



| Sessions Case No.275/2002 | |
|----------------------------------|-------------------|
| Filed on | 27/12/2002 |
| Registered on | 27/12/2002 |
| Decided on | 09/11/2011 |
| Duration | Years-Months-Days |
| | 8 - 10 - 12 |

| Sessions Case No.120/2008 | |
|----------------------------------|-------------------|
| Filed on | 08/09/08 |
| Registered on | 08/09/08 |
| Decided on | 09/11/2011 |
| Duration | Years-Months-Days |
| | 3 - 2 - 1 |

| Sessions Case No.7/2009 | |
|--------------------------------|-------------------|
| Filed on | 29/01/2009 |
| Registered on | 29/01/2009 |
| Decided on | 09/11/11 |
| Duration | Years-Months-Days |
| | 2 - 9 - 10 |

| Sessions Case No.72/2010 | |
|---------------------------------|------------|
| Filed on | 18/06/2010 |
| Registered on | 18/06/2010 |
| Decided on | 09/11/11 |

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| Duration | Years-Months-Days |
| | 1 - 4 - 21 |

COMMON JUDGEMENT

Passed in

Sessions Case Nos.275/2002
120/2008, 7/2009 & 72/2010

IN THE COURT OF SESSIONS JUDGE

At : Mahesana.

**DESIGNATED COURT FOR
VIJAPUR POLICE STATION I.CR.NO.46/2002**

[CORAM : KUM.S.C.SRIVASTAVA, ESQUIRE]

Exh.No.1096

Complainant : THE STATE OF GUJARAT

--: V E R S U S :-

Accused :

| Sr. No. | Name of Accused | Age | Address | U.T.P./ On Bail/ |
|---------|-----------------|-----|---------|---------------------|
|---------|-----------------|-----|---------|---------------------|

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|----------------------------------|---|-----|-----------|---|
| | | | | Expired |
| SESSIONS CASE NO.275/2002 | | | | |
| 1 | Patel Rameshbhai Kanjibhai | 23 | Sardarpur | On Bail |
| 2 | Patel Chaturbhai alias Bhurio Vitthalbhai | 28 | Sardarpur | On Bail |
| 3 | Patel Karshanbhai Tribhovanbhai | 56 | Sardarpur | On Bail |
| Sr. No. | Name of Accused | Age | Address | U.T.P./ On Bail/ Expired |
| 4 | Lakhvara Narayanlal Shitalmal | 18 | Sardarpur | On Bail |
| 5 | Patel Jayantibhai Mangalbhai | 21 | Sardarpur | On Bail |
| 6 | Patel Amratbhai Somabhai | 25 | Sardarpur | On Bail |
| 7 | Prajapati Babubhai Lavjibhai | 35 | Sardarpur | On Bail |
| 8 | Prajapati Rajeshkumar Amrutbhai | 18 | Sardarpur | On Bail |
| 9 | Patel Bhaveshkumar Kanubhai | 18 | Sardarpur | On Bail |
| 10 | Patel Jayantibhai Jivanbhai | 35 | Sardarpur | Died during the pendency of Trial |
| 11 | Patel Jagabhai Davabhai | 55 | Sardarpur | On Bail |
| 12 | Patel Prahladbhai Somabhai | 32 | Sardarpur | On Bail |
| 13 | Prajapati Bharatbhai Rameshbhai | 18 | Sardarpur | On Bail |
| 14 | Patel Kacharabhai Tribhovandas | 55 | Sardarpur | On Bail |
| 15 | Patel Jayantibhai Baldevbhai | 30 | Sardarpur | On Bail |
| 16 | Patel Mangalbhai Mathurbhai | 65 | Sardarpur | On Bail |
| 17 | Prajapati Gordhanbhai Revabhai | 36 | Sardarpur | On Bail |
| 18 | Patel Bhikhabhai Joitabhai | 50 | Sardarpur | On Bail |
| 19 | Prajapati Rohitkumar Ramanbhai | 17 | Sardarpur | Juvenile |
| | As per order passed below Exh.71, Trial against said accused sent to Juvenile Justice Board. | | | |

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| 20 | Prajapati Ravikumar Amratbhai | 18 | Sardarpur | On Bail |
| | As per Pursis submitted vide Exh.74 | | | |
| 21 | Patel Babubhai Kantibhai | 25 | Sardarpur | On Bail |
| 22 | Patel Dineshkumar Baldevbhai | 22 | Sardarpur | On Bail |
| 23 | Patel Vishnubhai Gopalbhai | 37 | Sardarpur | On Bail |
| 24 | Patel Kanubhai Karshanbhai | 22 | Sardarpur | On Bail |
| 25 | Prajapati Dahyabhai Varvabhai | 35 | Sardarpur | On Bail |
| 26 | Patel Raghubhai Revabhai | 51 | Sardarpur | On Bail |
| 27 | Patel Mathurbhai Ramabhai | 52 | Sardarpur | On Bail |
| 28 | Patel Sureshbhai Ranchhodbhai | 22 | Sardarpur | On Bail |
| Sr. No. | Name of Accused | Age | Address | U.T.P./ On Bail/ Expired |
| 29 | Patel Chaturbhai Kanabhai Girdharbhai | 31 | Sardarpur | On Bail |
| 30 | Patel Tulsibhai Girdharbhai | 34 | Sardarpur | On Bail |
| 31 | Patel Ramanbhai Jivanbhai Vanabhai | 29 | Sardarpur | On Bail |
| 32 | Patel Rajeshbhai Karshanbhai | 22 | Sardarpur | On Bail |
| 33 | Patel Rameshbhai Kantibhai | 24 | Sardarpur | On Bail |
| 34 | Patel Madhabhai Vitthalbhai | 33 | Sardarpur | On Bail |
| 35 | Patel Sureshkumar Baldevbhai | 20 | Sardarpur | On Bail |
| 36 | Patel Dashrathbhai Ambalal Dhwarkadas | 26 | Sardarpur | On Bail |
| 37 | Patel Vishnubhai Prahladbhai | 23 | Sardarpur | On Bail |
| 38 | Patel Rajendrakumar alias Rajesh Punjabhai Tribhovandas | 28 | Sardarpur | On Bail |
| 39 | Patel Baldevbhai Ranchhodbhai Dhwarkadas | 40 | Sardarpur | On Bail |
| 40 | Patel Prahladbhai Jagabhai | 23 | Sardarpur | On Bail |

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| 41 | Patel Rameshbhai Ramabhai | 35 | Sardarpur | On Bail |
| 42 | Patel Parshottambhai alias Pashabhai Mohanbhai | 45 | Sardarpur | On Bail |
| 43 | Patel Ashvinbhai Jagabhai | 21 | Sardarpur | On Bail |
| 44 | Patel Ambalal Maganbhai Kapoor | 54 | Sardarpur | On Bail |
| 45 | Patel Kalabhai alias Kanaiyalal Nathabhai | 30 | Sardarpur | On Bail |
| 46 | Patel Rameshbhai Prabhabhai Gopalbhai | 36 | Sardarpur | On Bail |
| 47 | Patel Jivanbhai Dhawarkadas | 42 | Sardarpur | On Bail |
| 48 | Patel Jayantibhai Ambalal | 43 | Sardarpur | On Bail |
| 49 | Patel Kanubhai Joitaram | 43 | Sardarpur | On Bail |
| 50 | Prajapati Ramanbhai Ganeshbhai | 51 | Sardarpur | On Bail |
| Sr. No. | Name of Accused | Age | Address | U.T.P./ On Bail/ Expired |
| 51 | Marvadi Aashutosh alias Pavankumar Murlidhar | 21 | Sardarpur | On Bail |
| 52 | Patel Dahyabhai Kacharabhai | 36 | Sardarpur | On Bail |
| 53 | Patel Rameshbhai Baldevbhai | 37 | Sardarpur | On Bail |
| 54 | Patel Mathurbhai Trikamdas | 46 | Sardarpur | On Bail |
| 55 | Patel Ashvinbhai Baldevbhai Joitabhai | 30 | Sardarpur | On Bail |
| SESSIONS CASE NO.120/2008 | | | | |
| 1 | Patel Babubhai Vanabhai | 45 | Sardarpur | U.T.P. |
| 2 | Patel Rameshbhai Kacharabhai | 35 | Sardarpur | U.T.P. |
| 3 | Patel Babubhai Kanjibhai | 35 | Sardarpur | U.T.P. |
| 4 | Patel Kanubhai Revabhai | 38 | Sardarpur | U.T.P. |
| 5 | Patel Natvarbhai Kacharabhai | 50 | Sardarpur | U.T.P. |

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| 6 | Patel (Nagar) Ashvinbhai Baldevbhai | 48 | Sardarpur | U.T.P. |
| 7 | Patel Dahyabhai Vanabhai | 51 | Sardarpur | U.T.P. |
| 8 | Patel Joitaram Ramabhai | 48 | Sardarpur | U.T.P. |
| SESSIONS CASE NO.7/2009 | | | | |
| 1 | Patel Kantibhai Prabhudas | 61 | Sardarpur | Died during the pendency of Trial |
| 2 | Patel Laxmanbhai Dhulabhai | 54 | Sardarpur | On Bail |
| 3 | Patel Maheshbhai Jivanbhai | 33 | Sardarpur | On Bail |
| 4 | Patel Mathurdas Dhwarkadas (Davabhai) (Doctor) | 63 | Sardarpur | On Bail |
| 5 | Prajapati Prahladbhai Varvabhai | 49 | Sardarpur | On Bail |
| 6 | Patel Jagabhai Jivanbhai | 42 | Sardarpur | On Bail |
| 7 | Patel Upendra Manilal | 26 | Sardarpur | On Bail |
| 8 | Patel Sanjay Ambalal | 28 | Sardarpur | On Bail |
| 9 | Patel Kalabhai Bhikhabhai | 37 | Sardarpur | On Bail |
| Sr. No. | Name of Accused | Age | Address | U.T.P./ On Bail/ Expired |
| 10 | Patel Govindbhai Mohanbhai | 51 | Sardarpur | On Bail |
| 11 | Patel Babubhai Gokaldas | 47 | Sardarpur | On Bail |
| 12 | Patel Rameshbhai Tribhovandas | 42 | Sardarpur | On Bail |
| SESSIONS CASE NO.72/2010 | | | | |
| 1 | Patel Arvind Kashiram | 33 | Sardarpur | On Bail |

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| Shri S.C.Shah Shri V.G.Patel | Learned Public Prosecutors Appearing on behalf of the prosecution |
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| Shri Y.B.Shaikh | Learned advocate appearing on behalf of the original complainant. |
| Shri J.G.Rajput | Learned advocate appearing on behalf of accused No.2 to 9, 11 to 18 and 20 to 22 in Sessions Case No.275/02. (During the trial, has withdrawn his appearance from the case) |
| Shri H.M.Dhruv | Learned advocate appearing on behalf of the accused No.1 to 12 in Sessions Case No.7/09 and accused No.1 in Sessions Case No.275/02. |
| Shri B.C.Barot | Learned advocate appearing on behalf of the accused No.1 to 8 in Sessions Case No.120/08 and on behalf of the accused No.28 to 55 in Sessions Case No.275/02. |
| Shri A.M.Patel | Learned advocate appearing on behalf of the Accused No.2 to 9 and 11 to 18 and 20 to 27 in Sessions Case No.275/02. |

CHARGE :

For the offence punishable under Section 143 of I.P.C.

For the offence punishable under Section 147 of I.P.C.

For the offence punishable under Section 144, 148 of I.P.C.

For the offence punishable under Section 302 read with Section 149 in alternate Section 302 of I.P.C.

For the offence punishable under Section 307 read with

Section 149, in alternate Section 307 of I.P.C.

For the offence punishable under Section 323, 324, 325 read with Section 149, in alternate Section 323, 324, 325 of I.P.C.

For the offence punishable under Section 395 of I.P.C.

For the offence punishable under Section 395, 397 of I.P.C.

For the offence punishable under Section 396 of I.P.C.

For the offence punishable under Section 435, 436 read with Section 149, in alternate 435, 436 of I.P.C.

For the offence punishable under Section 447, 448 read with Section 149 in alternate 447, 448 of I.P.C.

For the offence punishable under Section 336, 337 read with Section 149 in alternate 336, 337 of I.P.C.

For the offence punishable under Section 295-A, 153-A, 297 of I.P.C.

For the offence punishable under Section 120-B of I.P.C.

For the offence punishable under Section 135 of Bombay Police Act.

COMMON JUDGEMENT

1. Sessions Case No.275/2002, 120/2008 and 7/2009 arise out of one incident bearing I.CR.No.46/2002 of Vijapur Police Station of Mahesana District committed before this

Court for trial. It appeared desirable to try all the above three Sessions Cases all together therefore, all the three cases were ordered to be consolidated and tried together as per order passed below Exh.25, on 12.06.2009 and therefore, all the proceedings are ordered to be carried in Sessions Case No.275/2002 being the main Sessions. Moreover, charge-sheet against Arvindbhai Kashiram Patel was presented by the prosecution on 18.05.2010, which was committed to the present court on 04.06.2010 by the Judicial Magistrate, First Class, Vijapur and it is registered as Sessions Case No.72/2010. As it arises out of I.CR.No.46/2002 hence it was ordered to be consolidated and proceeded alongwith Sessions Case No.No.275/2002, 120/2008 and 7/2009 hence proceeded accordingly in Sessions Case No.275/2010.

