene jackets over the negatives X-1 and X-19 colly. carried markings of his lab - Scanner Colour Lab. He added that the polythene jackets over the negatives X-1 and X-19 colly. belong to his Colour Lab. PW 30-Pandit deposed that there was no other name as 'Scanner Colour Lab' either at Godhra or in the district Panchmahal, Dahod. Though he resiled from his statement previously made before the CBI that negatives X-19 colly. was developed in his Lab, one can reasonably believe from the circumstances before the Court that the negatives X-1 and X-19 colly. could not have carried the polythene jackets of 'Scanner Colour Lab' unless those were developed at the said Lab.

89. PW 52-Kalubhai Vohania, PI, CID, Gujarat State, deposed that the present case was investigated earlier by the A/16-Bhabhor, CPI, Limkheda and the A/18-Bhagora, Dy. SP, in succession; and he had taken over the investigation from the A/18-Bhagora; and thereafter had handed over the papers of investigation to PW 72-Sinha, Dy. SP, CBI, under seizure memo dated 5.1.04 Ex. 267. He added that muddemal articles in the present case were handed over to PW 72-Sinha under seizure memo dated 20.1.04 Ex.268.

90. Evidence of 52-Vohania, PW 66-Khan, PI, CBI, and PW 72-Sinha reveals that on interrogation of the A/15-Patel, the investigation was directed to PW 10-Soni, and PW 10-Soni led them to Chhapparwad area on the outskirts of Panivela on 6.1.04, indicated the places where the dead bodies were found, photographed and buried, and these facts were duly recorded in form of a memorandum dated 6.1.04 (Ex.348). PW 10-Soni did not dispute his signature on the memorandum Ex.348 and the fact of having visited the said place on 6.1.04. Evidence of PW 66-Khan and PW 72-Sinha shows that the memorandum Ex.348 bears signature of the A/15- Patel. According to PW 52-Vohania, the photographs Exs.59/10 to .59/17, along with the papers of investigation, were received by him from the A/18-Bhagora. There is no challenge to his testimony on these vital aspects.

91. PW 69-Arjun Pawar, PSI, CBI, corroborated the testimonies of PW 52-Vohania, PW 66-Khan, PW 68-Tariyal and PW 72-Sinha, more particularly regarding the events dated 6.1.04.

92. A point was raised in reference to 'Sarkotar area' being referred to as the 'scene of fence/crime' in the memorandum dated 6.1.04 Ex. 348 and the memorandum dated 10.1.04 Ex.352. However, it is illogical to come to a conclusion from such reference that the place/s referred to in the said memorandums is the location of the crime in question, more particularly the incidents of rapes and murders, as none of the persons referred to in the memorandums as the persons present claimed to be 'the eye-witnesses to the occurrence of the crime in question except to the shoddy investigation done by the police officials named as the accused in the present case.

93 Evidence of PW 69-Pawar and PW 16-Balwansingh Rajput reveals that the A19-Dr. Arunkumar Prasad produced requisition letter dated 5.3.02 Ex. 200, carbon copy of inquest panchnama dated 5.3.02, seven police reports to Civil Surgeon (marked X-13), letter dated 5.3.02 of the Medical Officer, Limkheda from the police (marked X-14), and the same were duly seized under seizure memo Ex.134.

94. PW 72-Sinha deposed that the A/19-Dr. Arunumar Prasad produced 7 carbon copies of the postmortem reports Exs. 411A to 417A and the photographs of the dead bodies Exs. 411B and 417B before him and the same were duly seized under memo Ex. 410 on 9.10.04 in the presence of the A/20-Dr.Sangeeta Prasad. He further deposed that the copy of the seizure memo was given to the A/19-Dr. Arunkumar Prasad and its receipt was duly acknowledged by the A/10-Dr. Arunkumar Prasad with the endorsement 'Received copy' made below the seizure memo Ex.410. Signatures of the A/19-Dr. Arunkumar Prasad appear on the obverse of the photographs Exs.411B to 417B. These documents were admitted in evidence and marked exhibits subject to the objection in respect, of the photographs. Substantially, therefore, the fact of production of the post-mortem reports Exs. 411A to 417A and the photographs Exs. 411B to 417B before PW 72-Sinha by the A/19-Dr.Arunkumar Prasad stands proved.

95. It is nowhere demonstrated in the evidence that the photographs in question could not have been or are not the products of developing process carried out on the corresponding negatives X-1 and X-19 colly. Examination of the A/13-Narpatsingh, the A/14-Saiyed, the A/15-Patel, the A/16-Bhabhor, the A/17-Gori and the A/18-Bhagora, the police officials connected with the initial investigation of the case, u/s 313 of Cr. P. C. offers no explanation in respect of the said photographs. On the other hand, the result of scientific investigation done by the Central Forensic Science Laboratory, New Delhi in relation to the Camera Art.3, the photographs Exs.59/1 to 59/17 and the corresponding negatives X-1 and X-19 colly. Points out vide Opinion Ex.309 colly.: (i) that the photographs Exs. 59/ 1 to 59/8 were developed from the negatives X-19 colly. which were used or exposed for taking photographs Exs.59/1 to 59/8 on the Camera Art.3 during night/artificial light and (ii) that the photo-graphs Exs.59/9 to 59/17 were developed from the negatives X-1 which were used or exposed on a professional camera in day light. The scientific investigation done by the CFSL, New Delhi was pertaining to physicochemical process of snapping photographs by means of a mechanical equipment like camera and of developing the negatives exposed during snapping such photographs and taking prints thereof in form of the photographs. No formal proof of genuineness of the report of such scientific investigation was, therefore, needed or examination of the concerned Expert was therefore, not, felt necessary by this Court. Element of human intervention in physicochemical process of taking such photographs is not revealed through the report Ex.309. The defence also did not feel it necessary to move the Court for summoning the Expert who carried out such scientific investigation for cross-examination before the Court.

96. Evidence of the prosecutrix reveals that she clearly identified dead bodies of the persons appearing in the photographs Exs.59/1 to 59/17 as under:-

Sr. No	Exh. No. of the photograph	Name of the person	Relation with the prosecutrix
1.	59/1 to 59/3 & 59/11	Halima	Mother
2.	59/4	Saleha	Daughter
3.	59/5, 59/8, & 59/9	Irfan	Brother
4.	59/6 & 59/12	Munni	Sister
5.	59/7 & 59/14	Aslam	Brother
6.	59/10	Amina	Aunt
7.	59/13 & 59/17	Sugra	Aunt
8.	59/15 & 59/16	Shamim	Cousin

It is not shown through the cross-examination of the prosecutrix that identification of the bodies seen in the photographs Exs.59/1 to 59/17 was either not possible or was wrong. It is quite unimaginable that the photographs of such corpses could have been procured by a human trick.

97. The circumstantial evidence coupled with the result of the scientific investigation clearly affords proof of the genuineness of the said photographs. Objection of the defence to the admissibility of the said photographs, therefore, falls to ground.

98. Fact of recording. the statement of the prosecutrix on 6.3.02 following the instructions given by PW 18-Smt. Jayanti Ravi, District Magistrate and Collector, District Panchmahal, Gujarat, at Godhra? Relief Camp peeps through the evidence of the prosecutrix, PW 18-Smt.Jayanti Ravi and PW 23-Govindbhai Patel, Mamletdar and Executive Magistrate, Godhra.

99. The prosecutrix and PW 23-Govindbhai Patel deposed that the statement carried Xerox thumb impression of the prosecutrix. Evidence of PW 23-Govindbhai Patel further reveals that the original of the statement of the prosecutrix recorded by him at Godhra Relief Camp on 6.3.02 was not on the record of the Collector but was sent to SP, Dahod.

100. PW 18-Jayanti Ravi deposed that the statement of the prosecutrix recorded by PW 23-Govindbhai Patel, Executive Magistrate, was placed before her around 8 p.m. on 6.3.02 and next day original statement of the prosecutrix recorded by the Executive Magistrate was sent to SP, Dahod for further action with the letter dated 7.3.02 Ex.147 (office copy). She identified copy of the said statement Ex.277 kept on record with the O/c. of the letter Ex.147. O/c. of the letter dated 7.3.02 Ex.147 confirms this fact. PW 18-Jayanti Ravi further identified the reminders dated 11.3.02 (Ex.148A), 18.3.02 (Ex.148B), 3.5.02 (Ex.148C), 27.6.02 (Ex. 148D and 29.6.02 (Ex.148E) sent to SP, Dahod from time to time in that regard. These reminders reveal the efforts made by PW 18-Jayanti Ravi to pursue the issue of legal action following the statement given by the prosecutrix. PW 18-Jayanti Ravi added that she had also Faxed a message dated 8.7.02 Ex.149 to the Home Department. She further identified the response received from SP, Dahod to her communication in form of a Fax message dated 20.3.02 Ex.150. These facts clearly

evince that sp, Dahod responded to the communications of PW 18-Jayanti Ravi through which the original statement of the prosecutrix dated 6.3.02 was sent.

101. PW 23-Govindbhai Patel averred that he had taken identical xerox copy of the statement of the prosecutrix dated 6.3.02 Ex.277 from the original statement sent to SP, Dahod. He identified Xerox impression of his handwriting and thumb impression of the prosecutrix on the' statement Ex.277. These averments of PW 23-Govindbhai Pate1 do not find any challenge in his cross-examination.

102. PW 48-Rameshbhai Bhabhor, Constable working in the Registry Branch is the office of SP, Dahod, produced the Inward Register (Art.46) and Outward Registers (Arts.47 6, 48) maintained at the office of SP, Dahod. He pointed out Entry No.3010 dated 15.3.02 (Ex. 255) in the Inward Register (Art. 46) as the one showing the record of the incoming letter dated 7.3.02 from the District Magistrate, Panchmahal. He deposed that this letter was forwarded to the Application Branch in the office. Outward entries showing dispatches to PSI, Limkheda as under were admitted in evidence:-

Entry No. & date	Name of the Register	Nature of the correspondence & name of the addressee
1830 dt.9.3.02 (Ex.257)	Outward Register (Art.47)	Outgoing letter addressed to PSI, Limkheda Police Station in respect of enquiry of murders and rapes.
2142 dt.19.3.02 (Ex.258)	Outward Register (Art.47)	Outgoing letter No. Application/A/23/02 as a reminder No.2 in the case of Bilkisbano rape case to PSI, Limkheda Police Station.
1 dt.20.3.02 (Ex.260)	Outward Register (Art.48)	Outgoing letter No.2142 addressed to PSI, Limkheda Police Station.

There was no challenge to the testimony of PW 48- Rameshbhai Bhabhor.

103. PW 49-Pramilaben Waria, Constable posted at Limkheda Police Station, deposed that she had collected and received the letters addressed to Limkheda Police Station as mentioned in the Outward Register (Art.48) entry Ex.260 on 20.3.02, and the said letters were passed on to PSO, Limkheda.

104. PW 50-Ganpatsingh Khant, Constable posted at Office of CPI, Limkheda produced Inward Register Art.49 and deposed that he was handling Inward and Outward despatches from the off ice of CPI, Limkheda i.e. the A/16-Bhabhor. From the entry No.158 dated 22.3.02 (Ex.263) in the Inward Register Art.49 made by him, he deposed that the said entry was made to record the incoming letter No.2142/02 dated 19.3.02 in the office of CPI, Limkheda from SP, Dahod and the said letter was passed on by him to the A/16-Bhabhor, CPI.

105. PW 50-Ganpatsingh Khant further deposed that ASI Mangalsingh and PC Amritsingh were attached to the office of CPI, Limkheda when he worked there under the

A/16-Bhabhor, the then CPI, Limkheda. He admitted the despatch of the letter/report Ex.292 to SP, Dahod and allotment of Outward No.101/2002 dated 19.3.02 to the said letter by him from the running number in the Outward Register maintained at the office of CPI, Limkheda. However, he had reservation about certain facts such as handwriting and signature appearing in the report Ex.292 and the things dispatched along with the said report.

106. Evidently, the report Ex.292 bears official seal of CPI, Limkheda, and was despatched from the said office. Undoubtedly, the A/16-Bhabhor was CPI, Limkheda in the month of March 2002 and yet he has no comment to offer in his examination u/s 313 of Cr. P. C. regarding this material in the evidence.

107. Cross-examination of PW 50-Khant resorted to by the prosecution reveals that he contradicted his own statement dated 13.4.06 Ex. 375 identifying the signature of the A/16-Bhabhor below the report Ex.292 and sending of the Bill Ex.292A to the SP, Dahod with the report Ex.292. His evidence shows that he was one amongst many police witnesses from the State of Gujarat who chose to support the accused in the present case. Obviously, fraternal sentiments outweighed the call to duty as police officials.

108. PW 51-Virendra Rawal, Dy. SP of Police Quarters in the office of SP, Dahod, deposed that the letter dated 7.3.02, original of the O/c. Ex. 147, was receive@ in the office of SP, Dahod from the District Magistrate and Collector, District Panchmahal, Godhra on 15.3.02 and entry Ex. 255 in the Inward Register Art .46 is the record of the said fact. He further deposed that Reminder No. 2 dated 19.3.02, as per its O/C. Ex.265, was despatched to PSI, Limkheda vide entry Ex.260 in the Outward Register Art.48.

109. Limited cross-examination of PW 51-Virendra Rawal only reveals that whatever was received with the letter Ex. 147A from the District Magistrate and Collector, Panchmahal was sent to PSI, Limkheda. Perusal of the letter Ex.265 shows that the original statement of the prosecutrix recorded by PW 23-Pate1 at the instance of PW 18-Jayanti Ravi, District Magistrate and Collector, Panchmahal, Godhra, was sent to PSI, Limkheda.

110. Total evidence before the Court reveals that original statement of the prosecutrix dated 6.3.02 recorded by PW 23-Pate1 moved from the office of the District Magistrate and Collector, panchmahal, Godhra and got lost in the papers of investigation in the office of CPI, Limkheda. In the given circumstances, the secondary evidence of PW 23-Govindbhai Pate1 regarding the statement of the prosecutrix dated 6.3.02 becomes admissible in evidence.

111. **Point Nos. 1 to 30:-** Outbreak of communal violence, following the call of Gujarat Bandh given by Vishva Hindu Parishad and Bajrang Dal in retaliation of Godhra Train Burning Incident, figuring in the evidence remains an undisputed fact. Before descending on the main issue of rapes and murders, it would be worthwhile to consider the background, particularly the facts as to what happened at Randhikpur on the day following the Godhra Train Burning Incident dated 27.2.2002.

112. The prosecutrix deposed that she, her husband and daughter Saleha were at her father's place at village Randhikpur about the time of Godhra incident and next day (- 28.2.2002) there was arson and looting in the village. She further deposed that her maternal aunt Bibi came to them and advised them to leave their residence immediately in view of the violent developments and thereafter they left the residence and started running in the fields at the back of her home and saw houses being burnt.

113. In her cross-examination, the prosecutrix was tried to be contradicted with her statements that she was a resident of Devgad Baria and her occupation was household. It is true that the prosecutrix was married to Yakub Rasul Patel, a resident of Devgad Baria and normally her residence on record would have been shown as Devgad Baria. However, the prosecutrix deposed that after the marriage she had started staying with her husband at Devgad Baria and for business purposes she had started staying with her father at village Randhikpur 4 to 5 months after her marriage; and on the day of Bakri Id prior to the incident she had been to her husband's place and next day she had returned to her father. The prosecutrix deposed in the cross-examination that her matrimonial home address was Kapadi Falia, village Devgad Baria, District Dahod, Gujarat.

114. What is, however, important is whether the prosecutrix, was at village Randhikpur on the date of exodus. PW 24-Abdul Issa Ghanchi, in response to a suggestion from the defence, averred that he, his wife Halima, his sons - Iqbal, Aslam and Irfan, his daughters - the prosecutrix, Mumtaz and Munni, Yakub and Saleha, husband and daughter of the prosecutrix, respectively, and his maternal uncle Majid Sakra Patel were the only persons at his residence at village Randhikpur in the morning of 28.2.02. This fact is further corroborated through the evidence of PW 8-Saddam. The controversy in that regard, therefore, fades to insignificance.

115. PW 2-Farukhbhai Pinjara deposed that he was the native of Randhikpur and was residing with his aunt Zubeda and her husband Karim as his parents were not living then. He further deposed that in front of his residence, i.e. in his aunt's house, there was a Pan shop of the A/10-Soni; and around 10 or 10.30 a.m. on 28.2.02 the persons giving slogans "Musalmanano maro, kapo, salgao" gathered around their residence and on hearing this Muslims started running helter-skelter. According to PW 2- Farukhbhai Pinjara, he remained at home on loft for about 2 to 3 hours as he was sick and not in position to run; and on hearing siren of police vehicle around 1 p.m. came down the loft and found the A/13-Narpat and the A/14-Saiyed going to the shop of the A/10-Raju Soni. He further deposed that he approached the A/13-Narpat and the A/14-Saiyed for help and told them that he was alone and all others had fled away. According to PW 2-Pinjara, the A/13-Narpat and the A/14-Saiyed asked him to run away or else the persons at the A/10-Raju Soni's shop would be killing him.

116. PW 2-Pinjara further deposed that he saw the A/4-Shailesh Bhatt, A/11-Mitesh Bhatt, A/3-Naresh Modhiya (now deceased) , A/8-Pradip Modhiya, A/7- Keshar Vohania, A/9-Baka Vohania, A/1-Jaswant Nai, A/2-Govind Nai, A/6-Lala Doctor, A/5-

Lala Vakil, A/10-Raju Soni, A/12-Ramesh Chandana, Raju Chhagan, Dineshkumar Anandilal Shah @ Lala, and Umesh Doctor holding meeting at the shop of the A/10-Raju Soni. He added that he heard these persons talking: "Je koi Musalman agal ave ene mari nakho. Emane mal saman looti nakho. Temna gharone salgavi nakho" (in Gujarati) (If any of the Muslims come forward kill them. Loot their belongings and burn their houses) in the presence of the police officials - the A/13-Narpat and the A/14-Saiyed. He further deposed that the persons in the meeting also asked him to go away or else he would be killed, and therefore he ran away from the said place.

117. PW 2-Pinjara further deposed that he went to Bhamreji Mata Mandir in a cave at Randhikpur, applied Sindoor, red in colour, to his forehead and wound Chundadi (scarf) around his head and proceeded to Sarjumi jungle after climbing up the hill in front of the temple. According to him, he could reach Limkheda around evening time and thereafter Devgad Baria around morning time to seek shelter at the residence of his maternal aunt.

118. In the cross-examination PW 2-Pinjara revealed that he studied upto 3rd standard at Umareth, at a distance of about 100 miles from Randhikpur, and thereafter completed his studies upto 5th standard in vernacular Gujarati medium at Prathamik Shala, Singwad. PW 2-Pinjara did not use the facts regarding his education at Umareth and Singwad. He could only say that he studied upto 1st and 2nd standards with his cousin at Umareth and had been to Umareth when he was about 6 to 7 years old. He was not in position to remember the name of his teacher at Umareth. While appreciating these facts, one cannot ignore that PW 2-Pinjara was giving evidence about his childhood after 15 years of leaving his school, and he had reason to be at Randhikpur as his parents were not living at the time of the incident. Evidence of PW 2-Pinjara further reveals that he earned his livelihood as a vendor plying fruit handcart at village Randhikpur. He named one Mr. Umesh Gopichand Shah as a person with whom he had worked for about 6 to 7 months at village Randhikpur. Looking to the nature of the work he was employed in, it is difficult to expect any documentary evidence in that regard, particularly when he was employed in a village like Randhikpur.

119. PW 2-Pinjara asserted that his name was shown in the ration card as an Unit Holder at village Randhikpur and he was prepared to produce ration card along with school leaving certificate in order to show that he was the resident of Randhikpur at the material time, if required. At the end of his lengthy cross-examination, PW 2-Pinjara volunteered to produce his ration card. However, the defence was complacent with the evidence on record and did not venture to request the production of ration card. These facts in the evidence offer credibility to the assertion of PW 2-Pinjara that he lived in village Randhikpur as

120. Cross-examination of PW 2-Pinjara further reveals that his father-in-law Mr. Kayum Jamal Shaikh and PW 24-Abdul Issa Shaikh, father of the prosecutrix called each other as 'Bhai' (brother); and he, his maternal aunt Madina, her family, Vakil Mohamed and his family, Abdul Sattar Kalu, Sayyed Abdul Salam Abdul Umar, Imtiyaz Yusuf Ghanchi, Siraj Adam Abdul Ghanchi, Salim Abdul Sattar Musa, Firoz bhai Sattar bhai Ghanchi @ Pintoo, Mohamed Iqbal Abdulla Ghanchi, Abdul Aziz Yusuf Patel, Abdul

Sattar Yusuf Patel, Sugraben Ismailbhai, Abdul Issa Ghanchi, Madinaben Sirajbhai Patel, Salim Adam Ismail, Yakub Ibrahim Shaikh, Rasool Aziz Umar and Salam Yusuf Shaikh and other Muslims fled from village Randhikpur and came to stay at Rahimabad Colony at Devgad Baria, Kapadi Phalia. His cross-examination further reveals that he has been talking with the said persons about the incident at village Randhikpur during his stay at Rahimabad Colony. However, he was unable to recollect whether he came to know about burning of large number of houses at village Randhikpur in course of his talk or he talked with any one of them about burning of his residence at village Randhikpur. According to PW 2-Pinjara, there was talk between them about the necessity to lodge a complaint about the incident till the time statement was recorded by the CBI. However, he did not lodge a complaint with the police or the District Revenue or judicial authority about the incident.

121. Evidence of PW 2-Pinjara shows that the Court was situate at 700 to 800 meters distance from Rahimabad Colony and after leaving the Court at Devgad Baria there was a bus stand and police station. Evidence / also shows that PW 2-Pinjara did not ask any one of the said persons at Rahimabad Colony whether they had lodged any complaint about the incident with any of the authorities. He denied the suggestion that a complaint was not lodged as nothing had happened, as deposed, in his presence and he was not thinking of lodging it. Do the distances between an individual and the law enforcing agencies really matter in lodging a complaint is the key question which requires to be answered at this juncture. Idea of lodging a complaint may be born in one's mind but it also requires courage to lodge it. The facts revealed by PW 2-Pinjara point out that his home at Randhikpur made of reed plastered with cow-dung was burnt down and presently a shopping centre stands at that place. More or less same fate was suffered by his neighbour Fakir Mohamed and others at Rahimabad Colony. They virtually deserted their ancestral homes; and PW 2-Pinjara had come face to face with the fierce mob of persons who once were his co-residents at village Randhikpur. To expect a man of his stature and standing in the social milieu to approach the authorities, whose protectors had advised him to run away, would be least plausible proposition.

122. Evidence of PW 2-Pinjara further shows that his aunt and her family as well as Fakir Mohamed ran away from their homes around 10 to 10.30 a.m. He deposed that he could walk the distance, as deposed by him, out of fear for his life. PW 2- Pinjara quoted the distance between Randhikpur and Limkheda as 15 to 20 miles approximately and deposed that the same was the distance between Limkheda and Devgad Baria. He was cross-examined at length about the distance he footed between Randhikpur and Devgad Baria. PW 2-Pinjara deposed that he took cross country route across the hills for reaching Devgad Baria. No improbability is shown from the testimony of PW 2-Pinjara as to the distance footed by him across the country side to reach Devgad Baria. It is also not demonstrated from his testimony or otherwise with Sindhoor of red colour (Kumkum) and Chundadi could not have been found at Bhamareji Mata Mandir. A fact that PW 2-Pinjara did assume camouflage with Sindhoor and Chundadi and footed the distance between Randhikpur and Devgad Baria, as deposed, therefore, needs to be believed.

123. It is not disputed that man of the accused from amongst the accused named by PW 2-Pinjara were active VHP members or their sympathizers; and that call of Gujarat Bandh was given on 28.2.2002. It is a common experience that often the Bandhs every where across the country are enforced usually by means of violence and the like-minded persons coming together in mobs for enforcing such Bandhs. It is, therefore, not unlikely that the testimony of PW 2-Pinjara regarding the said 'meeting' at the shop of the A/10-Raju Soni in the vicinity of his residence bears some grain of truth.

124. Though PW 2-Pinjara denied the suggestion that he had no occasion to see the A/13-Narpatsingh and the A/14-Saiyed before the incident, he was not in position to recollect when for the first time he saw the A/13-Narpatsingh at village Randhikpur. Strangely, he could not answer when he last saw the A/14-Saiyed before the incident. But he maintained that he had seen the A/13-Narpatsingh for the first time in the shop of the A/10-Raju Soni before the incident. He admitted that he had no occasion to talk to the A/13-Narpat and the A/14-Saiyed prior to the incident. According to him, he had occasion to hear in the shop of the A/10-Raju Soni that they were the A/13-Narpat and the A/14-Saiyed. Before any conclusions are drawn from this evidence, it is worthwhile to go through the evidence of DW 4-Mansinghbhai Kishori.

125. DW 4-Mansinghbhai Kishori, ASI, Fatehpura Police Station, District Dahod, deposed that he was PSO (SHO) and the A/14-Saiyed was second PSI at the police station on 28.2.02; and following the wireless message received from Dy. SP, Limkheda directing the A/14-Saiyed to report on Bandobust duty at Limkheda Police Station around 12.05 hours on 28.2.02 the A/14-Saiyed was informed of the message and accordingly around 13.30 hours the A/14-Saiyed left for Bandobust duty at Limkheda Police Station by police van - mini bus bearing No.P24 and registration No.GJ-17-G-5064; and an entry (Ex. 500) was accordingly made in the station diary (Art.76) maintained in ordinary course of the business of Fatehpura Police Station. He disclosed that Limkheda is approximately at a distance of 80 kilometers from Fatehpura Police Station.

126. In the cross-examination done by the prosecution, DW 4-Kishori revealed that the time and contents of wireless message were recorded in the Wireless Message Book by one Constable; and no station diary entry was made about the message received. According to DW 4-Kishori, the Constable informed the A/14-Saiyed, who was in the mini bus in town, about the message received. He revealed that a wireless set provided in the mini bus and there was wireless message book maintained in the mini bus. He denied the suggestion that the A/14-Saiyed did not report to the police station at about 13.30 hours on 28.2.02 and left directly without reporting to the police station after receiving the wireless message.

127. According to DW 4-Kishori, time '13.30 hours' written in the entry Ex. 500 is the time of making the entry. It was pointed out in the cross-examination that initials of the A/14-Saiyed in the entry Ex. 500 are found over-written. However, it is not shown from the cross-examination of DW 4-Kishori that there was any other person named Saiyed, with different initials, working as Second PSI at the said Police Station. It is, therefore, difficult to understand in what manner the alterations in the initials with overwriting in

the entry Ex. 500 could have benefited the A/14-Saiyed. Production of the wireless message book/s for challenging the veracity of DW 4-Kishori was also not felt necessary by the prosecution.

128. DW 4-Kishori revealed in his cross-examination the distances between the various places as under:-

From	To	Distance
Fetehpura	Dahod	60 K. M.
Sanjeli	Fatehpura	60 K. M.
Sanjeli	Limkheda	35 K. M.
Dahod	Limkheda	25 K. M.
Randhikpur	Limkheda	22 K. M.

According to DW 4-Kishori, one has to go to Limkheda from Fatehpura via Dahod and there is no other road to Limkheda from Fatehpura vide Sanjeli. This account of distances coupled with the entry Ex.500 (in Gujarati), which read as under:-

“13.30 hrs. Nond - aa vakhte 2nd PSI Shri.... (overwriting) Sayyed Saheb ne Meherban Vibhagiya Police Adhikari Saheb na Hukumthi Limkheda java ravana karya.

(Sd/-)
PSO”

(13.30 hrs. Note: At this time 2nd PSI Shri.... Sayyed sent to Limkheda on the orders of Divisional Police Officer), poses a pertinent question regarding the presence of the A/14-Saiyed at Randhikpur around 1.30 p.m. on 28.2.02.

129. PW 36-Abhesingh Patel, Police Constable at Randhikpur Police Out-post, falling within the limits of Limkheda Police Station, deposed that on the day following Godhra Train Burning Incident riots broke up in the village Randhikpur and the property was looted and burnt with the resultant exodus of persons, both Hindus and Muslims, from the village. He further deposed that the A/14- Saiyed from Fatehpura Police Station joined the outpost some time after the noon on 28.2.02. His evidence shows that he was not supporting the prosecution and had made statements contrary to what was recorded in the portions marked 'A' and 'B' in the statement dated 12.1.04 (Ex.419 colly.) recorded by PW 72-K. N. Sinha. He had made unexplained improvements in his testimony in relation to the alleged exodus of 'Hindus' and the time of joining Randhikpur Outpost by the A/14- Saiyed. His testimony only adds to the number of prosecution witnesses turning hostile.

130. Further cross-examination of PW 36-Abhesingh Patel fetched the following entries (Ex. 214) from 28.2.2002 to 5.3.2003 in the Movement Register Art .43:-

Sr. No	Date & time	Note/particulars
1.	28.2.02	At this time I came back with PC 884 for matter of AD

- 2.30 hrs. 4/2002. Remained present in patrolling in Nichvas area due to Godhra Incident.
2. 4.00 hrs. At this time I with PC 884 left for going to CHC, Limkheda in connection with AD 4/2002.
3. 11.30 hrs. At this time I was orally informed by PSI. Limkheda and Circle Saheb that there was riot in Randhikpur Outpost area and hence PC 884 was kept there, and
4. 12.45 hrs. I came to village Singwad for Bandobust and remained present there.
5. 20.00 hrs. I with PC 905,884 and SRPGRO Circle Saheb with Fatehpura Mobile remained on duty due to Godhra Railway Incident.

01/03/02

Sr. No	Date & time	Note/particulars
1.	0000 hrs.	Remained on duty.
2.	9.00 hrs.	At this time PC Rasulbhai resumed duty from Earned Leave continued Bandobust.
3.	24/00 2/03/02	Remained in Bandobust with aforesaid persons
1.	0000 hrs.	Remained on duty. Remained in investigation of Limkheda Police Station 1-49/02 and 1-50102.
2.	24/00 03/03/02	Remained on Bandobust.
	0000 hrs. 04/03/02	At this time remained on Bandobust
1.	0000 hrs.	On duty with personnel.
2.	9/00	On duty. Investigation in Limkheda P. Stn. 1-50/02. Diary No.1 in Bandobust.
3.	24/00 05/03/02	In Bandobust with accompanying personnel.
1.	1000	On duty.
2.	7.00 hrs.	On duty. Went to village Kaliarai for investigation of Limkheda 1-43/2002 and back on duty
3.	24/00	We all returned from investigation of Limkheda 1-59/02.

131. Cross-examination of PW 36-Abhesingh Patel further revealed that Buckle No.884 was of Police Constable Ranjitsingh and his Buckle No. was 901. Entries Ex.214 bear no reference to visit of the A/14-Saiyed, the A/16-Bhabhor and 3 constables to Kesharpur Jungle during the period of the said entries. However, the fact is revealed that the A/13-Narpatsingh had made those entries in the Movement Register Art.43 and the A/13-Narpatsingh was on Bandobust duty at village Randhikpur on 28.2.02.

132. Evidence of PW 2-Farukhbhai Pinjara further poses a question regarding leaving of the residential premises by PW 2-Pinjara as deposed. His evidence shows that the mob which approached the place of his residence was not throwing burning rags on the houses; however, Zubaida and Karim ran away around 10 - 10.30 a.m. His evidence further shows that he met Zubaida and Karim separately at Godhra Relief Camp some one-and-half or two months after the incident when he went to visit his brother Ismail and his aunt Zubaida. If he were to leave his home simultaneously with Zubaida and Karim, there could not have been such occasion for his meeting one-and-half or two months after the incident at Godhra Relief Camp.

133. PW 2-Pinjara deposed that he had no habit of reading newspapers and had not met the organizers of the Godhra Relief Camp, and could know about the burning of the houses of his aunt Zubaida and Karim from Hussain son of Zubaida when he made enquiries with him for the reason of construction of Rahimabad Colony.

134. PW 2-Pinjara further deposed that the story of the prosecutrix was known to every body and he could get to know this story after going to Rahimabad Colony. He further deposed that he did not learn that the prosecutrix had lodged a complaint and the fact of lodging of such complaint was also not disclosed to him by the CBI officers. His evidence shows that he remained under. The belief that he had not disclosed the facts concerning the prosecutrix. His evidence further shows that he did not carry any note to the CBI office for the purposes of giving statement. Pertinently, no material contradictions or omissions surfaced in the cross-examination of PW 2-Farukhbhai Pinjara.

