

Citizens for Justice and Peace

Note for Media June 26-28 2013

Arguments on behalf of Zakia Ahsan Jafri assisted by Citizens for Justice and Peace in the Zakia Jafri vs Narendra Modi & 59 Others Criminal Case.

Advocates Sanjay Parikh assisted by Adv Mihir Desai initiated the arguments. The entire team of 14 CJP lawyers was there in full force to assist the effort along with CJP Secretary Teesta Setalvad.

Do please keep a Bird s eye view on Arguments in this case as it is a matter of national importance concerning Accountability for State Perpetrated Mass Crimes.

Being heard before the Metropolitan Magistrate 11th Court, Ahmedabad

June 28 2013

The Accused No. 1 Narendra Modi s mindset against the minority Muslim community can be traced out from his being an his supporting the demolition of the Babri Masjid. The State Intelligence Bureau (Messages contained in the SIT documents) had been clearly and consistently informing the State Home Minister from 7.2.2002 onwards that members of the VHP, BD and BJP were preparing themselves armed with trishuls etc to go to Ayodhya to celebrate the Mahayagya. This Mahayayga was meant for building the Ram temple at the Babri Masjid site. The Sabarmati express left Ahmedabad on 24.2.2002 (night) and the same train was returning from Ayodhya. The Sabarmati Express started from Faizabad-Ayodhya on morning of 26th February 2002 Further reports of the state intelligence reveal that the provocative slogan shouting against Muslims was taking place throughout the train journey. In particular incidents took place a two places including Rudali where stabbing and attacks also followed.

7.2.2002

State Intelligence Bureau messages from PB Upadhyaya to the DGP, Gujarat, State Home Department and all Police stations of Gujarat warning of the communal mobilisations especially near temples, recruitment of volunteers for the programmes and aggressive posturing in Gujarat.

12.2.2002 SIB Message (PB Upadhyaya) to DGP Uttar Pradesh also intimating that 3,000 Kar Sevaks from Gujarat will reach Ayodhya on 23.2.2002 to participate in the Mahayagna.

12.2.2002 Message from SIB records that Praveen Togadia announced at a press conference that there would be active participation by VHP cadres in the Mahayagna would be enthusiastic. Message sent to all Police stations in Gujarat, DGP and Home department Gandhinagar warns of the possible repercussions of this.

13.2.2002 PB Upadhyaya message to all CPs, SSPs in districts and Home Secretary Gandhinagar intimating decision of VHP that Ram Mandir would be constructed at any cost after 12.3.2002 and enrolment of Ram Bhaktas would start from all over the country from 1.3.2002.

20.2.2002 DCP-INT (Communal) PB Upadhyaya SIB Message to DGP, SP, Western Railway Vadodara that 3,000 Kar Sevaks would be leaving on 22.2.2002 from Ahmedabad station.

21.2.2002 SIB Message states that Kar Sevaks are going to travel on a train going to Faizabad (Ayodhya) and therefore in respective areas as well as in the railway stations it is necessary to provide bandobast. Take steps to ensure that no untoward incidents take place. Message sent by PB Upadhyaya (SIB-Int-Communa) to DGP, CPS, SPS and Home Department Gandhinagar.

21.2.2002 SIB-Int –Communal PB Upadhyaya sends a Message to DGP Lucknow about the departure of VHP and Bajrang Dal activists (3,000) between 22.2.2002 and 27.2002 under the leadership of Dilip Trivedi for re-building the Ram temple from 15.3.2002

23.2.2002 SSP Faizabad and Home secretary Gandhinagar about 2800 VHP and Bajrang Dal & Durga Vahini activists under Dilip Trivedi and Kum Malabehn Rawal have left Ahmedabad by Sabarmati Express for Ayodhya on 22.2.2002 at 2050 hours.

24.2.2002 RSS, VHP supported by the BJP had decided to have Maha Yagna at Ayodhya (Faizabad) as a sequel to the demolition of the Babri Masjid which was announced by Praveen Togadia, international general secretary of the VHP. Further announcement was that construction of Ram temple will commence from 12.3.2002 onwards. Pursuant to this announcement, the following activities commenced

25.2.2002 DCP Communal State Intelligence PB Upadhyaya informing SSPs Faizabad and Home Secretariat Gandhinagar that 1900 VHP and Bajrang Dal activists under the leadership of Vijay Pramani, Hareeshbhai Bhatt and Khemrajbhai Desai have left Vadodara by Sabarmati Express train for Ayodhya on 24.2.2002 at 23.10 hours.

27.2.2002 Message by Sanjiv Bhatt DCP Int Communal to SSP Faizabad and Home Secretariat Gandhinagar that 1,500 VHP, Bajrang Dal and Durga Vahini activists including Narendrabhai Vyas activists have left Ahmedabad for participating in Mahajhap Majayagna by Sabarmati Express for Ayodhya-Faizabad at 26.2.2002

All message are part of the SIT records at Annexure III, File XXXIV D-176 given to the Court as A Colly record as Annexure A Colly.