2. The accused are charged in this case u/s.143 of I.P.C., u/s.147 of I.P.C., u/s.144, 148 of I.P.C., u/s.302 read with Section 149 in alternate Section 302 of I.P.C., u/s. 307 read with Section 149, in alternate Section 307 of I.P.C., u/s. 323, 324, 325 read with Section 149, in alternate Section 323, 324, 325 of I.P.C., u/s. 395 of I.P.C., u/s. 395, 397 of I.P.C., u/s. 396 of I.P.C., u/s. 435, 436 read with Section

149, in alternate 435, 436 of I.P.C., u/s. 447, 448 read with Section 149 in alternate 447, 448 of I.P.C., u/s. 336, 337 read with Section 149 in alternate 336, 337 of I.P.C., u/s. 295(A), 153(A), 297 of I.P.C. and u/s. 120-B of I.P.C., u/s. 135 of Bombay Police Act for forming unlawful assembly, committing rioting armed with deadly weapons like iron pipes, sticks, swords etc. and voluntarily causing grievous hurt in furtherance of common object of unlawful assembly or in furtherance of their common intention in village : Sardarpur on 01.03.2002, at about 23.30 hours.

3. The short facts giving rise to the prosecution's case are as under :-

On 01.03.2002, at about 23.30 hours, a mob of around 1000 Hindus formed unlawful assembly, carrying deadly weapons viz. iron pipes, sticks, swords and attacked the Shaikh Maholla of Sardarpur village and the houses, cabins and shops were set on fire. The house wherein the Muslim persons had sheltered themselves was also set on fire wherein 33 Muslims died and about 20 sustained injuries. 28 accused are named in F.I.R. F.I.R. was lodged on 02.03.2002 at about 9.00 hours. Prior to the occurrence of their incident, on 01.03.2002 there was

Godhra Railway Carnage incident which occurred on 27.02.2002 and there was Gujarat Bandh on 28.02.2002. Following the Bandh on 28.02.2002, mob had compelled closure of shops in Sardarpur village. At about 22.30 hours to 23.00 hours, a mob of Hindus, set on fire cabins belonging to Muslims and other communities. Upon receiving information about it, Sub Inspector G.K.Parmar of Vijapur Police Station rushed to Sardarpur village and arranged fire extinguisher and asked the victims to lodge their complaint. On the next day, Bharat Bandh Call was given and in the evening, a meeting was organized by P.S.I. - G.K.Parmar to make efforts to maintain peace and harmony. He also continued patrolling in the village with his men in police vehicle. He informed the Vijapur Police Station by wireless regarding the tense atmosphere. Thereafter, P.S.I. Shri M.L.Rathod was sent to the Sardarpur village with police mobile van and he reached the spot at about 20.30 hours. Both the Sub-Inspector patrolled in the village with staff and at about 22.00 hours, a mob of Hindus comprising about 1500 persons carrying deadly weapons, came shouting against the police and Muslims and started pelting stones and burning the shops, cabins belonging to Muslims in the Bazar upon which the

police resorted to lathi charge, lobbing tear gas and ultimately, did the firing and disbursed the mob.

Meanwhile, the police force came and disbursed the mob. Police cleared the blockages and hurdles dumped on roads. Nobody was seen moving in the village as the situation in the Vijapur town had worsened. On the message from the P.I., Shri K.R.Vaghela, police rushed to the village Sardarpur of Vijapur town. Thereafter, on receiving the information that the atmosphere in the village Sardarpur has worsened, Sub-Inspector, M.L.Rathod and G.K.Parmar were sent again. They reached Sardarpur by clearing hurdles dumped on road. Shri K.R.Vaghela also reached Sardarpur with fire fighters. S.P. and Dy.S.P. with their staff rushed to Sardarpur and then the rescue operation started. Fire was extinguished and people of Muslim community were rescued out from Shaikh Maholla.

During the attack on Shaikh Maholla, many Muslim persons, women and children took shelter in single pakka building of Shaikh Maholla. The police rushed there and opened the door and found many of the sheltered persons dead. From this building, dead bodies of deceased and

injured persons were shifted in police and private vehicles to Mahesana Civil Hospital. In the incident, 33 Muslims from Shaikh Maholla died and 20 sustained injuries.

Accordingly, F.I.R. was lodged before the Police Inspector- Shri K.R.Vaghela in Civil Hospital, Mahesana on 02.03.2002 at about 9.00 hours. The said was registered with the police station by P.S.O. Ambalal Karsanbhai on 02.03.2002 at about 11.30 hours. Investigation was carried out by Police Inspector Shri K.R.Vaghela. Thereafter, it was carried out by Shri R.D.Baranda and lastly, on his transfer, investigation was carried out by P.I. Shri K.P.Patel while Shri B.V.Jadeja, Dy.S.P., Visnagar, was the Visitation Officer in this case who supervised the investigation. Dead bodies of 28 deceased were identified by Nazir Mohamed Akbarmiya at the Civil Hospital, Mahesana while other dead bodies were identified during the Inquest by the relatives of the deceased.

On 03.03.2002, Panchnama of the place of offence was drawn. Place was shown by the victim Shaikh Bachumiya Imamamiya. The damages done by the mob to the houses and vehicles, looting of the properties, etc.

belonging to the Muslim families are shown in the Panchnama. Post-Mortem Reports, Injury Certificates were collected by the Investigating Officer. Furthermore, the statements of eye-witnesses, police witnesses, Government witnesses and peripheral witnesses were also recorded by the Investigating Officer.

4. During the investigation, names of total 55 accused were disclosed by the complainant and witnesses and, all the 55 accused were arrested and subsequently, charge-sheeted on 27.07.2002. All the 55 accused were released on bail by the Sessions Court, Mahesana from time to time. As against those bails, no appeal was preferred by any of the Investigating Officer but the complainant approached the Hon'ble High Court vide Criminal Misc. Application Nos.4026/2002, 3590/2002, 3591/2002 and 2588/2002 requesting the Hon'ble High Court to reject the bail. But those applications were rejected by the Hon'ble High Court of Gujarat. During the investigation, clothes of deceased after the Post-Mortem were collected by the Investigating Officer and case property receipts (Muddamal Receipts) were prepared. During investigation the F.S.L. had visited the place of offence and collected various necessary

samples like clothes of the deceased, articles taken from the place of offence, burnt clothes, containers and other samples, 14 weapons were recovered from 14 accused. Ultimately, the charge-sheet was submitted before the Court of Judicial Magistrate, First Class, Vijapur, which was numbered as Criminal Case No.724/2002 and it was charge-sheeted against 55 accused. Thus, earlier investigation was carried out from 01.03.2002 to 27.07.2002 and during that investigation, map of place of offence was prepared by the Revenue Circle Inspector, Vijapur and photographs of scene of incident were also taken during the investigation. After submission of charge-sheet, Criminal Case was committed to the Sessions Court vide Sessions Case No.275/2002 and it was pending for framing of Charge. The trial was stayed by the Hon'ble Supreme Court of India in Transfer Petition (Criminal No.194-202 of 2002 and 323-329 of 2003 with Criminal Misc. Petition No.6970-6948 of 2003 and 407-410 of 2004 on 21/11/2003) in Writ Petition (Criminal No.109/03 and T.P.No.194/03, 202/03, 326/03, 329/03) filed by National Human Rights Commission (N.H.R.C.) in the Hon'ble Supreme Court of India.

5. The Hon'ble Supreme Court of India has passed order on 26.03.2002 for forming of Special Investigation Team (S.I.T.) for the investigation of 9 important cases on Post Godhra Carnage inclusive of this case. In transfer petition No.194-202/03 filed by the N.H.R.C. 11 affidavits were filed before the Hon'ble Supreme Court of India in connection with this offence and ultimately, as per the direction of Hon'ble Supreme Court, Special Investigation Team has been formed which had taken the charge of further investigation and Shri G.V.Barot, Assistant Director, Anti Corruption Bureau, was appointed as Investigation Officer of the present case with 3 team members and further investigation was carried out accordingly. During their Investigation 9 (Nine) witnesses in their further statements have disclosed that they were also injured and this fact was not disclosed in previous investigation. During the investigation by S.I.T. an advertisement was published in leading daily newspapers of Gujarat State, inviting people to contact S.I.T. in person, or through written application to give any relevant information or evidence in connection with the case under the investigation by S.I.T. as a result of which, applications in this case were also received by the S.I.T. Statements of 44 witnesses including complainant

and 15 police persons were verified and their further statements were recorded by S.I.T. while statements of 39 new witnesses were recorded by S.I.T.

6. Further, place of incident was visited by S.I.T. to state the scene of incident and surrounding geographical situation and additional sketch was prepared by S.I.T. with the help of Revenue Circle Inspector. Further, some photographs were also taken by the S.I.T. and during their investigation, 21 persons were named by the witnesses as accused and S.I.T. has arrested accused No.1 to 8 of Sessions Case No.120/2008, on 26.05.2008. They were remanded to police custody subsequently, sent to judicial custody on 30.05.2008 still they are in judicial custody and supplementary Charge-sheet was filed on 22.08.2008 naming 13 persons as absconder and accused No.9 to 21 were arrested on 03.09.2008 by Vijapur Police. On the Report of S.I.T., they were remanded to police custody up to 09.09.2008 and then sent to the judicial custody on 09.09.2008. They are still in judicial custody. Supplementary Charge-sheet were submitted against them excluding Arvind Kashiram in whose favour Report under Section 169 of the Cr.P.C. was made, which was not

accepted by the Court and therefore, subsequently, Charge-sheet against him, has been submitted and all the cases have been committed to the Sessions Court for trial. Thus, total number of the accused before the Sessions Court are 76 under all the four Cases. Further permission to prosecute all the accused for the offence under Section 153A of IPC has been obtained from the competent authorities. Shri S.C.Shah has been appointed as Special Prosecutor and Shri V.G.Patel has been appointed as Additional Public Prosecutor to conduct the trial of this case, by the Government of Gujarat.

7. Accused No.10 of Sessions Case No.275/2002 - Jayantibhai Jivanbhai Patel died therefore, the order to abate the trial against him has been passed. Accused No.19 Prajapati Rohitkumar Ramanbhai is juvenile therefore, order vide Exh.61 has been passed dropping him from framing of charge from the present case and it is ordered to send his case to the Juvenile Justice Board while Accused No.1 of Sessions Case No.7/2009 - Patel Kantibhai Prabhudas has died and hence, order of abatement has been passed vide Exh. 540 and Exh.543. Accordingly all the above accused are facing trial for the various offences before this Court.

8. Thereafter, I have heard learned Public Prosecutor Shri S.C.Shah, on behalf of prosecution and learned advocates Shri J.G.Rajput and Shri B.C.Barot on behalf of accused for framing the Charge and after hearing both the parties, Charge against the accused was framed vide Exh.78 while the Charge in Sessions Case No.72/2010 was framed on 25.08.2010 against the accused for the offences mentioned in the Charge. Hence the following Charge has been framed vide Exh.78 :-

"(A) The Accused No.1 to 9 and 11 to 55 alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, Age 17 years of Sessions Case No.275/2002 in collusion with the accused No.1 to 8 of Sessions Case No.120/2008 and accused No.1 to 12 of Sessions Case No.7/2009, alongwith the other persons, had assembled and formed an unlawful assembly for causing hurt, grievous hurt, assault, burning and decoying the property of Sardarpur Muslims, on the base of Nation vide Strike due to the incident of burning almost 100 Hindu pilgrims in Sabarmati Express Train, at Godhra, on 01.03.2002 at village :

Sardarpur, Taluka : Vijapur, during the night between 21.30 hours to 02.30 hours and thereby committed offence under Section 143 of Indian Penal Code.

(B) All the accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons on the same day and same place, were members of an unlawful assembly of 1000 and in prosecution of the common object of such assembly, for overt act, committed the offence of rioting and thereby they have committed an offence punishable under Section 147 of the Indian Penal Code.

(C)That, all the accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons on the same day and same place, wherein the accused No.1 with burning rag, Accused No.2 to 7 and 11 to 13 and 15 to 18 and 20 to 22, Accused No.24 to 27 with stones and accused No.14

with Tin and bottle of inflammable items, accused No.28 and 30 with burning rag, Accused No.31, 33, 37, 38, 41, 44, 46, 54 armed with deadly weapon Dhariya while Accused No.39 with Sword and accused No.29, 34, 47, 51 and 52 with iron pipes, Accused No.42, 50 and 55 with Tin of inflammable items likely to cause death, were members of an unlawful assembly of 1000 persons and in prosecution of the common object of such assembly, for overt act, committed the offence of rioting with deadly weapon and thereby committed an offence punishable under Section 144, 148 of the Indian Penal Code.