135. PW 4-Salim Adam Ghanchi deposed that on hearing shouts from the mob of Hindu persons: "Musalmanoko kato, fek do" he left his residence and ran towards jungle; and his deceased mother Amina, his four brothers - Ayub Adam, Mohsin Adam, Yakub Adam and PW 8-Saddam Adam - ran away from the residence in different directions. He further deposed that the A/12-Ramesh Chandana, the A/10- Raju Soni, A/11-Mitesh Bhatt, A/8-Pradip Modia, A/3-Naresh Modia (now deceased), A/6-Lala Doctor, A/5-Lala Vakil, A/1-Jaswant Nai, A/2-Govind Nai, A/7-Keshar Khima, A/9-Baka Khima and one Vijay Modia were in the said mob of persons.

136. In the cross-examination, PW 4-Salim Adam Ghanchi deposed that when he heard the shouts he was in Uparwas Bazar near Ayub Majid's house; and on hearing "Musalmanoko kato, fek do" his attention was drawn to the mob. He was unable to

explain why there was omission of the word 'Musalmanoko' in his statement recorded by the CBI. He went on to say in his cross-examination that on hearing the shouts he straight ran to the jungle and did not see his mother or brothers from the time he heard the shouts. He denied the suggestion that he heard the shouts while he was at home. He deposed that he did not recollect whether he had seen his mother and PW 8-Saddam with others leaving in another direction. In the same breath he added that he stated before the CBI that his deceased mother, PW 8-Saddam and others left in another direction, and such thing did happen.

137. PW 4-Salim further deposed that he stayed in jungle for 4 – 5 days and returned to village Randhikpur on 3.3.02 to see his family members and did not meet them at village Randhikpur; and saw his house burnt down. He further deposed that he left village Randhikpur and went to junction of roads near Kuwajar and saw a mob of 20 to 25 person including the said accused around 8 – 8.15 a. m. on 3.3.02. He further deposed that the mob was armed with swords and sticks and was equipped with two white vehicles.

138. Cross-examination of PW 4-Salim Adam reveals that he, his mother and brothers left their residence around 8 – 8.30 a. m. on 28.2.02; and he had seen the house of his maternal uncle Kayum, situate in Bazar on Kuwajar Road near the house of Majid Adam Abdodia, on fire about the time of leaving his residence.

139. PW 4-Salim Adam further deposed that he stayed in the vicinity of a dam near village Borghuta after leaving his residence on 28.2.02 and returned to village Randhikpur therefrom on 3.3.02. His evidence further shows that he was not having any formal education and had no capacity to calculate numbers and did not know English months. According to him, he stayed in jungle for 5 days and got nothing except water for his sustenance. He further deposed that the junction of roads near Kuwajar was at walking distance of one hour from village Randhikpur; and he went to the places by walking through the jungle.

140. According to PW 4-Salim Adam, he did not know whether his narration was recorded as it is by the CBI despite the fact that he did state before the CBI that he returned to Randhikpur to see his family members. The Statement recorded by the CBI made reference to the fact of the returning to Randhikpur to see his house though the words "to see his family" are not found employed in the said statement. From the evidence of PW 4-Salim Adam, one can reasonably conclude that PW 4-Salim Adam had reason to return to Randhikpur to see his family members as he had not seen his mother and brothers from the time he heard the shouts in the Bazaar.

141. Evidence of PW 4-Salim Adam further reveals an omission of the fact making reference to the words "junction of roads" near Kuwajar in his statement recorded by the CBI. He further deposed that he had seen drivers Hari and Mahindra in the mob on both the occasions.

142. Evidence of PW 4-Salim Adam further reveals that his statement u/s 164 of Cr. P. C. makes no reference to he having seen the mob consisting of the said persons and two white vehicles while he was returning from visit to village Randhikpur after seeing his burnt house. Considering the fractured version of the incidents, it is difficult to place reliance on the uncorroborated testimony of PW 4-Salim Adam on the vital aspect of he having seen the said persons with two white vehicles. Keeping aside his evidence on the material facts, cross-examination of PW 4-Salim Adam opened a window to the minds of victims who were uprooted from village Randhikpur. PW 4-Salim Adam deposed that he had no enmity with Limkheda Police Station and had mind to lodge a complaint; and yet he did not approach the police at Devged Baria after leaving his native place Randhikpur. He added that the police were not in mood to entertain Muslims and therefore he did not approach the police. His evidence shows that it was his personal feeling, but this revelation gives insight into the mind of a victim of communal riots.

143. PW 25-Siram Adam Ghanchi deposed that he had seen the A/4-Shailesh Bhatt, Mantri (Secretary) of BJP Sanghatan (Organisation), carrying sword, and the A/9-Bakabhai Khimabhai carrying axe, and Maganbhai Chamar and Harshad Patanvadi amongst stone throwing mob in the morning when the riots broke a day after Godhra Train Burning Incident; and on seeing this, he ran away from his residence with his family to village Chundadi, and therefrom they were taken to Limkheda Police Station and thereafter to Godhra Relief camp by the police. He deposed that the persons in mob coming to village Randhikpur around 8.15 a.m. on that day were giving slogans "Musalmanano kapo, Musalmanano maro" (in Gujarati) (Cut Muslims, kill Muslims); and his house at village Randhikpur was burnt down and his belongings were looted.

144. Cross-examination of PW 25-Siraj Adam shows that he was related to the prosecutrix through his father Adam; and knew Abdul Sattar Kalu, Sayyed Abdul Salam Abdul Umar, Imtiyaz Yusuf Ghanchi, Sattar Majid Ghanchi, Salim Abdul Sattar Musa, Adam Ismail Ghanchi, Firozabhai Sattarabhai Ghanchi @ Pintoo, Mohamed Iqbal Abdulla Ghanchi, Abdul Aziz Yusuf Patel, Abdul Sattar Yusuf Patel, Sugraben Ismailbhai, Abdul Issa Ghanchi, Madinaben Sirajbhai Patel, Salim Adam Ismail, Yakub Ibrahim Shaikh, Rasool Aziz Umar, Salam Yusuf Shaikh and Fakir Mohamed Nana Patel, all settlers at Rahimabad Colony from village Randhikpur. He deposed that there was no common talk amongst them for taking decision to make an application in respect of the incident despite the fact that the houses of the said persons were burnt or damaged. He further deposed that he had been to the residence of Kadakyabhai, Sarpanch of village Randhikpur, but did not ask him to make an application in respect of the said incident as he was carrying fear in his heart.

145. Evidence of PW 25-Siraj Adam shows that he knew a little of writing being educated upto 5th standard in vernacular. However, he did not feel like making an application either on the date of the incident or before reaching Godhra Relief Camp some 4 or 5 days after the incident. According to him, nobody made inquiries with him at Godhra Relief Camp despite the fact that many persons were visiting the camp. His evidence further shows that he was not knowing whether there were persons at the camp making query about their names and other particulars and making record of it.

146. Evidence of PW 25-Siraj Adam further shows that there were many persons from Randhikpur at the camp, they did not discuss the issue of making an application to any authority while in the camp. Obviously, the evidence clearly shows that the inmates at the Godhra relief Camp or the victims who suffered common fate were in no mood to share their woes with others may be out of fear or mental depression. His evidence further shows that he had made an individual application for getting compensation for the loss suffered; and this application was got written at the same time when he gave statement to the CBI. Frankly PW 25-Siraj Adam disclosed that he went to the CBI for getting compensation and was not knowing whether others went to the CBI for the same purpose. He added that he appeared before the Court at Mumbai for giving his statement u/s 164 of Cr. P. C. (Ex.158-C) for the same purpose of getting the compensation. However, he denied that he was asked to give a statement by the CBI in the manner stated before the Court vide Ex.158-C for getting the compensation or was tutored by PW 3-Sugra or two other ladies. He also denied that he was instructed to give the names of the A/4-Shailesh Bhatt and the A/9-Bakabhai by PW 3-Sugra and other two ladies.

147. Evidence of PW 25-Siraj Adam shows that he approached the CBI with a hope of getting compensation, but certainly he had his own say to put before the CBI or the Ld. M. M. at Mumbai. No material contradictions or omissions surfaced in the cross-examination of PW 25-Siraj Adam. Weight of evidence can be felt from the fact that he did not name the A/5-Radheshyam Shah @ Lala Vakil, the A/6-Bipinchandra Joshi @ Lala Doctor, the A/10-Rajubhai, the A/11-Miteshbhai and the A/12-Ramesh Chandana as the persons in the mob despite knowing them either by their names or their standing.

148. PW 26-Imtiyaz Yusuf Ghanchi deposed that he had seen the deceased accused A/3-Naresh Modhiya holding a Rampuri knife in hand and the A/8-Pradeep Modhiya pelting stones, along with slogans giving Raju Chhagan Harijan, in the mob sometime between 10 and 11 a.m., on the day following the Godhra Train Burning Incident, in the vicinity of his residence at Nichwas Bazar at village Randhikpur; and on seeing the mob he, his lame mother and his sister left their residence and sought refuge in the home of one Lalu Madiya Parmar. According to PW 26-Imtiyaz, they stayed at the residence of Lalu Parmar for two days and thereafter went to Limkheda Police Station in a police vehicle. He claimed to have witnessed the burning of his residence and looting of his belongings. PW 26-Imtiyaz deposed that two years after the incident he saw another house standing at the place where his residence was situate; and thereafter he had lodged a complaint about the sale of his house property by third person with DSP, Dahod, Limkheda PSI and Randhikpur Police Station.

149. Cross-examination of PW 26-Imtiyaz shows that Lalu Parmar was a Hindu living with his family in a house situate at a distance of about 10 to 15 feet from the back of the residence of PW 26- Imtiyaz cross-examination of PW 26-Imtiyaz further shows that his mother was lame. Evidence of PW 26-Imtiyaz shows that he had no choice but to take refuge in the residence of Lalu Parmar. PW 26- Imtiyaz deposed that he was not afraid in entering Lalu Parmar's house when the mob was pelting stones. He further deposed that none from the mob entered Lalu Parmar's house. At the first look this may sound strange

but there have been instances when individuals do give shelter to the persons on the other side of the communal divide. Evidence of PW 26-Imtiyaz shows that he had been staying at village Randhikpur since his birth and Lalu Parmar was his neighbour and therefore, the occurrence of the intimidating incident anti-climaxed with a benign conduct on the part of Lalu Parmar, a Hindu, in giving shelter to. PW 26-Imtiyaz and his family members certainly cannot be ruled out.

150. PW 26-Imtiyaz deposed that he was knowing Abdul Sattar Kalu, Sayyed Abdul Salam Abdul Umar, ; Sattar Majid Ghanchi, Salim Abdul Sattar Musa, Adam Ismail Ghanchi, Firozbbhai Sattarbbhai Ghanchi @ Pintoo, Mohamed Iqbal Abdulla Ghanchi, Abdul Aziz Yusuf Patel, Abdul Sattar Yusuf Patel, Sugraben Ismailbbhai, Abdul Issa Ghanchi, Madinaben Sirajbbhai Patel, Salim Adam Ismail, Yakub Ibrahim Shaikh, Rasool Aziz Umar, Salam Yusuf Shaikh, Fakir Mohamed Nana Patel and PW 25-Siraj Adam Ghanchi, all settlers at Rahimabad Colony from village Randhikpur. His evidence further shows that PW 24-Abdul Issa Ghanchi was his relation. However, he denied that he was tutored by PW 3-Sugra and two other ladies for giving statement before the CBI.

151. An abortive attempt was made in the cross-examination of PW 26-Imtiyaz to project a picture that he had named the A/8-Pradeep Modhiya as the person seen by him in the mob for the reason that he had learnt in course of making inquiries that his house was sold by Lalu Parmar, a relation of the A/8-Pradeep Modhiya. PW 26-Imtiyaz deposed that Lalu Parmar was an Advise and the A/8-Pradeep Modhiya was Modhiya by caste and as such they were not related to each other.

152. Evidence of PW 26-Imtiyaz is found to be afflicted with minor omissions vis-a-vis statement recorded by the CBI and the statement (Ex.158-D) recorded u/s 164 of Cr. P. C., inasmuch as the facts - the description of the knife as 'Rampuri' and the role of throwing stones are found to be missing in the statement recorded by the CBI and the statement recorded u/s 164 of Cr. P. C. (Ex.158-D). These omissions do not materially change the fact of PW 26-Imtiyas having seen the deceased A/3-Naresh Modhiya and the A/8-Pradeep Modhiya amongst the rioters. From the fact that Lalu Parmar, a Hindu, gave shelter to PW 26-Imtiyaz, a Muslim, it cannot be construed that it was inspired by fanatical opponents of either VHP or BJP. PW 26-Imtiyaz, therefore, needs to be believed.

153. PW 31-Rasool Ajit Umar Ghanchi deposed that he had seen the A/11-Mitesh Bhatt, the A/12-Rameshbhai Chandana, Manu Gothana and Mohan Khima amongst the rioters armed with swords and incendiary articles at village Randhikpur on the day following the Godhra Train Burning Incident. He added that such mob was giving slogans "Musalmanono kapo, maro" and therefore to save himself he left his residence at Randhikpur, ran to jungle, stayed at village Pipliya for three days, and was taken to Limkheda Police Station therefrom in a police vehicle and thereafter to Godhra Relief Camp some 4 to 5 days after the incident.

154. According to PW 31-Rasool Ghanchi, there were 30 to 40 persons in the police vehicle when he was taken to Godhra Relief Camp; and he had not disclosed the fact of

he having seen the said accused in the mob any time during the period between leaving village Randhikpur and reaching Godhra Relief Camp. One can certainly appreciate that those were critical times for riot victims like PW 31-Rasool Ghanchi and it was not expected of them to exchange such information with each other on way to the relief camp.

155. Cross-examination of PW 31-Rasool reveals that he had received cold response from the police or revenue officials visiting the Godhra Relief Camp in respect of his grievances. However, PW 31- Rasool did not produce copies of such complaints made either to the police or revenue officials. His cross-examination further shows that he was knowing PW 3-Sugraben Ismailbhai, PW 4-Salim Adam Ismail, PW 7-Madinabn Sirajbhai Patel, PW 25-Siraj Adam Ghanchi (son of his maternal aunt Bibi), and W 26-Imtiyaz Yusuf Ghanchi as well as others who had shifted to Rahimabad Colony from village Randhikpur after the incident. However, he denied the suggestion that he was tutored and taken to the CBI by PW 3-Sugra and two other ladies along with other residents of Rahimabad Colony.

156. According to PW 31-Rasool, first he heard shouts from distance and was scared and thereafter he heard the shouts from short distance as the mob came near, and thereupon he told his family to move out and left the residence along with his family from rear. His evidence further shows that the statement dated 7.2.04 recorded by the CBI bears the following omissions vis-à-vis his evidence before the Court:-

- (i) hearing the shouts “Musalmanono kapo, maro”;
- (ii) seeing 2 or 3 swords in the hands of the persons in the mob; and
- (iii) reference to Mohan Khima.

However, it is specifically not shown from the cross-examination PW 72-Sinha that PW 31-Rasool had not made the relevant statements resulting into the omissions. No adverse conclusion against the testimony of PW 31-Rasool, therefore, can be drawn. Fact of having seen the A/11-Mitesh Bhatt and the A/12-Rameshbhai Chandana amongst the mob is not wiped out from the cross-examination of PW 31-Rasool Ghanchi.

157. PW 45-Sayyed Abdul Salam deposed that he happened to witness burning of his residence at village Randhikpur around 10 and 11 a.m. on a day following the Godhra Train Burning Incident. He identified the A/7-Kesharbai Khima as the person holding a petrol can in the mob which set his residence on fire. He further deposed that he quickly boarded a tempo when the mob was at a distance of about 20 to 25 feet from the tempo and managed .to move away from the said place along with other persons in the tempo. According to him, there were shouts "Musalmanono bhagav, maro" coming from the mob and nobody from the mob threw anything at them. It appears from the composite reading of the examination-in-chief of PW 45-Sayyed Abdul Salam that the mob was busy spreading petrol over the residence of PW 45-Sayyed Salam and lighting it thereafter when PW,. 45-Sayyed Salam and others boarded the tempo. No material contradiction or

omission is evident from the statement dated 6.2.04 (Ex.370) recorded by the CBI and the statement recorded u/s 164 of Cr. P. C. (Ex.158-E). In fact, statement Ex.158-E substantially co testimony of PW 45-Sayyed Salam.

158. PW 45-Sayyed Salam knew PW 24-Abdu Issa and the prosecutrix. Likewise, he knew the A/1-Jaswant, A/2-Govind, A/4-Shailesh, A/5-Radheshyaam, A/6-Bipinchandra, A/8-Pradeep, A/9-Bakabhai, A/10-Rajubhai, A/11-Mitesh Bhatt and A/12-Ramesh Chandana as the residents of Randhikpur. It is true that he did not approach the police for giving statement before his statement was recorded by the CBI on 6.2.04. As observed previously, the circumstances then ruling dissuaded many of the victims to approach the local police and the victims were complacent with the fact that their lives were spared. Fact of not giving a complaint to the police about the incident, therefore, makes no difference with the testimony of PW 45-Sayyed Salam. Evidence of PW 45-Sayyed Salam shows that he named only the A/7 - Keshar Khima as the person seen by him in the mob when he was asked by the CBI about it. Fact that he knew many of the settlers of Rahimabad Colony were from Randhikpur, particularly his relations, PW 24-Abdul Ghanchi, PW 3-Sugraben and the prosecutrix, cannot be construed to believe that he was tutored by them to give evidence before the Court. ,

159. It is true that PW 45-Sayyed Salam traveled to Mumbai with PW 25-Siraj Adam, Abdul Sattar Kalu and PW 31-Rasool Ghanchi for giving his statement u/s 164 of Cr. P. C. before the Ld. M. M., Mumbai. However, a fact remains that he was one of the victims of the riots who wanted to give statement before the Ld. M.M. as others, and as a matter of convenience he accompanied PW 25-Siraj Adam, Abdul Sattar Kalu and PW 31-Rasool Umar in the train to Mumbai and they stayed together in a rest house at Mumbai .

160. PW 46-Salim Abul Sattar Musa Ghanchi deposed that he was assaulted by Umesh Doctor, the A/8- Pradeep Modhiya, Mafat Mangel and Raju Chhagan Harijan, who were in the mob of 50 to 60 persons in Randhikpur Bazar around 10 to 10.30 a.m. on a day following the Godhra Train Burning Incident. According to him, the persons in the mob were shouting "Musalmanono mari nakho".

161. In the cross-examination, PW 46-Salim Sattar deposed that he had not seen any weapon in the hands of anybody in the mob and he was beaten with kicks and fist blows. He added that he managed to free himself and fled to his residence situate on Chundadi Road and left home with his family members after the incident. Cross-examination of PW 45- Salim Sattar further shows that he had not lodged any complaint with the police or any other authority till his statement was recorded by the CBI; and he was related to the prosecutrix and PW 3-Sugrabi. As observed herein before, the fact of not lodging a complaint with the police about the incident or his relationship with the prosecutrix and PW 3-Sugrabi by itself would not vitiate the testimony of PW 46-Salim Sattar. PW 46-Salim Sattar deposed that he heard about the case lodged by the prosecutrix when he went to give statement before the CBI; and there was a general talk about the prosecutrix in Devgad Baria. However, he deposed that he went to the CBI for giving his statement on his own. He conceded to the fact that every day he and father as well as brother of the prosecutrix talked with each other in Rahimabad Colony as they were local residents.

According to him, he consulted his father, who advised him to lodge a complaint with the CBI.

162. In further cross-examination PW 46-Salim Sattar deposed that he had been to Nichwas Bazar to meet Ismail, brother of PW 2-Farukh Pinjara. He deposed that PW 2-Farukh Pinjara was not present when he went to call Ismail. According to him, PW 2-Farukh Pinjara was working on a truck. It is not understood from his cross-examination whether he wanted to say that PW 2-Farukh Pinjara was residing with Ismail. Cross-examination of PW 46-Salim Sattar further reveals that he was lame and could walk with the help of a stick. One therefore wonders how he could manage to escape from the hands of the assailant in the mob which was giving slogans "Musalmanono mari nakho". It is, therefore, risky to place reliance on the testimony of PW 46- Salim Sattar.

163. PW 47-Sattar Majid Ghanchi deposed that he had to leave his home situate on Piplod Road, village Randhikpur when the A/1-Jaswantbhai Nai, A/2-Govindbhai Nai and Gopal Babulal Shah, from amongst the mob of 100 to 150 persons, threw fire balls at his residence and the persons amongst the mob were shouting "Musalmanono maro, looto, balo" (kill, loot and burn Muslims).

164. In the cross-examination, he deposed that fear lived in his heart when he left his house from the front door; and nobody chased him after leaving home. Cross-examination of PW 47-Sattar Ghanchi also reveals that there were about 4 to 5 houses belonging to Muslims between his house and - that of PW 25-Siraj Adam. Pertinently, PW 25-Siraj Adam deposed that his house at village Randhikpur was burnt down. Evidence thus shows that the rioters were primarily interested in looting and L. destruction of the property of the Muslims. Nothing much turns on the cross-examination of PW 47-Sattar Ghanchi except a fact that he knew the residents of Rahimabad Colony, particularly the persons who had migrated to Rahimabad Colony from village Randhikpur and was related to PW 24-Abdul Issa and PW 3- Sugrabi as well as the prosecutrix. Cross-examination of PW 47-Sattar Ghanchi further reveals that he did not lodge a complaint with the police or any other authority before giving the statement before the CBI. No material contradictions or omissions surfaced in the cross-examination of PW 47-Sattar Ghanchi. Steps taken by PW 47-Sattar Ghanchi for rehabilitating himself with the assistance from the persons from Hyderabad have nothing to do with the merits of his testimony.

165. PW 19-Phiroz Ghanchi deposed that around 10.30 a.m. on the day of outbreak of riots at village Randhikpur there was stone throwing on his residence and he had noticed the A/8-Pradeep Ramanlal Modhiya, Vijaybhai Ramanbhai Modhiya and Govindbhai Virsingh Bhilwad in the stone throwing mob, and thereupon he, his parents, brother, sister and wife fled from the residence; and thereafter stayed for two days in the house of one Kanubai near a jungle, and thereafter they were taken by the police to Limkheda Police Station. According to him, he did not lodge any complaint either with the police or revenue officials visiting the Godhra Relief Camp as the police at the camp were not in mood to listen to them. He further deposed that he did not lodge any complaint or request to the organizers in the camp for lodging their complaint. Evidence of PW 19-Phiroz

further reveals that he did not lodge any complaint when he was at Limkheda Police Station or with Dacor Police Station in which limits he stayed at his maternal uncle Rasoolbhai's place at village Nes before shifting to Rahimabad Colony. This apathy of PW 19-Phiroz Ghanchi towards lodging of a complaint needs to be appreciated in context of total evidence on record, particularly his experience as revealed through his evidence.

166. Before adverting to the experiences of PW 19-Phiroz Ghanchi in relation to the local law enforcement agency, it would be worthwhile to refer to his experiences in Godhra Relief Camp. PW 19- Phiroz Ghanchi deposed that nobody told him at the camp the names of the persons who had indulged in riots and arson in Randhikpur. He further deposed that one Maulavi Umarji used to visit the camp occasionally. He described Maulavi Umarji as a bearded man suggesting thereby Maulavi Umarji was a man of religious temperament. He further deposed that Maulavi Umarji used to persuade them to forget the facts of burning- of their houses by- the villagers and to adjust with the things. This in large measure explains his apathy towards lodging of a complaint.

167. PW 7-Madina Siraj Pate¹ deposed that on Thursday, next day after the Godhra riots, her residence at Randhikpur was attacked by the persons in mob and she and her daughter Farida left their residence thereafter together while others from her family left the residence and fled somewhere. According to PW 7-Madina, two days thereafter she took refuge in the house of one Maganbhai at village Randhikpur for a night and in the morning she and her daughter Farida were removed to Limkheda Police Station by the police. There is nothing- much in her cross-examination on these aspects except a fact that some of the persons in the mob carried kerosene cans and she saw her house being burnt. She further deposed that she returned to Randhikpur to find her husband and son. The fact of her return to Randhikpur is not unreasonable.

168. On this wide canvass of rioting and arson, it is necessary to appreciate the evidence of the prosecutrix. The prosecutrix deposed that all of them i. e. members of her household at village Randhikpur and the persons joining them left the residence in view of violent developments in the village and they started running to the fields at the back of her home when she saw houses being burnt. This situation, as portrayed by the prosecutrix, offers view to the state of her mind at the material time.

169. The prosecutrix further deposed that they went to Mr. Kadkyabhai, the Sarpanch of the village, staying a little distance away and sought refuge for one or two hours at his residence; and on finding the things there not to their liking they moved to one school near the residence of Mr. Bijalbhai Damor at village Chundadi. She further deposed that after getting food and water they moved to village Kuwajar.

170. In the cross-examination, the prosecutrix deposed that she did not meet Sarpanch Kadkyabhai or anybody else when they went to his residence but they sat outside the house of Kadkyabhai. According to the prosecutrix, she followed her father and her family members.

171. Her cross-examination further reveals that it takes about an hour less or more to walk distance between her father's residence at Randhikpur and Bijalbhai's residence at Chundadi and as such on the same day of leaving their residence they reached Chundadi around evening time. She deposed that she did not meet Bijalbhai at the school at Chundadi where they spent about 2 hours. She further deposed that Bijalbhai personally did not offer them food and water and her statement to that effect is not correct.

172. The prosecution did not examine Kadakyabhai. PW 33-Bijalbhai Damor remained silent about the facts deposed to by the prosecutrix. However, he did reveal that since 1972 he has been working in Indian National Congress Party and was MLA elected from Randhikpur constituency for the period between 1990 and 1995. According to him, he was at a school run by him at Limkheda when he learnt about Godhra Train Burning Incident and later on his cousin Ratansingh, Sarpanch of village Randhikpur, had informed him about the exodus of Muslims from Randhikpur and their need for help.

173. In the cross-examination PW 33-Bijalbhai Damor clarified that around 3.3.02 he had received a call from Ratansingh. There was no challenge to the fact of a call from Ratansingh to him about the exodus of Muslims from Randhikpur and their need for help.

174. On this background, the fact deposed to by the prosecutrix about getting assistance in form of food and water at a school in the vicinity of the residence of PW 33-Damor at Chundadi cannot be brushed aside lightly only for the reason that such fact fails to appear in the statement recorded by Limkheda Police and Godhra Police.

175. The prosecutrix further elaborated in her cross-examination that she had seen other Muslim families from village Randhikpur at the school near the residence of PW 33-Bijalbhai Damor at village Chundadi and Majid Kaka's family was one amongst them. According to the prosecutrix, all of them at the said school left the school for Kuwajar together despite the fact that it was not certain that they were to go to Kuwajar only. It appears from the testimony of the prosecutrix that she had never been to Kuwajar prior to that day.

176. In her cross-examination the prosecutrix further deposed that around midnight (i.e. midnight between 28.2.02 and 1.3.02) they reached village Kuwajar and took refuge in the village mosque. She further deposed that all of them including her mother Halima and aunt Sugraben went to the residence of one village midwife - PW 6-Zaitoon Atila - where Shamim, cousin of the prosecutrix, delivered a baby girl thereafter.

177. PW 6-Zaitoon Atila deposed that she has been working as a midwife for the last 15 years and happened to assist delivery of a female child by one Shamim around midnight. She described the day as Thursday, a second day after Godhra riots. She deposed that 4 or 5 Muslim women, one of them Shamim, from Randhikpur, accompanied by one Yusuf, came to her residence at Kuwajar on that day. She further deposed that they stayed with them overnight after the delivery of the child by Shamim and next day they went to the mosque in village Kuwajar believably to meet their relations at the mosque.

178. Cross-examination of PW 6-Zaitoon brought to light certain facts, such as: (i) her prior acquaintance with Shamim, Yusuf and their family members at Randhikpur; (ii) she holding certificate of competency as a midwife; (iii) maintenance of record of deliveries helped by her; and (iv) she knowing Salim Rampuria, Majid Mohamed Hathila of village Kuwajar as well as Sulemanbai Yusufbhai Haji, Deputy Sarpanch of village Kuwajar and his employee Shankarbhai Rambhai Naik. She further deposed in her cross-examination that those ladies accompanied by an adult male person approached her at late night on their own around 11 p.m.; and nobody else was with them and they did not approach her around 7 p. m.; and the child was delivered around 1.30 am. She was contradicted with the portions marked 'A' and 'B' in the statement dated

22.9.02 Ex.273 recorded by Gujarat CID with reference to her assertions in the statement regarding visit to her residence by 15 to 20 persons, comprising of gents, ladies and children, one of them an old person, from Randhikpur/Singwad, and one lady coming to her residence at 7 p. m. However, the statement that she had helped one Shamim from Randhikpur in delivery of a girl child around 1.30 a.m., as deposed, fails to get erased from the evidence with the contradictions on record.

179. In her further cross-examination, PW 6-Zaitoon deposed that only once during the period of four days after Godhra riots she had assisted delivery of the child as midwife at her residence; and had made a statement before the Gujarat CID that a woman had delivered a child between 8 p. m. and 9 p. m.; and she was not knowing who were those Muslim persons, one of whom had delivered a child at her residence; and she had not produced any record maintained by her before the Gujarat CID or CBI. It appears that PW 6-Zaitoon was made to make the statement without reference to the record maintained by her. Certainly, the statement recorded by the Police cannot take place of the evidence and act as the proof of the facts stated therein. Even at the time of cross-examination of PW 6-Zaitoon the defence did not think it necessary to assail her version regarding delivery of a child by Shamim as deposed to by her.

180. PW 6-Zaitoon further deposed in her cross-examination that when Godhra riots broke out on 27.2.02 her house as well as surrounding houses were attacked by Adivasis and as a result of this she fled to jungle. In her re-examination, she deposed that she left her residence not on the very day of breaking of Godhra riots but on Friday, the day next after the delivery of the child by Shamim. In her further cross-examination, she deposed that they got afraid as a result of stone throwing on Wednesday, the day on which the Godhra riots broke out, and they left the residence immediately. Her vacillating stand in giving the evidence before the Court calls for corroboration to the fact of she assisting Shamim in delivering a child as deposed.

181. PW 21-Salimbhai Rampuria, a resident of Kuwajar, deposed that on Thursday, a day next to the Godhra incident, some 16 to 17 persons from village Randhikpur came to his residence around 9 or 10 p.m. and took one pregnant lady amongst them to his sister-in-law - PW 6-Zaitoonbi, a midwife, around 11 p.m. in order, to provide assistance to the pregnant lady in delivering a child.

182. PW 21-Salimbhai Rampuria was sought to be contradicted in reference to (i) the year of his marriage, portion marked A, (ii) number of persons approaching him, portion marked B, (iii) at his request Shankar taking those persons inside the mosque, portions marked 'C1 and D, and (iv) time of taking of the pregnant lady to PW 6-Zaitoon between 10 and 10.30 p.m., portion marked E1, in his statement dated 13.2.04 (Ex. 361). Pertinently, PW 21-Salimbhai Rampuria did not state anything about the year of his marriage and the role of Shankar during his examination-in-chief. It must also be borne in mind that PW 21-Salimbhai is a rustic illiterate villager and therefore the appreciation of his evidence should not be a mechanical process. PW 6-Zaitoon had referred to PW 21-Salimbhai Rampuria as the person residing in front of her residence. In this context, cross-examination of PW 21-Salimbhai sheds light on the circumstances ruling then.

183. PW 21-Salimbhai had deposed in his examination-in-chief that he ran back to his home from Morwa on learning the occurrence of Godhra incident and the persons who approached him on that fateful night were requesting him to leave them at the police station and he had offered them the necessary help. PW 21-Salimbhai deposed that he called PW 6-Zaitoon to his residence on finding one of the lady amongst the said persons getting labour pains. He further deposed that he called PW 6-Zaitoon from her residence situate at some distance of about 30 to 40 feet from his residence; and thereafter PW 6-Zaitoon came to his residence, examined the lady and took the lady to her residence for helping her deliver a child.

184. Contradictions pointed out by the defence in his evidence do not materially disfigure the core fact that PW 6-Zaitoon had assisted one pregnant lady in delivering a child in the night between Thursday and Friday immediately following the Godhra incident; and PW 21-Salimbhai ran to fields out of fear on Friday morning. There is nothing in the cross-examination of PW 21-Salimbhai Rampuria to disbelieve his testimony. The testimony of PW 21-Salimbhai Rampuria, therefore, lends credence to the fact that Shamim did deliver a child at Kuwajar while on run from place to place.