Though the home department of the State headed by A-1 Narendra Modi was aware of this fact and was also aware of the fact that the same provocative slogan shouting will take place at other railway stations including Godhra, no action was taken.

The Godhra incident that took place between on 27.2.2002. Information was sent to the DM to the state functionaries (CMO, HD and Revenue department) by 9 a.m. (AK Malhotra's Report dated 12.5.2010 filed before the Hon'ble Supreme Court under Para Allegation IV, Page 12). Another message was sent by DCP-Int (Communal) Sanjiv Bhatt about slogan shouting. The fax message specifically mentioned provocative slogan shouting by karsevaks.

26.2.2002

A group of Kar Sevaks left Faizabad on 26.2.2002 (early morning) which was supposed to reach Godhra around 2 a.m. of 27.2.2002. The train was about five hours late. As per Jayanti Ravi in her fax communication the train Reached Godhra at 7.15 a.m and left Godhra at 7.20 a.m. The same fax says that after about half a kilometre the Train was stopped near Signal Falia and set on fire.

Following messages/information was sent:-

1. Fax Message dated 27.2.2002 sent by DM Janati Ravi (which according to SIT Repoert, AK Malhotra, 12.5.2010) to Chief Minister's Office, Home Department and Revenue Department. It states that in the train which left Godhra at 7.20 a.m., the Kar Sevaks were shouting slogans. Since the area around railway station is a Muslim area, hearing these slogans, crowds of Muslims gathered and started throwing stones. Thereafter the train stopped again and was set on fire.
2. Sanjiv Bhatt, an officer with the State Intelligence, deputing as DCP-Communal on 27.2.2002 sends a message to the Chief Secretary, Home Secretariat and Chief Minister, MOS Home and DGP Gandhinagar. The message states that on 27.2.2002 the Sabarmati Express travelling from Ayodhya to Ahmedabad reached Godhra at 7.15 a.m. At that time in the train the Kar Sevaks coming from Ayodhya were shouting slogans. Since the area is dominated by Muslims, the crowd started throwing stones and Coach Nos 6 was set on fire. At 10.55 a.m. in chowkey nos 1-7 ares of Godhra town, curfew has been imposed. Kar Sevaks are members of VHP. **(Annexure B Colly at Annexure III, File XLI at Serial in SIT record handed over to the Court)**
3. **Note:** Before the train reached Godhra, violent incident had taken place at 2 railway stations including Rudauli. The incident at Godhra took place between 7.30 to 8.00 a.m. The train left Godhra around 11.30 a.m. and after about an hour, reached Vadodara at around 1-1.30 p.m. At Vadodara, two persons were assaulted by the Kar Sevaks, in which one Abdul Rashid died. Another two persons were injured. From Vadodara, the train reached Anand at about 2.10 p.m. Again, violent incident took place in which one person died and two persons were injured. All those attacked and killed were Muslims. From Anand, the train reached Ahmedabad railway station at about 3.00 p.m. Violent incidents also took place at Ahmedabad where bloodthirsty slogans were also raised threatening revenge against Muslims. Stabbings, stone pelting and other incidents also took

place. No curfew was declared in Ahmedabad or Vadodara on 27.2.2002.

Presenting a detailed List of Dates and Note on the Mindset of Narendra Modi,

advocate Sanjay Parikh argued that Conspiracy is substantive offence introduced by criminal law Amendment 1913. Conspiring to commit an offence, itself is an offence. Conspiracy hatched in in secrecy; difficult to adduce direct evidence; prosecution can only rely on different acts of various parties to infer what they have done pursuant to their common plan. Citing from important judgements of the Supreme Court Parikh argued that the criminal offence of conspiracy can be

- * Mostly circumstantial evidence.
- * Actual meeting of two persons not necessary.
- * Actual words of conspiracy not necessary to be proved.
- * A tacit understanding between the conspirators is enough.
- * If several offences committed pursuant to conspiracy, all conspirators irrespective of whether they actively participate in the commission of offence, will be liable.
- * Very fact of conspiracy constitutes an offence, not necessary that anything was done in pursuance thereof
- * Sec 34- common intention and constructive liability for offence committed, different from conspiracy.
- * Conspiracy – mere agreement enough. Abetment- an act or illegal omission must take place.
- * From the acts and conduct of the parties, conspiracy can be inferred one performing one part of the act, the other performing other parts of the act.
- * Conspiracy can be proved by surrounding circumstance and the conduct of the accused that before and after the alleged commission of crime.