- (D) That, on the same day and same place, all the accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other person formed an unlawful assembly of 1000 persons and in prosecution of the common object of such assembly, for overt act of burning alive and murdering by intentionally (or knowledge) causing the death of Zyadabanu Ibrahimmiya Shaikh (by mistake Zyadabanu was identified as Ruksanabanu and therefore, it is subsequently

rectified), Sayarabanu Abbasmiya Shaikh,
Yunushusen Sherumiya Shaikh, Arifhusen
Manubhai Shaikh, Sultan Maheubmiya Shaikh,
Javedmiya Mustumiya Shaikh, Rasidabanu
Jamalmiya Shaikh, Idrishbhai Akbarmiya Shaikh,
Mehmudabibi Sherumiya Shaikh, Vahidabanu
Nazirbhai Shaikh, Banubibi Babumiya Shaikh,
Faridabanu Maheubmiya Shaikh, Mumtazbanu
Makbulhusen Shaikh, Mumtazbanu Sherumiya
Shaikh, Parvinabanu Ibrahimbhai Shaikh,
Saminabanu Muftumiya Shaikh, Sakkarbanu
Mahemubmiya Shaikh, Husenabibi Hibzulmiya
Shaikh, Abbasmiya Kesarmiya Shaikh, Raziabanu
Ibrahimmiya Shaikh, Bismillabanu Bhikumiya
Shaikh, Ruksanabanu Abbasmiya Shaikh,
Zohrabanu Manubhai Shaikh, Manubhai
Husenbhai Shaikh, Rifakathusen Hizbulmiya
Shaikh, Irfanhusen Mahemudmiya Shaikh,
Bachumiya Nathumiya Shaikh, Sherumiya
Rasulmiya Shaikh, Asiyanabanu Ashikhusen
Bachumiya Shaikh, Firoz Makbulhusen Shaikh,
Rafik Manubhai Shaikh, Abedabanu Manubhai
Shaikh, Suhanabanu Safikmiya Shaikh and

thereby, committed the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

In alternate on the same day and same place, all the accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai alongwith other persons for overt act of burning alive and murdering by intentionally (or knowledge) causing the death of Zyadabanu Ibrahimmiya Shaikh (by mistake Zyadabanu was identified as Ruksanabanu and therefore, it is subsequently rectified), Sayarabanu Abbasmiya Shaikh, Yunushusen Sherumiya Shaikh, Arifhusen Manubhai Shaikh, Sultan Maheubmiya Shaikh, Javedmiya Mustumiya Shaikh, Rasidabanu Jamalmiya Shaikh, Idrishbhai Akbarmiya Shaikh, Mehmudabibi Sherumiya Shaikh, Vahidabanu Nazirbhai Shaikh, Banubibi Babumiya Shaikh, Faridabanu Maheubmiya Shaikh, Mumtazbanu Makbulhusen Shaikh, Mumtazbanu Sherumiya Shaikh, Parvinabanu Ibrahimbhai Shaikh, Saminabanu Muftumiya Shaikh, Sakkarbanu

Mahemubmiya Shaikh, Husenabibi Hibzulmiya Shaikh, Abbasmiya Kesarmiya Shaikh, Raziabanu Ibrahimmiya Shaikh, Bismillabanu Bhikumiya Shaikh, Ruksanabanu Abbasmiya Shaikh, Zohrabanu Manubhai Shaikh, Manubhai Husenbhai Shaikh, Rifakathusen Hizbulmiya Shaikh, Irfanhusen Mahemudmiya Shaikh, Bachumiya Nathumiya Shaikh, Sherumiya Rasulmiya Shaikh, Asiyabanu Ashikhusen Bachumiya Shaikh, Firoz Makbulhusen Shaikh, Rafik Manubhai Shaikh, Abedabanu Manubhai Shaikh, Suhanabanu Safikmiya Shaikh and thereby, committed the offence punishable under Section 302 of the Indian Penal Code.

That, on the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons, and in prosecution of the common object of such assembly and did an act of burning alive and assaulting Muslim women, men and children with such intention (or

knoweldge) and under such circumstances, that if the said act had caused death (for not getting the immediate medical treatment) of Shayanbanu Ayubbhai and Bashirabibi and Iliyasbhai, the accused would have been guilty of murder under Section 302 (and that thereby, caused hurt by the said act to Shayanabanu Ayubbhai and Bashirabibi and Iliyasbhai) and thereby, committed the offence punishable under Section 307 read with Section 149 of the Indian Penal Code.

In alternate on the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons did an act of burning alive and assaulting Muslim women, men and children with such intention (or knowledge) and under such circumstances, that if the said act had caused death (for not getting the immediate medical treatment) of Shayanabanu Ayubbhai and Bashirabibi and Illiyasbhai, accused would have been guilty of murder under Section 302 (and that

thereby, caused hurt by the said act to Shayanabanu Ayubhai and Bashirabibi and Illiyasbhai) and thereby, committed the offence punishable under Section 307.

That on the same day and same place, the accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons, and in prosecution of the common object of such assembly, voluntarily caused hurt and grievous hurt, by pelting of stones, to complainant as well as Faridabanu Ashiqhusen Shaikh, Imtiyaz Mahmadsusen Shaikh, Bhikhumiya Kalumiya Shaikh, Shayanabanu Ayubmiya, Aminabanu Achhumiya, Mustufamiya Rasulmiya, Hizbulmiya Husenmiya, Iqbalmiya Rasulmiya, Akbarmiya Rasulmiya, Nazirmahmad Akbarmiya, Gulamali Akbarmiya, Ruksanabanu Ibrahimmiya, Maqbulmiya Kesarmiya, Rafikmiya Mahmadsusen, Hamidabibi Akbarmiya, Basirabibi Bachumiya, Khatijabibi Dosmahmad Shaikh, Shayanabanu Aashiqhusen,

Saidabibi Hizbulmiya Shaikh and thereby, committed the offence punishable under Section 323, 324 and 325 read with Section 149 of the Indian Penal Code.

In alternate, on the same day and same place, the accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons voluntarily caused hurt and grievous hurt, by pelting of stones, to complainant as well as Faridabanu Ashiqhusen Shaikh, Imtiyaz Mahmadsusen Shaikh, Bhikhumiya Kalumiya Shaikh, Shayanabanu Ayubmiya, Aminabanu Achhumiya, Mustufamiya Rasulmiya, Hizbulmiya Husenmiya, Iqbalmiya Rasulmiya, Akbarmiya Rasulmiya, Nazirmahmad Akbarmiya, Gulamali Akbarmiya, Ruksanabanu Ibrahimmiya, Maqbulmiya Kesarmiya, Rafikmiya Mahmadsusen, Hamidabibi Akbarmiya, Basirabibi Bachumiya, Khatijabii Dosmahmad Shaikh, Shayanabanu Aashiqhusen, Saidabibi Hizbulmiya Shaikh and thereby, committed the offence

punishable under Section 323, 324 and 325.

(E) That, on the same day and same place accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons, and have committed dacoity punishable under Section 395 of the Indian Penal Code.

That, on the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons committed dacoity (or robbery) and at the time of committing the said dacoity (or robbery) accused have used deadly weapons and pelted stones and caused hurt and grievous hurt, to complainant as well as Faridabanu Ashiqhusen Shaikh, Imtiyaz Mahmadhusen Shaikh, Bhikhumiya Kalumiya

Shaikh, Shayanabanu Ayubmiya, Aminabanu Achhumiya, Mustufamiya Rasulmiya, Hizbulmiya Husenmiya, Iqbalmiya Rasulmiya, Akbarmiya Rasulmiya, Nazirmahmad Akbarmiya, Gulamali Akbarmiya, Ruksanabanu Ibrahimmiya, Maqbulmiya Kesarmiya, Rafikmiya Mahmadsusen, Hamidabibi Akbarmiya, Basirabibi Bachumiya, Khatijabii Dosmahmad Shaikh, Shayanabanu Aashiqhusen, Saidabibi Hizbulmiya Shaikh and thereby committed an offence punishable under Section 395, 397 of the Indian Penal Code.

That, on the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons committed dacoity and that at the time of commission of the dacoity, murder was committed by the accused persons by using petrol, kerosene and other inflammable substances and burning rags and deadly weapons and thereby, caused dacoity with murder in the house of Bachumiya Imammiya Shaikh, resident of

village : Sardarpur, and thereby committed dacoity of ornaments worth Rs.60,000 to 70,000/- and thereby, committed offence punishable under Section 396 of the I.P.C.

(F) That, on the same day and same place accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons, committed mischief by the fire (or any inflammable substances) intending thereby to cause damage to a property of Muslim persons to the amount of Rs.85,87,500/- alongwith the destruction of 19 houses, 3 shops, 5 pavements, 1 Hut, 1 Jeep and 1 scooter, and thereby committed offence punishable under Section 435 and 436 read with Section 149 of the Indian Penal Code.

In alternate, on the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai,

alongwith other persons have committed mischief by the fire (or any inflammable substances) intending thereby to cause damage to a property of Muslim persons to the amount of Rs.85,87,500/- alongwith the destruction of 19 houses, 3 shops, 5 pavements, 1 Hut, 1 Jeep and 1 scooter, and thereby committed offence punishable under Section 435 and 436 of the Indian Penal Code.

- (G) On the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons and have committed tress pass by entering into the house of Bachumiya Imammiya Shaikh (or upon) (or by illegally / unlawfully remaining on), religious place of Muslim as well as graveyard of Muslim, with an intent to commit the offence (or to intimidate, insult or annoy the possession of Muslim people's property, and thereby committed offence punishable under Section 447, 448 read

with Section 149 of the Indian Penal.

In alternate, on the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons have committed tress pass by entering into the house of Bachumiya Imammiya Shaikh (or upon) (or by illegally / unlawfully remaining on), religious place of Muslim as well as graveyard of Muslim, with an intent to commit the offence (or to intimidate, insult or annoy the possession of Muslim people property, and thereby committed offence punishable under Section 447, 448 of the Indian Penal.

(H) On the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons have caused hurt and grievous hurt to the complainant and witnesses so rashly (or

negligently) as to endanger human life (or the personal safety of others) and thereby committed offence punishable under Section 336, 337 read with section 149 of the Indian Penal Code.

In alternate, on the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons have caused hurt and grievous hurt to the complainant and witnesses so rashly (or negligently) as to endanger human life (or the personal safety of others) and thereby committed offence punishable under Section 336, 337 of the Indian Penal Code.

- (I) On the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other 1000 persons have insulted (or attempted to insult the religion of Muslim residing at village : Sardarpur, (or the religious belief of Muslim) residing at

Sardarpur), by uttering words " Sala Bandiyao ne Maro" and by using those words with deliberate and malicious intention to outrage the religious feelings of Muslim community / class, of citizens of India, and thereby committed offence punishable under Section 295-A of the Indian Penal Code.

On the same day and same place, you accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons, the accused No.9 to 12 and 14 of Sessions Case No.7/09 at village Sardarpur, by uttering words " Ek pan Bandiyao Bachvo Joiye Nahi, Teone mari nakho, kapi nakho, balli kuto", promoted the feeling of enmity (or hatred) between (Muslim classes) of His Majesty's subjects and thereby committed offence punishable under Section 153-A of the Indian Penal Code.

On the same day and same place accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19

- Prajapati Rohitkumar Ramanbhai, alongwith other persons have entered the graveyard of Muslim community with intention of hurting the feelings of Muslims or insulting the religion of Muslims thereby, committed trespass in place of set apart for the performance of funeral rites or as a depository for the remains of the dead and thereby, committed offence punishable under Section 297 of I.P.C.

(J) On the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other persons formed an unlawful assembly of 1000 persons, and did, in prosecution of common object of such assembly, such as the members of that assembly knew to be likely committed in prosecution of common object of said assembly, committed offence of rioting, with deadly weapons (or with anything which used as weapon of offence was likely to cause death), accused have insulted (or attempted to insult the religion of Muslim) the

feeling of Muslim residing at village : Sardarpur, (or the religious belief of Muslim) residing at Sardarpur), by uttering words namely " Sala Bandiyao ne Maro" and that accused have uttered said words with deliberate and malicious intention to outrage the religious feelings of Muslim community / class, of citizens of India, and entered the graveyard of Muslim community with intention of hurting the feelings of Muslims or insulting the religion of Muslims thereby, committed trespass in place of set apart for the performance of funeral rites or as a depository for the remains of the dead and also committed murder by intentionally (or knowledge) causing death of Muslim persons with such intention (or knowledge) and under such circumstances, accused have caused death of Muslim persons, accused would have been guilty of murder under Section 302 (and that thereby, caused hurt to the said persons, by the said act), accused have committed mischief by the fire (or any inflammable substances) intending thereby to (or knowing it to be likely that you will thereby) cause damage to the property of Muslim persons to

the amount of Rs.85,87,500/- alongwith the destruction of 19 houses, 3 shops, 5 cabins, 1 Hut, 1 Jeep and 1 scooter and thereby committed offence under Section 147, 149, 435, 436, 447, 448, 395, 396, 324, 325, 302, 307, 336, 337, 295-A, 153(A) read with Section 120-B of the Indian Penal Code.

(K) On the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other person committed offence under Section 435, 436, 323, 324, 325, 447, 448, 302, 307, 336, 337 read with Section 34 of the Indian Penal Code.

(L) On the same day and same place, accused alongwith the deceased accused No.10 - Patel Jayantibhai Jivanbhai and Juvenile accused No.19 - Prajapati Rohitkumar Ramanbhai, alongwith other person knowing fully about the Notification in existence, issued by District Magistrate, the accused No.1 armed with deadly weapons whereas, the Accused

No.2 to 7 and 11 to 13 and 15 to 18 and 20 to 22 and 24 to 27 were pelting stones and accused No.14, 42, 50 and 55 were possessing inflammable substances whereas accused No.21, 31, 33, 37, 38, 41, 44, 46, and 54 alongwith accused No.39, 29, 34, 47 and 51 armed with deadly weapons and thereby, committed offence under Section 135 of the Bomaby Police Act.”