185. The prosecutrix further deposed that they went to village Khundra walking after leaving Kuwajar (on 1.3.02) around noon time and on the way they came across one person belonging to Nayak tribe who took pity on them, particularly looking to the condition of Shamim and made query how Shamim could walk with a new born child; and they, numbering 17, including the new born baby, stayed at his place for about two days. She named 16 others with her as follows:-

- (1) her daughter Saleha;
- (2) her mother - Halimaben;
- (3) & (4) her sisters - Mumtaz and Munni;
- (5) & (6) her brothers - Aslam and Irfan;
- (7) & (8) her uncles -Majidbhai & Yusuf Musa Patel;

(9) & (10) her aunts- Sugraben and Amina;

(11), (12) (13) her cousins – Shamimben, Mumtazben and Madinaben;

(14) Hussain – son of her cousin Shamimben;

(15) Saddam – son of her aunt Amina; and

(16) a new born female child of Shamim.

186. According to the prosecutrix, the person who gave them refuge advised them to move from that place as it was no more a safe place for them and therefore they left this place early morning (303.02) and started for village Sarjumi via village Chhapparwar. She deposed that they did not proceed to bus stand but proceeded some distance away from the bus stand of village Chhapparwar, moved through the fields of village Chhapparwar and were on Kuchcha road leading to village Panivela. She described this place as the Kucha road on the left side of which were agricultural fields and some 2 – 3 Kuchcha houses and on the right jungle and hillocks. This place, according to the prosecutrix, was the place of occurrence of the crime in the present case. The prosecutrix deposed that they had asked for clothes with Nayak before leaving his place and Nayak had obliged them with the clothes from his residence to wear in order to camouflage themselves. Accordingly, she deposed, she had received a petticoat (Gagra) (Art. 5A colly.) and blouse from the residence of Nayak before leaving his place and she was wearing it.

187. PW 20-Nanjibhai Nayak, a farmer living in the vicinity of village Kuwajar, Tal. Morwa, Dist. Godhra deposed that around 11.15 or 11.30 a.m. some 2 - 3 days after outbreak of Godhra riots, he saw 16 or 17 persons - men, women and children – from Randhikpur running helter-skelter; and he gave them food, water and shelter for about 2 nights and had also offered 4 sarees, 4 petticoats (Ghagras) and Chaniya Cholis to the women wearing Punjabi dress amongst them. He added that they wore those clothes and thereafter left his residence around 6 a.m. and he saw them off at Badiyadev Mandir.

188. Cross-examination of PW 20-Nanjibhai Nayak reveals that he cannot understand English calendar and cannot read time, but can count upto 100 numbers. His cross-examination further reveals that the said persons were strangers to him and he had no occasion to see them or their photographs or the clothes offered by him to them again. Certainly, the cross-examination of PW 20-Nanjibhai Nayak reveals that he had not counted the persons who came to his residence and was not in position to quote the date and month of the incident. Date and time of occurrence of incident as 1.3.02 between 9 and 10 a. m and he coming across the said persons, as per the portion marked 'A', dates of the stay of the said persons as per portion marked 'B', and the date of departure of the said persons as per portion marked 'D', as purportedly quoted in the statement dated 1.4.04 Ex.360, therefore appears to be a handiwork of the CBI officer recording it. A reference to the Godhra riots and span of period of stay of the said persons as quoted by PW 20-Nanjibhai Nayak provides the basis for argument of the prosecution that such

dates were possibly incorporated by the CBI officer in the statement Ex. 360 with reference to the facts quoted by the witness.

189. Testimony of PW 20-Nanjibhai further reveals the following omissions in reference to the statement dated 1.4.04 (Ex. 360) made by him before the CBI:-

- (i) giving of four sarees;
- (ii) number of Ghagras; and
- (iii) Badiyadev Mandir.

Even if the facts omitted by PW 20-Nanjibhai Nayak while giving his statement before the CBI are excluded, one can continue to see the fact that Ghagras (petticoats), Chaniya Cholis as well as shelter for two nights, were given by PW 20-Nanjibhai Nayak to a body of persons comprising of men women and children from Randhikpur 2-3 days after outbreak of Godhra riots.

190. PW 20-Nanjibhai Nayak deposed that he was been doing labour work at Kuwajar and he is a relation of one Shankar Rama Nayak, who was working with Suleman, Dy. Sarpanch of village Kuwajar, at Kuwajar. PW 6-Zaitoon made a reference to Nanjibhai and Kuniben as relations of Shankarbhai. She further deposed that Nanjibhai, Kuni and Savita were also called at the residence of Suleman when her statement was recorded by the CBI. However, PW 20-Nanjibhai did not identify himself as a person from Khundra and as husband of Kunibai. He denied the suggestion that he was called to the residence of Suleman twice or thrice in the presence of PW 6- Zaitoon.

191. PW 67-N. C. Dutta, who claimed to have recorded the statement of PW 20-Nanjibhai Nayak with the assistance of a Gujarati Interpreter – PW 64-Kalidas Chauhan, did not disclose any where in his evidence that the statement of PW 20-Nanjibhai was recorded at the residence of Suleman at Kuwajar.

192. PW. 64-Kalidas Chauhan merely deposed that he had accompanied I. Os. to village Randhikpur, Kesharpur and Chhapparwar. It is, therefore, very difficult to conclude or even infer that PW 20-Nanjibhai Nayak is the same Nanji, husband of Kunibai, as referred to by PW 6-Zaitoon; and that his statement was recorded by PW 67-N. C. Dutta at the residence of Suleman at Kuwajar.

193. On this background, the testimony of PW 20- Nanjibhai Nayak can be accepted as the piece of evidence revealing the facts and circumstances which have potential of lending assurance to the other evidence on record.

194. The prosecutrix further deposed that as they were moving along with the Kuchcha road, two white vehicles came from village Chhapparwar side. She further added that these vehicles were loaded with 25 to 30 male persons carrying weapons, like swords, sickles and sticks. She further deposed that the said persons halted the vehicles

and were shouting: "Aa raya Musalmano. Emne maro kapo" in Gujarati. (assault and cut these Muslims). According to the prosecutrix the said vehicles carried the A/4-Shailesh Bhatt, A/11-Mitesh Bhatt, A/2-Govind Nai, A/1-Jaswant Nai, A/9-Baka Khima, A/7-Keshar Khima, A/6-Lala Doctor, A/5-Lala Vakil, A/10-Raju Soni, deceased A/3-Naresh Modhiya, A/8-Pradeep Modhiya, A/12-Ramesh Chandana and others from village Randhikpur.

195. The prosecutrix further deposed that the said persons attacked them and to save themselves they ran helter-skelter. She added that Saleha was with her when she was running; and the A/4-Shailesh Bhatt snatched Saleha and smashed her on the rocky ground.

196. The prosecutrix, further deposed that the A/1-Jaswant Nai, the A/2-Govind Nai and the deceased A/3-Naresh Modhiya caught her from behind and tore her clothes. She further deposed that she was pleading with them not to kill her daughter and to spare her as they were like her brothers and uncles. She further deposed that they assaulted her and took her to a place beneath a tree. According to the prosecutrix, the A/1-Jaswant Nai was carrying a sword and when he was about to hit her, she tried to ward off the sword blow and tried to save herself with left hand, and in the process she suffered a cut injury between thumb and index finger of her left hand. She further deposed that the A/2-Govind Nai was about to place his leg on her neck. She further deposed that she kept on looking around for somebody to save her but she found nobody from her family who could save her; and saw her family members being assaulted and their clothes torn off.

197. About that time, she added, the A/1-Jaswant Nai did foul act of rape despite her pleading not to do such foul act as she was carrying a baby in womb and he was like her brother or uncle. Thereafter, she deposed, the A/2-Govind Nai and the deceased A/3-Naresh Modhiya raped her in succession; and her hands were held by the A/1-Jaswant Nai and the deceased A/3-Naresh when she was raped by the A/2-Govind Nai. She further deposed that she became unconscious and her assailants left her believing that she was dead.

198. One or two hours thereafter, the prosecutrix deposed, she regained consciousness and found herself naked with the dead bodies of her family members lying around. She added that she got frightened and looked around for some clothes to cover herself, and she could find her petticoat (Art. 5A), given by PW 20-Nayak to wear, lying in the vicinity and after putting on that petticoat she went sitting and squatting up the hill and stayed at the top of the hillock the entire day and night following thereto. The prosecutrix further deposed that she saw dead body of Shamim's new born daughter and many other corpses while she proceeded up the hill.

199. Evidence of the prosecutrix read in conjunction with the evidence of PW 16-Balwantsingh Rajput, PW 59-Kamlakar Sawant, PW 66-M. R. Khan, PW 69-Arjun Pawar and PW 72-K. N. Sinha, I. O., reveals that the place situate off Kuchcha road from village Chhapparwar leading to Panivela village in Taluka Limkheda, District Dahod as portrayed in the photographs Exs. 135/1 to 135/15 and videography recorded on the

cassette Art. 1A corresponding to CD Art. 1C (Ex. 354) was shown by the prosecutrix to the CBI as the place of offence on 13.3.04

200. PW 16-Balwant Singh Rajput, Jr. Telecom Officer from Devgad Baria, deposed that on 13.3.04 the prosecutrix led them to the said place and had narrated the facts. He further deposed that the photographs Arts. 41A/1 to 41A/15 i. e. Exs. 135/1 to 135/15 were taken at the places where the numbers were displayed, simultaneously with video shooting and recording of the panchnama Ex. 131. He identified the prosecutrix, PW 72-Sinha, PW 66-Khan, co-panch Patel and the CBI staff appearing in the said photographs. He deposed that the prosecutrix can be seen sitting in the crevice in the stones in the photographs Exs. 135/7, 135/9 and 135/10. He further identified in the photograph Ex. 135/1 a lady in brown coloured Kurta and Pyjama and blue coloured Odhani as one Farah Naqvi. He deposed in his cross-examination that he was told that this lady Mrs. Farah Naqvi was the friend of the prosecutrix; and she and the prosecutrix were at the CBI camp before he joining them.

201. Evidence of PW 59-Yamlakar Sawant, Head Constable, CBI, SCB, Mumbai, reveals that he had taken the photographs Exs.135/1 to 135/15 at the place shown by the prosecutrix around noon time on 13.3.04. He identified the persons seen in the photographs, namely, the prosecutrix, PW 66-Khan, PW 72-Sinha, two more persons from BSNL (panchas) and Constable Sable holding numbered sheets of paper. He was not cross-examined except getting a fact on record that one more lady was also present at the time of the said photographic session. This permits the Court to read the photographs Exs. 135/1 to 135/15 in evidence.

202. PW 66-Khan described the place indicated by the prosecutrix as the one in the vicinity of a Kuchcha road leading to village Chhapparwar from village Panivela. He deposed that they proceeded along the Pucca road leading to Randhikpur and near Chhapparwar village took diversion to the right of Kuchcha road leading towards village Panivela; and the place shown was at a distance of one-and-half kilometer from the Pucca road. Similar description of the place pointed out by the prosecutrix can be found in the evidence of PW 72-Sinha.

203. PW 66-Khan further deposed that he videographed the place shown by the prosecutrix and the events were recorded in the form of panchnama Ex.131, and the corresponding CD Ex.354 bears the record of videography recorded on the cassette Ex.1-A at the spot. His evidence rules out the possibility of manipulation of the videographic record done at the spot.

204. The prosecutrix identified different locations at the place of actual crime shown by her with reference to the photographs Exs. 135/1 to 135/20 as under:-

<u>Photograph</u>	<u>Description of the photograph</u>
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Ex. 135/1:	The place at Kuchcha road leading to Panivela where they came from the fields
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- Ex. 135/2: The prosecutrix seen moving on the Kuchcha road leading to Panivela with the CBI Officer (IO PW 72-Sinha)
- Ex. 135/3: The prosecutrix showing the place where her relations were killed to the CBI officer (IO PW 72-Sinha).
- Ex. 135/4: The prosecutrix showing the place where the A/4-Shailesh smashed her daughter Saleha to death to the CBI officer (IO PW 72-Sinha)
- Ex. 135/5: The prosecutrix showing the place where the Saleha was in her hands to the CBI officer (IO PW 72-Sinha)
- Ex. 135/6: The place where the prosecutrix was raped.
- Exs. 135/7, 135/9 & 135/10: The place where the prosecutrix remained in hiding after climbing the hill.
- Ex. 135/8: The place climbed by the prosecutrix up the hill after the offence.
- Exs. 135/11: The hand-pump where the prosecutrix drank water after the offence & 135/12):
- Ex.135/13: The place where the prosecutrix boarded a vehicle which took her to Limkheda.
- Ex. 135/15: The place where the offending vehicle arrived and halted at the time of the offence.

205. Perusal of the photographs Exs. 135/1 to 135/15 shows that the prosecutrix was showing the places to IO PW 72-Sinha, his colleagues and the panchas. The presence of one lady, who is identified as Ferha Naqvi, at that time, can also be gathered from the photographs Ex.135/1 to 135/15. However, one can clearly see from the said photographs that the said lady was playing role of a passive spectator while PW 66-Khan was videographing the events at the places shown by the prosecutrix on 13.3.04.

206. PW 66-Khan deposed that his first meeting with the prosecutrix was on the date of videography done by him; and he had no recollection of having interrogated the prosecutrix. He was not in position to say whether Ms. Ferha Naqvi was the family friend of the prosecutrix. However, he deposed that from the panchnama Ex.131 he learnt that Ms. Naqvi was the family friend of the prosecutrix. His evidence shows that he had not seen the prosecutrix and Ms. Naqvi coming together to the CBI Camp at Devgad Baria. He denied the suggestion that the investigating team and Ms. Ferah Naqvi had decided to change the place of offence in the beginning of March 2004 and the prosecutrix was tutored. This suggestion finds no basis anywhere in the evidence.

207. Perusal of the panchnama Ex. 131 reveals a corroboration to the fact of prosecutrix showing the place of offence to the CBI though the panchnama Ex. 131 fails to make specific references to the facts of prosecutrix showing the places, where her relations were attacked and killed or their corpses were found lying, or where the two vehicles arrived with the attackers. However, the composite reading of the panchnama Ex. 131 and the photographs Exs. 135/1 to 135/15 does not betray the veracity of the prosecutrix in relation to the showing of the places by her to the CBI officers.

208. The prosecutrix categorically asserted that Ms. Ferah Naqvi was not her friend. She denied the suggestion that the places were shown by Ms. Ferah Naqvi and the CBI officers. The photographs Exs. 135/1 to 135/15 do demonstrate how empty the said suggestion was.

209. PW 72-Sinha deposed in the cross-examination that he did not know whether Ferah Naqvi was the friend of the prosecutrix or her husband Yakub Rasool. According to him, Ferah Naqvi came there and therefore he described her as the friend of the prosecutrix or her husband Yakub Rasool.

210. Cross-examination of the prosecutrix reveals that her case had attracted attention of the media and she was even interviewed on T. V. Her cross-examination further reveals that many ladies used to meet her. According to the prosecutrix, the lady who was with them at the time of showing of the place/s of offences was one amongst those ladies who visited Godhra Relief Camp and she had disclosed the facts concerning the incident to them. However, she denied having made a statement before the CBI that the lady seen in the said photographs at the place of offence was Mrs. Ferah Naqvi wife of Vasant Sabarwal, resident of New Delhi, her friend. She also denied that the day before the visit to the place of offences the CBI officer and the said lady had paid visit to her residence. It is usual as well as probable that in the case of such kind media persons and social activists converge at the focal point of a controversy, many a times for their own agenda of attracting the attention of the public at large. It is equally improbable that a sophisticated lady from New Delhi would in any manner be a friend of an illiterate rustic woman – the prosecutrix – from the place like village Randhikpur Taluka Limkheda, District Dahod, Gujarat.

211. The Prosecutrix further deposed that after staying over night at the top of the hillock she went to other hill in the vicinity and came down the hill towards one hand-pump on feeling thirsty the next morning. She deposed that she met an Adivasi lady who turned violent to her and tried to assault her; and when told that she belonged to her and she needed clothes as she was semi-nude, the Adivasi lady took her to her home and provided a blouse and Odhani (Arts. 6A and 7A respectively). According to the prosecutrix, she wore the clothes provided by the said Adivasi lady, washed her face and drank water from the hand-pump.

212. The prosecutrix further deposed that she saw one person in police uniform standing near one vehicle on Kuchcha road and she, therefore, ran to him and asked him to save her. According to the prosecutrix, she told that person in the police uniform that

her family including her daughter was killed and she was raped. The said person, according to the prosecutrix, took her to Limkheda Police Station in his vehicle; and on the way they came across one vehicle with red lamp and the said person with police uniform had some talk with the person in the vehicle with red lamp.

213. PW 11-Sumaliben Patel deposed that one woman wearing Lenga and Zabba alighted from one vehicle approaching the place from Godhra side; and she had noticed two persons with white caps in the vehicle. She further deposed that the said woman took water from the hand-pump for drinking and when asked told her that she came from Baria; and thereafter the police vehicle came to the spot and the said woman went running to the police vehicle and went along with the police. According to PW 11-Sumaliben, the vehicle which came from Godhra side proceeded towards Irapur side.

214. Evidence of PW 58-Nirmalsing Raju reveals that he had recorded statement of PW 11- Sumaliben as per her narration with the assistance of one Gujarati knowing CBI Officer on 14.2.04 vide Ex. 333 and she had accepted the said statement after its contents were explained to her in Gujarati. He deposed that PW 11-Sumaliben did not state before him that a woman wearing Lenga and Zabba had come to the spot in a vehicle occupied by two persons wearing white caps; and the vehicle came from Godhra side and thereafter the vehicle proceeded towards Irapur side.

215. Cross-examination of PW 11-Sumaliben also brings on record that she contradicted with the material aspects revealed in the portion marked 'A' in the statement dated 14.2.04 Ex.333 in relation to the blouse Art.7A. PW 11-Sumaliben did not offer any explanation for the material contradictions and omissions in her statement. This raises a question as to how far PW 11-Sumaliben can be believed.

216. PW 11-Sumaliben, however, made material assertions besides the said aspects in her: testimony. She deposed that the said woman came to the hand-pump around 10 a.m. and there were 3 – 4 houses in the vicinity of her Kuchcha house; and those were disturbed times when the riots had broken. She added that there was a Kuchcha road leading to village Panivela by the side of her residence. Pertinently, in her cross-examination done by the defence, she deposed that the Kuchcha road leading to Panivela was visible from the place where her residence was situate. She, however, deposed that she had not seen any dead bodies lying on the Kuchcha road or witnessed any fight between the persons on this Kuchcha road. Before any conclusions are drawn on the basis of her evidence, it is necessary to examine the other evidence on record.

217. DW 2-Vanrajsingh Dhingra deposed that around 7.30 a. m. on 4.3.02 he left Dahod in Mahindra Jeep bearing registration No. GJ-17C-5336 driven by Mr. Pravinbhai Pandey, along with PW 27-Natwarbhai Bamniya, Mr. Govindbhai Bhuriyal, Mr. Shailesh Bamaniya and Mr. Valabhai Damor, all Home Guards, for patrolling and proceeded towards Limkheda. According to him, he went to the Kuchcha road leading to Panivela via Bandibar. He deposed that the persons at the junction of four roads on the way to Bandibar from Limkheda reported that there was a riot at Kesharpur; and near Kesharpur they found that police were making enquiries in the vicinity of a small hill. At the

Kuchcha road leading to Penivela, he added, they got down from the vehicle for making search around the place and returned to the vehicle, which was waiting for them some 1.5 kilometers ahead from the previous spot, some 30 to 45 minutes thereafter. At the said place, he deposed, a lady giving her name as that of the prosecutrix was found near the vehicle.

218. DW 2-Dhingra further deposed that the prosecutrix told him that when she and her family were returning home from work at Vadodara, she was accosted by a mob of 400 to 500 persons and thereupon they ran helter skelter and she was separated from her family members and she was not knowing whereabouts of her family members and she be saved and taken to the police station. DW 2-Dhingra proceeded to aver further that thereafter he took the prosecutrix to Limkheda Police Station and had told his colleagues upon a query made to him that the said lady was a Muslim girl named Bilkis and had narrated the facts which the prosecutrix had told him.

219. Cross-examination of DW 2-Dhingra reveals a fact that the record of what he and his colleagues did was maintained in one file by the Senior Clerk at District Head Quarters of Home Guards at Dahod. Unfortunately, no such record has been produced for throwing further light on the facts averred to by DW 2-Dhingra. The Court is also deprived of the view of the muster roll and duty registers concerning the Home Guards maintained at Taluka Home Guards office.

220. According to DW 2-Dhingra, he telephoned Limkheda Police Station around 8.15 a. m. about riots in Kesharpur in village Bandibar from his home at village Bandibar and he was told that the police had gone to Kesharpur. He further deposed that they learnt about 6 to 7 bodies lying at the riot affected area; and found that the policemen were busy at one point; and on the way some villagers asked them to make search for the bodies on the other side of the said spot. Mystery about this assertion deepens with the inquest panchnama Ex. 123 and the panchnama Ex. 124, which speak of the alleged place of incident being shown by one Mangalbhai Dhirsingh Baria to Limkheda police on 5.3.02 and not on 4.3.02

221. In the cross-examination done by the Court, DW 2-Dhingra deposed that whatever he knew he had disclosed before the Circle PI, Limkheda as well as PI, CID, Crime, Godhra while giving his statement. However, the fact that the prosecutrix had disclosed to him as deposed by him fails to appear in the statement dated 23.3.02 recorded by Circle PI, Limkheda and dated 27.9.02 recorded by PI, Limkheda and PI, CID, Crime, Godhra. He further deposed that on 14.9.03 he did state before CID, Crime, Godhra that the prosecutrix did not tell him anything about the incident and on 27.9.03 he did state before PI, CID, Crime, Godhra that he did not ask the prosecutrix anything about the incident. His cross-examination further reveals that his interrogation by cross-examination shows that the facts concerning the query made by the colleagues about the prosecutrix and his narration in response thereto are not found in any of the statements recorded by CPI, Limkheda, PI, Crime, Godhra and CBI.

222. Evidence of PW 52-Kalubhai Vohania confirms the fact of material omissions made by DW 2-Dhingra while his statements dated 14.9.03 and 27.9.03 were recorded. His evidence further reveals that he only asked DW 2-Dhingra as to what he knew and thereupon DW 2-Dhingra had given his narration. There is no cross-examination of PW 52-Vohania as to the explanation offered by DW 2-Dhingra for the omissions in his statement recorded by Gujarat CID.

223. It is argued by the defence, on the basis of lack of material omissions in the evidence of DW 2-Dhingra in relation to his statements recorded by the CBI, that DW 2-Dhingra needs to be believed. There is material before the Court in form of the FIR Ex. 56 recorded by Limkheda Police Station giving story of rape and killing of the relations of the prosecutrix in contrast with the alleged disclosures made by the prosecutrix to DW 2-Dhingras of not knowing the fate of her family members. The prosecutrix has not accepted the FIR Ex. 56 and the alleged disclosures made to DW 2-Dhingra as true. It is not probable that any victim or any person who had allegedly witnessed a crime of rape and murder would make a statement that he or she did not know about the fate of the others with him or her unless such person is out of his or her mind. Worth of the testimony of DW 2-Dhingra, therefore, needs to be appreciated on the background of the entire evidence on record, and it would be folly to reach any conclusion on the solitary version of DW 2-Dhingra.

224. PW 27-Natwarbhai Bamaniam, Home Guard, deposed that when he and his Commandant Vanrajsingh were on the way to village Randhikpur from Bandibar in the morning of 4.3.02 they learnt about riots and corpses lying in Kesharpur – Panivela hill; and they halted the jeep on a Kuchcha road and made search at that place but could not locate the corpses. He deposed that he and his colleagues went up the hill for search and Commandant Vanrajsingh remained at the foot of the hill and when they came down then found one lady standing near the jeep with Commandant Vanraj. He deposed that there was a talk between the lady and the Commandant Vanraj and thereafter they took the lady in a jeep to Limkheda Police Station. PW 27-Bamaniam further deposed that while proceeding towards Limkheda Police Station they came across one police jeep when Commandant Vanraj got down and talked with the person inside the said police jeep. He described the said lady as the lady wearing Punjabi dress.

225. Cross-examination of PW 27-Bamaniam, resorted to by the defence, points out that the search made at and around the place shown by the prosecutrix on the Kuchcha road did not result in finding of the corpses. According to PW 27-Bamaniam, DW 2-Vanraj Dhingra had told him about the disclosures made by the said lady regarding she having lost her way during outbreak of communal riots. He further deposed in his cross-examination that Adivasis had told them at village Bandibar that corpses were lying in Kesharpur jungle near river Hadap.

226. PW 27-Bamaniam was further cross-examined by the prosecution. It is revealed through his cross-examination that he did not state before the CBI about Commandant Vanraj telling him regarding the disclosure made by the said lady that she was in a group from Baroda when the communal riots broke out and their group was chased by 500

people and she lost her way. As observed herein-before, the story of the alleged disclosure made by the prosecutrix sounds strange particularly in light of the evidence before the Court.

227. Evidence reveals that areas of Districts Dahod and Panchmahal were engulfed in communal riots as a result of which lives and properties of Muslims populace were targeted and Muslims were seeking refuge either in the police stations or relief centers for saving themselves. It is, therefore, rather inconceivable that a Muslim lady in explicitly Muslim attire i. e. Lehenga and Zubba would be left alone on a Kuchcha road leading to a remote village like Panivela by two persons wearing white caps in a jeep. It is, therefore, necessary not to rush to any conclusion unless the entire direct and circumstantial evidence is weighed. However, one can easily see through this evidence that the prosecutrix was given lift by DW 2-Dhingra from the spot on the Kuchcha road leading to Panivela and taken to Limkheda Police Station as deposed to by the prosecutrix and on the way DW 2- Dhingra did come across a police jeep.

228. The prosecutrix further deposed that she disclosed the facts to the police at Limkheda Police Station that her family members, including her daughter, were killed and she was raped; and she had disclosed the names of the offenders. According to the prosecutrix, the police asked her why she was disclosing the names of the offenders and the facts concerning rape, and if she was to be taken to the hospital for examination in that regard she would be given a poisonous injection at the hospital and what would be her fate in such circumstances. She further deposed that she was frightened but she told them to write what she was narrating; and what was recorded by the police was not read over to her and yet they forcibly obtained her thumb impression on the FIR Ex. 56.

229. According to the prosecutrix, the fact of rape on her, names of the rapists and other offenders are not mentioned in the FIR Ex.56; and even the other facts concerning mob of 500 persons are not correctly recorded in the FIR Ex. 56. She, however, did not dispute the names of her family members appearing in the FIR Ex.56.

230. The prosecutrix further deposed that she had narrated the facts to the medical officer on duty at Limkheda Hospital but was not treated at the hospital. She named Abdul Sattar Ghanchi, PW 7- Madinaben, PW 19-Phiroz, Halima as the persons present at the time of she narrating the facts to the police at Limkheda Police Station. She added that the police had asked the said persons to go away from her and to sit at some distance.

231. The prosecutrix further deposed that on her return to Limkheda Police Station from the hospital she met Abdul Sattar Ghanchi and he told her that he was taken to the place of offence where he found her family members, including Saleha, lying dead and he had identified their bodies. On hearing this, she deposed, she was shocked and became semi-unconscious at the Limkheda Police Station and was thereafter removed to Godhra Refugee Camp.

232. The prosecutrix further deposed that she had disclosed the facts to PW 3- Sgrabibi, PW 5-Sharifa and Latifa and PW 18-Jayanti Ravi and PW 23-Govindbhai

Patel at Godhra Refugee Camp as well as a lady doctor, who examined her at Godhra Civil Hospital. According to the prosecutrix, she had handed over the clothes - petticoat (Art. 5A), blouse (Art.7A) and Odhani (Art. 6A) to PW 3- Sugrabibi at the camp.

233. PW 3-Sugraben, aunt of the prosecutrix, deposed that after leaving village Randhikpur on Thursday she and others moved therefrom to Godhra Relief Camp at Godhra via village Chundadi in a police jeep, and on Tuesday she found the prosecutrix crying at Godhra Relief Camp; and on being asked, the reason for crying, the prosecutrix told her that the A/1-Jaswant Nai , A/2-Govind Nai, deceased A/3-Naresh Modhiya had raped her and the A/4-Shailesh Bhatt had killed her daughter, by smashing her on, the ground, and 7 to 8 persons from village Randhikpur had killed her relations. She added that the prosecutrix had handed over to her green coloured petticoat (Ghagra) (Art. 5A), pink blouse (Kabjo) (Art.7A) and blue coloured Odhani (Art.6A) from her person with a statement that the said clothes were given to her by an Adivasi lady.

PW 3-Sugrabi deposed that she had washed the said clothes and kept them with her in anticipation that the Adivasi woman, who had given these clothes to the prosecutrix, may come and these clothes would be handed over to her; and later on she had passed on these clothes to the CBI under seizure memo Ex.72.

234. Cross-examination of PW 3-Sugrabi reveals that she was once elected as a Member of Gram Panchayat from village Randhikpur, which had strength of 100 to 150 Muslim households, and had worked as the Member for five years. Her evidence further shows that she knew the A/5-Radheshyam Shah, the A/6-Bipin Joshi, the A/7-Kesharbhaji Vohania, the A/8-Pradip Modhiya, the A/9-Bakabhai Vohania, the A/11-Mitesh Bhatt since their childhood; and she also knew that that the A/5- Radheshyam Shah was the only lawyer in village Randhikpur known as Lala Vakil; and the A6-Bipin Joshi was known as Lala Doctor. PW 3-Sugrabi also knew the - A/10-Soni as a shopkeeper Rajubhai Soni running a shop in front of their residence since 8 to 10 years prior to the Godhra Incident. Her evidence further shows that she knew the A/12- Ramesh Chandana and his wife Pramilaben, who served as a Sarpanch of village Randhikpur, and their acquaintance was spread over a decade prior to the Godhra Incident.

235. Cross-examination of PW 3-Sugrabi further reveals that she was knowing Amina Jamal, Iqbal Abdul Ghanchi, brother of the prosecutrix, Abdul Aziz Yusuf Patel, Abdul Sattar, son of Yusuf Patel, Yakub Rasool, husband of the prosecutrix, Salim Abdul Sattar Musa, Sattar Majid Ghanchi, Siraj Abdul Ghanchi, PW 2-Farukhbhai Pinjara, PW 26- Imtiyaz Yusuf Ghanchi, Sayyed Abdul Salam Abdul, Abdul Sattar Kalu, Fakir Mohamed Nana Patel, Adam Ismail Ghanchi, Phirozbbhai Sattarbbhai Ghanchi, PW 7-Madinaben Siraj Patel, Rasool Aziz Umar, PW 4- Salim Adam Ismail and Yakub Ibrahim Shaikh from village Randhikpur, many of whom had settled at Rahimabad Colony after the riots. She also knew Salim Adam Ismail @ Kalu.

236. PW 3-Sugrabi denied the suggestion that they, Latifa, Sharifa, Maulavi Umarji, his son Sayyed, Advocate Farukh Kharadi, Advocate Yakub Batuk, Advocate Siraj, Farukh and Mukhtiyar were meeting each other and were planning strategies in the

present case. She also denied the suggestion that she was making propaganda for Kadkyabhai's panel for contesting Panchayat's elections. By these suggestions and ancillary cross-examination it is tried to be suggested that out of politico-communal interest the accused have been framed up in the present case. However, there is no explicit cross-examination bringing forth some material to reasonably provide platform for such thesis. It is not known what political cause PW 3-Sugrabi espoused as a member of Grampanchayat; and it cannot be also said that she could be a Member of Gram Panchayat only on the strength of Muslim households in village Randhikpur. On the contrary, her cross-examination reveals that there was no separate residential locality for the Muslims in the village Randhikpur and houses of Hindus were around the houses of Muslims.

237. PW 3-Sugrabi further revealed in her cross-examination that they i. e. herself and her family members, namely, Madina Ayub, Sakina Ibrahim, Halima, Munni, Abdul, Munti Abdul, Kaloo Abdul, the prosecutrix, Aslam Abdul and Majid Sakra Patel left village Randhikpur together. According to her, she stayed at Chundadi for about 2 days and left on Sunday when she was directly taken to Godhra Relief Camp. Nowhere there is a whisper in her testimony that the prosecutrix and /or PW 8-Saddam accompanied her to Godhra Relief Camp on Sunday and thereafter the prosecutrix was taken out of the Godhra Relief Camp to be left on the Kuchcha road leading to Panivela on 4.3.02 in order to dramatize the entire case for falsely implicating the accused in the crime of rape and murder.