Therefore despite receiving the fax from DM Godhra that it was the provocative sloganeering of the VHP men (Kar sevaks) that had led to a skirmish following the burning of the S-6 Sabarmati Coach at Godhra, A-1 as home minister instead of appealing for calm and meeting with police officials, A-1 Modi, manifesting criminal intent and conspiracy, did two things:-

a) He called the VHP Gujarat general secretary to go to Godhra. What Jaideep Patel did in Godhra was to instigate other VHP men and Hindus against the Muslims.

Therefore, Modi conspired with Jaideep Patel to instigate negative and aggressive

feelings of RSS, VHP workers against Muslims. Otherwise, there was no need for him to inform the VHP man (and be in close contact with him) knowing fully well that after the Godhra incident, tensions may escalate and what was required was restraint and specific measures to strengthen the law and order situation. He, therefore commits an omission in not discharging his duty; he in fact by his conduct allowed communal tension to escalate. (Jaideep Patel is now facing trial for his direct involvement in the Naroda Gaam carnage).

b) The other part of conspiracy is in suppressing the official intimation that karsevaks were shouting provocative slogans. He convened a meeting of MOS Home Zadaphiya and other state officials to prepare a joint statement where the provocative sloganeering by karsevaks was not mentioned. Zadaphiya read out this statement in the assembly. The background of Zadaphiya is that he was also a VHP member. His statement to the SIT (24.9.2009) states that a VHP activist Ashwinbhai Patel who was on the train had informed Zadaphiya of the incident at 7.30 a.m. This is in fact even before the time of the actual train burning.

9.39 – 9.41 am,
27.2.2002

Two telephone calls were made from the telephone of P.A. Mr. A.P. Patel of Narendra Modi, Chief Minister, from his mobile no. 09825037439 to Jaydeep Patel, General Secretary of VHP, Gujarat State. Pursuant to this telephone message, Mr. Jaydeep Patel, who was at that time at Naroda, left for Godhra. The distance between Naroda Patiya and Godhra is approximately 150 k.m. Mr. Jaideep Patel reached Godhra around 12 noon. (All concerned documents in this regard are at **Annexure IV, File VI in SIT Papers handed over as Annexure C Colly to the Court with List of Dates**).

10.30 am, 27.2.2002

A meeting took place at the residence of Mr. Narendra Modi at Gandhinagar. In the said meeting, Mr. Gordhan Zadafiya (A-5), Mr. Ashok Narayan (A-28), Mr. K. Chakravarthi (A-25), Mr. P.C. Pandey (A-29) and other persons of Chief Minister's Secretariat were present. In this meeting, a note was prepared on behalf of the Home Department. In the note, the fact that Kar Sevaks were shouting provocative slogans, was purposefully not mentioned. This is the

note which was ultimately read out in Vidhan Sabha at 1.00 p.m. by Mr. Gordhan Zadafiya. **(Annexure D at Annexure III, File XLI, Serial Nos 5 of the SIT Papers)**

Around 10.30 am,
27.2.2002

Mr. Ashok Bhatt, Minister of Health, left for Godhra and reached Godhra around 1.00 p.m. He had telephonic conversations with A-1 several times especially concerning the hastily conducted post mortems of the victims of the Godhra tragedy.

Around 12.30 pm,
27.2.2002

Declaration of bandh by 12.00 p.m. called by VHP. This was supported by the ruling BJP. **(Annexure E Colly at Annexure III, File XIX, D-161 of the Sit papers)**

1.00 pm, 27.2.2002

In the Assembly proceedings, a Motion relating to Godhra incident was moved by Mr. Punjabhai Vansh who was not present. Therefore Mrs. Mayaben Kodnani (A-16), M.L.A. from Naroda Patiya, spoke on the issue Mr. Gordhan Zadafiya, as mentioned above, has also read out the note, which was prepared in the meeting at Chief Minister's residence at 10.30.

An important fact is the statement given by a senior minister, Sureshbhai Mehta in Modi's cabinet to the SIT (15.08.2009) who was sitting next to A-1 in the Assembly when Modi said "*Hindus should wake up now.*" In the Vidhan Sabha, Mr. Suresh Mehta, Minister of Industries, was sitting next to Mr. Narendra Modi (A-1). Mr. Suresh Mehta has given a statement to the S.I.T. on 15.8.2009. In the said statement, he said "I was sitting by the side of Mr. Narendra Modi, Chief Minister, who remarked that 'Hindus should wake up now.'" (Statement of Suresh Mehta at **Annexure F at Annexure I Volume I Serial Nos 13 of the SIT Papers**)

This shows the mindset of A-1 Modi against Muslims and that he wanted targeted violence against Muslims to commence and, moreover, that the karsevaks should not be blamed. He had also been elected through a by-election days before the Godhra incident when heavy voting by the Muslim minority at Rajkot gave another impetus to his motive. He, as political head of the Home Department deliberately suppressed the act of provocative sloganeering by them in the official statement prepared by the Home