9. So far as accused Arvind Kashiram of Sessions Case No.72/2010 is concerned, charge against him was framed on 25.08.2010 in the middle of trial. The above mentioned Charge was read over to the Accused Persons and they have denied all the charges leveled against them vide Exh.79 to 151.
10. In support of their case prosecution has examined following witnesses :-

ORAL EVIDENCE OF MEDICAL WITNESSES :-

| P.W. No. | Name of the witness | Exh. No. | Remarks |
|----------|------------------------------|----------|---------|
| 1 | Dr.Dhreejkumar Jivanlal Soni | 158 | |
| 2 | Dr.Pravinkumar Popatlal Soni | 211 | |

| | | | |
|----|-----------------------------------|-----|--|
| 3 | Dr.Babubhai Nathubhai Chaudhari | 233 | |
| 4 | Dr.Ishvarsinh Ratansinh Solanki | 244 | |
| 5 | Dr.Prakshbhai Laxmandas Shah | 252 | |
| 6 | Dr.Shaileshkumar Shivabhai Patel | 262 | |
| 7 | Dr.Anju Muljibhai Parmar | 271 | |
| 8 | Dr.Nilima Ajaybhai Talvelkar | 278 | |
| 9 | Dr.Kokilaben Maganbhai Solanki | 283 | |
| 10 | Dr.Sangeetaben Kailaschandra Jain | 290 | |
| 11 | Dr.Alkaben Dungarbhai Patel | 295 | |
| 12 | Dr.Prakash Pravinbhai Patva | 302 | |
| 13 | Dr.Kantilal Babaldas Patel | 308 | |
| 14 | Dr.Bharatkumar Babubhai Solanki | 312 | |
| 15 | Dr.Jagdishkumar Khodabhai Solanki | 317 | |
| 16 | Dr.Vijaykumar Vitthalbhai Oza | 322 | |
| 17 | Dr.Arvind Kantilal Kapadia | 331 | |
| 18 | Dr.Vinayakrao Vasudev Patil | 339 | |
| 19 | Dr.Dharmesh Somabhai Patel | 344 | |
| 45 | Dr.Vikram Kalidas Pardhi | 461 | |

ORAL EVIDENCE OF PANCH WITNESSES :-

| P.W. No. | Name of the witness | Exh. No. | Remarks |
|-------------|-------------------------------|-------------|---------|
| 20 | Shaikh Abdulbhai Dalubhai | 353 | |
| P.W. No. | Name of the witness | Exh. No. | Remarks |
| 21 | Jitrana Mahemudaben Faridkhan | 355 | |
| 22 | Parmar Pravinkumar Arjanbhai | 356 | |

| | | | |
|----|----------------------------------|-----|---------|
| 23 | Patel Ishvarbhai Gopalbhai | 362 | |
| 24 | Patel Jayantibhai Baldevbhai | 364 | Hostile |
| 25 | Thakor Jayantiji Varvaji | 365 | |
| 26 | Goswami Chandrakantgiri Ramgiri | 368 | |
| 27 | Kadia Shamalbhai Gopalbhai | 370 | |
| 28 | Kureshi Sarafat Husen Sabdalbhai | 372 | |
| 29 | Patel Naranbhai Manilal | 376 | Hostile |
| 30 | Patel Babubhai Mathurbhai | 387 | Hostile |
| 31 | Patel Arvindhbai Becharbhai | 389 | Hostile |
| 32 | Patel Babubhai Varvabhai | 391 | Hostile |
| 33 | Thakor Amraji Kodarji | 392 | Hostile |
| 34 | Oza Manishkumar Babubhai | 396 | Hostile |
| 35 | Chauhan Fulaji Somaji | 399 | Hostile |
| 38 | Shaikh Inayat Husen Bachumiya | 423 | Hostile |
| 97 | Lodha Hafijbhai Nasirbhai | 725 | |

ORAL EVIDENCE OF OTHER WITNESSES :-

| P.W. No. | Name of the witness | Exh. No. | Remarks |
|----------|-------------------------------|----------|---------|
| 36 | Chaudhari Ishvarbhai Bababhai | 405 | |
| 37 | Sathwara Babubhai Khodidas | 418 | |
| 39 | Memon Janmahmod Ismilbhai | 438 | |
| 40 | Memon Mahmood Aarif Janmahmod | 441 | |
| 41 | Memon Abdulkadir Ismilbhai | 444 | |
| 42 | Memon Altafhusen Valibhai | 446 | |

| P.W. No. | Name of the witness | Exh. No. | Remarks |
|----------|---------------------------------|----------|---------|
| 43 | Memon Aarifbhai Valibhai | 449 | |
| 44 | Mansuri Munirahmed Noormahmed | 455 | |
| 46 | Pathan Sabirmiya Akumiya | 475 | |
| 47 | Shaikh Ibrahimbhai Rasulbhai | 485 | |
| 48 | Shaikh Sabirhusen Kadarmiya | 491 | |
| 49 | Shaikh Iqbalmiya Rasulmiya | 500 | |
| 50 | Shaikh Jakirhusen Kadarmiya | 505 | |
| 51 | Shaikh Nazirmahmed Akbarmiya | 507 | |
| 52 | Shaikh Hizbulmiya Husenmiya | 513 | |
| 53 | Shaikh Kulsumbibi Kadarmiya | 524 | |
| 54 | Shaikh Sharifmiya Bhikhumiya | 527 | |
| 55 | Shaikh Aashiqhusen Bachumiya | 530 | |
| 56 | Shaikh Ayubmiya Rasulmiya | 535 | |
| 57 | Shaikh Mustufamiya Rasulmiya | 546 | |
| 58 | Fakir Sabirhusen Imamsha | 553 | |
| 59 | Shaikh Mohmad Sattar Bachumiya | 557 | |
| 60 | Shaikh Bachumiya Imammiya | 563 | |
| 61 | Shaikh Safikmiya Babumiya | 570 | |
| 62 | Shaikh Rafikmiya Mahmadhuseen | 575 | |
| 63 | Shaikh Bhikhumiya Kalumiya | 580 | |
| 64 | Shaikh Rafikmiya Babumiya | 583 | |
| 65 | Shaikh Akbarmiya Nathumiya | 586 | |
| 66 | Shaikh Akbarmiya Rasulmiya | 591 | |
| 67 | Shaikh Imtiyazbhai Mahmadhuseen | 594 | |
| 68 | Shaikh Gulamali Akbarmiya | 603 | |

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|-------------|--------------------------------|-------------|---------|
| 69 | Shaikh Mahemudmiya Husenmiya | 606 | |
| 70 | Pathan Munsafkhan Yasinkhan | 609 | |
| 71 | Rawal Mangabhai Ramabhai | 627 | |
| P.W. No. | Name of the witness | Exh. No. | Remarks |
| 72 | Rawal Prahladbhai Nathabhai | 628 | |
| 73 | Shaikh Faridabibi Aashikhusen | 631 | |
| 74 | Shaikh Sikandarmiya Rasulmiya | 632 | |
| 75 | Shaikh Firozabanu Bachumiya | 637 | |
| 76 | Shaikh Hamidabibi Akbarmiya | 638 | |
| 77 | Shaikh Badrunnisha Akbarmiya | 639 | |
| 78 | Shaikh Basirabibi Bachumiya | 642 | |
| 79 | Shaikh Samimbanu Mahemudmiya | 647 | |
| 80 | Shaikh Ruksanabanu Ibrahimmiya | 650 | |
| 81 | Shaikh Dilavarkhan Abbasmiya | 651 | |
| 82 | Fakir Sabirabibi Sabirhusen | 655 | |
| 83 | Fakir Sharifabanu Sabirhusen | 656 | |
| 84 | Kureshi Imtiyazali Husenmiya | 657 | |
| 85 | Parmar Pravinkumar Khemabhai | 662 | |
| 86 | Patel Dineshbhai Bhagvanbhai | 664 | |
| 87 | Patel Jitubhai Chhaganbhai | 670 | |
| 88 | Modi Hasmukhlal Thakorlal | 674 | |
| 96 | Purshottambhai Nathabhai | 719 | |
| 98 | Prajapati Revabhai Shankarbhai | 729 | |
| 108 | Oza Vipulkumar Bhogilal | 760 | |

ORAL EVIDENCE OF POLICE WITNESSES :-

| P.W. No. | Name of the witness | Exh. No. | Remarks |
|----------|--------------------------------|----------|-----------|
| 89 | Makwana Ambalal Karshanbhai | 687 | A.S.I. |
| 90 | Parmar Galbabhai Khemabhai | 695 | P.S.I. |
| 91 | Rathod Mahendrasinh Lalsinh | 699 | P.S.I. |
| P.W. No. | Name of the witness | Exh. No. | Remarks |
| 92 | Goswami Jivagiri Vihagiri | 701 | A.S.I. |
| 93 | Sadhu Hargovandas Mohandas | 707 | A.S.I. |
| 94 | Solanki Chandansinh Nanusinh | 711 | A.S.I. |
| 95 | Bihola Vikramsinh Narsinh | 715 | A.S.I. |
| 99 | Krushnakumar Kantilal | 734 | Po.Con. |
| 100 | Rajakbhai Allarakhabhai | 736 | Po.Con. |
| 101 | Khodidas Govindbhai | 737 | Po.Con. |
| 102 | Desai Laljibhai Arjanbhai | 739 | A.S.I. |
| 103 | Ganpatbhai Narsinhbhai | 740 | Head P.C. |
| 104 | Jadeja Bachubha Vesalji | 744 | Dy.S.P. |
| 105 | Gehlot Anupamsinh Shreejaysinh | 750 | D.S.P. |
| 106 | Sisodiya Jagdevsinh Takhsinh | 754 | P.I. |
| 107 | Chauhan Ramtuji Kanaji | 755 | P.S.I. |
| 109 | Baranda Rohitkumar Dhuljibhai | 770 | Dy.S.P. |
| 110 | Vaghela Kakusinh Ranjitsinh | 810 | P.I. |
| 111 | Patel Kantibhai Parshottamdas | 877 | P.I. |
| 112 | Barot Gautamkumar Vishnubhai | 895 | I.O. |

11. In support of their case prosecution has produced following

documentary evidence :-

| Sr. No. | Details of document | Exh. No. |
|---------|--|----------|
| 1 | Treatment Certificate of Shaikh Rafikbhai Manubhai, issued by the General Hospital, Mahesana. | 159 |
| 2 | Case papers of Rafikbhai Manubhai Shaikh. | 160 |
| 3 | Treatment Certificate of Complainant - Shaikh Ibrahimmiya Rasulmiya, issued by the General Hospital, Mahesana. | 161 |
| Sr. No. | Details of document | Exh. No. |
| 4 | X-Ray Plates (Total-6) of Complainant – Shaikh Ibrahimmiya Rasulmiya. | 162 |
| 5 | Treatment Certificate of witness - Shaikh Rafikhusen Mahmadsusen, issued by the General Hospital, Mahesana. | 163 |
| 6 | Case papers of witness – Shaikh Rafikhusen Mahmadsusen. | 164 |
| 7 | Treatment Certificate of witness - Shaikh Firozmiya Maqbulmiya, issued by the General Hospital, Mahesana. | 165 |
| 8 | Case papers of witness - Shaikh Firozmiya Maqbulmiya | 166 |
| 9 | Treatment Certificate of witness - Shaikh Iqbalmiya Rasulmiya, issued by the General Hospital, Mahesana. | 167 |
| 10 | Case papers of witness - Shaikh Iqbalmiya Rasulmiya | 168 |
| 11 | Treatment Certificate of witness – Shaikh | 169 |

| | | |
|---------|--|----------|
| | Akbarmiya Rasulmiya, issued by the General Hospital, Mahesana. | |
| 12 | Treatment Certificate of witness – Shaikh Basirabibi Bachumiya, issued by the General Hospital, Mahesana. | 170 |
| 13 | Case papers of witness - Shaikh Basirabibi Bachumiya | 171 |
| 14 | Treatment Certificate of witness – Shaikh Hizbulmiya Husenmiya, issued by the General Hospital, Mahesana. | 172 |
| 15 | Case papers of witness - Shaikh Hizbulmiya Husenmiya | 173 |
| 16 | Treatment Certificate of witness – Shaikh Nazirhusen, Akbarmiya, issued by the General Hospital, Mahesana. | 174 |
| Sr. No. | Details of document | Exh. No. |
| 17 | Treatment Certificate of witness – Shaikh Mustufamiya Rasulmiya, issued by the General Hospital, Mahesana. | 175 |
| 18 | Case papers of witness – Shaikh Mustufamiya Rasulmiya | 176 |
| 19 | Treatment Certificate of witness – Shaikh Saidabibi Hizbulmiya, issued by the General Hospital, Mahesana. | 177 |
| 20 | Case papers of witness – Shaikh Sahidabibi Hizbulmiya | 178 |
| 21 | Treatment Certificate of witness – Shaikh Suhanabanu, Safikmiya, issued by the General Hospital, Mahesana. | 179 |
| 22 | Case papers of witness - | 180 |

| | | |
|---------|--|----------|
| | Shaikh Suhanabanu Safikmiya | |
| 23 | Treatment Certificate of witness – Shaikh Gulamali Akbarmiya, issued by the General Hospital, Mahesana. | 182 |
| 24 | Treatment Certificate of witness – Shaikh Imtiyaz Mahmadsusen, issued by the General Hospital, Mahesana. | 183 |
| 25 | Case papers of witness - Shaikh Imtiaz Mahmadsusen | 184 |
| 26 | Treatment Certificate of witness – Shaikh Hamidabibi Akbarmiya, issued by the General Hospital, Mahesana. | 185 |
| 27 | Case papers of witness - Shaikh Hamidabibi Akbarmiya | 186 |
| 28 | Treatment Certificate of witness – Shaikh Sainbanu Ayubmiya, issued by the General Hospital, Mahesana. | 187 |
| 29 | Case papers of witness - Shaikh Sainbanu Ayubmiya | 188 |
| Sr. No. | Details of document | Exh. No. |
| 30 | Treatment Certificate of witness – Shaikh Faridabibi Ashikhusen, issued by the General Hospital, Mahesana. | 189 |
| 31 | Case papers of witness - Shaikh Faridabibi Ashikhusen | 190 |
| 32 | Treatment Certificate of witness – Shaikh Makbulmiya Kesharmiya, issued by the General Hospital, Mahesana. | 191 |
| 33 | Case papers of witness - Shaikh Makbulmiya Kesharmiya | 192 |