238. Cross-examination PW 3-Sugrabi further reveals that there was no one else when the prosecutrix confided the facts to her; and she had not seen any stains on the clothes handed over to her by the prosecutrix, she further deposed that it did not occur to her then that the said clothes were necessary for being produced before the police as it was a rape case.

Facts revealed in the evidence of the prosecutrix show that the Petticoat (Ghagra) (Art. 5A) was recovered by the prosecutrix from her vicinity and she found herself naked after she regained consciousness; and the blouse (Art. 7A) and Odhani (Art. 6A) were given by an Adivasi lady after the incident. Seminal stains were, therefore, not expected on the clothes handed over to PW 3-Sugrabi by the prosecutrix.

239. Cross-examination of PW 3-Sugrabi read in conjunction with the evidence of PW 72-Sinha reveals that PW 3-Sugrabi did not state before PW 72-Sinha: (i) that the clothes were kept in anticipation of the concerned Adivasi woman approaching her; (ii) that the daughter of the prosecutrix was smashed on the ground; and (iii) that the assailants were 7-8 persons from Randhikpur. However, the statement dated 20.1.04 of PW 3-Sugrabi refers to the killing of the daughter of the prosecutrix and relations of the prosecutrix being lost. PW 3-Sugrabi further explained that when her statement was read over and explained to her, it did not occur to her that the reference to keeping of clothes in anticipation of the concerned Adivasi woman approaching him, was not recorded in the statement. It is true that PW 3-Sugrabi was not knowing the said Adivasi woman nor any woman approached her for the said clothes at Godhra Relief Camp.

Evidence of PW 3-Sugrabi further shows that her son, a policeman, met her at Godhra Relief Camp a month after her admission to the camp but she had not taken his advice about the clothes with her. There is nothing in the evidence of PW 3-Sugrabi which would suggest that she could comprehend the importance of the said clothes in relation to the allegations made and except keeping the clothes with her possibly, PW 3-Sugrabi could have done anything else. Worth of her testimony is, therefore, not materially reduced by her cross-examination.

240. PW 5-Sharifa Umarjee deposed that she and Mrs. Latifaben Giteli worked in Godhra Relief Camp; and she happened to meet the prosecutrix in the camp on 5.3.02. She deposed that she found the prosecutrix crying in one of the rooms at the camp when she first met her. She further deposed that when she asked the prosecutrix why she was crying so much, the prosecutrix had disclosed the facts concerning: (i) rape on her by three persons- Jaswant Nai, Govind Nai and Naresh Modhiya and the wrong done with her mother and sisters; (ii) killing of her daughter and others accompanying her; (iii) killing of her daughter by Shailesh Bhatt; (iv) reporting of the incident to Limkheda Police Station and the police threatening her with death by giving a poisonous injection if she gave names of the offenders; and (v) the police obtaining her thumb impression on the complaint without reading over its contents.

241. PW 5-Sharifa further deposed that on 6.3.02 PW 18-Mrs. Jayanti Ravi, Collector, visited the camp and the prosecutrix had disclosed the facts to PW 18-Jayanti Ravi and the magistrate accompanying PW 18-Jayanti Ravi had made record of the facts disclosed by the prosecutrix and next day the prosecutrix was medically examined at Godhra Civil Hospital. She further deposed that the statement of the prosecutrix was recorded at Godhra Police Station; and the prosecutrix stayed in the camp till the end of May 2002. She added that Yakub, husband of the prosecutrix, came to the camp some 17 days after she met the prosecutrix.

242. Cross-examination of PW 5-Sharifa reveals that she had studied up to 8th standard in Gujarati and had not made record of the date of meeting the prosecutrix at the camp. It appears that PW 5-Sharifa was giving the date of meeting the prosecutrix from her memory.

243. Cross-examination of PW 5-Sharifa further reveals that she had contradicted herself in reference to her statement recorded by the CBI in relation to the place of her residence and name of her husband. She explained that she never lived at Dahod; and stayed with her husband Abdul Razzak at Godhra. According to her, there was misunderstanding of the officer recording the statement inasmuch as she gave the name of her husband as Abdul Razzak and it was understood Abdul Azaz. Such contradictions do not materially disfigure her testimony before the Court. Moreover, there could have been such misunderstanding as deposed to by PW 5-Sharifa.

244. Cross-examination of PW 5-Sharifa further reveals that there was 'Umarjee House' situate in front of her residence at Godhra. However, she denied that 'Umarjee

House' belongs to one Maulana Umarjee Hussain, who was known to her. She frankly admitted that Maulana Umarjee was doing the work in the camp. Nothing further can be understood about the said Maulan Umarjee from the cross-examination of PW 5-Sharifa.

245. Cross-examination of PW 5-Sharifa also reveals that she was not knowing where Chhaparwar was. It is further revealed from her cross-examination that United Economic Forum For Welfare of Minorities, Hyderabad had started English medium school at Godhra, of which Latifa was the President and she was a Trustee. However, these facts cannot be reasonably interpreted to believe that she had taken part in cooking up of a false case against the accused, particularly when there is an evidence that she was coming across different stories from the victims of the riots at Godhra Relief Camp and yet her role had remained passive.

246. PW 18-Mrs. Jayanti Ravi, District Magistrate and Collector, District Panchmahal, deposed that the situation in the district was tense due to riots and arson following the burning of Sabarmati Express in February 2002; and the relief camps were set up at various places in the district including Godhra for affording refuge to the vulnerable and affected section of the society in the communal violence; and as a District Magistrate she had visited the Godhra Relief Camp on 6.3.02 and had come across with a distinct complaint of the prosecutrix. She further deposed that on her interaction with the prosecutrix she learnt from her (the prosecutrix) that the prosecutrix and her relations, escaping from violence, were attacked by the mob and she was raped and her family members were killed. According to PW 18-Smt. Jayanti Ravi, the prosecutrix had mentioned the names of the offenders, whom she had identified, and the FIR given by her was not lodged as per her narration.

247. PW 18-Smt. Jayanti Ravi further deposed that on hearing the prosecutrix, she realized that it was her duty to help her and had therefore directed her Executive Magistrate to record her narration; and the recording of such narration had started in her presence but she had to leave the place for attending to her other work; and in the evening she had received the record of the statement of the prosecutrix so made by the Executive Magistrate. She further deposed that on realizing its gravity, she ordered medical examination of the prosecutrix by the Civil Surgeon, Godhra.

248. Cross-examination of PW 18-Smt. Jayanti Ravi reveals that it was her first time to meet the prosecutrix sometime in the evening of 6.3.02. This shows her neutrality towards the entire issue as on 6.3.02. She fairly deposed in her cross-examination that to the extent she remembers she was knowing her conversation with the prosecutrix when her (PW 18-Jayanti Ravi's) statements were recorded. She was further cross-examined with reference to her statement dated 21.2.04 recorded by the CBI. She countered her cross-examination with the statement that she was not dissected or questioned in the manner adopted at the time of her cross-examination, when her statement was recorded by the CBI, and therefore there was alleged omission of the fact that the prosecutrix had made a statement about the attack on her near her village where she was at that point of time. She conceded that she was not remembering the names of the rapists/offenders as disclosed by the prosecutrix at the time when her statement was recorded by the CBI and

therefore there was omission of the specific names of the rapists/offenders in her statement. She denied the suggestion that on hearing the pleas of those ladies she had asked PW 23-Govindbhai Patel, Executive Magistrate, to record the statement of the prosecutrix. Even if the alleged omissions are excluded, one can clearly see from the testimony of PW 18-Smt. Jayanti Ravi that the prosecutrix did make grievance of rape on her and non recording of the FIR as per her narration; and following thereto she had instructed the Executive Magistrate to record the statement of the prosecutrix.

249. PW 7-Madina Patel deposed that on Thursday, next day after the Godhra riots, when her residence at Randhikpur was attacked by the persons in the mob, she and her daughter Farida had left their residence, sat in jungle for two days, taken refuge in the house of one Maganbhai at village Randhikpur over night and thereafter they were taken to Limkheda Police Station the next day (Sunday) morning. She deposed that at Limkheda Police Station she found Sattarbhai, Firoz and their families and a day thereafter (Monday) the prosecutrix came to Limkheda Police Station. She further deposed that she was confronted with the prosecutrix at the police station by the police for the purposed of identification of the prosecutrix. This fact sounds natural and in keeping with the circumstances the existing.

250. PW 7-Madina further deposed that the prosecutrix narrated in the presence of PW 19-Phiroz and Sattar to the Limkheda Police that her family members were murdered and she was raped by Jaswant Nai, Govind Nai and Naresh Modhiya; and on hearing such narration made by the prosecutrix, the police gave abuses and asked them to go out and thereupon she left the place. She further deposed that the prosecutrix was sent for medical examination along with one lady constable.

251. According to PW 7-Madina, the police took Abdul Sattar to the place where the dead bodies were lying for the purposes of identification around 7 p. m., and when he returned around 8 p. m. she found him crying. She added that About Sattar disclosed to them that there persons had met with very bad end. PW 7-Madina further deposed that they (i.e. the prosecutrix and PW 19-Phiroz) stayed over night at Limkheda Police Station and next day were taken to Godhra Relief Camp.

252. Cross-examination of PW 7-Madina reveals that they left Limkheda Police Station for the camp around 10 or 11 a. m. and had reached the Godhra Relief Camp around 4 p. m. Her evidence further reveals that the police were on security duty at the camp. She identified Latifa as one of the social workers in the camp. Her evidence further reveals that she was knowing PW 3-Sugra Ismail Isa; and she had no occasion to visit Limkheda Police Station again.

253. Cross-examination of PW 7-Madina further reveals that she did learn about murder of her son Sikandar at village Dangaria, Tal. Limkheda, Dist. Dahod on the very day of she reaching the camp; and no policeman had approached her for making inquiries about the murder of her son Sikandar. One can, therefore, reasonably infer from such circumstances the mental shock PW 7-Madina must have suffered on hearing the news of murder of her son Sikandar. It is difficult to expect such a woman rushing to the police or

any other authority for making complaint or any grievance about the facts witnessed by her at Limkheda Police Station prior to recording of her statement by the CBI.

254. Cross-examination of PW 7-Madina did not bring to surface any contradictions or omissions in relation to her statement before the CBI. However, when confronted with her statement recorded u/s 164 of Cr. P. C. (Ex. 4-M), particularly the facts concerning the murderous assault on her husband and killing of her son Sikandar and her brother-in-law Ayub Nana Patel appearing at the portions marked 'A' and 'B' in the statement Ex. 4-M, she was unable to explain how such record was made. She denied the fact that she was with her husband and the incident of assault had taken place in the jungle in her presence and she had removed her husband to the hospital. PW 7-Madina further revealed in her cross-examination that she did not go to Limkheda Police Station for lodging the complaint about the loss suffered by her; and it did not happen that she wanted to lodge a complaint with Limkheda Police Station and it did not entertain her complaint. When confronted with her statement at portion marked 'C' in her statement Ex. 4-N, she admitted that she did state before the M. M.'s Court that at Limkheda Police Station they wanted lodge complaint about the loss suffered by them but nobody recorded their complaint; and she had made two statements before the M. M.'s Court. She denounced her earlier averments in that regard. This part of her testimony, though not concerning the core issue of the treatment meted out to the prosecutrix at Limkheda Police Station, calls for further corroboration.

255. PW 19-Phiroz Ghanchi deposed that Abdul Sattar was his father; and he and his family, including his parents, were brought to Limkheda Police Station in a police vehicle from the house of one Kanubhai on third day (i. e. Saturday) from the day of outbreak of riots at village Randhikpur. He further deposed that two days thereafter i. e. on 4th of February or March 2002 (Monday), the prosecutrix was brought to the police station around 10 – 10 a. m.; and he, his father and PW 7-Madinaben were called for identification of the prosecutrix. According to PW 19-Phiroz, the prosecutrix narrated the facts before the police as under:-

- (i) that while she was at the place near Kuchcha road leading to Panivela, two white vehicles came to the spot and a mob of persons alighted from the said vehicles and attacked her and her relations;
- (ii) that she was raped by Govindbhai Hakambhai Raval, Nareshbhai Ramanlal Modiya and Jaswantbhai Chaturbhai Raval; and
- (iii) that one Shailesh Bhatt had snatched away her daughter from her hands, and killed her by smashing her on the stone.

He further deposed that the police asked PW Madina to go away and threatened the prosecutrix that if the names of the rapists were given she would be finished by giving poisonous injection. According to him, the prosecutrix had also narrated some more names to the police as the offenders.

PW 19-Phiroz identified the A/17-Sombhai as the police officer who was recording the statement of the prosecutrix at Limkheda Police Station.

256. PW 19-Phiroz further deposed that around 4 - 4.30 p.m. his father Abdul Sattar was taken by the police to the spot; and his father returned crying to the police station around 10 p.m. or 11 p.m., and narrated the fact to him about the visit to the spot. Next day morning (Tuesday) (i. e. 5th March 2002), he deposed, he and his family members as well as the prosecutrix were removed to Godhra Relief Camp.

257. As observed above, calling of the persons from Randhikpur to identify the prosecutrix at Limkheda Police Station appears to be a natural phenomenon. Though it is pointed out from the cross-examination of PW 19-Phiroz that there is an omission regarding the fact of the persons being called from Randhikpur for the purposes of identification of the prosecutrix at Limkheda Police Station, in relation to the statement/s recorded u/s 161 Cr . P .C; the statement (Ex. 4-Id) of PW 19-Phiroz recorded u/s 164 of Cr. P. C. corroborates this fact. PW 19-Phiroz admitted the presence of other policemen at the place of recording the statement, but he could not state how many policemen were present at that time.

258. Cross-examination of PW 19-Phiroz further shows that he did not know why a reference to the prosecutrix having stated before the police about coming of two vehicles on the Kuchcha road leading to Panivela and the assailants alighting from the said vehicles is found missing , though he having stated so, in his statement recorded by the CBI. However, these facts are found in his statement Ex.4-M made by him u/s 164 of Cr. P. C. PW 19-Phiroz admitted that the prosecutrix did not utter the names of Hakambhai Raval, Ramanlal and Charturbhai Raval. However, his testimony does not suffer from any contradictions or omissions in reference to his statement (Ex.4-M) u/s 164 of Cr. P. C.

259 PW 19-Phiroz further deposed that he did not state before the CBI that PW 7-Madina was asked to go after the disclosures were made by the prosecutrix; and he did not name or describe the A/17-Somabhai before the CBI. PW 19-Phiroz further deposed that he did not hear the names of the other offenders named by the prosecutrix. According to him, the narration of the facts by the prosecutrix and its recording was going on simultaneously. However, there is nothing concrete in the testimony of PW 19-Phiroz which should prompt a prudent man to distrust his testimony.

260. Perusal of the statement dated 6.3.2002 (Ex.277) of the prosecutrix recorded by PW 23- Govindbhai Patel reveals that the prosecutrix had furnished her name, age, occupation and the place of residence, and briefly narrated how she happened to leave Randhikpur and reach the road leading to Panivel. Statement Ex.277 bears a record of the fact that the persons arrived at the spot in two white vehicles around noon time assaulted them, killed her relations, torn off the clothes of the females and raped them. It also bears a record of the fact that she was also raped. Statement Ex. 277 makes a reference to the A/1-Jaswant Nai to the A/12-Ramesh Chandana as the offenders.

261. PW 23-Govindbhai Patel deposed in his cross-examination that he faithfully recorded the statement of the prosecutrix without adding or deducting anything therefrom. According to PW 23-Govindbhai Patel, PW 18-Jayanti Ravi was making enquiries with the inmates of Godhra Relief Camp about their difficulties in the evening of 6.3.2002; and at that time two ladies in the room talked to PW 18-Jayanti Ravi that the prosecutrix was raped and was separated from her relations, He further deposed that those two ladies did not say anything further to PW 18-Jayanti Ravi. PW 23- Govindbhai Patel, however, did not state that PW 18-Jayanti Ravi had not made any enquiries with the prosecutrix. FE PW 23-Govindbhai Patel is to be believed, his evidence merely shows that those two ladies did not say anything more than the fact that the prosecutrix was raped and was separated from her relations, and therefore, all that is recorded in the statement Ex.277 needs to be accepted as the facts disclosed by the prosecutrix and none else.

262. A controversy was raised from the contents of the letter dated 5.3.2002 (Ex.440 colly.) from the Relief Committee, Godhra to the District Collector, Panchmahal, Godhra as to the presence of the prosecutrix at Godhra Relief Camp on 5.3.02. Letter dated 5.3.02 (Ex.440 colly.) is a requisition made to t h e District Collector, Panchmahal, Godhra for supply of essential commodities to Godhra Relief Camp. List of information giving names and number of victims in the camp as on 5.3.02 annexed thereto fails to show the name of the prosecutrix.

The prosecution did not examine anybody to throw light on the attending circumstances, particularly, the time when such letter was prepared and despatched. Endorsement of Mamletdar's Office, Godhra thereon shows the date as '5.3.2002'. Certainly this letter must have been delivered to the Office of Mamletdar, Godhra during working hours on 5.3.2002. Oral evidence reveals that the prosecutrix was at Godhra Relief Camp around 4 p.m. on 5.3.2002. Assuming the fact that the prosecutrix was not at Godhra Relief Camp on 5.3.02, the fact of presence of the prosecutrix at Godhra Relief Camp on 6.3.2002 is irrefutable and makes no difference with the fact that the statement of the prosecutrix was recorded by PW 23- Govindbhai Patel on 6.3.2002.

263. Evidence of PW 17-Dr. Mrs. Rohini Katti, Medical Officer, reveals that while she was on emergency duty at Godhra Civil Hospital on 7.3.02 the prosecutrix was brought to the hospital around 6.45 p.m. by Dr . Maqsood and Dr. Jamilaben from Godhra Relief Camp and she was told by Dr. Maqsood and Dr. Jamilaben that it was a case of rape. She further deposed that she consulted Civil Surgeon Dr. Chandana about that case as no policeman accompanied the prosecutrix, and on getting nod from Dr. Chandana for examination of the prosecutrix, she examined the prosecutrix. Written Report Ex.137 vouches for the dispassionate attitude of PW 17-Dr.Rohini Katti in handling the said case, She urged the police to take legal steps in the matter of the alleged case of rape brought to her around 6.45 p.m. on that day vide report Ex. 137.

264. PW 17 - Dr. Kati deposed that she made inquiries with the prosecutrix about the medical history and could get to know that the prosecutrix fled from her residence at Randhikpur due to the mob approaching her residence; and she moved through two or

three villages thereafter and while she was on a Kuchcha road leading to Panivela the mob attacked them, killed her small daughter as well as her relations accompanying her and she was raped by three persons after being taken to the side of the trees. PW 17-Dr. Katti further deposed that the prosecutrix had disclosed the names of the rapists and she could recollect one such name as Jaswant. She identified Indoor Case-paper Ex. 138 as the record of the medical history given by the prosecutrix and the observations made by her. The medical history referred to by PW 17-Dr. Katti in her testimony is found recorded in the OPD case paper Ex.138. Names of Jaswant Nai, Govind Nai and Naresh Maurya figure therein.

265. PW 17-Dr. Katti further deposed that she noticed the following injuries on the person of the prosecutrix: -

- (i) CLW admeasuring about 4 cm, x 2 cm. x 1I cm. in the web between left hand thumb and index finger as well as defused tender swelling on left hand;
- (ii) multiple abrasions over back with scab formation;
- (iii) abrasions over right arm with scab formation;
- (iv) abrasion over right breast of 1 cm.

She further noticed that the prosecutrix was of 20 weeks pregnant and was conscious, co-operative, well oriented to time, place and person. She further deposed that she collected blood of the prosecutrix in two bottles along with samples of ail, pubic hair, saliva and referred the prosecutrix to X-Ray examination for the purposes of age determination as well as detection of injury, particularly, of the right wrist, right elbow, right iliac crest and had noted the observations in the Indoor case-papers Ex.138. Corroboration to these facts can be easily found in the Indoor Case-papers Ex.138. PW 17-Dr. Katti opined that injury - CLW - in the web between thumb and index finger can be caused either due to blow of hard and blunt substance or due to fall on the hard substance, and multiple abrasions on the back can be caused due to friction of the rough surface on the back, and abrasion on the breast can be caused due to friction may be due to nails. According to PW 17-Dr. Katti, the injuries observed by her were 4 - 5 days old.

266. Evidence of PW 17-Dr. Katti further reveals that one sample of blood and vaginal swabs taken from the prosecutrix were sent to the pathological laboratory of the hospital and other samples were sent to Forensic Science Laboratory, Baroda through the police after being duly sealed and labeled. She pointed out t h e acknowledgement of its receipt in form of endorsement 'Samples received' with dated signature below the second sheet of the case-papers Ex.138. She identified the bottles and test tube Art.10/1 to 10/5 as the bottles in which she had collected the biological samples from the prosecutrix and sent to FSL, Baroda along with letter Ex. 141.

267. Evidence of PW 17-Dr. Katti further reveals that Police Yadi was riot sent to her despite the report Ex.137 and she had to address a reminder to the police as per Reminder

dated 13.2.02 (Ex. 139-A) in that regard and ultimately the police Yadi Ex.140 was received by her on 10.3.02.

268. Evidence of PW 17-Dr.Katti and PW 65-Dinesh Mohan Sharma, PI, CBI, SCB, Bhopal, clearly reveals that 'the report Ex.137, OPD case-papers Ex.138, Ex.138-A, O/c of the reminder Ex.139, Police Yadi Ex.140, O/c. of forwarding letter Ex.141, case-paper Ex.144 and record file with case-papers were seized from PW 17-Dr. Rohini Katti under seizure memo dated 5.2.04 Ex.142 at the place in Madhya Pradesh where PW 17-Dr. Katti was residing on 5.2.04. There is no further cross-examination of the said witnesses on this point. These facts signify how important PW 17-Dr. Katti regarded the said record and what made her carry the said record with her to Madhya Pradesh after leaving Godhra Civil Hospital.

PW 17-Dr.Katti deposed that she had handed over medical certificate dated 2.11.03 (Ex. 143) to the State CID.

269. The defence contended that the phrase "No marks of injury over breast" is found scored/in the observations noted in the Indoor case-papers Ex.138 and therefore the observations made by PW 17- Dr. Katti are suspicious, It is true that such phrase is found scored from the record of the observations found in the indoor case-papers Ex.138. However, PW 17-Dr. Katti was not confronted and questioned in her evidence about this portion of the writing made by her. On the contrary, her evidence shows that on the same day she and gynaecologist DW 3-Dr. Geetaben Pisagar had jointly examined the prosecutrix at Godhra Civil Hospital and their observations revealed the following injuries:-

- (i) one healed abrasion over sternum with scab formation;
- (ii) one healed abrasion over right breast with scab formation;
- (iii) three abrasions on lower portion of right thigh;
- (iv) one abrasion on left leg;
two to three old abrasions on left scapular region (back);
- (vi) two small abrasions over right scapular region (back);
- (vii) mark of scratches as well as 2 cm. x 2 cm. bruises on both right gluteal and right lumbar regions on the back;
- (viii) three healed abrasions with scab formation on right arm; and
- (ix) 4 cm. x 2 cm. CLW in web between thumb and index finger of left hand.

She further deposed that the said observations were duly recorded by DW 3-Dr. Pisagar as per case-papers Ex.138-A and the certificate Ex.143 was given to the State CID on the

basis of the said case-papers. Collection of vaginal swabs from posterior fornix and urethra from the person of the prosecutrix was reiterated by PW 17-Dr. Katti. Nothing contradictory between the observations recorded by PW 17-Dr. Katti at the indoor case papers Ex.138 and the observations recorded by DW 3-Dr. Pisagar at the case-papers Ex.138-A has been pointed out by the defence. Their contention, therefore, holds no water.

270. PW 17-Dr. Katti was cross-examined as regards the contents of the letter Ex. 139-A making reference to the fact that prosecutrix was brought by some social workers and RMO Dr. Maqsood from the relief camp to Godhra Civil Hospital. PW 10-Dr. Katti explained that Dr. Jamilaben, wife of RMO Dr. Maqsood, was a retired Medical Officer engaged in the social work. She added that the two more ladies from the relief camp had accompanied the prosecutrix. Evidence shows that the fact of the sufferings of the prosecutrix had become known in Godhra Relief Camp and the said facts were sufficient to attract the attention of the social enthusiasts amongst the persons at Godhra Relief Camp. Nothing much, therefore, can be interpreted from the said facts disclosed in the cross-examination of PW 17-Dr. Katti.

271. Cross-examination of PW 17-Dr. Katti further reveals that on 07.3.02 she learnt that the doctors from Civil Hospital had visited Godhra Relief Camp and Dr. Maqsood only asked her to examine the prosecutrix as it was a case of rape. Her evidence reveals that she was not knowing about the case of the prosecutrix and could only learn the said facts when the prosecutrix was brought to her. She flatly denied that the medical history recorded by her was given by the social workers and not by the prosecutrix. She further denied the suggestion that definite opinion can be given on the basis of record that the prosecutrix was not raped.

272. According to PW 17-Dr. Katti, there are four types of abrasions: scratches, grazes, pressure and impart abrasions, and they can be caused either by fall, scratching with the nails or contact with the thorn. She further explained that bright redness remains for 12 hours when the abrasion is fresh, and after 12 hours blood starts drying and scab formation starts and the scab is formed at the end of 24 hours; and for first 2 - 3 days the scab appears reddish brown. She added that falling off of the scab amounts to healing and it takes place after 7 days and the scab remains after 2 - 3 days but the healing has taken place. According to her, all abrasions had scab formation present. She agreed with the proposition revealed in the Essentials of Forensic Medicine & Toxicology by Dr. K. S. Narayan Reddy, 20th Edition, 2001 that 4 to 7 days epithelium grows and covers defect under the scab and after 7 days scab dries, shrinks and falls off. Even on reading her evidence in conjunction with evidence of DW 3-Dr. Geetaben Pisagar, her opinion that the injuries noticed were 4 to 5 days old remains undisturbed.

273. PW 17-Dr. Katti further deposed that she did not add or subtract anything on her own in the medical history so given by the patient. Whatever was not disclosed, she added, was not recorded by her. It appears from her evidence that she had not questioned the prosecutrix as to how CLW or the abrasions were caused and therefore

there were no disclosures from the prosecutrix, and consequently no recording of such facts was made in the case-papers (Ex.138).

274. PW 17-Dr. Katti deposed that date '28/2/2002' was supplied by the prosecutrix. She added that reference to killing of a small daughter is not in the medical history recorded at case-papers Ex.138; and the prosecutrix did state: "Mari sathe balatkar thayel chhe" in Gujarati. She denied that she had ever made a statement before the State CID about the prosecutrix using the word 'rape' as well as word 'balatkar'. There is no further evidence of the fact that PW 17-Dr. Katti had made such statements before the State CID. However, a reference to killing of a small daughter of the prosecutrix is found in the medical history recorded at case-papers Ex.138-A as under:-

"Alleged history of Rape Noted.
Detail History taken by MLC doctor.
H/o 5 mth of Amenorrhoea.
Obstetric history: -

1 full term normal delivery
of female/died in rite (riot).
No H/o abortion/MTP (Medical
Termination of pregnancy)."

Therefore, it cannot be said that reference to killing of a small daughter did not figure anywhere in the medical record.

275. It is correct that PW 17-Dr. Katti had not made record of the colour of the CLW (Contused Lacerated Wound) despite the fact that colour of the skin around CLW could have assisted in ascertaining the age of the CLW. Such omission to make record of the colour of the CLW by itself cannot negative the finding based on the observation of other injuries found on the person of the prosecutrix that the injuries were 4 to 5 days old.

276. PW 17-Dr. Katti further opined that there would be linear abrasions on the back of a naked woman dragged on a rough surface for a distance of about 30 Feet, but there would be no wheel marks on her person. She further deposed that the abrasions recorded by her were small in dimension. She further opined that if the face and neck of a woman is pressed with great pressure by a person with a foot having a chappal on; there would be a bruise left at the point of application of the surface of the chappal. She further deposed that from the report Ex.144 she noticed that no spermatozoa were detected in the vaginal swab sent to the pathological Laboratory, Godhra Civil Hospital, and no injuries were detected on external or internal genital organs. She further deposed that no semen or blood stains were found on generative organs, and hymen tears were due to previous deliveries. She deposed that no damage to fetus was found. From all these observations, she was not in position to say whether the prosecutrix was raped or not.

277. At this stage, it is necessary to advert to the evidence of DW 3-Dr.Geetaben Pisagar. DW 3- Dr. Geetaben Pisagar deposed that she is M. D. (Gynaec) of 1996 batch

of Saurashtra University, and had served as Gynaecologist at Godhra Civil Hospital for about 6 years. She identified the case-papers Ex.138-A as the record of the medical examination of the prosecutrix done by her at Godhra Civil Hospital around 7 p.m. on 7.3.2002. She deposed that the prosecutrix was found carrying a five-month baby in her womb and was to give birth to a child second time. She further deposed that the prosecutrix was found conscious, co-operate and well oriented to time, place and person, and her gynaecological findings on per abdominal were as under:-

- (i) uterus 20 weeks (pregnant size);
- (ii) external ballotment present;
- (iii) no marks of injuries over abdomen;
- (iv) no tenderness.

On local examination, she deposed that she found pubic hair were well developed; and did not notice marks of injuries over external genitalia, nor any tear or injuries or discharge. According to her, old tear of hymen was noticed because of previous normal vaginal delivery, and per speculum examination was easily possible. On per vaginal examination, she deposed, she found uterus with 20 weeks pregnancy, soft, mobile and regular with no tenderness; and her clinical observations were that there was (i) old hymenal tear because of normal previous delivery, and (ii) no any fresh tear or injuries. Significantly, she deposed that cervix was found congested because of pregnancy.

278. DW 3-Dr. Pisagar opined that from the observations made during the examination of the prosecutrix vide case-papers Ex.138-A and the laboratory findings vide Ex.144 she did not think that the prosecutrix was raped by three persons.

279. Cross-examination of DW 3-Dr. Pisagar, done by the prosecution, reveals that she had not recorded her opinion about the non-possibility of rape on the prosecutrix. She agreed that the work of Modi on medical jurisprudence is a standard treatise on the subject and Dr. K. S. Narayan Reddy is authority in medical jurisprudence and toxicology. However, in her further cross-examination she showed her disagreement with the observations made by Dr. K. S. Narayan Reddy in his work "Medical Jurisprudence & Toxicology", 1st Edition, 2000, page 433 as under:-

"What Constitutes Rape? The slightest penetration of the penis within the vulva, such as the minimal passage of glans between the labia with or without emission of semen or rupture of hymen constitutes rape. There need not be a completed act of intercourse. It is an essential part of proof in a rape, that there should have been not only an assault but actual penetration. Rape can be committed even when there is inability to produce a penile erection. Rape can occur without causing any injury, and as such negative evidence does not exclude rape. The doctor should mention only the negative facts, but should not give his opinion that rape

has not been committed. Corroboration by eyewitnesses or circumstantial evidence is necessary in such cases".

280. One can easily gather from the observations made by Dr. K. S. Narayan Reddy that there always exists a gap between the medical opinion and the reality. Judicial precedents have, therefore, give greater value to the direct evidence than the opinion evidence and merely assigned the corroborative value to the opinion evidence. The process of giving opinion involves interpretation of the co-relationship between the act and the effect observed. It is, therefore, essential that all such facts revealing the actions involved must precisely come on record in order to properly appreciate the opinion evidence.

281. In most of the cases the witnesses do not give photo-finish account of the dynamics of the acts involved in the crime. Invariably, therefore, no positive opinion about the actual occurrence can be given by an Expert unless the facts are clear and precise.

282. In the instant case, DW 3-Dr. Pisagar gave a lengthy explanation to defend her opinion in the following terms:-

"In this case Bilkis Bano (the prosecutrix) has said that she was raped by three persons. However, as per my observations, I found no, injuries on her private parts, and there was five months old baby in her womb and there was no injury on her abdomen; and I found movement of the baby in womb. On per speculum examination, I found no injury of any type and no bleeding as well as no injury on the mouth of uterus; and no tenderness was detected on abdominal and per speculum examination. On per vaginal examination T found five months old baby in womb and there was no tenderness and bleeding. If a-pregnant woman is raped then there is pain or tenderness or bleeding or discharge from vagina. However, these things were not found in the present case. If the woman was forcibly raped then these things would have been found. This woman gave birth to a living child. These are my reasons for not agreeing with the aforesaid observations of Dr. K. S. Narayan Reddy."