Department. It was on the basis of this statement that the official statement by Zadaphiya was made to the State Assembly at 1 p.m. on 27.2.2002.

c) Another important aspect is that when the statement was made in the State Assembly at 1 p.m. VHP had already announced a Gujarat bandh by about 12 noon which was supported by the ruling BJP. The state government did not oppose it. No statement is made in the Assembly that the state government is opposing the Bandh. A-1 was, therefore, aware that the Bandh would give further opportunities for provocation and give a free hand to the RSS, VHP and Bajrang Dal to lead violent mobs and vent of their ire on innocent Muslims, yet officially, neither as Home Minister, nor as Chief Minister, did he make any statement to ensure that strict preventive action is take, arrests of communal miscreants are made etc, in spite of the State Intelligence field reports and warnings.

The Bandh Call was, therefore, part of the conspiracy as it served two purposes:

1. Allowing RSS/VHP/BD/BJP men to behave aggressively and indulge in unlawfully violent activities and
2. Using the police machinery to clear public places and ordinary movement so that aggressive mobs of these organisations could target minority populations and establishments (thereby neutralizing ordinary peoples and movements);
3. Not allowing the police and other state machinery to take action i.e. omission from discharging their lawful and statutory duties.
4. Deliberately no Curfew is declared in Ahmedabad, Vadodara and many parts of the state despite clearcut warning signals all through 27.2.2002 and no arrests are made. No official communication was given to observe law and order and maintain peace and calm in Gujarat.

Advocate Parikh also made detailed arguments on the Crime of Abetment stating that

I. Bare agreement to commit offence is covered by Sec 120A. But for abetment there should be some act or illegal omission in pursuance of that aspiring conspiracy.

Commission of actual crime is not necessary.

II. In abetment by illegal omission, it is to be shown that the accused intentionally aided the commission of crime by his non-interference.

III. Omission involves breach of legal obligation.

IV. Non-interference when there is duty to interfere amounts to abetment.

V. A person abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends to facilitate and does in fact facilitate, the commission thereof.

VI. Rendering any kind of assistance constitutes abetment

VII. Person himself may not act but he may instigate another to put in executing his criminal intention.

VIII. 'Instigate' includes stimulating, suggesting by language or expression or hints or encouragement or advice to act.

IX. Words amounting to permission may fall under instigation

Besides, advocates for Smt Jafri also made extensive arguments on the Scope and Powers of a Magistrate to take cognizance of offences that are serious and are an offence against society. Cognizance means becoming aware of and 'to take notice of judicially'. The cognizance is taken of an offence and not of an offender. At this stage the court has to be satisfied that material on record exists to take cognizance and not that it is sufficient for conviction. (See **Jagdish Ram, 2004 4 SCC, 432 Paras 10, 11**) After cognizance is taken, it is the duty of the Magistrate to ascertain as to who the offenders really are. Besides a score of other judgements, Parikh cited **Shivnandan Paswan Vs. State of Bihar & Ors. 1987 (1) SCC 288 at 321 Para 20 (5 judges)**: The Magistrate has to form an opinion that on the facts set out in the report whether prima-facie offence appears to have been committed. The Magistrate is final arbiter on the question whether offence is committed and whether cognizance should be taken. (The judgment in **H.S. Bains Vs State** was approved)

On the opening day of arguments, senior counsel Sanjay Parikh submitted before metropolitan magistrate B J Ganatra on Wednesday June 26 2013 that the Supreme Court was well aware of some conspiracy behind the 2002 riots and the courts orders, one after the other, in different riot cases had reflected this. Citing various orders passed by the SC, including the direction in the Best Bakery case, and other developments that ultimately led to the formation and reconstitution of the SIT, the lawyer argued that the SC had acted whenever it felt that investigations had been derailed. Judges of the apex court had removed IPS officers Geetha Johri and Shivanand Jha from the probe team on 6.4.2010 and also asked Amicus Curaie to directly assess evidence collected by SIT in the critical case implicating Narendra Modi when the SIT investigations were found to be problematic.

Hinting at the SITs efforts to limit Zakias complaint to the Gulbarg Society case, the lawyer also submitted that both the cases were completely different. Zakias complaint is definitely not confined to the Gulbarg Society massacre case, the lawyer said. He added that the SC had also clarified this point on Zakias application in December last, and that any effort to mix Zakias case with the complaint lodged with the Meghaninagar police in the Gulbarg case would be contrary to the apex courts order.

Earlier, the SIT had argued against Zakias protest petition and defended its closure report. It claimed that all witnesses put forth by Zakia had no personal knowledge of Modis alleged instruction to senior officials on February 27, 2002 to go slow on Hindu rioters. Earlier, in her petition in the apex court, Zakia had alleged a larger

conspiracy involving Modi and others, behind the riots. The court had asked the SIT to investigate her allegations.