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|------------|---|-------------|
| 34 | Treatment Certificate of witness – Shaikh Saynabanu Asikhusen, issued by the General Hospital, Mahesana. | 193 |
| 35 | Case papers of witness - Shaikh Saynabanu Ashikhusen | 194 |
| 36 | Treatment Certificate of witness – Shaikh Rukshanabanu Ibrahimmiya, issued by the General Hospital, Mahesana. | 195 |
| 37 | Letter written by the Police to the Medical Officer for the P.M of Shaikh Ashiyanabanu Ashikhusen. | 196 |
| 38 | Posthumous Form of Shaikh Ashiyanabanu Ashikhusen | 197 |
| 39 | Inquest Panchanama - Shaikh Ashiyanabanu Ashikhusen | 198 |
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| 315 | Copy of Death Certificate of Sultanbhai Mahemudmiya Husenmiya Shaikh | 945 |
| 316 | Copy of Death Certificate of Shaikh Aarifhusen Manubhai | 946 |
| 317 | Copy of Death Certificate of Yunushusen Sherumiya Rasulmiya Shaikh | 947 |
| 318 | Letter seeking information from R.T.O. in respect of ownership of Jeep No.GJ-17-A-8775 and Scooter No.GAF-4710 | 949 |
| 319 | Letter seeking information from S.D.O.T. Vijapur seeking information about the ownership, name and address of the person having Telephone Number 32328 of Sardarpur Village. | 950 |
| 320 | Letter written by Bharat Sanchar Nigam Limited submitting information. | 951 |
| 321 | Office Copy of Letter seeking details from P.I. Vijapur about the Mobile by D.S.P. and I.O., S.I.T. Gandhinagar. | 966 |
| 322 | Letter written by P.I. Vijapur to Shri G.V.Barot, I.O., S.I.T. Gandhinagar about the information of Mobile Numbers | 967 |
| 323 | Original papers of details of Mobile of Police Officers of Vijapur Police Station for the Year 2002. | 968 |
| Sr. No. | Details of document | Exh. No. |

| | | |
|-----|--|-----|
| 324 | Copy of Letter written by G.V.Barot, S.P. Gandhinagar to Regional Secretary (Legal) Vodafone, Ahmedabad. | 969 |
| 325 | Letter informing the Mobile Numbers | 970 |
| 326 | Arrest Panchnama of accused. | 971 |

12. Prosecution has passed closing Purnis vide Exh.977.
13. Thereafter, Further Statements of the accused were recorded in which they have denied the allegations made against them and also denied evidence of the prosecution. The defence of the accused persons, as appearing from the cross-examination of the prosecution witnesses and from their examination under Sec.313 of Cr.P.C. is of total denial. The basic defence of the accused persons is that they have been falsely implicated. They claim that they are innocent. They were not present at the time of incident. They have not taken part in the incident nor they were part of conspiracy for the incident. They had not pelted stones nor attacked Muslim community in Shaikh Maholla nor they were armed with deadly weapons, nor ransacked anybody or set on fire cabins, houses etc., as alleged. Further, they have submitted that they are residing in the Sardarpur and the Muslims in the village : Sardarpur are also residing in the village since their birth. They have no previous enmity with

any community. Muslim persons of Sardarpur village were safe. Earlier there were no communal riots in the village. As the Godhra train incident occurred, in many parts of the Gujarat, riots took place but in Sardarpur village, there were no untoward incident occurred, no complaint was lodged for any such incident. Sundarpur is 1.00 Km. away from Sardarpur. Mukeshbhai Madhabhai Patel, resident of Sundarpur was in Sabarmati Express Train, on his return he arranged some meetings and instigated the public who attacked the houses of Muslims in Sundarpur, Ladol and there was a tense atmosphere in different villages of Mahesana District but Sardarpur village was peaceful. Muslims of Sundarpur came to Pathan Maholla in Sardarpur on 01.03.2002 at about 5.00 P.M. Soon as the persons from the Sundarpur village came to know this fact, they came to Sardarpur and came to the office of Panchayat as mob. The police had lobbed teargas shells and lathi charged and firing in the air was also done. Thereafter, the mob was disbursed. Thereafter, a mob from Sundarpur and Kamalpur reached the backside of Shaikh Maholla and attacked the house of Mahemudmiya as well as Shaikh Maholla and other houses of Shaikh Maholla and the said incident occurred. As the Muslims of Sardarpur

thought that the Hindu persons from Sardarpur have not protected them they prepared Yadi to take the name of persons from Sardarpur and Yadi was prepared by Munusfkhan Pathan and the eminent persons from the village are implicated in the incident. On 04.03.2002, 25 persons were falsely arrested by the police. Graveyard is situated behind Shaikh Maholla. It is highly impossible that 1000 to 1500 persons can reach in Shaikh Maholla at a time. Witness of Shaikh Maholla are falsely deposing before the Court. Considering the situation of the house of Shaikh Maholla, if known persons attacks, it is highly impossible to save the persons residing in Shaikh Maholla. The Muslims of Shaikh Maholla are telling lie at the instance of Teesta Setalvad and falsely identifying the accused before the Court. No attack took place in any other Muslim area in the village. Munusfkhan Pathan being Police Officer is well aware of the law. A false complaint has been lodged by the complainant by alleging against the accused persons of Sardarpur. Application by Pathan Sabirmiya Akumiya is falsely made before S.I.T. after 6 years. Mangabhai Ramabhai Rawal and Prahaladbhai Nathabhai are the friends of Munsufkhan Pathan and at the instance of Munsufkhan they have deposed falsely before the Court.

Witnesses from Memon and Fakir families are also deposing falsely. One Imtiyazali Kureshi is witness from Sundarpur. He has deposed about the injury to Babubhai Panchal and has admitted about tense atmosphere at Sundarpur which supports the theory of the accused that the people from Sundarpur have attacked Muslims in Sardarpur. Further, it is submitted by them that the street-light connection in Sardarpur village was disconnected due to non payment of amount of bill and at the time of incident, street light was not working. Some of the witnesses have falsely created the evidence in respect of Halogen light. Further statements and affidavits submitted by the witness of Shaikh Maholla are in collusion just to misguide the Court at the instance of Teesta Setalvad and other institutions. No weapons were tendered by the accused. All Panchnamas are falsely created. Map is also falsely prepared. Doctors have not deposed independently in the deposition. Deposition given by the Doctors in respect of injuries are not proper. Histories are also falsely endorsed by the doctors. No independent investigation is carried out by S.I.T. and their Investigating Officers and they have suppressed the fact that mob from Sundarpur have attacked the Shaikh Maholla. The involvement of the accused in the incident

which occurred in Shaikh Maholla as alleged is to be discarded.

14. In addition to that, the accused No.6 of Sessions Case No.7/2009, has stated that he is resident of Sardarpur carrying agricultural work. Persons from Shaikh Maholla were working as labourers with him therefore, they know him very well. With an intention to involve the village persons, he has falsely been involved by the Muslims. He was not present in the mob at the time of the incident. While accused No.2 in Sessions Case No.275/02 has added that Aashiqmiya Bachumiya Shaikh and Samirmiya Bachumiya are drivers and he himself is also a driver therefore, they know each other very well. Accused No.9 of Sessions Case No.275/02 has added in his Further Statement that, he is the son of Kanubhai - the then Sarpanch at the time of incident, he was studying in 12th Standard. He was preparing for his examination. Simply, he is the son of Kanubhai, he has falsely been involved. Accused No.14 of Sessions Case No.275/02 has added that earlier, he was Sarpanch of the village hence, people from the village know him very well. If any officer calls him, he has to go to that officer in the capacity of Sarpanch. Police

had called him at about 2.00 O'clock in the midnight and arrested him. His name is not mentioned in the F.I.R. but he has falsely been involved by the complainant and witnesses. In the year 2002, he was in jail even though persons from each community of the village had selected him as Sarpanch. He had done good work for the village and he had made attempts that all persons from different community resides in the village cordially. He has made attempts for the development of each community but he has falsely been involved in the incident. Accused No.18 of Sessions Case No.275/02 has added in his Further Statement that, on the back side wall of the house of the accused, Shaikh Maholla is situated and accused is falsely involved. Accused No.20 of Sessions Case No.275/02 has added that he was studying in Standard 12th and during the midnight on 04.03.2002, he was sleeping, at that time, he was arrested. Accused No.26 of Sessions Case No.275/02 has added that he was carrying business of milk and butter milk etc. therefore, persons from the village know him well therefore, he was identified falsely by the witnesses who are residing behind his house. The accused No.29 of Sessions Case No.275/02 has added that his old house is 62 to 70 Ft. away. Since the year 1997 he is

staying 0.5 Km. away from the village. As earlier, he was staying in the old house therefore, the witnesses were known to him. Accused No.35 of Sessions Case No.275/02, has added that the Munsufkhan Pathan has not given his name in any of his statement but just to involve him in the incident, he is identified by the Munusfkhan Pathan for the first time. The accused No.38 of Sessions Case No.275/02 has added that he is residing in Sardarpur village and witnesses were working in their field therefore, the witnesses were knowing him well and he has falsely been involved in the incident. Accused No.39 of Sessions Case No.275/02 has added that he is an acting member of Seva Sahakari Mandali and Umiya Kisan Dairy since last 15 years therefore, just to cause damage to his image, he has falsely been involved. Accused No.40 and 43 of Sessions Case No.275/02, respectively have stated that in the incident Shri Ram Parlour, which was carried out by accused No.40 and his brother, was set on fire and Rs.2000/- is paid by the Government towards the damages. Since 1996 to 2002 they were carrying the business in the name of Dairy Parlour and Candy Parlour therefore, they are known by the village have persons therefore, they falsely been involved. In support of his say, he has produced copy

of payment receipt, ration card and copy of list of persons whose cabins were damaged. The accused No.41 has added that he was member of Gram Panchayat during the year 1998-2002 he was Secretary of Sarvodaya Kelvani Mandal. He was working as Sarpanch and member of Taluka Panchayat and just to cause damage to his image, he has falsely been involved. The accused No.42 of Sessions Case No.275/02 has added that so as to cause financial loss and damage to his image, he has falsely been involved. The accused No.44 of Sessions Case No.275/02 has added that he was active in public work in the public institutions such as Gram Panchayat, Seva Sahakari Mandali, Vijapur Taluka Market Committee, Sarvodaya Kelvani Mandal and he was also working as President, Secretary, Member etc. in the above institutions. He has further narrated that he has rendered his services in the above institutions since last 25 years and therefore, the persons of village know him well and due to political enmity Munsufkhan has falsely involved him as accused. Accused No.45 of Sessions Case No.275/02 has stated that he is a teacher of Private Tuition Class and is connected with Pandurang Shastri and just to cause damage to his image, he has falsely been involved. Accused No.48 of Sessions Case No.275/02 has stated that

he was an acting member of Sardarpur High School during the years 2000-2009 and Secretary from the year 2009-2010 and he was also an acting member in Seva Sahakari Mandali for the period from 2005 to 2010. He is well acquainted with the office of Kisan Diary and he was a Government employee and at the time of incident, he was in his office for Programme. On 28.02.2002 he was at Karanpur and on 09.03.2002, he was at Aithor for Billing programme. To support his this say, he has produced Certificate of Umiya Kisan Diary, Sardarpur, Certificate from Sardarpur Seva Sahakari Mandali Ltd., Certificate from Sarvodaya Kelvaniandal and Certificate from Gujarat Vidyut Board, Sub-Division office Patan. The Accused No.49 of Sessions Case No.275/02 has added that he was Sarpanch of the village in the year 2002 Mahemudmiya Husenmiya and other persons of the Shaikh Maholla had applied under Sardar Avas Yojna for free house. Application of Mahemudmiya was granted while applications of other persons were rejected and with that political enmity, the Muslims and Munusfkhan have involved him as accused and false applications and affidavits are filed by the witnesses. A peace committee met in the house of Munsufkhan Pathan and in the presence of P.S.I. - Shri

G.K.Parmar, he alongwith other 4 Patel persons were present in the meeting at the relevant time. He came to know the fact that, Muslims from Sundarpur were brought to Sardarpur. He has further stated that, people of the Village were agreed to maintain peace in the village. On 28.02.2002, during night, he was at Khedhbrahma temple as he used to go there on that day since last 25 years. And on that day his son Bhavesh and other two persons were there alongwith him at Khedhbrahma. On 01.03.2002 at about 10.00 A.M. he came in the village and came to know about the incident. On 02.03.2002 at about 6.00 A.M., he was called by Mamlatdar, Talati, P.I. etc. He went to that place and his statement was recorded. He offered to lodge a complaint but the Police Inspector refused to take the complaint as the complaint was already lodged and in complaint, his name was not there. He was assisting Government officers. On 04.03.2002, Bachumiya Imammiya Shaikh and other two persons of their Maholla came to Sardarpur and at that time Munsufkhan and P.S.I. Parmar were with them. At that time, he came to know about the names mentioned in the complaint. Munsufkhan told that, he did not know the persons who came from outside but they have to take the names of the

village persons whether they were involved or not, if they wanted to save themselves they should give the names of the persons who came from outside. He has refused to give the names of the village persons as the village persons were not involved in the incident. Munsufkhan was the member of Panchayat and he has political rivalry with the accused, therefore, name of the accused has falsely been involved by the complainant in the application and affidavit before S.I.T. and witnesses have falsely taken his name as an accused. Accused No.50 of Sessions Case No.275/02 has stated that he was servant and he has falsely been involved. Accused No.52 of Sessions Case No.275/02 has stated that during the incident, he was bedridden due to accident and in support of his say, he has produced Disability Certificate, issued by the Resident Medical Officer, Civil Hospital, Ahmedabad. Accused No.54 of Sessions Case No.275/02 has added that, he was working in GEB since the year 1999 to 2009 and he had worked as village helper. During the incident time, he was in his service and village persons know him well. After two to three months of the incident, his name has been added as an accused, as he is a Government Servant. His house is 1.00 Km. away from Shaikh Maholla. His name has falsely been added in the

incident.