283. Interestingly, the observations made by DW 3-Dr. Pisagar were before her at the time of writing case-papers Ex.139-A. With the denial of the suggestion that she cannot give negative opinion regarding finding of rape based on her observations and pathological report, one can fairly conclude that she knew that she could have given negative opinion regarding finding of rape. Then what prevented her from recording such candid opinion in the case-papers Ex. 138-A is an unanswered question. She also did not adduce any standard work on medical jurisprudence and/or gynaecology to substantiate her opinion.

284. A reference to the prosecutrix giving birth to a living child made in the testimony by DW 3-Dr. Pisagar appears to have been based on some hearsay talks in the hospital.

Even accepting the fact that the prosecutrix gave birth to a living child after the incident, it, is difficult to come to any conclusion therefrom that medically it was impossible fact. Rape is defined under Section 375 of the Indian penal- Code, 1860 as under:-

"A man is said to commit "rape" who, except in the case hereinafter excepted has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: - Firstly - against her will, secondly - without her consent, thirdly - with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt, fourthly -

285. Evidence of PW 9-Dr. Rakeshkumar Mahato reveals that there is exception to the generalization that it is, practically impossible for physically forcible rape to occur without some marks of violence being left on the victim. The work of Dr. Lester Adelson on the Pathology on Homicide quotes this exception in the following terms:-

"When the woman has been so terrorized by display of a deadly weapon or a threat of death that she submits unwillingly to intercourse without offering physical resistance".

In the instant case, there is evidence of the fact that the mob, including the A/1-Jaswant Nai, carried deadly weapons at the material time. The fact, therefore, cannot be ruled out that the prosecutrix was terrorized by display of deadly weapon/s so as to bring about her unwilling submission to intercourse without offering physical resistance. If there is sexual intercourse without any physical resistance, it would be like any other normal sexual intercourse. It is not shown from the medical works that a pregnant lady carrying 20 weeks fetus in womb would suffer abortion if she has sexual intercourse once, twice or thrice in succession.

286. Cross-examination of the prosecutrix reveals that after she fell on the ground she was dragged to one tree, approximately upto 30 feet, and when she was being dragged she was being beaten by them - the A/1-Jaswant, A/2-Govind, A/3-Naresh. Pertinently, the prosecutrix deposed that when she was caught her clothes were torn and she tried to save herself; and she tried to release herself from their clutches when she was being dragged; and she remained on the ground where she was dragged. Her entire evidence shows that the process of dragging upto 30 feet was a dynamic process and not a uniform one like dragging of a listless person flat on the back to a distance of 30 feet. For a linear abrasion to appear on the back, it is necessary that a nude victim should lie flat listlessly on the back on a rough surface and dragged upto a distance of 30 feet in the same condition. It cannot be understood from the evidence of the prosecution that at the material time she was nude and dragged on her back without change of position continuously upto a distance of 30 feet. The prosecutrix deposed that when she regained consciousness she found herself naked. Medical evidence is, therefore, incapable of breeding a reasonable doubt in relation to the testimony of the prosecutrix. On the contrary, the medical evidence on record has a potential to suggest some amount of physical violence suffered by the prosecution.

287. PW 9-Dr. Rakeshkumar Mahato deposed that after passing MBBS Examination in 1999 from Darbhanga Medical College, Lehria Sarai, Bihar, he joined medical services of the State of Gujarat as Medical Officer in January 2002 and was posted at Community Health Centre, Limkheda, District Dahod, Gujarat. At the material time, the evidence reveals, he worked under Medical Superintendent Dr. R. M. Patel. Gynaecologist at CHC, Limkheda. He deposed that the record – OPD register, Indoor Register, Medico-Legal Cases Register – of the work done was maintained at Community Health Centre, Limkheda. He further elaborated that pharmacist at the OPD during OPD hours between 8.30 a. m. and 1 p. m. as well as between 4 p. m. and 6 p.m. every day except weekly and public holidays, used to make entries in the OPD Register Ex. 37 and at all other times nurses attending to the patients used to make entries in the OPD Register.

288. PW 9-Dr. Mahato deposed that due to Godhra riots in flow of the patients was large; and he happened to examine Saddam Shaikh at about 1.55 a.m. on 4.3.02. He identified OPD paper Ex.88-A, Indoor case-paper Ex. 88-B, Medico-Legal Certificate dated 4.3.02 Ex.88-C and the entries Ex.89 colly. in the Medico-Legal Cases Register Art.38 as the relevant record of the examination of Saddam Adam Shaikh.

289. He further deposed that one Mohsin Yusuf was brought to the Community Health Centre, along with Saddam, by a policeman named Narpatsingh, and the relevant record of the examination of Mohsin Yusuf is as per OPD case-paper Ex. 90-A, Indoor case-paper Ex.90-8, Medico-Legal Certificate Ex.90- C and entries Ex. 89 colly. in Medico-Legal Cases Register Art -38.

290. According to PW 9-Dr. Mahato, he found on the person of Saddam Adam Shaikh a CLW admeasuring about 0.5 cm. over the forehead towards right side and a small abrasion over the occipital area of the scalp towards right side. He further deposed that he mistakenly recorded the date of examination of Saddam Adam Shaikh as 4.1.2002 instead of 4.3.2002 in the OPD case-paper Ex.88-A. Likewise, he deposed, he had committed a mistake in recording the time of examination of Saddam and Mohsin at the hospital as 10 p.m. in the Medico-Legal Certificates Ex. 88-C and 90-C, respectively. He further deposed that similar mistakes in dating the entries were made in the indoor case-papers Exs.88- B and 90-B, respectively.

291. PW 9-Dr.Mahato deposed that one Joravar Singh, Constable, Buckle No. 1031, came to the CHC and told him that he would go back to the police station and return for taking the children – Saddam and Mohsin - to the police station but he did not return; and around 9.15 a.m. on 4.3.02 one Safibhai Karimbhai, a social worker, came to the CHC with the police and took the said children to Godhra Relief Camp after acknowledging receipt of the said children below indoor case-papers Ex.90-B.

292. OPD case-paper Ex.88-A is found dated 4.3.2002. However, the date '4.1.2002' is found entered in the date column by PW 9-Dr. Mahato. Indoor case-papers 88-B is found dated 3.3.2002 and the date column bears date '4.2.2002 in the handwriting of PW 9-Dr. Mahato. Time 1.55 a.m. is found endorsed in the date column in the indoor case-papers

Ex.88-B. OPD case-paper Ex.90-A concerning Mohsin is found dated 4.2.2002 and the date below in the date column appears as 4.3.2002 in the hand of PW 9-Dr.Mahato. Indoor case-papers Ex.90-B concerning Mohsin is found dated 4.3.2002 and date below in the date column appears as 4.2.2002 in the hand of PW 9-Dr.Mahato and time '1.55 a.m.' is found endorsed in the date column. Comparative study of the handwriting appearing on the OPD papers Exs.88-A, Ex.90A and Indoor papers Exs.-88-B and 90-B reveals involvement. of common person in filling the columns therein during preparation of the said papers. Registration numbers allotted to the patients Mohsin Yusuf and Saddam Adam Shaikh are found consecutively numbered as 356 and 357 respectively. Entries concerning Saddam Adam and Mohsin Yusuf in the OPD Register Art-37 are found consecutively made as per the entries Ex. 94 colly.

293. Scrutiny of the entries in the OPD Register Art.37 reveals that the entries Ex. 94 colly. Are found at the foot of the entries commonly dated as 2.3.2002. PW 9-Dr.Mohato was cross-examined regarding the entries at Sr.Nos.3904 and 3905 dated 2.3.2002 Ex.100 colly. concerning Fakruddin Abdul Hussain and Kutubuddin Fakruddin in the Register Art -37 and MLC Register Art -38. PW 9-Dr .Mahato was not in position to find any corresponding entry in the MLC Art.38. No explanation for this was asked from the witness by the defence. Evidence, on the other hand, shows that MLC Register Art. 38 was maintained for making record of the medico-legal cases and not others. Pertinently, the entries immediately succeeding the entries Ex.100 colly. are found dated 3.3.2002 and one such entry at Sr. No. 3901 in respect of examination of Shakriya Siska in the OPD Register Art.37 and dated 3.3.2002 finds corresponding equivalent entry No. 1792 dated 3.3.2002 in the MLC Register Art.38. Entries corresponding to the entries Ex.94 colly. pertaining to Saddam Adam and Mohsin Yusuf in the OPD Register Art. 37 can be found at Sr. No. 1794 and 1795 dated 4.3.2002 Ex.89 in the MLC Register Art. 38.

294. PW 9-Dr. Mahato deposed in the cross-examination that initially entry of the patient used to be made in the OPD Register and thereafter OPD case-paper used to be made and such patient used to be examined by the medical officer; and on examination of such patient the medical officer used to record his observations on OPD case-papers and recommend medical treatment, PW 9-Dr. Mahato further revealed in his cross-examination that Indoor case-papers used to be made in case of the patient admitted to CHC and nurses on duty used to fill the particulars of the patient so admitted in the Indoor case-papers and the medical officer used to record the observations made and treatment advised in such indoor case-papers. According to PW 9-Dr. Mahato, a MLC Certificate used to be prepared either on the same day or later on depending on the workload and entry in the MLC register used to be made at the time of preparation of MLC certificate. He further elaborated that such entry in the MLC register was required to be made at the most within one or two days and MLC register was maintained chronologically and serially. He further deposed that MLC register used to be kept ready whether police came to seize it or not.

295. PW 9-Dr.Mahato was confronted with the entries in the MLC Register Art.38. According to him, some of the entries there in were made by the medical officers whom he could not identify; and there were other doctors on deputation at CHC, Limkheda.

Entries ExS.98, 99, 102, 103, 104 in the MLC Register Art.38 depict the manner in which the MLC register was maintained at CHC, Limkheda despite a certificate of authenticity recorded under the seal of Superintendent, Community Health Centre, Limkheda, Dist. Dahod at the end of it. Entries in the registers - OPD Register Art. 37 and MLC Register Art. 38 - and indoor case-papers can be read as a sad comment on the affairs ruling in the medical services administration in the State of Gujarat. However, it would not be prudent to draw conclusions from such treacherous records that Saddam Adam and Mohsin Yusuf referred to in the entries Ex. 94 colly. were examined on 2.3.2002. Pertinently, entries Ex. 94 colly. Immediately precede the entries dated 4.3.2002. Going by the primary record - OPD case-papers Exs. 88-A and 90-A and the other oral evidence - one can reasonably believe that Saddam Adam and Mohsin Yusuf were examined around 1.55 a. m. on 4.3.2002.

296. PM 9-Dr.Mahato deposed that the prosecutrix was brought to CHE, Limkheda by a lady Constable with a Yadi (Ex. 203) written in Gujarati. He identified entry at Sr.No.3983 dated 5.3.2002 (Ex. 95) in the OPD Register hrt.37 made by the pharmacist concerning the prosecutrix. He further deposed that he examined the prosecutrix at about 10.10 a. m. on 5.3.2002 and recorded his observations in the OPD case-papers Ex.92 in MLC Register Art.38. He further deposed that he had issued MLC certificate dated 5.3.2002 Ex. 93. concerning the examination of the prosecutrix. He identified entry at Sr.No.1796 dated 5.3.2002 Ex.91 in MLC Register Art.38 as the entry regarding examination of the prosecutrix at CHC, Limkheda.

297. PW 9-Dr. Mahato further deposed that he found swelling of the left hand and pain in neck and back of the prosecutrix as well as complaint of pain in right occipital area of the scalp. He further deposed that he had advised X-Ray examination for further diagnosis. According to PW 9-Dr. Mahatot he had made a mistake in describing the area of swelling as right hand instead of left hand. He identified the seizure memo Ex.97 as the memo bearing the record of handing over of the OPD and indoor case-papers, MLC Register, MLC certificate, MLC and X-Ray plates concerning examination of the prosecutrix to the CBI.

298. In the cross-examination PW 9-Dr. Mahato further revealed that Saddam Adam only responded to his queries with crying and therefore he could not get medical history and consequently no note of such medical history was made anywhere. Same was the case, PW 9-Dr. Mahato deposed, with the patient Mohsin Yusuf.

299. PW 9-Dr. Mahato further deposed in the cross-examination that when he inquired with the prosecutrix about medical history, there was narration coming from her in Gujarati, which he could not understand. HE further deposed that he asked her in Hindi and he could not get response thereto from her, According to PW 9-Dr. Mahato, the prosecutrix was making gestures to hint at the injury; and accordingly he had recorded the facts of injury as the history given by the prosecutrix. He added that from the Yadi he could believe that it was a medico-legal case; and despite his queries the prosecutrix did not say anything except the gestures about the pain in the neck and scalp. He expressed that he could not say whether the prosecutrix did not tell him about the rape.

300. A pertinent fact is revealed through the cross-examination of PW 9-Dr. Mahato that from the Yadi he could believe that it was a medico-legal case. According to PW 9-Dr. Mahato, he tried to understand what was written in the Yadi but he could not understand its contents. He deposed that he did not call Mr. Sanjay Rathod, Pharmacist, who had prepared OPD case-paper Ex. 92 concerning the prosecutrix and who knew Gujarati, for understanding what was written in the Yadi. His evidence shows that he did not call understand what was written in the Yadi despite fact the that there was realisation on his part that the Yadi was important in medico-legal cases.

301. According to PW 9-Dr. Mahato, he used to take assistance of the pharmacist or the Nurse on duty for understanding the contents of Yadis or sometime the persons attending the patients used to explain to him the contents of the Yadis. He averred that he was knowing little Gujarati like the phrases “Kem chho”. He further deposed that he used to diagnose the patients not from what was told but from symptoms. He denied the suggestion that he could understand many things of Gujarati.

302. One fact clearly emerges from the evidence of PW 9-Dr. Mahato that he joined the office as Medical Officer in January 2002 and happened to handle large inflow of patients following Godhra riots at the end of February 2002. This means that at the time of joining the service in January 2002 PW 9-Dr Mahato, a native of Bihar, was not conversant with Gujarati and continued to be so at the time he examined the prosecutrix on 5.3.2002. However, he was expected to take assistance of someone knowing Gujarati when he realized that it was a medico-legal case concerning a female victim in riots.

303. PW 9-Dr. Mahato deposed that he understands the words ‘Balatkar’, ‘Sambhog’ and ‘Bura Kaam’ but does not understand the word ‘Khotu Kaam’. PW 9-Dr. Mahaato promptly thereafter averred that he understands what is ‘Khotu Kaam’. According to PW 9-Dr. Mahatok, he did not hear from the prosecutrix the words ‘Balatkar’ ‘Sambhog’ and ‘Bura kaam’ and if the prosecutrix had told him anything about rape in Gujarati he could not have understood that fact.

304. On the other hand, there is evidence of PW 23-Govindbhai Patel that he had noticed Sharifa, Latifa and the prosecutrix speaking with each other sometimes in Hindi, sometimes in Gujarati; and the prosecutrix had used the word ‘Balatkar’ found in the statement Ex. 277.

305. Evidence of PW 8-Saddam reveals that sometimes he used to talk with the prosecutrix in Hindi. However, evidence of PW 71-Dhanashree Karmarkar reveals that the prosecutrix could reply to her questions asked in Hindu in poor Hindi Being a native of Gujarat, it appears that the prosecutrix was at ease in Gujarati rather than Hindi, Evidence also reveals that assistance was taken by the IOs of Gujarati Interpreter for recording the statements of the prosecutrix; and at times, the evidence reveals, there was confusion in understanding of the IOs as to what she had actually revealed. Naturally, in the given circumstances, the prosecutrix was likely to express the facts in her mother tongue i. e. Gujarati.

306. Cross-examination of PW 9-Dr. Mahato further reveals that he was conscious about the precautions he was required to take as a medical officer in the case of rape victim. Difference between the observations recorded by him in respect of examination of the prosecutrix at the indoor case-papers Exs.92 and MLC certificate Ex. 93 and the observations recorded by PW 17-Dr. Katti and DW 3- Dr. Pisagar in the indoor case papers Exs.138 and 138-A, respectively, clearly demonstrate the casual approach of PW 9-Dr. Mahato in handling the case of the prosecutrix. His negligence in discharging his duties as a medical officer dealing with riot cases at Community Wealth Centre, Limkheda was further compounded by the lack of his understanding of Gujarati language. Though PW 9-Dr. Mahato denied that he was, under tension when his statements were recorded, a fact contrary to this denial surfaces in his cross-examination when he admitted the correctness of the statement "I am under tension" recorded by the CBI on 12.2.2004. PW 9-Dr. Mahato very well knew that he had committed mistakes in discharging his duties as the medical officer, CHC, Limkheda and this was the reason why he was under tension while giving statement before the CBI on 12.2.2004. PW 9-Dr. Mahato denied that he was threatened by the CBI to fabricate the evidence as desired by them or else face prosecution. From the previous discussion, it is very clear that the affairs at CHC, Limkheda were in disarray and there was a casual approach of PW 9-Dr. Mahato in the matter of examination of riots victims, particularly the prosecutrix.

307. Numerous anomalies in the medical records evidenced through the testimony of PW 9-Dr. Mahato clearly rule out the fact that Exs.88-A to 88-C, 98-A to 98-C and Ex. 92 were fabricated with the assistance of Mr. Rathod, pharmacist, and the Nurses at the instance of the CBI. As regards the discrepancy in the evidence of PW 9-Dr. Mahato in relation to the statement dated 1.10.03 recorded by Gujarat CID, PW 9-Dr. Mahato denied having made any discrepant statements before Gujarat CID.

308. PW 52-Kalubhai Vohania, PI, CID, Gujarat, however, deposed that PW 9-Dr. Mahato had made statements that: (i) he could follow what she (the prosecutrix) talked in Gujarati; (ii) the prosecutrix had told him about the painful injury on her left palm; (iii) the prosecutrix replied to the query that public had assaulted her; (iv) the prosecutrix did not state any fact about the rape except the fact of assault; (v) the prosecutrix was free of shock, sorrow and threats; (vi) the prosecutrix was giving correct replies as per portions marked 'A' to 'F' in the statement Ex. 274. A fact, however, remains that PW 9-Dr. Mahato was recently employed person from non-Gujarati State - Bihar - at Community Health Centre, Limkheda and had not pass the test of Gujarati language. Evidence also shows the casual approach of PW 9-Dr. Mahato in dealing with the case of the prosecutrix. These statements, therefore, do not make much difference with the facts revealed in the evidence of PW 9-Dr. Mahato.

309. PW 13-Mukeshbhai Harijan deposed that days after Godhra riots, the police took him to one Kotar (ravine) at the outskirts of village Kesharpur at about 12.30 p. m. where he and other neighbours had dug a waist-deep pit, and 7 dead bodies - 4 females, 2 boys and 1 girl were buried in the pit dug by them. Pertinently, he deposed that he found two

doctors, one male and one female, and no other lady at the said place when he was at the said place between 12.30 p.m. and 530 p. m.

310. In the cross-examination, PW 13-Harijan described the spot as the place lying off the Kuchcha road branching off the Pucca road leading from Piplod to Randhikpur and as the place which could be reached after walking on a Pagdandi (Foot-track) across the hill for a distance of about 2 kilometers.

311. PW 14-Mavsi Mulabhai Patel deposed that he was conducting a provision store at village Kesharpur arid he used to keep salt in his shop for sale. He did not support the prosecution on the point of PW 73-Somabhai, husband of Kampaben, accompanied by Ramsinghbhai, Dy. Sarpanch and two policemen approaching him at his shop around 2 p. m. in March 2002 and purchasing three gunny bags weighing 90 kgs. of common salt from his shop on payment of Rs. 90/- towards its cost His hostility to the prosecution can be seen from his statement dated 6.1.2004 Ex.330 recorded by PW 57-Randhir Dudhraj.

312. PW 15-Baria Nayaka deposed that he happened to read a news item published in the Gujarat Samachar issue dated 5.3.2002 regarding some dead bodies lying in Kesharpur jungle, and therefore he and PW 73-Somabhai Nanabhai from Kumpur decided to approach Limkheda Police Station Publication of the news item, as deposed by PW 15-Baria Nayaka, (indicates that a wide publicity was received to the fact of dead bodies lying in Kesharpur jungle. How this f a c t could reach news media cannot be understood from the evidence. Evidence of PW 15-Baria Nayaka also signifies how enthusiastic were PW 73-Somabhai and PW 15-Baria Nayaka in the facts concerning the present: case.

313. PW 15-Baria further deposed that while they were standing at the bus stand at Kesarpur around 10 a.m. on 5.3.2002 waiting for a bus to Limkheda, the police picked them up and took them to the Kotar (ravine) after passing Panivela; and they had reluctantly joined the police as panchas. More or less, similar facts were averred by PW 73-Somabhai Chauhan.

314. At Sarkotar, PW 15-Baria and PW 73-Sombhai Chauhan deposed, they found several policemen, one male and one female doctor, one lady panch and labourers. They further deposed that the postmortem examinations of the 7 dead bodies, 4 females and three children, found lying there, were carried out and thereafter the bodies were buried in a pit. They further deposed that injuries were noticed on the dead bodies and t h e facts were recorded as per inquest panchnama Ex.123 on 5.3.2002.

315. Pertinently, PW 73-Somabhai Chauhan deposed that one woman named Ramtiben Mangalbhai had signed the panchnama; and the photographs were taken of the dead bodies lying there (i. e. at the Sarkotar in Kesharpur jungel) for the purposes of future identification.

316. PW 15-Baria Nayaka initially deposed that - nobody identified the dead bodies and later averred that one Muslim person present there had identified a dead body of lady

as of one Halima. He was, however, not certain about the said fact. PW 15-Baria Nayaka was not in position to name the lady Panch.

317. Both PW 15-Baria Nayaka and PW 73-Somabhai Chauhan were hostile to the prosecution, inasmuch as they contradicted their earlier statements: (i) that no lady named Smt. Ramtiben Mangalbai Baria other than lady doctor was present; (ii) that corpses were buried in the pit with salt purchased by the police from the shop of PW 14-Mavsi Patel at Kesharpur; (iii) that PW 10-Rameshbhai Soni had photographed the dead bodies; (iv) that Sattar Abdul Ghanchi was not present at the spot; (v) that: no lady had impressed thumb impression on the panchnama Ex.123 in their presence at the spot; and (vi) that there was no body to identify the dead bodies, recorded by the CBI on 7.1.2004.

PW 15-Baria Nayaka, however, admitted that after recording the statement he had shown the place where the dead bodies were buried, to the CBI.

318. Cross-examination of PW 15-Baria, done on behalf of the accused, reveals that Kotar, where the dead bodies were found, was not accessible to the vehicles; and scene of offence panchnama was recorded between 1 p.m. and 2 p.m. on 5.3.2002 as per panchnama Ex. 124. He could not say who was Mr. Maganbhai Dheersingh Baria named in the panchnama Ex.124 as the person showing the place of offence.

319. Evidence of PW 16-Balwantsingh Rajput reveals that the A/14-Saiyed had showed a spot in Kesharpur jungle not accessible to the vehicles in Kotar (ravine) where the bodies were found lying; and the A/14-Saiyed had indicated 3 - 4 places at a little distance away from each other at the said spot on 11.3.2004 and the said facts were noted as per panchnama Ex. 129. His cross-examination only reveals a material fact that the places visited on 11.3.04 and 13.3.04 were different.

320. PW 22-Chandubhai Patel, Nayab Mamletdar, Tahsil Limkheda, Dist. Dahod, deposed that around 8 - 8 . 3 0 a.m. on 5.3.2002, he, Mr. Pandya, Mamletdar and Mr. G. B. Parekh, Sub-Divisional Magistrate, left for village Dudhiya; and at village Dudhiya Mr. Patel (Accd. No. 15) showed to them the place of firing at village Dudhiya where one lady in injured condition was found crying near the dead body of a male person. His evidence further reveals that condition then prevailing in his Tahsil was so worst that he was not in position to go to Chundadi alone for two Muslim persons in safety to Limkheda; and Mr. Parekh, SDM, himself and two policemen could venture to proceed to Chundadi in a jeep around 1.30 p. m.; and at some places they found the road to village Chundadi blocked with stones and trees, and at one place they could not proceed in the vehicle any further due to such blockade and had to get down from the vehicle. He further deposed that a little time thereafter he could manage to reach Bijalbhai's place at village Chundadi on a motor-bike and thereafter he could bring the two Muslim persons to Mr. Parekh, SDM, and subsequently the two Muslim persons were taken in a jeep to village Limkheda.

321. PW 22-Chandubhai Patel further deposed that Godhra Train Incident occurred on 27-2-2002 and a day following thereto Vishwa Hindu Parishad had declared Gujarat Bandh and Bajrang Dal had supported this Bandh.

322. Some more additional facts concerning this aspect are brought on record with the cross-examination of PW 22-Chandubhai Patel. PW 22-Chandubhai Patel deposed that the tense atmosphere at Dudhiya was brought under control; and village leaders from both Hindu and Muslim communities were called before Mr. Parekh, SDM, and were advised not to indulge in communal strife; and he was not prepared to go alone to village Chundadi as the condition in the entire district was not safe. This material fact remains undisturbed in the cross-examination of PW 22-Chandubhai Patel.

323. PW 22-Chandubhai Patel further deposed that on the way he came across two policemen around 3.30 p.m. and one of them was the A/14- PSI Saiyed from Fatehpura Police Station and the other was the A.13-Narpatsingh. According to PW 22-Chandubhai Patel, they were told by the said policemen that some Muslims were killed near the tree in the vicinity; and the A/14-Saiyed showed the corpses of two women lying below the tree and thereafter took Mr. Parekh, SDM, to Kotar and bushes for showing more corpses. He added that Mr. Parekh SDM, and the A/14-Saiyed returned after visiting the Kotar and bushes sometime thereafter; and he had noticed one male and female duo of doctors standing near the corpses of two women lying below the tree.

324. PW 22-Chandubhai Patel deposed that Mr. Parekh, SDM, asked the doctors duo about the post-mortem examination and they were told that the post mortem examination was going on. He fairly deposed that he had noticed some men busy digging the pits in Kotar; and had also noticed two civilians – one Mr. Ramsinghbhai Nayakbhai (PW 15) and Mr. Somabhai (PW 73) Sarpanch, Group Gram Panchayats, Kesharpur. He deposed that they were at the said spot for about 25 to 30 minutes and thereafter proceeded towards Limkheda with the said two Muslim persons.

325. Cross-examination of PW 22-Chandubhai reveals a pertinent fact that no inquest over the dead body of the male person found lying at village Dudhiya was held in his presence despite the fact that they were there for about 4 or 4-1/2 hours. He, however, denied the suggestion that he was knowing in the morning of 5.3.2002 about Kesharpur killings and SEM had informed Mr. Parekh about it then. Though his cross-examination shows that he had made discrepant statement regarding knowing of killing before the CBI on 18-2-2004, a fact remains that they did come across two police personnel on the way to Limkheda around 3 p.m. showing the landmark of a mango tree where the dead bodies were lying. Pertinently, evidence of PW 22-Chandubhai Patel reveals that the did not know whether inquest panchnama was over by the time they had reached the spot in Kesharpur jungle. He denied the suggestion that the CBI had threatened him to state the facts as desired and thereupon he had withdrawn the application for anticipatory bail moved by him before the High Court at Ahmedabad. He asserted that he was not knowing what happened to the anticipatory bail application before the High Court at Ahmedabad. This would only show that he was anticipatory arrest in the present case and nothing else.

326 PW 22-Chandubhai Patel further disclosed in his cross-examination that one has to travel 1.5 kilometers from his residence at Chapparwad on a Pucca road before reaching Kuchcha road leading to village Panivela; and one passes through Sarjumi, Randhikpur on way to Chundadi from village Dudhiya. He further deposed that there were two ways from Chundadi to Kesharpur, one via Randhipur and other via Pipliya; and one has to pass by a dam when one takes a route to Kesharpura from Chundadi via Pipliya; and Randhipur is at the distance of about 10 to 12 kilometers from Dudhiya. Description of the routes in the evidence of PW 22-Chandubhai Patel pertains to the routes taken by an individual in normal circumstances.

327. Evidence of the prosecutrix shows that the cross-country route was taken by them, and therefore it is difficult to pass any adverse comments against the testimony of the prosecutrix in relation thereto. However, a fact emerges from the aforesaid discussion that the place described by the prosecutrix as the place of offence on 13.3.2004 was different than the place where the dead bodies were found lying at Sarkotar on 5.3.2002.

328. Nowhere in the evidence it is seen that the prosecutrix had shown the place of offence to the Limkheda Police. A contention has been raised that there is indication of the place of crime in the FIR Ex. 56 with the term 'Kotar' used therein. However, the prosecutrix has disowned the FIR Ex. 56. There is no apparent reason available from the record as to why the prosecutrix was not taken to the place 'Sarkotar' where the dead bodies were found lying. On the contrary, the scene of offence panchnama Ex.124 recorded by Limkheda police makes reference to one unknown person i. e. one Maganbhai Dheersingh Baria, resident of Zarola, as the person, showing the place of incident.

329. PW 34-Amritsinh Khant deposed that he wrote the inquest panchnama Ex.123 at the instance of the A/16-Bhabhor, CPI, the A/14-Saiyed, PSI, and the A/13-Narpatsingh, HC, upon the dictation given by the A/14-Saiyed and the A/13-Narpatsingh at the spot in Panivela-Kesharpur jungle where the corpses were found lying. According to him, they left Randhikpur Outpost around 9 a.m. in a police jeep and a minibus of the A/14-Saiyed on 5.3.02. He deposed that PW 38-Arjunsingh Patelia was at the wheel of the police jeep bearing registration No. GJ 17-229 at their disposal. He further deposed that around 9.45 a.m. they reached the area where the corpses of 4 ladies, 2 boys and one girl were found lying. He further deposed that the A/14-Saiyed conducted the inquest in the presence of the two panchas; and the corpses were buried in a pit after post mortem examination done 'by the medical officers present the site. According him, one Abdul Sattar had identified one of the corpses as that of one Aminaben. Strangely, he deposed that nothing from the corpses was preserved for the purposes of establishing their identities. He confirmed the fact that around 3 p.m. on 5.3.02 SDM, Devogad Baria and Mamletdar Mr. C. B. Baria came to the site where the corpses were buried.

330. Evidence of PW34-Amritsingh Khant reveals that he was hostile to the prosecution, as most of the police witnesses were, in the present case. He refused to admit

the following facts which are found recorded in the statement dated 24.2.2004 recorded by the CBI:-

- (i) the A/13-Narpatsingh approaching the A/16- Bhabhor in the evening of 4.3.2002 and informing him of the wireless message from PS Limkheda on behalf of PSI Patel 8 dead bodies lying in Kesharpur jungle;
- (ii) the A/16-Bhabhor, CPI, the A/13-Narpatsingh HC, the A/14-Saiyed, PSI, PW 35-Ranji Singh , PC, PW 36-Abhaysingh, PC, Bharatsingh, Driver, and two SRP Constables leaving for Kesharpur jungle in the jeep of the A/16- Bhabhor and minibus of the A/14-Saiyed;
- (iii) collection of Camera from the shop of a photographer near Randhikpur outpost;
- (iv) taking of PW 28-Bhavin, photographer and PW 29-Balusingh with them;
- (v) the entire team reaching Kachcha road leading to Panivela village near Chhapparwad around 5.30 p.m. and after getting down from the vehicle they taking right turn and searching for the dead bodies while walking;
- (vi) receipt of wireless message from the A/18- Bhagora, Dy. SP, directing them to proceed to other side of the hill near Ashram .near Kesharpur;
- (vii) reaching the spot within 10 minutes there-after;
- (vii) one Abdul Sattar Ghanchi coming with PSI B. R. Patel:
- (ix) seeing 8 dead bodies including the dead body of 3 years old girl at the said spot on 4.2.2002;
- (x) PW 28-Pravin taking photographs of the dead bodies;
- (xi) PC Budhsingh noting the positions of the dead bodies;
- (xii) Abdul Sattar Ghanchi identifying 8 corpses as the dead bodies of the relations of the prosecutrix and her family on 4.3.2002;
- (xii) that no lady panch named Ramtiben was present at the time of the inquest; and
- (xiv) the A/14-Saiyed, A/15-Patel, A/16-Bhabhor, A/18-Bhagora discussing further action and taking decision to hold the inquest on the next day morning i.e. on 5.3.2002 and to call the doctors from PHC, Bandibar and Dudhia for the purposes of post mortem examinations;
- (xv) giving instructions to the A/13-Narpatsingh for calling the doctors;

- (xvi) leaving the place unguarded without ensuring safety of the dead bodies around
- (xvii) the A/19-Dr .Arunkumar Prasad and the A/20- Dr. Sangeeta Prasad not conducting the post-mortem examinations properly;
- (xviii) The A/13-Narpatsingh, A/14-Saiyed, A/16- Bhabhor and A/18-Bhagora not directing the Medical Officers to conduct the post mortem properly;
- (xix) procurement of salt and use of it for the burial of the dead bodies on instructions of the A/13-Narpatsingh;
- (xx) holding of inquest under the supervision of the A/18-Bhagora on 5.3.02; and
- (xxi) failure of the A/19-Dr.Arunkumar Prasad and the A/20-Dr.Sangeeta Prasad to dissect the dead bodies in order to know the cause of death.