15. Accused No.2 of Sessions Case No.7/09 has added that his house is just adjacent to Shaikh Maholla therefore, the witnesses know him well, hence, after 7 years of incident, he has falsely been involved whereas Accused No.2 and 3 of Sessions Case No.7/09 have stated that they have signed one of the Panchnama of the incident, therefore after 6 years of the incident, they have falsely been involved. Accused No.4 of Sessions Case No.7/09 has stated since the year 1970 to 1978 he was at Surat and thereafter, he is staying at Vijapur and in the year 2002 his family members were falsely arrested in Sardarpur case and he had taken part for releasing them on bail therefore, he has falsely been involved in the incident after 7 years. Accused No.5 of Sessions Case No.7/09 has stated that his house is nearer to Shaikh Maholla and witnesses know him well and therefore, after 7 years, he has falsely been involved. Accused No.6 of Sessions Case No.7/09 has stated that he is an agriculturist and persons from Shaikh Maholla used to work as labourers with him therefore, they know him well hence after 7 years, he has falsely been involved and taken as an accused. Accused No.7 and 9 of Sessions Case No.7/09 have added that just to cause mental and financial

harassment, their names have been added as an accused in the incident as accused No.7 and No.9 respectively, after 7 years. Accused No.8 of Sessions Case No.7/09 has stated that his house is just adjacent to Shaikh Maholla therefore, the witnesses know him well hence, he has falsely been added as an accused after 7 years. His father is also taken as accused from the very beginning. He is very eminent person of the village and connected with different societies and being son of Ambalal Maganbhai he has falsely been implicated as an accused after 6 years. Accused No.10 of Sessions Case No.7/09 has added that he has falsely been implicated as an accused after 7 years. He is an employee of North Gujarat Electricity Company, just to cause damage to his image and with intention to get him dismissed from his service, he has falsely been involved in the incident.

16. Accused Nos.1 and 2 of Sessions Case No.120/08 have added that just to cause mental and economical loss to them, they have falsely been implicated as accused after 6/7 years, respectively. Furthermore, the accused no.2 and his family members are facing mental torture. Accused No.3

of Sessions Case No.120/08 has added that in the year 2002, he had made attempts for release of some accused in the present case therefore, after 6 years, he has falsely been involved in the incident. He has also stated that he is an agriculturist, used to go to his field regularly and on the day of incident, he had been to his field and on the next day, he came back. His field is 2.00 Kms. away from the place of incident. Accused No.4 of Sessions Case No.120/08 has added that he has falsely been involved after 6 years. Accused No.5 of Sessions Case No.120/08 has added that Mangabhai Rawal has encroached upon the open land in the year 2003 to carry out illegal construction of house which was encroaching the way causing disturbance to the agriculturist for outgress and ingress to their field therefore, an application was given by him to the Sardarpur Gram Panchayat and Taluka Panchayat, Vijapur to stop his work, accordingly that work was stopped by the Panchayat. After 6 years, with a malafide intention, the name of the accused is falsely been involved in the incident. Further, in the year 2002 he had made attempts for release of some of the accused. Accused No.6 of Sessions Case No.120/08 has added that just to cause physical, mental and financial torture, after 7 years, he has falsely been

involved in the incident. Accused No.7 of Sessions Case No.120/08 has stated that he is having his shop just in front of Shaikh Maholla, therefore, they know him very well hence, after 6 years, he has falsely been involved in the incident. Accused No.8 of Sessions Case No.120/08 has added that he is a teacher, just to cause damage to his image and to get him dismissed from his service, he has falsely been involved in the incident after 6 years.

17. I have heard the arguments advanced by Shri S.C.Shah, learned Special Prosecutor, who is assisted by Additional Special Prosecutor Shri V.G.Patel, appearing on behalf of the Prosecution as well as I have also heard the learned advocates Shri H.M.Dhruv, Shri B.C.Barot, Shri A.M.Patel, appearing on behalf of the accused persons. I have also gone through the Written Arguments produced vide Exh.1042, submitted by Learned Advocate Shri Y.B.Shaikh, appearing on behalf of the original complainant.

This court has paid sufficient attention towards the oral as well as written arguments advanced and/or submitted by the learned advocates, appearing on behalf of both the sides and they are discussed hereunder, at the

relevant point in this Judgement and therefore, at the cost of repetition it is not produced here.

18. In this case, the Special Prosecutor Mr.S.C.Shah and Additional Special Prosecutor Mr.V.G.Patel as well as learned advocates appearing on behalf of the original complainant Mr.Y.B.Shaikh, have cited some authorities, in support of their case. On the other hand learned advocates appearing on behalf of the accused - Mr.H.M.Dhruv, Mr.B.C.Barot and Mr.A.M.Patel have also cited some authorities. This court has respectfully owes down with the law laid down by the Hon'ble Apex Court of India as well as by the Hon'ble High Court of Gujarat and other Hon'ble High Courts and all the citations are discussed at the relevant point in this Judgement, hereunder for the sake of convenience.

19. Following points arise for my determination of this case :-

POINTS

- (1) Whether the prosecution proves that, death of the 33
(Thirty three) persons are homicidal death ?
- (2) Whether the prosecution proves that, the accused or

any of them in furtherance of common object formed unlawful assembly with the common object of voluntarily causing hurt, grievous hurt, murder, burnt and to rob the properties of the Muslim community and thereby became member of Unlawful Assembly ?

- (3) Whether the prosecution proves that, the accused or any of them formed unlawful assembly with the common object of voluntarily causing hurt, grievous hurt, murder, burnt and to rob the properties of the Muslim community and thereby became member of Unlawful Assembly ?
- (4) Whether the prosecution proves that, the accused or any of them committed rioting by arming themselves with dangerous weapon ?
- (5) Whether the prosecution proves that, the accused in furtherance of common object of unlawful assembly by using force and violence have committed rioting ?

- (6) Whether the prosecution proves that, the accused in furtherance of common object of voluntarily caused grievous hurt burnt alive and assaulted Muslim men, women and children with intention knowing fully well that if the said act is done, they may cause death of persons and by doing this act, they have committed offence?
- (7) Whether the prosecution proves that all or any of the accused have committed offence causing murder of 33 (thirty three persons) ?
- (8) Whether the prosecution proves that all or any of the accused have in furtherance of common object of unlawful assembly by burning men, women and children of Muslim Community have attempted to commit murder of Shayanabanu Ayubbhai Shaikh, Basirabibi Bachumiya Shaikh and Iliyasbhai ?
- (9) Whether the prosecution proves that all or any of the accused have by burning men, women and children of Muslim Community have attempted

to commit murder of Shayanabanu Ayubbhai Shaikh, Basirabibi Bachumiya Shaikh and Iliyasbhai ?

(10) Whether the prosecution proves that, accused No.10- Patel Jayantibhai Jivanbhai alongwith other persons by forming unlawful assembly committed dacoity of ornaments worth Rs.60,000/- ?

(11) Whether the prosecution proves that, in furtherance of common object of such unlawful assembly, all the accused or any of them have caused damage to the property of Muslim person to the amount of Rs.85,87,500/- alongwith destruction of 19 houses, 3 shops, 5 cabins, 1 hut, 1 Jeep and 1 scooter and thereby committed offence ?

(12) Whether the prosecution proves that, in furtherance of common object of such unlawful assembly all the accused or any of the accused have committed criminal trespass by entering into the house of Bachumiya Imammiya Shaikh or upon the

religious place of Muslim as well as graveyard of Muslim with an intent to commit offence of insult and annoy the possession of the Muslim people's property ?

(13) Whether the prosecution proves that, in furtherance of common object of such unlawful assembly accused No.10 alongwith other person caused hurt, grievous hurt to the complainant and witnesses so rashly and negligently to endanger human life?

(14) Whether the prosecution proves that in furtherance of common object of such unlawful assembly accused No.10 alongwith other person spoke the words "Sala Bandiyao ne Maro" with deliberate and malicious intention of outrage the religious feeling of Muslim community and promoted the feelings of enmity ?

(15) Whether the prosecution proves that in furtherance to common object of such unlawful assembly accused No.10 alongwith other persons had

entered in the graveyard of Muslim community and have damaged the Graveyard with intention to insult the feelings of Muslims ?

(16) Whether the prosecution proves that, all the accused or any of them have committed criminal conspiracy to commit an offence punishable with death imprisonment for life or rigorous imprisonment ?

(17) Whether the accused have committed offence by committing breach of the Notification of District Magistrate by arming themselves with burning rags, stones, Dhariya, sword, iron pipe and inflammable items etc. ?

(18) Which of the accused are liable for committing offence and if yes, under which sections ?

(19) What order ?

20. My findings to the above points are as under :-

(1) In the affirmative.

- (2) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (3) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (4) In the affirmative for accused Nos.28, 32, 33, 34, 44, 52 of Sessions Case No.275/2002 and in the negative for other accused.

- (5) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (6) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (7) Independently in the negative.

- (8) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14,

16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (9) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (10) In the negative.

- (11) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41,

42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (12) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (13) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case

No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (14) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15, 17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

- (15) **In the affirmative** for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 &

In the negative for accused Nos.3, 4, 7, 8, 12, 13, 15,

17, 20, 21, 22, 23, 24, 25, 26, 29, 30, 36, 39, 45, 47, 51, 53, 55 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, Accused Nos.2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010.

(16) In the negative.

(17) In the affirmative for accused Nos.28, 32, 33, 34, 44, 52 of Sessions Case No.275/2002 and in the negative for other accused.

(18) As per final order.

(19) As per final order.

-:: REASONS ::-

21. Before entering into the appreciation of evidence and deciding all the points in the case, it is desirable to discuss and decide the point regarding F.I.R. first.

As per the case of the prosecution complainant, Ibrahimmiya Rasulmiya Shaikh has lodged complaint before the Vijapur Police in Mahesana Civil Hospital which is produced during the deposition of the complainant. To Exhibit the said complaint, objection was raised by the advocate appearing on behalf of the accused.

After considering the arguments advanced by the advocates and on perusing the citations on behalf of both the sides and keeping in mind the fact that the document in question was executed in Mahesana Civil Hospital and it was written as per the say of the complainant and complainant has signed the complaint and considering the citations, the complaint was given tentative Exhibit as Exh.484. Now whether it should be considered as F.I.R. or not or it should regularly Exhibited. For this purpose, relying upon the evidence of complainant & police witnesses, it is argued by the Special Prosecutor that delay has been caused in lodging the complaint due to emergency of treatment to the injured persons, as it was emergency to give priority to save the life of the victims. Further, Vijapur is 45 Kms. away from Mahesana. Thus, the delay which has been caused in lodging complaint is reasonable one and the complaint lodged by Ibrahimmiya Rasulmiya Shaikh, is covered under Section 157 of Cr.P.C. which is signed by the complainant and written at his instance and it was read over to him thereafter, it was signed by the complainant as well as the P.I. Furthermore, the incident occurred on 01.03.2002 during 9.30 P.M. to 2.30 A.M. In support of his arguments, he has relied upon the following rulings:-

| Sr.No. | Citation |
|--------|---|
| 1 | 2010(3) G.L.R. Page 2617 D.A.Solanki Vs. State of Gujarat, |
| 2 | 1978 SC page 1142 Sonilal and others Vs. State of U.P., |
| 3 | 1994 G.L.H. page 329 Ramsinh Bavasinh Jadeja Vs. State of Gujarat, |
| 4 | AIR 2009 SC 2292 Himmat Sukhdev Vs. State of Maharashtra, |
| 5 | 2009(2) G.L.R. Page 1189 Harijan Keshubhai Bhadaji Vs. State of Gujarat |
| 6 | 2009(3) G.L.R. Page 2298 Aher Praful Meram Chhahya V. State of Gujarat, |
| 7 | AIR 2010 SC 3300 Criminal Appeal No.342/07, D/1506/0 Shmabudas Alia Vs. Bija State of Assam, |

Therefore, it is submitted by the prosecution that F.I.R. which is given tentative Exhibit should be given regular Exhibit and it should be treated as F.I.R.

While on behalf of the accused, it is argued that though disclosure of commission of cognizable offence was known to the police officers, they have neither given the complaint by themselves nor recorded the complaint of the persons, who were interrogated. Even initial interrogation

as admitted by the witnesses disclose that a mob attacked the houses of Mahemudmiya. Police officers have not cleared the record of the persons who were interrogated and who disclosed the commission of cognizable offence. They have given very invasive reply in their cross-examination for not recording the complaint of any of the persons interrogated nor with regard to why they themselves have not given any complaint. Inquest Panchnama of Ashiyabanu was executed by Hargovandas Mohandas Sadhu. Thus, it was known to him that in Criminal riots deceased had received injuries and it can be said to be a cognizable offence. Therefore, it is the say of Shri Dhruv that tentative F.I.R. has been lodged after the execution of Inquest Panchnama. In view of the decision of Hon'ble Supreme Court, F.I.R. cannot be lodged after the Inquest Panchnama is drawn. Still however, no complaint has been recorded. Further, it is argued by Shri Dhruv that as per the deposition of the complainant, complaint was recorded at about 12.00 hours. After recording the complaint, P.I. has sent the said complaint to Vijapur Police Station for registration. Exh.487 discloses the registration time as 11.30 A.M. Inquest panchnama of 28 dead bodies was executed from 10.00 A.M. to 2.00 P.M. The same was

started in the morning before the registration of F.I.R. In spite of that, Inquest Panchnama reflects the crime register Number. Thus, there is concoction in F.I.R. though commission of cognizable offence was revealed to all police officers but they have not recorded the complaint in view of Section 157 of the Criminal Procedure Code. On receipt of information or otherwise, the police officer has to forward his Report to the Magistrate empowered to take cognizance of such offence. There were even high rank police officers who were present at the time of commission of cognizable offence but neither of them gave the F.I.R. nor recorded the F.I.R. of any of the persons who were interrogated by them. On the above circumstances, tentative Exhibit given to the F.I.R. as Exh.487, is required to be de-Exhibited. For his arguments, Mr.Dhruv has relied upon following authorities:-

In the case of **A.I.R.1955 S.C. 196, H.N.RISHBUD v. STATE OF DELHI**, the Hon'ble Supreme Court of India has observed that, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the

offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the order thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet u/s.173.

In the case of **1964 (1) CRIMINAL LAW JOURNAL 140 , STATE OF U.P. v. BHAGWANT KISHORE JOSHI,** the Hon'ble Supreme Court of India has observed that, though ordinarily investigation is under taken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Section-157 prescribes the procedure in the matter of such an investigation which can be initiated either on information which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise.

In the case of **(2009) 1 SUPREME COURT CASES**

(CRI.) 212, RAMESH BABURAO DEVASKAR v. STATE OF

MAHARASHTRA, the Hon'ble Supreme Court of India has observed that, A first information report cannot be lodged in a murder case after the inquest has been held. If the said prosecution witness who claimed himself to be the eyewitness was the person who could lodge a first information report, there was absolutely no reason as to why he himself did not become the first informant. It is further held that, FIR cannot be lodged in murder case after inquest was held. Names of all the assailants not disclosed. FIR not reliable. Lodging of a first information report is necessary for setting the criminal law in motion. It can be lodged by anybody. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had

been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital. In the cited ruling the copy of F.I.R. was sent to the Magistrate concerned after four days. There was sharing of common object by other accused persons with the accused who was named in the F.I.R. not made out. One witness turned hostile and other two witnesses were not reliable. It was held that it would be hazardous to record conviction of the appellant.

In the case of **AIR 1993 SUPREME COURT PAGE 1544, PARESJ KALYANDAS BHAVSAR v. SADIQ YAKUBBHAI JAMADAR AND OTHERS,** the Hon'ble Supreme Court of India has observed that in a case of Murder during communal riots, Murder took place inside the house - informant stating in F.I.R. only that part of occurrence that he had seen from a nearby house- no attempt made to give details of occurrence that took place inside house - names of only 9 accused mentioned in F.I.R. - indicating that there was no attempt of exaggeration or wholesale roping of persons of any community after

deliberations - F.I.Report was true - delay if any sending it to Magistrate would not be a ground to doubt its genuineness. Further it is held that, Murder during communal riots information about riots already with police-statement can also be used to corroborate evidence of other eye witnesses.

In the case of **(2010) 1 SUPREMECOURT CASES (CRI.) PAGE 413, (2009) 10 SUPREME COURT CASES (CRI.) PAGE 773, PANDURANG CHANDRAKANT MHATRE AND OTHERS v. STATE OF MAHARASHTRA,** it is observed by the Hon'ble Supreme Court of India that, A first information report cannot be lodged in a murder case after the inquest has been held.

When we peruse the deposition of the complainant, complainant has deposed that he has signed the complaint in Mahesana Civil Hospital in the presence of the police and it was written as per his say. In his cross-examination he has deposed that, it is not true that complaint was recorded at about 9.30 A.M., complaint was recorded at about 12.00 Noon and at that time Medical Officer had examined him. There were approximately 15 persons of their Maholla in the Civil Hospital for treatment. In

continuation of complaint his statements were recorded on 10.03.2002, 01.06.2002 and while recording statements on 10.03.2002 and 01.06.2002 complaint was read over to him and at that time he has stated that the complaint is true.

For this purpose, when we peruse the deposition of P.W.89 - Makwana Ambalal Karshanbhai who has deposed on oath that, he was on his duty as P.S.O. and Police constable Nasirali and Wireless Operator Babubhai were with him and in the second shift, Head Constable - Devjibhai and Ashokkumar were there. On 01.03.2002, at about 14.00 hours to 20.00 hours, he was on duty and during that period, the information which he received, he had noted it and accordingly, he has acted. At about 11.30 hours, on 02.03.2002, he was on duty and one Yadi came to him to register the complaint and he has registered the complaint vide I.CR.No.46/2002 which was relating to Section 302 of I.P.C. etc. and further investigation was handed over to P.I. Shri Vaghela. The yadi which was sent to him for registering the complaint is produced vide Exh.688 and he has passed a Depute Order which is produced vide Exh.689. Copy of the Station Dairy is produced vide Exh.690. When we peruse the cross-examination of this witness, in the cross-examination,

advocate for accused side has tried to bring the irregularities committed by the police while registering the complaint but those irregularities are not much important from which the offence registered by this witness becomes fatal. Simply because there was Bandobast and no entry is made in respect of Bandobast at about 8.00 P.M., when we peruse the deposition of Mr.Parmar, P.S.I., whether he was in patrolling or not, all these entries are not made in register as those are minor irregularities and all these cross-examinations will not be helpful to the accused. Evidence of all these witnesses are supported by Exh.688, 689 and 690. Thus, it is proved by the prosecution that P.W.89 - Makwana Ambalal Karshanbhai has registered the F.I.R..

P.W.110 - Vaghela Kakusinh Ranjitsinh has recorded the complaint. For this purpose, when we peruse the deposition of Shri Vaghela, he has deposed that in the Civil Hospital, complainant Ibrahimmiya Rasulmiya Shaikh has shown his willingness to lodge the complaint therefore, the complaint was recorded as per the say of the complainant and it was written by writer Manharsinh and it was read over to the complainant thereafter, it was signed by the

complainant and P.I., Mr.Vaghela and it was recorded at about 9.30 A.M. and that complaint was verified by Dy.S.P. Jadeja on 03.03.2002 and the complaint was sent to P.S.O., Vijapur for registration. Police Constable - Somabhai Ranchhodbhai had taken Yadi to Vijapur Police Station and complaint was registered by P.S.O. - P.W.89 - Makwana Ambalal Karshanbhai vide I.Cr.No.46/2002. When we peruse the cross-examination of this witness, it comes out that when he reached at the place of offence, he has not heard about the incident from P.S.I. - Parmar and Rathod and he came to know about the incident only when he reached Shaikh Maholla. He came to know that, persons were burnt and some persons were dead and some persons were alive. He came to know about the cognizable offence but he has not informed the Vijapur Police Station to lodge the complaint in spite of having wireless and mobile facility nor he instructed the P.S.I. Parmar or Rathod to lodge the incident before the Vijapur Police Station. No one has lodged the complaint at that time. He has not taken any complaint. At the time of place of incident, he has not informed the Executive Magistrate under Section 174 of Cr.P.C. He has seen the injured persons in the Maholla but has not asked those persons to lodge the complaint. Those

persons who were not injured were also not asked by him to lodge the complaint. He has denied the fact that P.S.I. - Parmar and Rathod had told him that unknown persons have burnt the Shaikh Maholla. It is denied by him that before recording the complaint of Ibrahimmiya Rasulmiya in Mahesana Civil Hospital, he was having full information about the incident. In his cross-examination, he has admitted that the complaint was recorded at about 9.30 A.M. and it is signed by him. He has denied the fact that he has not recorded the evidence at about 9.30 A.M.. He has stated that after recording the complaint at Civil Hospital, Mahesana, to register the complaint, Yadi was written immediately. In the Yadi, at what time, Report was sent to the Vijapur Police Station for registration, is not mentioned. As per the say of the witness, there is no such procedure. At what time, F.I.R. was sent to the Magistrate, he has no knowledge. Vijapur is 45 Kms. away from Mahesana. Somaji Ranchhodji took the yadi and after registering the offence at about 12.30 hours, all the papers were received by this witness. Time written in complaint is the time when writing of complaint was over. No statement of Police Constable - Ranchhodaji Somaji is recorded. He has admitted that he has not taken complaint at the place of

incident though persons were present over there. This witness has explained the situation that at the time, it was necessary to save life of the persons in spite of recording the F.I.R. therefore, they had made attempts to take the injured persons to the Hospital without delay.

For this purpose, when we peruse the cross-examination of P.W.105 - Gehlot Anupamsinh Shreejaysinh, it comes out from the evidence in the cross-examination that soon as he saw the incident, he came to know about the cognizable offence but he has not given any complaint nor instructed anyone to record the complaint of two persons who met him and told him about the injured persons inside the Mahemudmiya's House. For this purpose, D.S.P. Shri Gehlot, has explained that both two persons were in burnt condition and it was necessary to shift them in the hospital for treatment at the earliest. No doubt, those two persons were important witnesses but they were so burnt that, they were bitterly in need of treatment. Thereafter, persons from ordi (Mahemudmiya's House) and other persons who were burnt were shifted to the Mahesana Civil Hospital and it was necessary to save and treat the injured persons first at that time, instead of lodging the complaint. He inquired about the offence and at

that time, he came to know about the attack by mob.

P.W.90 - Parmar Galbabhai Khemabhai who is the P.S.I. was present in the village prior to the present incident. In his cross-examination, he has admitted that he reached with the police staff in mobile van at about 1.45 A.M. P.S.I. Rathod had also reached there, P.I. Shri Vaghela, P.S.I. Gohel, Dy.S.P. Jadeja and D.S.P. Gehlot, all came there. He saw the burning of the houses in Shaikh Maholla. They tried to save the persons from there. He has not recorded any statement of any person. He has not recorded the complaint of any persons because he was busy to save the life of all the persons. He has not taken the name of two persons who told him about the incident because, he was busy in saving the life of the persons. He has not inquired about the incident.

P.W.112 - Barot Gautamkumar Vishnubhai has deposed that he has recorded the statement of the complainant after his complaint and statement was read over to him.

When we peruse the evidence of P.W.93 - Sadhu Hargovandas Mohandas, in cross examination, he has

admitted that he came to know about the cognizable offence but he has not taken the complaint. There is no reason for him for not recording the offence as P.I- Vaghela was recording the complaint.

Prosecution has relied upon **2010(3) G.L.R. PAGE 2617 IN THE CASE OF D.A.SOLANKI VS. STATE OF GUJARAT** in which, it has been observed that F.I.R. was lodged on next day however, witness had narrated the incident to others soon after its occurrence in the night. It was held that late filing of the F.I.R. pales into insignificance. In another citation **1978 SC PAGE 1142 SONILAL AND OTHERS VS. STATE OF U.P.,** cited by prosecution occurrence took place in the midnight wherein the informant had lost his two sons. He must have been in shock particularly when even the corpses of two deceased were not spared but were taken away by the accused. Accused were armed with deadly weapons. F.I.R. was lodged at 9.00 A.M. next morning. Under above circumstances, Hon'ble Supreme Court of India has held that there is no delay. In another citation **(2009) 10 SUPREME COURT CASES 477 VISHNU AND OTHERS V. STATE OF RAJASTHAN,** the Hon'ble Supreme Court of

India has held that, merely because FIR handed over to police on next day of incident, would not show that no incident took place all - undoubtedly, appellants were members of unlawful assembly, common intention of which was to mount attack and cause injuries and death to first informant and his relatives - Hence, held conviction justified - criminal procedure code 1973 - S. 154 - Delay in lodging FIR - satisfactory explanation. In another citation **1982 CR.L.J. PAGE 36 RAM CHANDRA AND ANOTHER v. THE STATE OF RAJASTHAN** relied upon by the prosecution, there was delay in lodging the complaint and the delay was caused due to anxiety of relatives to provide medical aid to the injured persons before the filing of F.I.R. It was observed that delay must be deemed to be well explained. The another citation **1994 (2) G.L.H. PAGE 329 IN THE CASE OF RAMSINH BAVASINH JADEJA VS. STATE OF GUJARAT** is in respect of Cryptic telephonic message. Giving information of cognizable offence it cannot be considered as F.I.R. In another citation **A.I.R. 2009 SC 2292 IN THE CASE OF HIMMAT SUKHDEV AND OTHERS VS. STATE OF MAHARASHTRA**, it has been observed that delay in filing the F.I.R. and conduct of investigation in circumstances become insignificant. Here I

would like to rely upon **2009(2) G.L.R. PAGE 1189 IN THE CASE OF HARIJAN KESHUBHAI BHADAJI VS. STATE OF GUJARAT** In the cited ruling F.I.R. was lodged after the Inquest but within three hours of incident and it was held that it does not suffer from phase of delay. Further F.I.R. was not lodged by a proper person but by eyewitness, it was held proper. I would also like to rely upon **2009(3) G.L.R. PAGE 2298 IN THE CASE OF AHIR PRAFUL MIHRAM CHHAYA AND ANR. VS. STATE OF GUJARAT.** In the cited ruling, F.I.R. was lodged after the Inquest Panchnama was done. The first, informant was one of the panch of the Inquest and had seen the injuries. It was held that prosecution case would not become doubtful due to this reason. I would also like to rely upon **AIR 2010 SC 3300 CRIMINAL APPEAL NO.342/07, D/1506/0 IN THE CASE OF SHMABUDAS ALIA VS. BIJA STATE OF ASSAM,** it is observed in the ruling that if F.I.R. is lodged after Inquest Report, loss of authenticity of F.I.R., not an universal rule to be applied in all circumstances.

Keeping in mind the ratio laid down in the cited rulings, when we peruse the facts of the present case, the explanation which has been given by all the police

witnesses for not lodging the complaint immediately though they had received knowledge about the cognizable offence, they were rushing to save the life of the injured persons, immediately to the hospital and in that circumstances, if the complaint has been lodged on next day at about 9.20 or 9.30 A.M., then that delay is satisfactory explained by the prosecution.