A bald explanation for such anomalies in his evidence that he was threatened by the CBI officers with removal from service can also be found in his evidence. Similar version of the events concerning the inquest panchnama Ex.123 can be found in the evidence of PW 35-Ranjeetsingh Patel.

331. At this stage it is worthwhile to scrutinise the evidence concerning the photographs Exs. 59/1 to 59/17. The prosecutrix had identified the dead bodies appearing in these photographs. Photograph of the dead body of Saleha Ex.59/4 is not found in the set of photographs Exs.59/9 to 59/17. There is no reference to this dead body in the inquest panchnama Ex.123. Evidently, the bodies were buried on 5.3.2002 much before darkness had set in. Report Ex.309 of the scientific investigation done in respect of the said photographs reveals that the photographs Exs.59/1 to 59/8, including the photograph of the dead body of Saleha Ex.59/4, were taken in artificial light and other set of photographs Exs. 59/9 to 59/17 were taken in broad day light. Certainly, therefore, the photographs Exs.59/1 to 59/8 were taken prior to the photographs Exs. 59/9 to 59/17 i. e. at least a day before 5.3.2002. his goes to show that PW 34- Amritsingh Khant is not telling the truth.

332. Interestingly, the cross-examination of PW 34-Amritsingh Khant reveals that he did not narrate anything about visit to the Kesharpur jungle on 4.3.2002 before State CID for the reason of not going there. However, one can easily see from the evidence of PW 34-Amritsingh Khant why he did not narrate anything about the visit to Kesharpur Jungle on 4.3.2002 before the State CID.

333. PW 35- Ranjeetsingh Patel deposed that complaint Ex. 56 was narrated by the prosecutrix to the A/17-Sombhai Gori, then PSO at the police station, around 10 a.m. on 4.3.2002. According to him, the complaint Ex.56 is in the handwriting of PC Budhsingh.

334. PW 35-Ranjeetsingh Patel obliged the defence with the elaborate account of the recording of the complaint Ex.56. According to him, he was with the A/17- Sombhai

when the prosecutrix approached the A/17-Sombhai; and thereafter the A/17-Somabhai took the prosecutrix to PSI's room admeasuring 10' x 10' and there the A/17-Somabhai wrote the original complaint in the FIR book and simultaneously PC Budhsingh and Chandusingh made copies thereof, a carbon copy of the complaint given to the prosecutrix and original of it sent to the Magistrate. He further deposed that throughout writing of the complaint nobody else was present at the place where the complaint was scribed; and the complaint Ex. 56 was faithfully written as per narration of the prosecutrix. He further identified the entry in the case-diary Ex. 204. All these facts are refuted by the prosecutrix.

335. Examination of the complaint Ex. 56 shows that it bears no acknowledgement showing the receipt of its copy by the prosecutrix. PW 35-Ranjeetsingh did not depose that the original complaint's in the hand of the A/17-Sombhai Gori or the duplicate made by PC Chandusingh bears thumb impression of the prosecutrix. The prosecutrix was also not confronted with the said documents.

336. PW 35-Ranjeetsingh Patel gave account of seizure of the clothes: (i) sky-blue saree with checks carrying blood stains (Art. 25A); (ii) brown (maroon) coloured petticoat with blood stains on back and front (Art. 26/6); (iii) one green coloured pant (Art. 25/5); (iv) one piece of bush-shirt/ pyjama with white lining (Art.28/5); (v) one frock with floral designs (Art. 29/5); and I(vi) piece of bush-shirt (Art. 30/5) as the clothes collected from the corpses lying in Kesharpur jungle on 5.3.2002. He further deposed that these clothes were handed over to PSO Jaisingh at Limkheda Police Station and the same were seized under panchnama Ex. 205 and later on deposited in Malkhana under receipt Ex. 206 on 5.3.2002. He identified controlled as well as blood soaked samples of soil (Arts. 9A colly. and 9B colly. respectively) seized from the said place on 5.3.2002. Significantly, the inquest panchnama Ex. 123, scene of offence panchnama Ex.124 and the testimony of PW 35-Ranjeetsingh Patel fails to make reference to any other article or personal belonging found or recovered from the dead bodies of the said persons lying in Kesharpur jungle.

337. In the cross-examination done by the prosecution, PW 35-Ranjeetsingh Patal was found contradicting his statement recorded by the CBI on 6.2.2004 that:

- (i) the prosecutrix made a complaint that she was raped by the A/1-Jaswant Nai, A/2-Govind Nai and deceased A/3-Naresh Modhiya, residents of Randhikpur, at about 11 a.m. on 3.3.2002 near village Chhapparwad, and her relations were raped and murdered by mob of 20 - 25 persons, and she was assaulted by one of the rapists, and her daughter was killed by the A/4-Shailesh Bhatt;
- (ii) the A/17-Somabhai, then PSO, reduced the complaint in writing in Gujarati;
- (iii) photographs of 7 dead bodies were taken by one photographer - PW 10-Soni - on 5.3.2002 and the said photographs were identified by him; and
- (iv) salt was put in the pit while burying the corpses on 5.3.2002.

PW 35-Ranjeetsingh Patel did not have any explanation for existence of such record.

338. PW 35-Ranjeetsingh Patel, on being recalled, deposed that PW 52-Vohania of Gujarat CID had instructed PSI Limkheda to make enquiries about Ramtiben, and accordingly he was instructed by PSI Limkheda to make enquiries in that regard. According to him, name of the husband of Ramtiben was not furnished to him.

339. Though PW 35-Ranjeetsingh Patel was not questioned about the alterations in the timings recorded in the inquest panchnama Ex.123. Alterations of the timings '12 hours' to '15 hours', '10 hours' to '12 hours' in light of the depositions of PW 22-Chandobhai Patel and PW 13-Mukeshbha Harijan confirms the degree of suspicion on the inquest panchnama Ex.123. Name of lady panch is shown as Ramtiben Mangalsingh Baria at the beginning and end the inquest panchnama Ex.123. Name of Dheersingh is found appended to this name of the lady shown in the inquest panchnama Ex.123. Evidence of PW 35-Ranjeetsingh offers no clue to this fact.

340. PW 36-Abhesingh Patel refused to say that he visited Kesharpur jungle with the A/16-Bhabhor and contradicted himself in relation to the statement dated 12.1.2004 recorded by the CBI, particularly, regarding the purchase of salt from a Kesharpur shop.

341. PW 38-Arjunsingh Patelia deposed that he was Driver of the police jeep bearing registration No .GJ-17-G-229 allotted to the CPI A/16-Bhabhor; and he and the A/16-Bhabhor had been to village Randhikpur for patrolling duty on 28.2.2002. He further deposed that on 4.3 .2002 he and the A/16- Bhabhor went to the places/villages in the vicinity of Randhikpur Police Station, including Kesharpur for the purposes of patrolling. However, he showed his inability to recollect which place at Kesharpur they went on 4.3.2002. He produced motor-logbook Art.44 maintained in respect of the said motor jeep. Entries Ex.217 colly. in the motor-logbook Art.44 show that the vehicle did move in Limkheda- Kesharpur-Singwad area on 4.3.2002 and 5.3 .2002 for the purposes of investigation regarding the dead bodies of minorities found at Kesharpur village and investigation in the present case. No further light is thrown on any material facts in the present case by the said entries in the motor-logbook Art. 44.

342. PW 38-Arjunsingh contradicted his statements: (i) that SPI Mangalsingh and PW 34-Amritsingh, Const able, were at Kesharpur jungle around 9 a. m. on 4.3.2002 and the A/14-Saiyed, ASI Mangalsingh and PW 34-Amritsingh went walking inside the jungle for seeing dead bodies, and he waited at the vehicle upto 5 p.m. on 4.3.2002; (ii) that on 5.3.2002 they, including the A/14-Saiyed, the A/13-Narpatsingh, left for Kesharpur at about 0730 hours and after reaching Kesharpur forest, he remained with the vehicles till 18.30 hours on 5.3.2002; (iii) that ASI Mangalsingh, PW, 34- Amritsingh, PC, two SRP personnel, the A/14-Saiyed and the A/13-Narpatsingh left Randhikpur Outpost around 2030 hours on 4.3.2002 in vehicle No.GJ-17- D-229 and reached the spot on the Pucca road near Kesharpur Nursery around 2100 hours and after reaching there all, except himself and Bharatsingh, left the vehicles and came out of the forest around 2300 hours on 4.3.2002, made before the CBI on 26.2.2004.

343. PW 39-Ratilal Bhabhor deposed that on 4.3.2002 he and the A/18-Bhagora did not visit Kesharpur. He denied his previous statement made before the CBI, particularly, regarding receipt of wireless message in the morning of 4.3.2002 and visit to Kotar of Panivela where the dead bodies were found lying

344. PW 40-Phulabhai Khat deposed that he worked as Driver on the police vehicle No.GJ-20-G-24-P-4 used by the A/18-Bhagora and produced motor-logbook Art. 45. He further deposed that he and the A/18-Bhagora did move in the said vehicle as per the entries Exs.223 and 224. Entries dated 4.3.2002 and 5.3.2002 (Exs. 223 and 224 respectively) show the movement of the said vehicle in the area of Limkheda, Bandibar, Singwad, Randhikpur, Dudhia either in connection with patrolling duties, Bandobust duties or investigation in the present case on 5.3.2002 and nothing further.

345. Evidence of PW 56-Dr. Lt. Colonel Abhijit Rudra reveals the efforts made by the forensic experts to examine the place where the dead bodies were found and buried. PW 56-Dr. Lt. Col. Rudra was Associate Professor in the Department of Forensic Medicine in Armed Forces Medical College, Pune, and was sponsored for the training he received in forensic medicine from All India Institute of Medical Sciences, New Delhi between July 2001 and 2004 under the leadership of Dr. T. D. Dogra, Head of the Department of Forensic Medicine & Toxicology, AIIMS. His evidence reveals that on receipt of a letter dated 19.1.2004 from SP, CBI, SCB, Mumbai, Dr. Dogra gave instructions to open the file in respect of the present case and subsequent thereto he joined the team of Dr. T. D. Dogra, Dr. Millo, Dr. Sanjeev Lalwani, Dr. Lt. Col. Ravi Rautji and Dr. C. Behera formed for exhumation of graves and carrying out scientific investigation as per the permission sought vide letter Ex.306 and memorandum Ex. 307. He deposed that they carried with them surgical gloves, masks, aprons, body packs and such other standard equipments needed for examination of the exhumed bodies; and all of them were taken to a spot falling within the limits of Limkheda Police Station on 28.1.2004 after initial briefing by IO Mr. Sinha. He deposed that other team from CFSL headed by Dr. S. R. Singh, Director, CFSL, joined them at Godhra. He produced before the Court a copy of the order dated 27.1.2004 Ex.308 of Collector and District Magistrate, Dahod authorising the exhumation of the bodies.

346. According to PW 56-Dr.Rudra, a general search of the area to find out any physical or trace evidence of the crime was carried out by them on 28.1.2004 and 29.1.2004. He deposed that on 29.1.2004 the team of doctors was taken to a spot situated on the South-Western side of a hill feature consisting of the bed of a small stream strewn with rocks and boulders towards village Kesharpur. He identified the photographs Exs.337/1 to 337/39 as the photographs taken by the members of the CFSL team at the spot near Kesharpur village.

347. PW 56-Dr. Rudra further deposed that he prepared sketch of the spot near village Kesharpur. According to him, initial digging at the Eastern side of the river bed could not locate the bodies on 29.1 -2004 and later on the venue of digging was shifted to other side as pointed out by one eyewitness to the burial brought to the spot. He deposed that one

bone was found at a distance of two feet towards West of the spot indicated by the witness and marked as Point 'X' in the sketch. This bone, he deposed, was found about 6 inches to 1 foot below the surface of soil, which was designated as level zero of the grave. He added that the venue of digging was shifted to the another site nearby marked '6' on the sketch and finally a grave was finally located at the point marked '11' on the sketch in the afternoon of 31.1.2004. He identified the photographs showing the care and caution taken in the process of digging and exhumation of the skeletal remains from the pit as under:-

Photograph	<u>Photographs showing the process of digging and exhumation taken on</u>
Exs. 337/40 to 337/64	29/1/2004
Exs. 337/65 to 337/69	31/1/2004
Exs. 337/70 to 337/77	31/1/2004
Exs. 337/78 to 337/119	1/2/2004

348. PW 56-Dr.Rudra deposed that he appears in the photographs Exs. 337/32, 33, 34, 36, 37, 56, 59, 60, 63, 64, 65, 68, 69, 72, 73, 74, 78 to 83 and 85 to 93

349. The unchallenged testimony of PW 60-S. Ingarsal, Senior Scientific Officer in Photo Division of CFSL, New Delhi, lends the proof of authenticity and genuineness of the said documents taken by him.

350. PW 56-Dr.Rudra deposed that he drew the sketch of the grave finally located on 31.1.2004 as per Sketch 1 (Ex.311B); and in the evening of 31.1.2004 exhumation was started and was carried out as per the protocol prescribed therefore till 1.2.2004. He further deposed that human bones as per Arts.58/1 colly. to 58/5 colly. and Art. 58/1/A colly. and items of clothings (Arts.31/A to 31/R), remains of empty plastic packets (salt) (Art. 34/C) and a broken metallic and plastic bangle (Art. 14/B) were recovered from the grave at different levels in the process of exhumation of the said articles on 31.1.04 as well as on 1.2.04 as per List Ex.311. He pointed out that the bone Art. 58/2/A appearing in the photograph Ex.337/63 was recovered from the grave site on 29.1.2004. He further deposed that he drew Sketch 2 Ex.311/B and Recovery Charts as per Exs.311/D, E and F, respectively, depicting recovery of the said articles from the grave at different levels. He further deposed that memorandum of exhumation Ex. 310 bearing the record of the exhumation was prepared at the spot on 1.2.2004 in the presence of his team, the A/14-Saiyed and the A/13-Narpatsingh. According to PW 56-Dr. Rudra, he could observe from the circumstances that the bodies were dumped haphazardly in a pile in the grave admeasuring approximately 6 feet in length, 3 ½ feet in width and 3 ½ feet in depth with general orientation of the bodies from North-West to South-East directions.

351. PW 56-Dr. Rudra deposed that the recovered from the grave were received in sealed condition at AIIMS under letter dated 3.2.2004 (Ex.312) on 4.2.2004; and forensic assessment of the bones in 3 steps; (i) identification and sorting out of the bones; (ii)

radiological examination of the bones for assessment of age of the concerned deceased; and (iii) forensic anthropometric assessment of bony remains for the purposes of stature estimation of the deceased, was carried out by him and other doctors in the team as well as Dr. M. L. Ajmani, Professor, Department of Anatomy, AIIMS, and Dr. Aashu Seith, Assistant Professor of Radiology, during the period from 5.5.2004 to 9.2.2004. PW 56 Dr. Rudra further deposed that total conclusions from such examination were as under:-

- (i) the bones belonged to human beings;
- (ii) the bones belonged to five different individuals whose remains were interred in the same grave near village Kesharpur;
- (iii) the bones were consistent with those of females and children;
- (iv) the skull and cervical vertebra of the individuals were not found;
- (v) the bones were in a condition that was compatible with their burial in a moist environment for almost two years;
- (vi) the bones were likely to belong to the following individuals:
 - (a) Set-A: Female less than 16 years age of a stature of 150 cms.;
 - (b) Set-B: Female more than 19 years age of a stature of 153 cms.;
 - (c) Set-C: Young male less than 16 years age or female less than 13 yrs. age of a stature of 136 cms.;
 - (d) Set-D: Young male less than 16 years age or female less than 15 yrs. age of a stature slightly more than 136 cms.;
 - (e) Set-E: Young male less than 16 years age or female less than 15 yrs. age of a stature slightly more than-146 cms.

352. PW 56-Dr.Rudra deposed that report of exhumation dated 10.2.2004 Ex.311/A, along with the sketches Ex.311-B and C, recovery charts Exs.311-D, E & F, and list of bones Ex.33-G, were sent to the CBI with the letter dated 10.2.2004 Ex.311 and report of forensic examination dated 14.2.2004 Ex.313-A as well as sketches of human skeleton Exs.313-B to F, and copies of authoritative material on the subject of human skeleton Ex.313-G colly. were sent to the CBI with letter dated 14.2.2004 Ex.313.

353. PW 56-Dr.Rudra deposed that the items of clothings, salt packets and bangles were sent to CFSL on 9.2.2004 in sealed condition under letter dated 4.2.2004 (Ex.319). He further deposed that the clothing items were received back from CFSL in sealed condition around 12.3.2004. Evidence of PW 56-Dr. Rudra, and PW 61-Pankaj Sharma, Junior photographer in Forensic Medicine and Toxicology of AIIMS, New Delhi, reveals that 18 items of clothes (Art. 31-A to 31-R), were photographed by PW 61-Pankaj

Sharma in course of the examination done by PW 56-Dr. Rudra, Dr. T. D. Dogra, Dr. Sanjeev Lalwani, Lt.Co3. R. Rautji and Dr. C. Behera on 12.3.2004 at AIIMS as per photographs Exs.320/1 to 320/18 and negatives Ex.321 colly.

354. PW 61-Pankaj Sharma deposed that the photographs Ex.323-A colly. are the exact copies of the photographs Exs.320/1 to 320/18. PW 61-Pankaj Sharma was not cross-examined. Virtually there is no cross-examination of PW 56-Dr.Rudra on the point of the said articles from the grave located near Kesharpur.

355. PW 56-Dr.Rudra deposed that a questionnaire soliciting the opinion of the AIIMS was received from the CBI with letter dated 11.2.2004 (Ex. 322); and on 27.2.2004 some photographs, along with P. M. examination report dated 5.3.2002 and list of victims, were received at AIIMS from the CBT, New Delhi with letter dated 27.2.2004 (Ex. 428 colly.). He deposed that the photographs received from the CBI were studied along with the items of clothings and photographs Exs.320/1 to 320/18 and comparison was made between the items of clothings Art. 31-A to 31/R found in the grave and the clothings seen on the bodies of the, deceased in the photographs sent & by the CBI on 12.3.2004.

356. PW 56-Dr.Rudra deposed that four items of clothings: (i) item marked 'FM02/A2' - pant of young child (Art. 31-B); (ii) item marked 'FM03/A3' - dirty white Salwar with minute red grosses (Art. 31-C); (iii) item marked 'FM13/A13' - light green coloured cloth (Art.31 -M; and (iv) item marked 'FM16/A16' - light green cloth (Art. 31-p); did not appear in any of the photographs sent by the CBI.

357. According to PW 56-Dr. Rudra, the other items of clothings were visible in the photographs sent by the CBI; and these items of clothings were identified vis-a-vis the deceased seen in the photographs as per the report and photographs Ex.323-A colly.; and the report was sent to the CBI with the letter dated 12.3.2004 Ex.323. There is no challenge to these facts brought in evidence by PW 56-Dr. Rudra. Co-relationship between the clothes recovered during exhumation and the bodies seen in the photographs examined stands clearly established with the evidence of PW 56-Dr-Rudra.

358. PW 56-Dr .Rudra deposed that they studied the report: of exhumation Ex. 311-A to 311-G, report of forensic examination Ex.313-A to 313-G, post mortem examination reports Exs.411-A & B to 417-A & B, 10 photographs taken on 4.3.2002 referred to as Set-A (Exs.59/1 to 59/8) in the report, 9 photographs taken on 5.3.2002 referred to as Set-B in the report (Exs.59/9 to 59/17), 119 photographs Exs. 337/1 to 337/119 referred to as Set-C in the report, report of examination of clothings (Ex.323-A colly.) and the photographs Ex.320/1 to 320/18 referred to as Set-D in the report and the letter dated 27.2.2004 with list Ex. 428, and thereupon the questionnaire Ex. 322 was answered in writing as per reply Ex. 324. PW 56-Dr.Rudra produced analytical charts Exs.324-A to 324-H with the photographs sent by the CBI as the record of the analysis done by them as a result of aforesaid study carried out at AIIMS.

359. Unchallenged testimony of PW 60-Ingarsal reveals that he had prepared enlargement of the photographs Exs. 59/1 to 59/17 from their negatives Arts. 53-A and

54-A as per the photographs A-1 to A-10, B-1 to B-9 (Exs. 324-A to 324 -H) in the colour lab of Photo Division of CFSL, New Delhi. No exception can be taken to the evidence of PW 60- Ingarsal,

360. PW 56-Dr-Rudra deposed that judging from the appearance of the bodies as visible in the photographs Set-A and Set-B at Exs.324-A to 324-G, he could say that Set-A photographs (Ex.59/1 to 59/8) were taken earlier than Set-B photographs (Ex.59/9 to 59/17); and in Set-A photographs the bodies appear to show recent injuries with some evidence of recent bleeding; and in Set-B photographs signs of decomposition are visible on the bodies.

361. PW 56-Dr. Rudra gave account of his observations vis-a-vis the photographs as under:-

<u>Photographs</u>	<u>Observations</u>
A1, A3 & A4 of Alimbibi (Halima)	(i) fresh injury mark visible on the right forearm of the deceased, (ii) yellow striped thread visible over the right leg of the deceased.
B1 of the same body	(i) position of the striped yellow thread is different, (ii) early signs of decomposition are visible from the face.
A5 of the young girl	(i) the front of the body appears to be partially wet, (ii) the cloth appears to be partially wet; and this is not consistent with the surrounding area which is dry.
B2 of the same body	(i) the clothes appear dry, (ii) the face shows early signs of decomposition.
A6 & A7 of a boy	(i) the front of the pant appears to be wet and blood stains are visible on the left side of the face with the injury to the scalp through which brain matter is seen coming out.
83 of the same body	(i) the trouser is dry with face showing early signs of decomposition.
A8 & A9 of a young boy	(i) some injuries are visible on the face.

B4 of the same body

(i) features of purging indicative of decomposition are visible.

PW 56-Dr. Rudra deposed that on account of these features he could give his opinion that Set-A photographs were taken previous to Set-B photographs. He added that judging from the condition of the bodies, as is visible from the said two sets of photographs, he could say that time gap between these sets of photographs is about a day; and Set-A photographs of the dead bodies could have been taken within 24 hours of the demise of the individuals seen therein; and Set-B photographs could have been taken between 24 hours and 48 hours of the death of the individuals seen therein. These findings about the time lag between the photographs - Set-A & Set-B- and the probable time of taking the Set-A photographs go unscathed in the cross-examination of PW 56-Dr. Rudra.

362. PW 56-Dr. Rudra deposed that judging from the condition of the bodies seen in the photographs - Sets-A & B - and the injuries recorded in the P.M. examination reports, the spots where the photographs were taken would be unlikely to be the spot of actual violence. He justified this finding from the following observations made by him: -

Photographs

Observations

A1 to A4:

Reddish stains are seen running downwards from left corner of mouth and left nostril. However, no reddish material or stain is apparently visible on the ground. In the same set of photographs, apart from a pinkish Salwar and greenish cloth, no other clothing is visible.

A1 to A4 & B1:

Staining and soiling of the body is visible. However, the Salwar on the body is relatively clean.

A5:

The front of the body appears partially wet and reddish stains are visible over right side of the face. The left hand appears to be in a position that does not match the visible position of the rest of the body. No reddish stain or material is visible on the ground or over surrounding area.

B2:

On the right side of head of the same body some dried leaves are seen adherent to the scalp. In post mortem examination report of the same body it has been noted that fracture of the back of the skull with expulsion of brain matter, which is not visible in the photograph.

- B2: Left hand of the deceased is seen raised above the ground which does not match with the current position of the body as visible in the photograph and therefore the possibility of the position of the body having been changed after the onset of rigor mortis in some other position cannot be ruled out.
- A6 & A7: The brain matter is seen coming out but the surroundings does not show any reddish material or brain tissue or any other stain, whereas the post mortem examination report of the same body records fracture of the skull.
- Of the unknown body (5): The body shows extensive soiling and a piece of pink coloured cloth lying over it. From the surrounding area there does not appear to be any disturbance of the leaves and other material on the ground which are indicative of the struggle having taken place there.
- B6 & B7: Of the unknown body (6): Two items of clothings with printed gray and red material do not appear to be the part of her garments. While branch and some leaves are visible over the head, rest of the body does not have any leaves over
- BB & B9: Of the unknown body (7): No signs of struggle visible in the area around the body. A bluish cloth appears to have been tied around the neck of the deceased. All these features indicate that the possibility of the person having died as some other spot.

363. PW 56-Dr-Rudra further deposed that the boulders seen in photographs A1 and A2 of Alimbibi appear to have been placed there carefully. Pertinently, the corresponding post mortem report Ex.417B bears no reference to any external injury except a broad reference to inquest panchnama Ex.123. Inquest panchnama Ex.123 makes a reference to the bleeding from nose and mouth and merely describes the chest portion as pressed vis-a-vis the said body.

364. PW 56-Dr.Rudra deposed that judging from the condition of the bodies of the female deceased visible in the photographs B5, B8 & B9 (identified the prosecutrix as Halimbi) and the findings recorded in the post mortem examination report of Alimbibi and unknown (7), the possibility of sexual assault cannot be ruled out. He further deposed that judging from the condition in which the bones were found inside the grave, it was not possible to comment on how many bodies could have been there in the grave.

365. PW 5-Dr.Rudra further deposed that in case of rape the medical officer is expected to collect certain biological samples, such as blood sample, hair and pubic hair, finger nail clippings and genital swab from the victim apart from clothings and swabs taken from those areas where suspicious stains are detected. / He further deposed that normally for the purposes of identification of the dead bodies some time is given for efforts to establish the identity and thereafter upon the failure of such efforts to establish the identity the post mortem examination is usually carried out, and where required the body is preserved after the post mortem examination for the purposes of identification. According to him, there was no bar for preservation of the clothings, accessories, photographs and fingerprints of the deceased by the police to aid in subsequent identification of the deceased. He pointed out that the bangle Art. 14-B is similar to the bangle seen in the hand of the deceased appearing in the photograph B1 at Ex.324-k colly (photograph of Alimbibi/Halima).

366. Ld. Advocate Mr. Ponda, for the Accd.No.1, succeeded in reducing the rigour of the assertions made by PW 56-Dr .Rudra. Cross-examination of PW 56- Dr. Rudra reveals that he is not expert in photography and he found the photographs unclear. His cross-examination further reveals his belief that Set-A photographs were taken at one stage and Set-B photographs were taken at other stage. However, he added that his opinion of time difference given was based on the appearance of the bodies as they were visible in the photographs. Obviously, his opinion was based on visible things mainly of forensic importance seen in the photographs. Logic employed by him in arriving at the opinion regarding time difference has not been shown to be wrong in the cross-examination of PW 56-Dr. Rudra, and therefore, what he believed was found to be correct on the ultimate analysis of the things observed by him.

367. PW 56-Dr. Rudra further deposed in his cross examination that general appearance and signs of decomposition of the bodies led to his conclusion regarding the time difference between the bodies appearing in the said photographs. He maintained that decomposition of the bodies in Set-B photographs is found more advanced than the one found in the bodies in Set-A photographs. It may be that there are no corresponding photographs of the bodies seen in Set-A photographs to the bodies seen in the photographs B6 & B7 at Ex. 324-F and B8 & B9 at Ex.324-G. "3F this fact can hardly have any impact on the opinion expressed by PW 56-Dr. Rudra.

360. PW 56-Dr. Rudra deposed in his cross-examination that he was in total agreement with the answers given in the report Ex.324. He further deposed that the terms 'possible', 'probable' and 'unlikely' convey the meanings in literal sense. Cross-examination of PW 56-Dr. Rudra thus reveals that he was not in disagreement with the findings appearing in the report Ex.324 that it could be possible that death could have taken place at the site other than that has been shown in the photographs as no blood like or other stains on earth could be seen in the photographs. Necessarily this finding in the report Ex. 324 needs to be read in context with the detail observations referred to in the Appendices 'A' to 'H' to the report Ex. 324. It is correct that inquest panchnama was not seen by the experts for giving opinion. However, it is not pointed out in the cross-examination of PW

56- Dr. Rudra that the injuries observed in the photographs and taken in to consideration for giving opinion were in any way a t variance with the injuries noted in the inquest panchnama Ex. 123. No adverse inference, therefore, can be drawn against the quality of the opinion expressed in the report Ex. 324.

369. PW 56-Dr.Rudra deposed in context to the photographs Ex.324-A colly. and P.M. Report Ex.282- A, particularly in relation to the frothy and purging of fluids out of the body referred to in Column No.13 in the P.M. Report Ex.282-A, that upon the death of a person when purging occurs the fluids do not spurt but ooze out through the body of the victim. He further deposed that he could see from the photograph A1 in Ex.324-A colly. That reddish stains oozing from the nostrils stopped at the cheek of the body. He agreed that considering the tilt of the head seen in the photograph A3 in Ex.324-A colly. the reddish stains oozing from the mouth of the deceased seen in the photograph A1 in Ex. 324-A colly. could have gone to the portion between neck and the' shoulder.

370. PW 56-Dr.Rudra further agreed that some stains could be seen on the left leg end of the Salwar found on the body of the deceased in the photograph A3 in Ex.324-A colly. He also conceded that the fact about the Salwar on the body of the deceased Alimbi being found relatively clean is not mentioned in Appendix 'A' to the photograph Ex.324- A colly. He further agreed that a fracture to the posterior occipital bone can occur even without the scalp being visibly wounded.

371. PW 56-Dr. Rudra agreed with the propositions found in the standard medical work as under:-

"Owing to the pressure of the gas in the blood vessels, hypostatic stains may be displayed in any direction. After 3 days, the face is so discoloured and bloated that identification becomes very difficult. Urine and faeces may escape due to intra abdominal pressure

- per Dr. K. S. Narayan Reddy, Forensic Medicines and Toxicology, 24th Edition, 2005, and

"From 12 to 18 hours after death in summer, these gases collect in the intestine, consequently abdomen swells up. The sphincters relax, and urine and faeces may escape".

- per 22nd Edition of Modi's Medical Jurisprudence and Toxicology.

PW 56-Dr. Rudra further deposed that such collection of gases in the dead body may also occur in winter season, but may take more time depending upon the weather condition. PW 56-Dr. Rudra accepted the fact that wetness could be seen spread over the portion extending from lower portion of the chest to the thigh in the photograph A5 at Ex. 324-B. He further agreed that there is possibility of wetness seen in the photographs A5, Ex.324-B, and A6, Ex.324-C due to passage of urine. However, the fact that the trouser

on the same body seen in the corresponding photograph B3 was found dry by PW 56- Dr. Rudra is not wiped out from his cross-examination.

372. PW 56-Ex.Rudra further conceded in the cross-examination that possibility of the stains seen on the ground in the portion encircled on the photograph A5 at Ex.324-B were of blood cannot be ruled out. He further deposed that the reddish stains were visible on the right side of the face of the deceased in the said photograph; and such reddish stains could be anything. He further deposed that he could see something red oozing out of right nostril of the deceased in the photograph A5 at Ex.324-B; and it could be blood oozing out. He could not rule out the possibility that position in the said photograph would occur in a case where the body which was lying on the face was overturned for the purposes of photograph. He further deposed, in reference to the photographs A5 and B2 at Ex. 324-B, that dried leaves found sticking to the scalp on the right side of the head of the deceased in the photograph B2 were possible due to the blood.

373. PW 56-Dr. Rudra agreed that red stains could be seen in the three portions encircled with red ink, particularly, two on the twigs and one on the stone appearing in the photograph A7 at ex.324-C; and a dark patch on the ground in the portion encircled in red ink in photograph A6 at Ex.324-C also could be seen. He was not in position to rule out that red stains seen in the photograph A7 and dark stains seen in the photograph A6 at Ex.324-C could be of blood.

374. Though PW 56-Dr.Rudra could sense that the body seen in the photograph B5 at Ex.324-E was lying underneath a tree exposed to the falling leaves of the trees and density of dried leaves around the body was uneven. He did not agree that he was not in position to say whether there was any struggle at the said place or not. There is nothing to dislodge his observations except the fact that these observations were not expressed in the Chart at Appendix 'E', Ex.324-E or in the report Ex.324.

375. When confronted with the photographs 86 and B7 at Ex.324-F, PW 56-Dr. Rudra was unable to comment on the density of the leaves seen fallen around and on the body. He further deposed that dried leaves can fly away with the wind. Like wise, he admitted the fact that falling of the leaves around and on the body seen in the photographs B8 & B9 at Ex.324-G was uneven. He, however, conceded that under such circumstances he was not in position to say whether there was any struggle at that place or not.

376. All said and done, PW 56-Dr. Rudra maintained that he was not in agreement with the proposition that looking to the photographs of the bodies - Set-A & Set-B - it was impossible to give opinion whether the bodies were shifted from one place to another or not. His cross-examination shows that he was dithering in expressing his opinion about actual place of violence. At the same time he accepted that the existence of blood in blood like stains can be confirmed by the CFSL on examination of the objects carrying such stains; and there was no CFSL report in that regard before them prior to arriving at the conclusion in the report Ex.324.

377. Though no definite conclusion can be drawn as to the place of actual violence, the testimony of PW 56-Dr. Rudra is sufficient to throw a slur of suspicion against the investigation carried out by the Limkheda Police.

378. Most importantly, inquest panchnama Ex.123, scene of offence panchnama Ex.124, and photographs Exs.59/1 to 59/17 do not show either the presence of footwear on the, bodies or the recovery of the footwear from the place where the bodies were found lying. Post mortem examination reports Exs.282-A to 282-G do not show either the presence of any footwear or injury to the bottom of the feet of the deceased. In normal course anybody, particularly women and children, undertaking cross-country journey would not be without any footwear, and if they were with out any footwear there ought to have been marks or injuries on the bottom of their feet.

379. On the other hand, there is evidence coming forth from the testimonies of PW 56-Dr.Rudra and PW 60-Ingarsal that on 28.1.2004 combing operations by CFSL team headed by Dr. S. R. Singh were undertaken at the place of offence, particularly the place abutting the Kuchcha road leading to village Panivela as indicated in the statement made by the prosecutrix on 9.1.2004 and broken pieces of red coloured bangle (Art .11A), a pair of Hawai Chappal (Art.15A), Hawai Chappals (Art.16A, 17A, 18A, 19A, 20A and 21A), blue coloured piece of clothing (Art.4A), broken red coloured bangle (Art. 12A) and plastic Chappals (Art. 22A) were recovered from the place of offence and the same were packed and sealed under dated signatures of Dr. S. R. Singh, his four colleagues and PW 72-Sinha. IO, at the spot and were seized under memorandum Ex.422 signed by Dr. S. R. Singh and PW 72-Sinha. Memorandum Ex. 422 and the envelopes used for packing and sealing the said articles corroborate PW 72-Sinha on these aspects.

380. Evidence of PW 60-Ingarsal reveals that the photographs Exs.337/1 to 337/29 are the photographs of the locations near Panivela Kuchcha road. He deposed in his cross-examination that the photograph Ex.337/29 shows open place with the background of hillock; and nearly 3 kilometers distance was required to be walked down to reach the river-bed from the place seen in the photograph Ex. 337/19. Photographs Exs.337/3 to 8, 13 to 15 and 17 show t h e places where the slippers were found lying.

The prosecutrix identified the said articles as follows:-

<u>Name of the article</u>	<u>Article seen on the person of at the time of incident</u>
Piece of bangle (Art. 11A):	One of the lady members.
Slippers (Art. 15A):	Deceased aunt Sugra.
Slippers (Art.16A):	Deceased uncle Yusuf Musa.
Slippers (Art.17A):	Deceased uncle Yusuf Musa.
Slippers (Art. 18A):	One of the family members.
Slippers (Art.19A):	One of the family members.
Slippers (Art .20A):	One of the family members.
Piece of clothing (Art. 4A):	One of the family members.

Piece of bangle (Art.12A):	One of the family members
Slippers (Art.21A):	One of the family members.
Chappals (Art.22A):	One of the family members.

It is true that such articles are available in the market. However, the slippers and chappals appear to be used and weatherbeaten.

382. The prosecutrix, clarified that she was not present when these articles were recovered by the CBI from the place. She denied the suggestion that she had seen these articles, particularly the slippers and chappals for the first time in the Court. It is equally true that the CBI had told her about recovery of the slippers and chappals from the place, To test the veracity of the prosecutrix, this Court compared the slippers Arts.16A and 17A, which were shown separately to the prosecutrix, and the prosecutrix had unequivocally identified the same slippers as the pair of slippers on the person of her uncle Yusuf Musa Patel at the time of the incident. These two slippers together form a pair of slippers which can be used by a single individual. This shows that the prosecutrix was not wrong in identifying the said articles.

383. On this background, it can be very well said that what the prosecutrix stated about the actual place of offence is credible, and the spot where the inquest panchnama Ex.123 and scene of offence panchnama Ex.124 were drawn could not be the place of actual crime. If this be so, it is only the offenders or eye-witnesses to the actual crime and its aftermath, who can say how the dead bodies moved to the place in Kesharpur jungle, some distance away from the actual place of crime indicated by the prosecutrix.

384. PW 8-Saddam Adambhai, a child of 12 years, who could understand the sanctity of oath, deposed that he was staying with his mother Amina and brother Salim at village Randhikpur; and he left village Randhikpur with his mother, his sister Akli @ Sugra, the prosecutrix and her family when Hindus were burning the houses of Muslims. He further deposed that 2 or 3 days after they left Randhikpur Hindus armed with swords, sticks and Dharias and shouting slogans "Mar dalo, jinda mat chhodo" came in white coloured vehicles on Kuchcha road and chased them. He further deposed that they pelted stones on them and he was hit with stone on his right hand side forehead. He further deposed that his mother was hit with Dharia and died as a result thereof; and his mother told him that Akli was also killed. He added that Hussain, 4 years old child, was thrown in a bush and they (the persons who alighted from the vehicles) tore the clothes of the ladies with them and he fell unconscious.

385. PW 8-Saddam further deposed that when he regained consciousness he found Hussain weeping in the bush; and he and Hussain ran towards the road. He further deposed that one uncle came to the road with a vehicle and saved them and one policeman took them to Randhikpur Police Station. PW 8-Saddam revealed that after receiving medical treatment at the hospital, he and Hussain were taken to Devgad Baria. He identified the A/1-Jaswantbhai Nai, the A/7-Kesharbhai Vohania, the A/8-Pradeep Modhiya, the A/9-Bakabhai Vohania and the A/10-Rajubhai Soni from amongst the accused as the villagers from village Randhikpur whom he had seen on the Kuchcha road

referred to by him. He added that they had come to Kuchcha road in a white jeep and some 20 - 25 others were with them.

386. In the cross-examination, FW 8-Saddam denied that he was being questioned by one policeman and replies were being recorded by another policeman. He further denied that he had made statements before Gujarat Police: (i) that he was staying with his brother Ayub at Kapadi Falia, and (ii) that after crossing the road when he proceeded towards the hill a big mob came from hill side. However, there is no evidence of the fact that he ever had made such statements before the Gujarat Police.

387. PW 8-Saddam was confronted with portions marked 'A', 'B', 'C', 'D', and 'E' in his statement (Ex.437) recorded by the CBI on 15.1.2004. He was not in position to explain why portion marked 'A' in the said statement refers to him as a resident of "Hal Nivasi (Refugee Camp), Rahimabad, Devgad Baria, District Dahod, Gujarat". However, the same statement refers to him as 'a student of III Std. of Shah Zakeria Haji Peer Public School, Anjar, District Kuchch'. PW 8-Saddam did refer to the fact that one Maulana took him to Anjar where children used to reside in one building and none of his relations stayed with him at Anjar. These facts in his testimony do show that the facts recorded in the portion marked 'A' in the statement dated 15.1.2004 do not cast a shadow of doubt on the testimony of PW 8-Saddam. When confronted with the portion marked 'D' in his statement Ex. 437 that he was sent to the refugee camp after receiving medical treatment at the hospital, PW 8-Saddam denied having made such statement. Even if the facts in the portion marked 'D' in his statement (Ex. 437) are accepted, it would only suggest that he was treated in the hospital and sent to the refugee camp.

388. There is evidence of the fact that PW 8- Saddam was given -medical treatment at Limkheda Hospital and an entry to that effect is found made at Ex. 94 in the OPD Case Register Art. 37. As observed herein above, the medical record in the present case is treacherous enough to twist the facts. It was very likely for PW 8-Saddam to be with his deceased mother Amina; and considering the sequences of the facts, his production before PW 9- Dr. Mahato around 1.55 hours on 4.3.2002 seems to be only probable.

389. PW 8-Saddam did not say anything about his journey after leaving Randhikpur while deposing in examination-in-chief. However, he was confronted with the portion marked 'C' in his statement (Ex.437) making reference to leaving the village in the night. This fact of leaving the village in night does not change the complexion of his testimony given before the Court. Like wise, PW 8- Saddam denied having made references to 'jungle' as per portion marked 'D' & 'E' in his statement (Ex.437) dated 15.1.2004 before the CBI. Assuming such references were made by PW 8-Saddam, one may infer that the incident to which PW 8-Saddam was referring occurred in the jungle area. Pertinently, PW 8-Saddam deposed that he had not seen any river by the side of the place of incident; and there was no jungle at the place where he was hit with a stone. Perusal of the photographs Exs.337/1 to 337/29, particularly the photograph Ex.337/19 shows that the place near the Kuchcha road was a place showing no human habitation (except few huts seen in photograph Ex.337/23) and some vegetation, bushes and trees around typical of

jungle area. These contradictions, therefore, do not materially change the complexion of the evidence given by PW 8-Saddam.

390. PW 8-Saddam, however, did not state before the CBI: (i) that one of the offenders was a person manning cash counter in the hotel at Randhikpr; (ii) name of Raju Panivala; (iii) that he could identify five persons; (iv) physical features of the offenders; (v) number of offenders; and (vi) that he was hit on forehead. As regards the injury on the forehead, there is evidence of PW 9 Mahato regarding medical examination of PW 8 Saddam in corroboration. Statement dated 15.1.2004, however, refers to the fact that PW 8-Saddam was in position to identify the offenders. This aspect is revealed in the evidence of PW 72-Sinha. There is also evidence of the fact that permission to conduct the T. I. parade was refused by the Ahmedabad Court. On this background, the identification, of the offenders/ accused before the Court by PW 8-Saddam as the persons seen in village Randhikpur as well as on the Kuchcha road in a white jeep cannot be rejected as an afterthought or as a thing tutored. Even excluding the fact of identification of the offenders/accused one can continue to see the fact that the, incident had occurred on the Kuchcha road and the offenders came to the said place in white coloured vehicles. Evidence of PW 8-Saddam, therefore, is sufficient to generally corroborate the evidence of the prosecutrix.

391. PW 54-Prafulchandra Sevak, Inspector of Motor Vehicles at Dahod, produced Register of Motor Vehicles (Art. 50) maintained in ordinary course of business in the office of Assistant RTO, Dahod, and pointed out from t h e entry Ex.294 therein that Mahindra & Mahindra Mode 98 make LMV Jeep bearing registration No.GJ-20-A-3123 was initially owned by Mr. Jaswantsingh Sumansingh Bhabhor r/o Dasa, Taluka Limkheda, District Dahod; and this vehicle was transferred to the name of Mrs. Ramilaben Rameshchandra Chandana r/o Singwad, Post Randhikpur, Tal. Limkheda, Dist. Dahod on 18.9.2001 vide ARTO's order dated 29.1.2004 vide entry Ex.294 in the, Register of Motor Vehicles Art. 50. He deposed that composite fees/late fees of Rs.100/- were accepted for delayed presentation of Transfer Form Nos.29 and 30. He added that 18.9.2001 is the date of Transfer Forms. He denied t h a t there is no signature of the transferee anywhere on the Transfer Form Nos.29 and 30. These facts are not demolished in the cross-examination of PW 54-Sevak, Certainly the actual transfer of this vehicle in the name of Mrs. Ramilaben Rameshchandra Chandana was on 18.9.2001 though the Asstt. R. T. D. had passed order recognising such transfer on 29.1.2004.

392. The prosecutrix deposed that the Jeep Art.2 was used by the offenders to come to the place of offence on the date of the incident. PW 67-N. C. Dutta, PI, CBI, SCB, deposed that on 5.4.2004 Mahindra & Mahindra Jeep (Art. 2) bearing registration No.GJ-20-A-3123, along with R. C. Book, was duly seized in the presence of the panchas; and photographs Ex.58/1 to 58/4 of the said jeep were taken on the same day; and the facts were duly recorded as per panchnama Ex.115. PW 12-Madhusudan Prajapati corroborated PW 67- Dutta on this aspect. This evidence read in conjunction with the statement of the A/12-Rameshchandra Chandana made u/s 313 of Cr. P. C. vide Ex.467 offers credible corroboration to the evidence of the prosecutrix on this aspect.

393. PW 55-Kampaben Sombhai Chauhan, Sarpanch of Group Grampanchayats, Kesharpur, deposed that one Mrs. Ramtiben Maganbhai Baria was living in village Zarola, Randhikpur but she was not there since last three years; and certificate Ex.298 was issued in that regard by her in the presence of her husband PW 73-Sornabhai Chauhan. She was contradicted in reference to the certificate Ex.298 by the prosecution. She deposed that she did not state in the certificate Ex. 298 that Smt. Ramtiben Maganbhai Baria was living in village Zarola, Randhikpur, and was not there since last three years. She had no reason to offer regarding such contradiction.

394. In the cross-examination done on behalf of the accused, PW 55-Kampaben Chauhan admitted that certificate Ex.298 bears her handwriting and was issued regarding husband and wife, She further deposed that the duo named in the certificate Ex.298 were residing in the village and had left the village some three years back in search of labour work and thereafter they did not return. If this evidence is accepted, one can easily conclude that this lady - Ramtiben - was the wife of Maganbhai Dheersingh Baria and not the wife of Dheersingh Maganbhai Baria as tried to be shown in the inquest panchnama Ex.123.

395. Interestingly, when PW 55-Kampaben Somabhai Chauhan was recalled she deposed in her cross-examination about one Dheersingh Manabhai Dayra, whose wife's name was Shardaben. She promptly accepted the suggestion that after the marriage Ramtiben was named as Shardaben, suggesting thereby that Ramtiben was wife of Dheersingh.

396. In the cross-examination done by the prosecution, PW 55-Kampaben Chauhan was not in position to state, even approximately, the date, month and/or year as to when she learnt about the change of name Ramtiben. She revealed in the cross-examination that she had neither attended the marriage nor visited the matrimonial home of Ramtiben. She was confronted with the certificates Exs.298, 397 and 398 issued by her from time to time which refer to 'Ramtiben' as wife of Maganbhai Baria. She deposed that she was knowing about the change of name of Ramtiben when the said certificates were issued. However, she was not in position to explain properly why there was no reference to 'Shardaben' in the said certificates. She merely stated that sometimes Ramtiben was referred to as 'Ramtiben' and sometimes she was referred to as 'Shardaben'. She was not knowing whether there was any record in the Panchayat showing the change of name of Ramtiben to Shardaben. Obviously, PW 55-Kampaben Chauhan cannot be trusted as to her evidence regarding 'Ramtiben' as wife of Dheersingh Baria. In this connection, the evidence of PW 73-Sombhai Chauhan, husband of PW 55-Kampaben Chauhan makes an interesting reading.

397. PW 73-Somabhai Chauhan was not in position to say whether the lady named 'Ramtiben Mangalbai Baria was not staying at village Zarola. When confronted with his previous statement made before Limkheda Police that lady Ramtiben Mangalbai Dheersingh Baria was not staying at village Zarola. He took time to answer and showed his incompetency to read his statement dated 19.10.2003 recorded in Gujarati. He deposed that he was not in position to recollect whether such statement was ever made.

However, he readily gave the evidence in response to the cross-examination by Ld. Advocate Mr. Ponda, for the accused No. 1, that there was no reference to the photographs in the panchnamas Exs.123 and 124; and that Ramtiben was wife of Dheersingh.

398. PW 52-Kalubhai Vohania deposed that he could not record the statement of Ramtiben, the lady panch shown in the Inquest Panchnama Ex. 123, as he could not find her; and he had entrusted the work of tracing out the whereabouts of Ramtiben and to find out whether she existed or not to Constable PW 35-Ranjeetsingh Patel; and PW 35-Ranjeetsingh Patel had handed over to him statement dated 19.10.2003 of PW 73 Somabhai Chauhan and certificate Ex. 397. Certificate Ex.397 refers to Ramtiben wife of Mangal Dheersingh Baria and further certifies that such person was not the resident of village Zarola.

399. PW 52-Kalubhai Vohania further deposed in his cross-examination that he realised on reading the statement dated 19.10.2003 of PW 73-Somabhai Chauhan and from talk with PW 35-Ranjeetsingh that Ramtiben w/o. Mangalsingh was not traceable. As discussed above, PW 55-Karnpaben initially was referring to a couple Ramtiben Magansingh Baria and Mangalsingh Dheersingh Baria, and her evidence as to the name Ramtiben Dheersingh was not trust- worthy. Evidence of PW 73-Somabhai Chauhan in that regard is also not free from doubt.

400. PW 70-Rupesh Wankhede, PI, CBI, SCB, deposed that besides recording statements of PW-23 Govindbhai Patel and PW 9-Dr. Rakesh Mahato, he collected original Statements/Order Book-2002, X-Ray Register, original Laboratory Investigation Register, original Indoor Register-2001-2002, original MLC Register, original Inpatient Register and original OPD Register (Arts.61 to 67, respectively) under seizure memo Ex. 379 as well as Electoral Rolls for the years 2002-2003 (Exs.385 to 389) under Receipt Memo Ex.384 from the concerned authorities. He further deposed that he had addressed letter dated 18.3.2004 Ex.383 to the Executive Magistrate, Limkheda for ascertaining the existence of one Ramtiben and a reply thereto was received vide letter dated 19.3.2004.

401. Evidence of PW 70-Wankhede in the cross-examination reveals that he was instructed to make investigation regarding one Smt. Ramtiben Mangalbai Dheersingh Baria. It is not demonstrated from the cross-examination of PW 70-Wankhede or otherwise that name of Smt. Ramtiben wife of Mangalbai Dheersingh appears in any of the electoral rolls produced before the Court. Evidence before the Court thus casts a shadow of doubt as regards the presence of lady panch Ramtiben at the time of Inquest Panchnama Ex.123

402. The entire evidence reveals that Saleha, daughter of the prosecutrix, was killed; and her photograph was taken a day prior to the inquest panchnama Ex.123. However, her photograph is missing from the later set of photographs, certainly taken before the bodies were buried, and there is no reference to the said photograph in the inquest panchnama Ex.123. This adds a cloud of suspicion over the inquest panchnama Ex.123.

403. The prosecutrix was cross-examined at a considerable length till, perhaps, the defence exhausted itself of all its ammunition. Keeping with the thought expressed by the Hon'ble Apex Court in the case of Jay Shree Yadav vs. State of Uttar Pradesh reported in 2004 CRI. L J. 4826, the contradictions surfacing the time lengthy arduous cross-examination are required to be appreciated in the background of ground realities which makes the witness confused because of folly blustering tactics of cross-examining counsels. The Hon'ble Apex Court while deciding Venkat Gouda's case reported in (2007) 2 SCC (Cri.) 610 (Venkat Gowda & ors. v, State of Karnataka) further held that some improvements, contradictions and omissions are bound to occur in the evidence of the witnesses subjected to lengthy cross-examinations, and such discrepancies, not serious nature, cannot be treated as vital and significant discrepancies so as to disbelieve and discard the substratum of the prosecution case. It also cannot be overlooked that the Hon'ble Supreme Court of India not only ordered the investigation in the present case to be carried out by the CBI but also directed the State Authorities to keep off from the petitioner (the prosecutrix) vide order dated 25.9.2003 in Criminal M. P. No. 8850/2003 in W. P. (Cri.) No. 118/2003.

404. Perusal of the copy of Writ Petition No.118/03 (Ex. 61 colly.) reveals the material record of the investigation done by the Gujarat Police including copies of FIR (Ex.56), statement of the prosecutrix dated 6.3.2002 (Ex. 277) recorded by the Executive Magistrate, Godhra, FIR registered by Godhra Police Station, Report of medical examination dated 7.3.2002, statement dt. 13.3.2002 of the prosecutrix recorded by CPI, Limkheda, statement dated 14.3.2002 of PW 8-Saddam recorded by CPI, Limkheda, DFSL report dated 24.4.2002, final report u/s 173 of Cr. P.C. and Fax dated 7.3.2002. After considering this record, the Hon'ble Apex Court was prompted to issue directions for further investigation at the hands of CBI and transfer of the case outside State of Gujarat. The prosecutrix, however, disowned the Fax dated 7.3.2002 (Ex.57) referred to in the copy of Writ Petition Ex. 61. Except a reference to the said Fax in the Writ Petition Ex.61 in the following terms: -

"True copy of the complaint dated 7.3:2002 made by the petitioner to the Magistrate is annexed hereto and marked as Annexure P5",

there is nothing in the evidence to suggest that this Fax message bears thumb impression of the prosecutrix or that it originated from Godhra Relief Camp where the prosecutrix was lodging at the material time. The prosecutrix deposed that the facts concerning the incident were already well known after her narration of the incident before Limkheda Police and the Executive Magistrate, Dahod. She deposed that she did not send the Fax Ex.57. However, she admitted that she had preferred writ petition (No.118/03) in the Supreme Court but was not recollecting the name of Advocate Shobha. She further deposed that approaching Supreme Court was her and her husband's decision and she went to New Delhi twice, firstly for making petition to NHRC and secondly for making the writ petition. While appreciating this evidence, it cannot be forgotten that the prosecutrix is a rustic illiterate lady who has to largely depend on others for understanding the written words.

405. Evidence of the prosecutrix in the cross-examination further shows that the contents of the affidavit tendered in the Supreme Court were explained to her in Hindi and her husband was helping her to understand such explanation in Gujarati. It is worthwhile to note that the prosecutrix also averred that the contents of the petition were explained to her and thereafter she had subscribed her thumb impression in token of having found the contents correctly recorded. In fact, the writ petition bears signature of Advocate Shobha, whose name the prosecutrix was unable to recollect at the time of her evidence. Thumb impression of the prosecutrix appears on the affidavit annexed to the writ petition. The prosecutrix deposed, when confronted with this affidavit, that she was not knowing what was written in the affidavit despite the fact that she had subscribed her thumb impression after its contents were purportedly explained to her. This shows that there was a gap between what was explained to her as the contents of the affidavit and what she actually understood in Gujarati. In order to understand this gap, it is necessary to examine the contents of the writ petition as well as the other evidence on record.

406. Para 3 of the Writ Petition Ex.61 reads as under: -

"3. The details facts leading to this petition are taken from the official records of the criminal case recorded by Gujarat Police".

Writ petition Ex.61 is of 14 typed pages and other annexures including the documents referred to herein above and 50 more pages. The prosecutrix deposed that she had not made grievance before the Supreme Court that the translation of Fax Ex.57 was not introduced in the writ petition by her. According to the prosecutrix, she did not personally collect the documents annexed to the petition made to Supreme Court from the authorities and did not inquire from where such documents were procured. She named one Mukhtiyarbhai as the person who had prepared the writ petition and was working for the riot affected persons. She deposed that she did not furnish any papers to Mukhtiyarbhai and did not know from where Mukhtiyarbhai procured the papers annexed, to the writ petition. She further deposed that Mukhtiyarbhai did not disclose to her what papers were annexed to the writ petition. Interestingly, she deposed that she had not annexed copy of the statement dated 7.3.2002 recorded by Godhra Police, a copy of which is found annexed to the writ petition Ex.61 as Annexure P5. She further deposed that if her advocate had done it, she was not knowing about it. The total view of her evidence on this material aspect reveals that what was written in the writ petition Ex. 61 was not properly explained to her. It is highly probable, as it mostly happens, that everything in the petition drafted by the lawyers was not explained to the litigant prosecutrix with its complete meaning.

407. In the instant case, the documents annexed to the writ petition Ex. 61 emanated from the record available with Gujarat Police. Writ petition Ex. 61 appears to have been signed by one Advocate Shobha. Writ petition Ex. 61, which runs into several pages, is in English. Its contents apparently were explained to the witness in Hindi and later on rendition of such explanation was purportedly made available to the prosecutrix in Gujarati. In such circumstances, one can believe the prosecutrix that the Fax Ex.57 was not sent by her.

408. On this background, all contradictions and omissions in reference to the suspicious statements made before Gujarat Police as well as Fax Ex.57 do not have great value as otherwise such contradictions and omissions may have in weighing of the material on record as against the accused. (Supra) AIR 1956 SC 181 (Baladin & ors. v. State of Uttar Pradesh).

409. As regards the contradictions and omissions brought on record in relation to the statement of the prosecutrix (Ex. 277) recorded by the Executive Magistrate, Dahod, it can be observed that such contradictions and omissions do not materially disfigure the evidence of the prosecutrix so as to disbelieve and discard the substratum of the prosecution case. It is not unlikely that the Executive Magistrate had recorded the facts succinctly with out questioning the prosecutrix specifically regarding the necessary details.

410. Looking at the photographs Exs.337/1 to 337/119, one can get a feeling that the place in the Kesharpur jungle could have been a trekker's delight but certainly it could not have been the place where a mob of 500 persons would have roamed through the said area. Evidently, such statement in that regard in the FIR Ex.56 is a colourable design to suppress the truth. It is also unlikely that a mob of such persons would have come to the said spot chanting a statement "Ke tamara Muslim manaso amara Hindu manasone maari nakhel chhe". In fact the persons amongst the violent mob were more likely to shout "Aa raya Musalmano emane maaro, kaapo". It is also unlikely that the persons in the mob intoxicated with a desire to kill and ravish women would have spared the prosecutrix in response to her pleas t o spare her as she was pregnant. killing of Saleha, daughter of the prosecutrix, shows the mood of the persons in the mob.

411. DW 8-Dr.Amar Jit Singh, Commissioner of Health, Medical Services & Medical Education (Health), Gujarat State, deposed that on 25.4.2002 he happened to meet the prosecutrix, her husband and one Latifabibi at Godhra Refugee Camp; and his talks with the proecutrix yielded names of the offenders and the facts concerning the incident as per the Note Ex.446-B. The prosecutrix denied this fact. If one looks at the letter Ex.446-A, names of Vijay Modhiya and Prakash Modhiya are found introduced in the list of the offenders and the names of Kesharbhair Vohania, Bakabhair Vohania, Rajubhai Soni and Ramesh Chandana are found deducted from the said list of offenders.

412. A question, therefore, arises whether the prosecutrix had made such revelation as disclosed in the letter Ex.446-A. In the cross-examination DW 8-Dr. Amar Jit Singh revealed that he was alone from his office to visit the camp and local Medical Officers - the Chief District Health Officer and 2 - 3 others from Godhra - accompanied him. He further deposed that some policemen were in the camp but nobody accompanied him. He added that he had talk with the District Magistrate on the phone. According to him, he had not made any note apart from note Ex. 446-B about meeting the inmates of the camp. Note Ex.446-B is merely an inventory of the names and nothing more. DW 8-Amar Jit Singh deposed that the did not think it fit to record statement of the prosecutrix or her husband or Latifa; and the jotting Ex.446-B was not dated by him. He further deposed

that he not prepared any official report more than letter Ex.446-A. He volunteered that he took action from health point of view. However, the material portion in the letter Ex.446-A reads as under:-

"She has already lodged police complaint in this regard. I understand that Secretary, Women and Child Welfare has also taken up this issue along with Collector, Panchmahal. However, no action has been taken in this regard so far.

I shall appreciate if the matter is inquired into and necessary action taken against the perpetrators of this heinous crime".

Nowhere it is reflected in the said letter that he took action from health point of view.

413. DW 8-Amar Jit Singh deposed that he found the prosecutrix pregnant and under state of shock and therefore she was described as a patient in trauma. He added that the other persons in trauma were the persons affected with measles or other physical ailments. If he was to write such letter Ex. 446-A from health point of view, he could have very well included the names and conditions of the persons affected with measles or other physical ailments in the Ex.446-A. However, such is not the case with the letter Ex.446-A. His evidence further shows that he had not inquired with the prosecutrix about the complaint made by her to the police; and he had not prepared' any official report of his visits to any camps; and had not sent any letter similar to letter Ex.446-A to the Government. If he had not made inquiries with the prosecutrix about the complaint made by her to the police, how is it that the letter Ex. 446-A makes a reference to the lodging of the police complaint by the prosecutrix and inaction on the part of the police. There is no answer to be found to this question in the evidence of DW 8-Dr.Amar Jit Singh.

414. DW 8-Dr. Amar Jit Singh further deposed that the letter Ex.446-A does not bear any Outward number; and he did not receive any reply to the letter Ex.446-A. He further deposed that he did not take any follow up action except talking with one Mr. Khandwawala from DGP 's Office and PW 18 –Jayanti Ravi, District Magistrate, Panchmahal on telephone.

415. Evidence of PW 18-Jayanti Ravi projects no such facts in her evidence. Consequently, the evidence of DW 8-Dr.Amar Jit Singh sounds less credible and certainly is without any corroboration; and, therefore, cannot be acted upon while appreciating the evidence of the prosecutrix.

416. DW 1-Budhsingh Patel, deposed that as a Writer Constable in Limkheda Police Station, he had scribed the FIR Ex.56 on the dictation of the A/17- Somabhai Gori between 10.45 a. m. and 11.15 a. m. on 4.3.2002 in the office of PSI situate in a room admeasuring 10' x 10' at the police station. According to him, the prosecutrix gave replies to the questions put by the A/17-Somabhai; and the A/17-Somabhai, was loudly reading out the material which he was recording simultaneously, and he and Constable Chandubhai Tavia were scribing the copies, FIR Ex. 56 and Ex, 56-A, respectively; and

the prosecutrix approved the FIR and subscribed her thumb impressions on the FIR Ex.56 and Ex.56-A after the contents of the records so made were read over and explained to her , He deposed that he, the A/17-Somabhai, Constable Chandubhai Tavia and the prosecutrix were the only persons present in the said room at the time of recording of the complaint//FIR Ex.56. He gave the process of recording the FIR in the FIR Book and preparation of its copy for the purposes of handing over one copy to the complainant lodging the FIR and sending another copy to the Court. He identified the FIR Ex.56-A as the copy of the FIR sent to the Court.

417. For the purposes of cross-examination of DW 1-Budhsingh Patel, original FIR Book (Art. 74) was summoned. Cross-examination of DW 1-Budhsingh reveals that Limkheda Police Station and J. M. F. C. Court, Limkheda were situate in one campus facing each other leaving distance of about 40 to 50 meters between them. However, the endorsement on the certified copy of the FIR sent to the JMFC as well as its original Ex.56-B show that it was received in the Court of JMFC on 8.3.2002. DW 1- Budhsingh Patel further described Limkheda Police Station. He deposed that there was an open corridor of 7 feet in width and 40 feet in length and there were three rooms in Limkheda Police Station.

418. DW 1-Budhsingh deposed that Vishwa Hindu Parishad and Bajrang Dal had declared Bandh on 28.2.2002; and riots broke out with in the limits of Limkheda Police Station on 28.2.2002 and continued for about 10 days thereafter. He further deposed that many persons from Muslim community had taken refuge in police station campus and were being removed the next day either to Godhra or Dahod Refugee Camps by Limkheda Police as well as District Magistrate. He added that there was only one police vehicle and therefore it was not spared for shifting work.

419. DW 1-Budhsingh Patel made a significant disclosure that he was the only Writer to PSI A/15- Patel; and he was accompanying PSI A/15-Pate1 on patrolling duties between 27.2.2002 and 3.3.2002. He was not in position to give break-up of the time of patrolling and the time when he was at the police station.

420. Evidence of DW 1-Budhsingh given in response to his cross-examination reveals that the FIR Ex.485-B, purportedly recorded by the A/17 - Somabhai Gori, numbered as 'I-0/2002' registered at 17.30 hours dated 4.3.2002 is found sandwiched between FIR Ex. 485-A, purportedly registered by HC Jaisinghbhai as C. R. No. 58/2002 registered at 10.15 a.m. on 4.3.2002 and the FIR Ex.56-C in the present case shown registered at about 10.45 a.m. on 4.3.2002. DW 1-Budhsingh further deposed that he could see both digits '3' and '4' written in the date and overwriting in the time of offence at the spaces meant for filling date and time of the occurrence of the crime in the FIR Ex.56-C. He added that the time '10.45' mentioned in the para no.1 meant for 'date and time of reporting in the FIR Ex. 56-C was found overwritten, inasmuch as digit '0' in the figure '10' and digit '5' in the figure '45' were found overwritten. He was not in position to say when this overwriting was done.

421. DW 1-Budhsingh was confronted with the entry Ex.406 in respect of the crime in question in the station diary Art.69. He deposed that this was made by the A/17-Somabhai. However, he was unable to state whether it was made after 8 p.m. on 4.3.2002 though he admitted that the entry (Ex. 486) just above it was timed as '20.00' in the handwriting of the A/17-Somabhai Gori. He further deposed that the A/17-Sombhai took charge of PSO at 11.35 a.m. on 4.3.2002 from Jaisinghbhai, PSO.

422. In the re-examination Ld. Advocate Mr. Ponda, for the Accd. No.1, asked DW 1-Budhsingh to explain the circumstances deposed to by him i. e. writing of the complaint Ex.56 at 10.45 a.m. dictation of the A/17-Somabhai and the A/17-Somabhai having taken charge at 11.30 a. m. In response to this query he could only maintain that he wrote the complaint Ex.56 at 10. 4 a. m. at the instance of the A/17-Somabhai Gori.

423. DW 6-Chandubhai Tariyad, Constable, Limkheda Police Station, towed the line of DW 1-Budhsingh Patel and deposed that around 10.45 a.m. on 4.3.2002 he had scribed the FIR Ex.56-B (certified copy of FIR Ex. 56-A) on the dictation of the A/17- Somabhai in the manner deposed to by DW 1- Budhsingh.

424. In his cross-examination, DW 6-Chandubhai Tariyad deposed that DW 1-Budhsingh Patel, the A/17-Somabhai and PW 35-Ranjeetsinqh were at the police station for whole day on 4.3.2002; and there was nobody other than himself, DW 1-Budhsingh, the A/17-Somabhai and the prosecutrix when her complaint was recorded. He disclosed that he was not knowing when the original FIR Ex.56-A was sent to the Magistrate.

425. DW 5-Jaisinghbhai Patel, HC, Limkheda Police Station, deposed that he was police station in-charge between 11.30 a.m. on 3.3.2002 and 11.30 a. m. on 4.3.2002 and he had scribed FIR entry Ex.485-A in the FIR Book Art.74 at about 10.15 a.m. He came up with a story that the A/15-Bhikabhai Patel, PSI, gave instructions to him to leave two pages of FIR Book for recording the complaint from Sanjeli as he had received a message from DSP, Dahod of breaking of riots at Sanjeli, instructed the A/17-Gori to record the complaint of the prosecutrix after leaving two pages for recording the complaint from Sanjeli. Nowhere in the statement of A/15-Bhikabhai Patel recorded u/s 313 Cr. P. C. one finds expression of this story. Date of occurrence of the crime registered at FIR Ex. 485-B, for which two pages in the FIR Book were allegedly left off, is shown in the entry Ex.485-B as 1.3.2002. Entry Ex.503 in the station diary Art.69 is the record made by the Ails-Patel at 10.30 hours purportedly regarding the fact of receipt of the telephonic message from SP, Dahod at about 19.25 hours on 3.3.2002 and he leaving for Sanjeli for recording the complaint and nothing further.

426. DW 5-Jaisinghbhai Patel further deposed that he had handed over charge to the A/17-Somabhai Gori at about 12.35 a.m. on 4.3.2002 as per the entry Ex.407 colly. in the station, diary Art. 69. He deposed that two sheets appended to the sheet bearing Nos.83 and 84 in the Book irt.74 were torn out and separated from the torn sheets in the presence of the A/15-Patel. His cross-examination further reveals that he was knowing that blank pages of FIR Book were not torn and separated from the torn sheets and he did not ask the A/15-Patel not to ask him to tear off blank sheets from the FIR Book. He further

explained that numbering of the complaint '0/2002' at the entry Ex.485-B means that the offence had not taken place within the jurisdiction of Limkheda Police Station. Significantly, there is no explanation regarding these facts in the statement of the A/15-Patel recorded u/s 313 Cr. P. C. In fact, the A/15-Patel expressed that he had done his job assigned to him sincerely and following all rules and regulations.

427. In any event, the fact of recording the complaint could have been entered in the station diary promptly after the entry Ex.503 around 10.45 a. m. on 4.3.2002 and the entry (Ex.485-B) could have been made after registration of the crime in the FIR Book. The facts disclosed through the record - station diary (Art. 69), the FIR Book (Art. 74) and the FIR Ex.56-3 - generate suspicion about the incident of recording of the complaint in the present case. The prosecutrix was not confronted with the thumb impressions appearing on the FIR Ex.56-C and the FIR Ex.56-A. Looking to the trend of hostility amongst the police witnesses even on the matters of record with the prosecution, one can see where the interest of these witnesses lies. It is, therefore, difficult to place credence on their testimonies.

428. DW 7-Ushaben Kishori deposed that the prosecutrix did not make disclosure regarding the crime while on the way to Community Health Centre, Limkheda with Yadi Ex.203. Interestingly, she deposed that she had talk with the prosecutrix on the way to CHC, Limkheda. Obviously, the prosecutrix was the complainant and she was expected to narrate at least some facts to DW 7-Ushaben Kishori. However, DW 7-Ushaben did not make any specific disclosure about the subject of the talk between her and the prosecutrix. To the Court question, she answered that she did not state before the CBI that she had talk with the prosecutrix on the way to CHC, Limkheda, and she had not stated anything of such crime before the CBI as the prosecutrix had not stated anything to her. This is something contrary to her version in the examination-in-chief that she had talk with the prosecutrix on the way to CHC, Limkheda. DW 7- Ushaben deposed that she was not knowing whether a large Muslim population had taken shelter in the Police station. Her evidence, therefore, does not inspire any confidence.

429. Evidence of the prosecutrix, coupled with the evidence of PW 8-Saddam, therefore offers a credible view of the incident. Contradictions/ omissions in relation to her statement before the CBI do not present a distorted view of the prosecution case. Element of any previous enmity with any of the accused named by her does not surface in her evidence. On the contrary, her evidence discloses that her father was the patient of the father of the A/6-Bipinchandra Joshi @ Lala Doctor. No other evidence brings forth such fact on record.

430. It is true that the A/6-Bipinchandra Joshi was found using crutches during the time he appeared before this Court. The defence produced certain documents on record with the List Ex. 476. However, no evidence was led in respect of the medical condition of the A/6-Bipinchandra Joshi at the time of the incident. There is nothing before the Court to reach any conclusion regarding this fact.

231. Though the analysis of vaginal swab collected from the prosecutrix in the pathological laboratory at Godhra Hospital shows no presence of spermatozoa, the report Ex.238 of DFSL, Vadodara shows presence of spermatozoa in the vaginal swab in the following terms (in Gujarati):-

"Namunano upar manav viryani hajari mali shakel hati."

It is argued on behalf of the defence that word 'na' (in Gujarati) is found deleted in the said sentence thereby recording a positive finding of the presence of spermatozoa in the vaginal swab, and the corresponding analysis done by the CBI is negative and therefore the detection of spermatozoa in the vaginal swab collected from the person of the prosecutrix is a doubtful proposition. It is correct that there is an alteration as pointed out by the defence. However, that alteration is found initialed. In the corresponding report of serological examination dated 20.4.2002 Ex.238 the space for recording the source of semen is left blank and serological report is shown to be inconclusive. Finding in the report Ex. 238 therefore appears to be elusive. Such finding, however, would not falsify the prosecution version as is observed in the judgment reported in 1998 (1) Gujarat Law Reporter 735 (State vs. Vikramji Thakor) as well as the judgment of the Apex Court reported in (1994) 5 SCC 728 (Narayanamma (Kum.) v. state of Karnataka & anr.).

432. Evidence of PW 56-Dr. Rudra speaks about the possibility of sexual assault on the deceased Halima and unknown 7 persons (identified by the prosecutrix as Shamim). Reports of DFSL, Vadodara, Gujarat also point to the presence of semen being detected on the female apparels. If these are read together with the evidence of the prosecutrix, one can safely believe that Halima and Shamim were gang raped.

433. As discussed above, there is credible evidence of the fact that the A/1- Jaswant Nai to A/12-Rameeh Chandana, along with other unknown accused, came to the spot on Kesharpur road leading to Panivela, Taluka Limkheda, District Dahod in white vehicles, particularly jeep Art. 2, and launched murderous assault on the prosecutrix and the persons accompanying her, namely, her daughter Saleha, mother Halima, sisters Mumtaz and Munni, brothers Aslam and Irfan, uncles Majidbhai and Yusuf Musa Patel, aunt Sugraben, cousins Shamimben, Mumtazben, Madinaben, Hussain, Amina and Saddam. The prosecutrix specifically named the A/1-Jaswant Nai as the person carrying a sword. Though dead bodies of some of the persons accompanying her do not appear in the photographs Exs.59/1 to 59/17 and do not figure in the inquest panchnama Ex,123, it can reasonably be concluded from the facts and circumstances of the case that they were finished and their bodies were disposed off by the offenders.

434. Who removed the dead bodies from the place of offence and moved them to the place in Kesharpur jungle is the question which has no answer in the evidence on record. It also cannot be understood from the evidence as to who was Narpatsingh, who brought PW 8-Saddam and Mohsin to the Community Health Centre, Limkheda from the police station. It is true that the A/13-Narpatsingh and the A/14-Idris Saiyed were shown to be present at village Randhikpur through the evidence of PW 2-Farukhbhai Pinjara. However, their presence can be explained from the fact that they were detailed for doing

Bandobust duty at village Randhikpur. No criminal nexus between the A/1-Jaswantbhai Nai to the A/12- Ramesh Chandana and the A/13-Narpatsingh and the A/14-Idris Saiyed can be construed from evidence of PW 2-Pinjara . Existence of photographs Ex.59/1 to 59/17 on the police record has potential to suggest that those were kept on the record for the purposed of identification of the deceased. Evidence before the Court had a potential to generate a grave suspicion about the role of the policemen-the A/13-Saiyed, A/15-Patel, A/16-Bhabhor, A/18-Bhagora – and medical officers - the A/19-Dr. Arunkumar Prasad and A/20- Dr. Sangeeta Prasad in the investigation of the crime. However, the evidence is not sufficient and cogent to suggest their involvement in the present case, particularly for the reason of some pertinent questions remaining unanswered in the evidence,

435. The prosecution did not examine Abdul Sattar may he for his demise as reported by PW 19- Phiroz Ghanchi in his testimony. However, his evidence could have thrown light on the vital aspect concerning the inquest panchnama Ex.123 and identification of the dead bodies. The prosecution evidence on this aspect, therefore, becomes lame.

436. As regards the A/17-Somabhai Gori, there is convincing evidence of the fact that he refused to record the FIR as narrated by the prosecution and framed it in the manner which he knew to be incorrect with an intention to save the accused involved in the crime from legal punishment.

437. Before parting with the judgment, it is necessary to briefly comment on the issue of sanction to prosecute the police officials, particularly, the A/17-Somabhai Gori

438. PW 43-Kuldipchand Kapoor, Principal Secretary, Home Department, Government of Gujarat, deposed that a request for grant of sanction to prosecute the A/13-Narpatsingh to the A/18-R.S. Bhagora, accompanied with the report of investigation done by the CBI and the draft articles of sanction received in his office on 23.4.2004 was processed, and the Under Secretary of the Home Department made a noting in respect of the said papers on 11.5.2004. He further deposed that the papers were then forwarded with the nothings to the Joint Secretary (Law & Order), and after perusing the papers the same were placed before him on the same day. He added that he went through the papers, subscribed his signature to the notings and thereafter forwarded the notings with the papers to the Chief Secretary. According to him, he, Joint Secretary (Law & Order) and the Minister of State discussed the issue amongst themselves and agreed to accede to the request made by the CBI; and the Minister of State for Home Affairs made a noting in that regard on 18.5.2004 and thereafter with the concurrence of the Hon'ble Chief Minister the sanction to prosecute the said accused u/s of 197 Cr. P. C. as per Order Ex.3-C was issued on 20.5.2004.

439. In the cross-examination PW 43-Kapoor revealed before the Court that he did not peruse the complaint dated 4.3.2002 lodged by the prosecutrix at Limkheda Police Station as well as the papers of investigation carried out by the CID, Gujarat, Limkheda Police Station and Godhra Police Station; and the sanction Ex.3-C was given on the basis of the report of the CBI and the draft articles of sanction.

440. The Ministry of Home Affairs could have certainly called the complaint dated 4.3.2002 lodged by the prosecutrix as well as the papers of investigation carried out by the CID, Gujarat, Limkheda Police Station and Godhra Police Station for assessment of the report of CBI. However, it appears that its need was not felt by the Government and prima facie the report of the CBI was convincing. Nowhere in evidence of PW 43- Kuldipchand Kapoor there is a whisper of the fact that the sanction to prosecute the said accused was granted mechanically without application of mind. On the contrary, there is evidence of the fact that the papers moved at various levels in the Ministry of Home Affairs between 23.4.2004 and 20.5.2004, the date when the sanction to prosecute was issued, and the issue was finally discussed and the request made by the CBI for grant of sanction to prosecute was acceded to. Apart from this, it needs to be observed that the protection to the public servant u/s 197 of Cr. P. C., 1973 extends to the acts done while acting or purporting to act in discharge of one's official duties and not otherwise. Framing of false record was certainly not an act which could have been committed by the A/17- Somabhai Gori while acting or purporting to act in discharge of his official duty. No exception, therefore, can be taken on the ground that the prosecution of the A/17- Somabhai Gori was bad for want of valid sanction to prosecute him.

441. In view of the aforesaid discussion:

The Point Nos.1, 2 and 3 are answered affirmatively as regards the A/1- Jaswantbhai Nai, the A/2-Govindbhai Nai, the A/4-Shailesh Bhatt, the A/5-Radheshyarn Shah, the A/6-Bipinchandra Joshi @ Lala Doctor, the A/7-Kesharbhai Vohania, the A/8-Pradip Modhiya, the A/9-Bakabhai Vohania, the A/10- Rajubhai Soni, the A/11-Mitesh Bhatt and the A/12- Ramesh Chandana.

The Point No.1 is answered negatively as regards the A/13-Narpatsingh Patel, the A/14-Idris Saiyed, the A/15-Bhikachand Patel, the A/16-Ramsingh Bhabhor, the A/17-Somabhai Gori, the A/18- R. S. Bhagora, the A/19-Dr. Arunkumar Prasad and the A/20-Dr. Sangeeta Prasad.

The Point No. 4 is answered affirmatively as regards the A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, the A/4-Shailesh Bhatt, the A/5- Radheshyam Shah, the A/6-Bipinchandra Joshi, the A/7-Kesharbhai Vohania, the A/8-Pradip Modhiya, the A/9-Bakabhai Vohania, the A/10-Rajubhai Soni, the A/11-Mitesh Bhatt and the A/12-Ramesh Chandana.

The point Nos.5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 23 are answered affirmatively as regards the A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, the A/4-Shailesh Bhatt, the A/5-Radheshyam Shah, the A/6-Bipinchandra Joshi, the A/7-Kesharbhai Vohania, the A/8-Pradip Modhiya, the A/9-Bakabhai Vohania, the A/10-Rajubhai Soni, the A/11-Mitesh Bhatt and the A/12-Ramesh Chandana.

The Point Nos.24, 26, 27, 28 and 29 are answered negatively.

The Point Nos. 25 and 30 are answered affirmatively.

The convicted accused, their respective Advocates and the prosecution were heard on the point of sentence.

443. Upon a holistic view of the entire evidence and sensing the sensitivity of the investigation carried out by the CBI, this Court believed the victims in the present case - the prosecutrix and PW 8-Saddam - and as a result thereof came to the conclusion that the A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, the A/4-Shailesh Bhatt, the A/5-Radheshyam Shah, the A/6-Bipinchandra Joshi, the A/7-Kesharbhai Vohania, the A/8-Pradip Modhiya, the A/9-Bakabhai Vohania, the A/10-Rajubhai Soni, the A/11-Mitesh Bhatt and the A/12-Ramesh Chandana are guilty of the offences punishable under Sections 120-B read with Sec. 143, 247, 302, 376 of I. P. C. and for commission of substantive offences under Sections 143, 147, 148, 302 r/w Sec. 149, 376 (2) (e) and (g) of I. P. C., 1860. Now, these accused are pleading for leniency commonly on the grounds that they are innocent having no criminal antecedents and have families to support and lookafter.

The A/6-Bipinchandra Joshi further pointed out that he is suffering from bodily infirmity due to necrosis of ones and the leniency, if shown, would permit him to see future of his small children in the remainder of his short life time.

The A/5-Radheshyam Shah @ Lala Vakil added that he be given set off for the period of 4 years in jail and be released at the end of the trial.

444. Learned Counsels representing the accused submitted that life imprisonment is the 'rule' and death sentence is an 'exception', and therefore, it is for the prosecution to point out how the present case falls with in the exception to this rule.

445. Ld. Spl. P. P. Mr. Shah, for the prosecution, thereupon submitted that the manner in which the crime of multiple murders and rapes was planned and executed brings the present case with in the net of this exception to the rule of awarding life imprisonment. He pointed out from the evidence the overt acts of the A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai and the A/4-Shailesh Bhatt in commission of the crime in the present case. He submitted that the A/1-Jaswantbhai Nai and the A/2-Govindbhai Nai committed rape on the prosecutrix in succession despite her pleas that she may be spared for the reason of her pregnancy; and the A/4-Shailesh Bhatt had mercilessly snatched her little daughter Saleha from her arms and smashed her to death. He further pointed out that the prosecutrix saw her relations being murdered when she was being raped. These facts revealed in the evidence, he submitted, the judicial mind to impose extreme penalty of death.

As regards the other accused involved in the multiple murders and gang rapes, Ld. SPP Mr. Shah, for the prosecution, submitted that their culpability could be construed from the principle of constructive liability under the law and there fore they can be spared from extreme penalty of death.

Ld. SPP Mr. Shah, for the prosecution, cited the following judgments in order to educate the judicial mind on the philosophy of sentencing the accused: -

- (1) 2004 CRI. L. J 658 (Supreme Court) (Sushil Murmu v. State of Jharkhand),
- (2) (2005) 3 Supreme Court Cases 114 (State of U. P. v. Satish), and
- (3) 2007 CRI. L. J. 4700 (Supreme Court) (State of Karnataka v. Raju).

446. Ld. Advocate Mr. Ponda, for the A/1-Jaswantbhai Nai, in his brief submissions advocated the minimum punishment of life imprisonment for the A/1-Jaswantbhai Nai. Firstly, he submitted that the present case was not the "rarest of rare case"; and in case of a slightest chance of innocence of the accused imposition of the capital punishment would be a folly. He pointed out from the evidence as well as the statement of PW 19- Phiroz Abdul Sattar Ghanchi (Ex. 158-N) that one Jaswantbhai i. e. the A/1-Jaswantbhai Nai had given shelter to PW 19- Phiroz Ghanchi and his family for two days, and this fact was sufficient enough to reveal the mind of the A/1-Jaswantbhai Nai. According to him, in the given circumstances, therefore, the imposition of capital punishment would be too harsh.

447. Ld. Advocates Mr. Jain and Mr. Gopal Solanki, for the other accused involved in the crime of multiple murders and gang rapes, submitted that the crime was not one of the rarest of rare and therefore the said accused did not deserve the capital punishment.

A judgment reported in 1999 CRI. L. J. 2044 (Supreme Court) (Om Prakash v. State of Haryana) was cited by Ld. Advocate Mr. Jain, for the A/2- Govindbhai Nai and the A/4-Shailesh Bhatt, in order to impress upon the mind of this Court that even the case of multiple murders in a preplanned manner cannot be termed as a rarest of rare case as observed by judgment.

448. Ld. Advocate Mr. Jain, for the A/17- Somabhai Gori, further submitted that the A/17- Somabhai Gori be released as he has already suffered detention in prison for the period exceeding the maximum term of punishment prescribed for the commission of offences under Sections 217 and 218 of I. P. C., 1860.

Ld. SPP Mr. Shah, for the prosecution, found no reason to resist the submissions of Ld. Advocate Mr. Jain for the A/17-Somabhak Gori.

449. The Apex Court while taking review of the sentencing policy adopted over the years made the following observations in the judgment in Sushil Murmu's case reported in 2004 CRI. L. J. 658 (Supreme Court) (Sushil Murmu v. State of Karnataka):-

"15. The following questions may be asked and answered as a test to determine the "rarest or the rare" in which death sentence can be inflicted:-

(a) IS there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

16. The following guidelines which emerge from Bachan Singh case (supra) will have to be applied to the facts of each individual case where the question of imposition of death sentence arises (SCC p. 489, para 38):

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into along with the circumstances of the "crime".

(iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

450. The questions which this Court must ask to himself, as required by the said Judgment of the Apex Court, have answers in the evidence as well as the memo of written arguments of the prosecution vide Ex. 526-A. Evidence shows that Hindus and Muslims, including the accused and the victims lived together without noticeable disharmony over generations at village Randhikpur till Vishwa Hindu Parishad gave call for Gujarat Bandh following the Godhra Train Burning Incident, and ferment of communal hatred sparked off the riots. The prosecution voiced this fact in its written memo of arguments Ex.526-A, and further added that our country and particularly the State of Gujarat has history of communal violence; and from about the days of independence movements when the idea of partition was mooted out we are witnessing communal violence at intervals. Occurrence, of riots, according to the prosecution, is not considered as something which is rare.

451. As observed herein above, an individual has his secret agenda in joining the riots. Many join for looting the properties, some join for satisfying their lust and few join the riotous mob for killing and more often the religious fervour is merely a cover for their secret agenda. In the instant case, evidence shows that the A/1- Jaswantbhai Nai and the A/2-Govindbhai Nai committed rape in succession on the pregnant prosecutrix despite her pleadings to spare her. After satisfying their lust they did not bother whether the prosecutrix was finished or not. No further act is attributed to the A/1-Jaswantbhai Nai and the A/2-Govindbhai Nai in the crime. It is not clear from the evidence and statement of PW 19- Phiroz Ghanchi Ex.158-N that whether 'Jaswantbhai' referred to by PW 19- Phiroz as the person with whom they sought refuge for two days is the A/1-Jaswanbhai Nai or not. No much weight therefore can be given to this fact pointed out by Ld. Advocate Mr. Ponda in his submissions for leniency. Such fact in the evidence only goes to show that human feelings were not vanished from every home in Randhikpur.

452. The A14-Shailesh Bhatt is attributed with the act of smashing the little child Saleha, daughter of the prosecutrix, on the ground to death and nothing more.

453. As regards multiple murders and gang rapes of Halima and Shamim, it is not clearly understood from the evidence as to who gave the fatal blows or actually committed the rape on Halima and Shamim. Culpability could be fastened on the accused by means of the principle of constructive liability in law.

454. Issue of innocence pleaded by the accused has been already considered and ruled out. Using family as a shield for getting protection from the penal consequences is merely an afterthought. From the analysis of the nature and circumstances of the crime and of relevant circumstances, as discussed herein above, life imprisonment appears to be a condign punishment in the present case.

455. Acts of the A/17-Somabhai Gori gave unprecedented twist to the serious crime of multiple murders and gang rapes, and therefore, deserve maximum punishment of imprisonment prescribed under law and need to be fined appropriately.

456. Evidence shows that the Mahindra jeep bearing registration No.GJ-20-A-3123 (Art.2) was used in the crime. The prosecution submits that the jeep Art.2 is in custody of CBI. Jeep Art.2 is, therefore, required to be confiscated and disposed of according to law.

457. Ld. SPP Mr. Shah, for the prosecution, urged for initiating proceedings for perjury against PW 10-Rameshchandra Soni, PW 28-Bhavinkumar Patel, PW 34-Amritsingh Khant and DW 1-8udhsingh Patel. In the considered opinion of this Court, it is not expedient in the interest of justice to initiate such action against PW 10-Rameshchandra Soni, PW 28-Bhavinkumar Patel, PW 34-Amritsingh Khant and DW 1-Budhsingh Patel.

458. In view of the aforesaid discussion, the following order would meet the ends of justice.

ORDER

(1) The A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, A/4-Shailesh Bhatt, A/5-Radheshyam Shah, A/6- Bipinchandra Joshi, A/7-Kesharbhai Vohania, A/8-Pradip Modhiya, A/9-Bakabhai Vohania, A/10-Rajubhai Soni, A/11-Mitesh Bhatt, A/12-Ramesh Chandana are convicted of the offence punishable under Section, 143 of I. P. C., 1860 and are sentenced to suffer R. I. for a term of 6 months.

(2) The A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, A/4-Shailesh Bhatt, A/5-Radheshyam Shah, A/6- Bipinchandra Joshi, A/7-Kesharbhai Vohania, A/8-Pradip Modhiya, A/9-Bakabhai Vohania, A/10-Rajubhai Soni, A/11-Mitesh Bhatt, A/12-Ramesh Chandana are convicted of the offence punishable under Section 147 of I. P. C., 1860 and are sentenced to suffer R. I. for a of years.

(3) The A/1-Jaswantbhai Nai is convicted of the offence punishable under Section 148 of I. P. C., 860 and is sentenced to suffer R. I. for a term of 3 years.

(4) The A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, A/4-Shailesh Bhatt, A/5-Radheshyam Shah, A/6- Bipinchandra Joshi, A/7-Kesharbhai Vohania, A/8- Pradip Modhiya, A/9-Bakabhai Vohania, A/10-Rajubhai Soni, A/11-Mitesh Bhatt, A/12-Ramesh Chandana are convicted of the offences punishable under sections 302 r/w Section 149 of I. P.C., 1860 for having murdered (1) Saleha Yakub Patel, (2) Halima Abdul Issa Ghanchi, (3) Irfan Abdul Isse Ghanchi, (4) Aslam Abdul Issa Ghanchi, (5) Munni Abdul Issa Ghanchi, (6) Amina Jamal Patel, (7) Sugra @ Akka Yusuf Musa Patel, (8) Shamin Musa Patel, (9) Yusuf Musa Patel, (10) Mumtaz Musa Patel, (11) Madina Abdul Issa Ghanchi, (12) Majid Patel, (13) Mumtaz Abdul Issa Ghanchi, and (14) an unnamed child of Ms. Shamim and are sentenced to undergo imprisonment for life and to pay fine of Rs. 2000/- each on each count of murder and in default of payment of fine to suffer R. I. for further period of 2 years each.

(5) The A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, A/4-Shailesh Bhatt, A/5-Radheshyam Shah, A/6- Bipinchandra Joshi, A/7-Kesharbhai Vohania, A/8- Pradip Modhiya, A/9-Bakabhai Vohania, A/10-Rajubhai Soni, A/11-Mitesh Bhatt, A/12-Ramesh Chandana are convicted of the offences punishable under sections 376 (2) (e) & (g) of I. P.C., 1860 and are sentenced to undergo imprisonment for life and to pay fine of Rs. 2000/- each and in default of payment of fine to suffer R. I. for further period of 2 years each.

(6) The A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, A/4-Shailesh Bhatt, A/5-Radheshyam Shah, A/6- Bipinchandra Joshi, A/7-Kesharbhai Vohania, A/8- Pradip Modhiya, A/9-Bakabhai Vohania, A/10-Rajubhai Soni, A/11-Mitesh Bhatt, A/12-Ramesh Chandana are convicted of the offences punishable under sections 376 (2) (g) of I. P.C., 1860 for having committed gang rape on Halim a Abdul Issa Ghanchi and Shamim Musa Patel and are sentenced to undergo Rigorous Imprisonment far a term of 10 years each

and to pay fine of Rs. 2000/- each on each count of gang rape and in default of payment of fine to suffer R. I. for further period of 2 years each.

(7) The A/1-Jaswantbhai Nai, the A/2-Govindbhai Nai, A/4-Shailesh Bhatt, A/5-Radheshyam Shah, A/6- Bipinchandra Joshi, A/7-Kesharbhai Vohania, A/8- Pradip Modhiya, A/9-Bakabhai Vohania, A/10-Rajubhai Soni, A/11-Mitesh Bhatt, A/12-Ramesh Chandana are convicted of the offences punishable under sections 376 (2) (g) of I. P. C., 1860 for having committed gang rape on Sugra @ Akka Yusuf Musa Patel and Amina Jamal Patel.

(8) The A/13-Narpatsingh Patel, A/14-Idris Saiyed, A/15-Bhikhachand Patel, A/16-Ramsingh Babhor, A/17-Somabhai Gori, A-18/-R. S. @ Ramabhai Bhagora, A/19-Dr. Arunkumar Ramkishan Prasad and A/20-Dr. Sangeeta Arunkumar Prasad are acquitted of the offence punishable u/s 201 of I. P. C. and the A/13 to A/16 are ordered to be set at liberty unless required in any other case.

(9) The Accd. No. 17-Somabhai Gori is convicted of the offence punishable u/s Section 217 of I. P. C., 1860 and is sentenced to undergo Rigorous Imprisonment for a term of 2 years and to pay a fine of Rs.1500/- and in default of payment of fine to undergo for further R. I. for a period of 2 months.

(10) The Accd. No. 17-Sornabhai Gori is convicted of the offence punishable under section 218 of I. P. C. 1860 and is sentenced to undergo Rigorous Imprisonment for a term of 3 years and to pay a fine of Rs.1500/- and in default of payment of fine to undergo for further R. I. for a period of 2 months.

(11) The A/13-Narpatsingh Patel, A/14-Idris Abdul Saiyed, A/15-Bhikhachand Patel, A/16-Ramsingh Babhor, A-18/-R. S. @ Ramabhai Bhagora, are acquitted of the offence punishable u/s 217 and 218 r/w Sec. 34 of I. P. C., 1860 and they are ordered to be set at liberty unless required in any other case.

(22) The A/19-Dr. Arun Kumar Prasad and A/20- Dr. Sangeeta Arun Kumar Prasad are acquitted of the offences punishable u/s 217 and 218 r/w Sec. 34 of I. P. C., 1860.

(13) Bail bonds of the A/18-R.S. @ Ramabhai Bhagora, the A/19-Dr. Arun Kumar Prasad and the A/20-Dr. Sangeeta Arunkumar Prasad stand cancelled.

(14) The substantive sentences shall run concurrently.

(15) The period of detention, if any, undergone by the accused during the investigation, enquiry or trial shall be set off against the term of imprisonment, not being imprisonment in default of payment of fine imposed on the accused.

(16) White coloured Mahindra Jeep bearing Regn. No. GJ 20-A-3123 (Art.2) and Camera (Art.3) shall be confiscated and disposed off according to law after expiry of the period of appeal.

(17) Attendance Registers (Arts.35 & 36), OPD Register (Art. 37), MLC Register (Art. 38), MLC X-Ray Register (Art. 39) and X-Ray Register (Art. 40) shall be returned to the Community Health Centre, Limkheda, Gujarat, after the expiry of the period of appeal.

(18) Movement Register, Randhikpur Police Out-Post, Limkheda (Art. 43), Motor Logbooks (Arts. 44 and 45), Inward Register (Art.46), Outward Registers (Art. 47 & 48), Inward Register (Art. 49), Motor Vehicles Register (Art. 50), Station Diary (Art.69), FIR Book (Art. 74), and Motor Logbook (Art. 75) shall be returned to the Gujarat Police, after the expiry of the period of appeal.

(19) Order Book (Art. 61), X-Ray Register (Art. 62), Original Laboratory Investigation Register (Art. 63), Original Indoor Register (Art. 64), Original MLC Register (Art. 65), Original In-Patient Register (Art. 66), and Original OPD Register (Art. 67) shall be returned to Godhra Civil Hospital, Godhra, after the expiry of the period of appeal.

(20) Station Diary (Ex.76) shall be returned to Fatehpura Police Station, after the expiry of the period of appeal.

(21) File (Art.77) shall be returned to the Commissioner of Health, Medical Services and Medical Education (Health), Gujarat State, after the expiry of the period of appeal.

(22) File (Art. 78) shall be returned to the office of the District Magistrate and Collector Dahod, Gujarat, after the expiry of the period of appeal.

(23) All other muddemal articles, being worthless, shall be destroyed after the expiry of the period of appeal.

21/1/2008.

(U. D. Salvi)
Special Judge, Gr. Mumbai

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| (i) Last date of dictation of the Judgment by the HH Judge: | 21/01/2008. |
| (ii) Date of transcription of the Judgment by the Steno: | 16/02/2008 |
| (iii) Date on which the Judgment is signed by the HH Judge: | 04-04.2008
10.04.2008 |
| (iv) Date of delivery of the Judgment to the Certified Copy Section: | 19/4/2008 |