So far as point of drawing of Inquest Panchnama, in the present case is concerned, no doubt Inquest Panchnama of Ashiyanabnau was executed by Mr.Sadhu prior to the lodging of complaint, but the Inquest Panchnama of other dead bodies were under process and during that period, complaint has been recorded by the P.I. Shri Vaghela in the Civil Hospital and complaint has been given by Ibrahimmiya Rasulmiya Shaikh, resident of Shaikh Maholla and it was read over and explained to him and it is signed by him as well as by P.I.- Shri Vaghela. Thereafter, it was sent with police Yadi to Vijapur for registration and it was registered with the Vijapur police station at about 11.30 A.M. on 02.03.2002 and F.I.R. was sent to the Magistrate at about 23.45 hours and considering the ratio laid down in above cited rulings, if

F.I.R. is sent at about 23.45 hours to the Magistrate, it is not fatal. So far as the case Reported in **2009(2) PAGE 1189 IN THE CASE OF RAMESH BABURAV DEVSHANKAR VS. STATE OF MAHARASTHRA** is concerned, It is observed in it that, F.I.R. lodged after execution of Inquest Panchnama, by eye witness is proper. Furthermore, F.I.R. was not lodged by eye witness made by him to the informant. The Court has observed that if that is so, why the person who gave information did not become first informant himself. Here is no such case and during the drawing of Inquest Panchnama, recording of complaint had started. Inquest Panchnama of only Ashiyanabanu was completed by A.S.I. Sadhu but keeping in mind the ratio laid down in **AIR 2010 SC 3300** the object of repression of Inquest Report as the preposition of lodging the F.I.R. under Section 154 of Cr.P.C. is described in the cited ruling. Here, the complaint given by Ibrahimmiya Rasulmiya Shaikh vide tentative Exh.487 comply all the requirement provided under Section 154 of the Cr.P.C. and considering above all, it requires to be considered as F.I.R. and the say of Mr.Dhruv that it should be de-Exhibited, cannot be considered in the eye of law. Simply in the cross-examination, complainant has stated that he has given

complaint at 12.00 Noon. Documents produced show that the recording of complaint was started at 9.30 A.M. and in chief-examination, complainant has stated that the recording of the complaint started at about 9.30 but in cross-examination, he has stated the time as 12.00 Noon. Say of the complainant in chief-examination, in respect of time, is supported by deposition of police witnesses and also supported by documentary evidence. In that, circumstances, if in cross-examination, he is telling time as 12.00 Noon, that may be due to some misunderstanding which is not supported by any document nor by any witness hence, his say in chief-examination is proved and can be relied upon while his say in cross-examination about recording of complaint at 12.00 Noon is required to be ignored.

In the cross-examination of P.W.110 - Vaghela Kakusinh Ranjitsinh, it has come out that Dr.Soni had given information but this witness has no knowledge about this fact. Information was given on 6.20 A.M. in Mahesana City Police Station vide telephonic message/Information was registered vide No.190/02 informing that Ashiyabanu, Daughter of Ashikmiya Bachumiya, resident of Sardarpur, has been admitted in the hospital. She had

sustained injury due to burning. He had not verified from Mahesana City Police station. From the information register, he has not taken the statement of Shri Sadhu nor he inquired about the Inquest papers of Ashiyanabanu. It is admitted by this witness that on 02.03.2002, at about 2.05 P.M., they received dead bodies of 28 persons. Before registering the F.I.R. if any message is received, he has not collected that message. Thus, the contents of the documents were freely referred to in the cross-examination and the witnesses were questioned with regard thereto. No prejudice, has thus been caused to the defence in any manner by deciding the objection about its admissibility.

It may be observed that the question of time and date of recording of F.I.R. assumes importance in many cases for the purpose of appreciating the evidence. If it is established that the F.I.R. has been lodged immediately after the occurrence it strengthens the case of the prosecution showing that the information contained in it was available immediately and thereby reduces the possibility of concoction, fabrication etc. when the time of lodging of F.I.R. would be in dispute the issue as to when the complaint or F.I.R. was received by Magistrate assumes importance. The delay in sending F.I.R. to the Magistrate is

relevant for ascertaining whether F.I.R. had indeed been lodged at when it is claimed to have been lodged.

On perusal of citations produced on behalf of both the sides in respect of delay in sending the F.I.R. to the Magistrate, there is no necessity to make any reference to the authorities as legal position is well settled. The delay in sending the F.I.R. to the Magistrate may create doubt in the mind of the court whether at the time of lodging the F.I.R., as in such a claim, is indeed correct. In such cases, the possibility of the F.I.R. having been lodged subsequently or having been tampered with, is required to be kept in mind. However, it cannot even remotely be suggested that the time of lodging the F.I.R. has to be proved only from the fact of the time of its receipt by the Magistrate, though being external check of an authentic nature, it would assume importance. All that can be said that is that receipt copy of the F.I.R. by a Magistrate is a surer way of establishing that by that time, the F.I.R. had already been lodged. In view of above discussion, it is hereby ordered to give regular Exhibit to F.I.R. as Exh.487 and that it is to be treated as F.I.R.

POINT NO.1 :

22. As per the case of the prosecution, 33 persons have died in the incident and their death is unnatural and homicidal. The following persons have died :-

| Sr. No. | Name of deceased person |
|---------|--|
| 1. | Asiyanabanu Asikhusen Bachumiya Shaikh |
| 2. | Sakkarbanu Mahemudmiya Shaikh |
| 3. | Parvinabanu Ibrahimhai Shaikh |
| 4. | Samimbanu Mustumiya Shaikh |
| 5. | Zayadabanu Ibrahim Shaikh |
| 6. | Sayarabanu Abbasmiya Shaikh |
| 7. | Yunushusen Sherumiya Shaikh |
| 8. | Arifhusen Manubhai Shaikh |
| 9. | Sultanabanu Mahemudmiya Shaikh |
| 10. | Javedmiya Mustumiya Shaikh |
| 11. | Rasidabanu Jamalbai Shaikh |
| 12. | Idrishbai Akbarbai Shaikh |
| 13. | Mehmudabibi Sherumiya Shaikh |
| 14. | Vahidabanu Nazirbai Akbarbai |
| 15. | Bismillabanu Bhikumiya Shaikh |
| 16. | Barubibi Babumiya Shaikh |
| 17. | Faridabanu Mahebubhai Shaikh |
| 18. | Ruksanabanu Abbasmiya Shaikh |
| 19. | Mumtazbanu Maksubhusen Shaikh |
| 20. | Mumtazbanu Sherumiya Shaikh |
| 21. | Johrabanu Manubhai Shaikh |
| 22. | Husenabibi Hibzulmiya Shaikh |

| | |
|-----|--------------------------------|
| 23. | Rifakathusen Hijbulmiya Shaikh |
| 24. | Manubhai Husenbhai Shaikh |
| 25. | Bachumiya Nathumiya Shaikh |
| 26. | Sherumiya Rasulmiya Shaikh |
| 27. | Abbasmiya Kesarmiya Shaikh |
| 28. | Raziabanu Ibrahimmiya Shaikh |
| 29. | Abedabanu Manubhai Shaikh |
| 30. | Rafik Manubhai Shaikh |
| 31. | Firoz Mahemudhusen Shaikh |
| 32. | Irfanhusen Mahemudmiya Shaikh |
| 33. | Suhanabanu Safikmiya Shaikh |

23. For this purpose prosecution has relied upon the depositions of Doctors, P.M. Reports, F.S.L. Reports, Cause of Death Certificates, Inquest Panchnamas & depositions of witnesses of Inquest Panchnama & other Panchas as well depositions of other witnesses.

While it is argued on behalf of accused that in some of the clothes articles, human blood on the clothes is found. The Post-Mortem Reports of all the deceased show injuries on the bodies including CLW and fracture, suggesting that the deceased might have been assaulted first and then they had been set on fire inside the house of Mahemudmiya. There is no question of injury over any of the deceased either of fracture or CLW. Further, it is argued that it is not

the case of the prosecution that first they were assaulted and then set on fire and secondly, as to how the blood stains have been found on the clothes, is not explained by the prosecution. Further, it is argued that in case of burns, no blood would be found over the body which last over the clothes. Thus, it is the say of the accused that the prosecution is suppressing the genesis and origin of the occurrence. Further, it is argued on behalf of the accused that the prosecution has failed to establish how the residues of Kerosene and Hydrocarbon, have been found from the clothes of the deceased. Since the deceased appear to have died because of flame burns, there is no question of residues of Kerosene and Hydrocarbon to be found over the clothes. Looking to the amount of heat generated which claimed lives of total 33 persons, it is impossible that residues of kerosene and hydrocarbon would be found on clothes. Thus, it is the say of the accused that the F.S.L. Report will not be helpful to the prosecution.

Considering the arguments advanced on behalf of both the sides and on perusing the depositions and documents, details of their depositions and their documents supporting the case of the prosecution, is as under:-

P.W.1 - Dr.Dhreejkumar Jivanlal Soni has performed the Post-Mortem of Asiyanabanu - D/o. Aashiqhusen Bachumiya and Sakkarbanu W/o- Mahemudmiya Shaikh. He has produced the Posthumous Form of Ashiyanabanu vide Exh.197, Post-Mortem Report vide Exh.199, Cause of Death Certificate of Ashiyanabanu vide Exh.200. He has also produced the P.M.Note of Sakkarbanu Mahemudmiya Husenmiya Shaikh vide Exh.201, Posthumous Form of Sakkarbanu vide Exh.202 and Cause of Death of Sakkarbanu Mahemudmiya Husenmiya Shaikh vide Exh.203.

In his deposition he has deposed that during the Post-Mortem, he found that Ashiyanabanu was a female child with age of 10 months and there were singing of scalp hairs, clothes were torn, body was burnt more on back, body was fairly nourished and cold. Face was slightly blackened due to the burns. There were 1st, 2nd and 3rd degree burns by flame over back of chest, abdomen, 1st, 2nd and 3rd degree burns over face and front of neck. 1st and 2nd degree burns over both upper limbs and both legs. All the injuries were ante mortem. Lungs were congested. Some carbon particles were present in nose and trachea

and both the chambers of the heart were full of blood and as per his opinion, she died due to shock and extensive burns.

In support of his oral version, when we peruse Exh.199 and 200, both the documents support the say of Dr.Soni. During the cross-examination on this point much has been asked about the degree of burns, types of burns but from whole cross-examination, nothing has come out to suggest that there were no smoke of carbon particles in nose and trachea or there were no burns over upper limbs and both legs or no burns over face and front of neck or no hairs at forehead or scalp were missing. Thus, from the deposition of Dr.Soni as well as from the Post-Mortem Report and death certificate, it is established by the prosecution that Ashiyabanu has died and her Post-Mortem was performed by Dr.Soni and she died due to shock due to extensive burns.

P.W.21 - Jitrana Mahemudaben Faridkhan is examined vide Exh.355 as Inquest Panch witness. Inquest Panchanama of Ashiyabanu Aashiqhusen Shaikh is produced vide Exh.198 which was executed in presence of

Mahemudaben Faridkhan Jitarana and she has deposed on oath that the Inquest panchanma of Ashiyanabanu was done in her presence in Room No.17 of Civil Hospital, Mahesana on 02.03.202 at about 7.00 A.M. From the cross-examination, nothing comes out from which, the say of Inquest panch in chief-examination can be denied, who also supports the say of Dr.Soni. Inquest Panchnama produced vide Exh.198 supports the say of Mahemudaben. Exh.196 - Yadi of Death of Ashiyanabanu also supports the say of Dr.Soni.

So far as the death of Sakkarbanu Mahemudmiya Husenmiya Shaikh is concerned, as per the deposition of Dr.Soni, he has received police yadi from P.S.I. Vijapur alongwith Inquest Panchnama to perform the Post-Mortem and he had performed the Post-Mortem of Sakkarbanu on 02.03.2002 at about 12.30 hours till 15.00 hours. As per the say of Dr.Soni, she was a female aged about 38 years, her scalp hairs were singing, body was nourished and cold. Whole body was blackened due to burns, eyes and mouth were closed, external genital were burnt, scalp hairs on forehead were singing There were 1st, 2nd and 3rd degree burns over the face, neck, abdomen, front and back Both

upper and lower limbs including soles and feet, front and back except left leg upper 3rd degree burns about 98% to 100%. All the injuries were ante mortem. Lungs were congested. Smoke particles were present in the nose and trachea. Both the chambers of the heart were full of blood and as per the say of the doctor, Sakkarbanu Mahemudmiya Husenmiya Shaikh died due shock of extensive burns. In support of the say, he has produced P.M Note vide Exh.201 and cause of Death Certificate vide Exh.203. Post-Mortem and cause of Death Certificate supports the say of the Dr.Soni.

For this purpose, when we peruse the Inquest Panchnama of Sakkarbanu at Exh.223, P.W.20 - Shaikh Abdulbhai Dalubhai is examined vide Exh.353 and as per his say, Inquest Panchnama was executed in Civil Hospital, Mahesana on 02.03.2002 at about 10.00 A.M. There were total 28 dead bodies and the Inquest Panchnama was executed in his presence. After verifying the dead bodies, Nazirmiya had identified the dead bodies. In support of his say, he has produced the Panchnama vide Exh.223. In his cross-examination, position of dead bodies is brought on record. He has stated in cross-examination that, from dead

body No.5 only smell of kerosene was coming and this fact is not written in the Panchnama of other dead bodies. Thus, from the deposition of this Inquest panch, facts of the Inquest panchnama is established. It supports the say of the witness. As per F.S.L. Report in Muddamal article No.19 which were the clothes of Sakkarbanu, smell of kerosene was coming from the clothes, which also supports the say of this witness.

Prosecution has also relied upon the deposition of **P.W.2 - Dr.Pravinkumar Popatlal Soni** who has deposed on oath vide Exh.211 that he had performed the Post-Mortem of Samimbanu Mustumiya Rasulmiya Shaikh, aged about 24 years. Her dead body was brought to him for Post-Mortem on 02.03.2002 and he had performed the Post-Mortem at about 2.05 P.M. till 4.15 P.M. There were 3rd degree burns all over the body except the left eye, scalp hairs were burnt, 4th and 5th degree burns over right and left feet. Carbon particles were present in nose and trachea. The right ventricle was full and left was empty. As per his say, she died due to shock of extensive burns. In support of his say, he has produced Post-Mortem Report vide Exh.226, Posthumous Form vide Exh.227, Cause of Death Certificate

vide Exh.228 and Receipt of dead body vide Exh.229. Post-Mortem Report and Death Certificate supports the deposition of Dr.P.P.Soni. Inquest Panchnama of Samimbanu which is produced vide Exh.223, supports the say of the Dr.P.P.Soni.

Dr.P.P.Soni has also performed the Post-Mortem of Parvinbanu Ibrahimmiya Rasulmiya Shaikh. Yadi of Post-Mortem is produced vide Exh.222, Inquest Panchnama of the dead body is produced at Exh.223, Posthumous Form vide Exh.227 and Cause of Death Certificate of Parvinbanu is produced at Exh.225 while the Post-Mortem Report is produced at Exh.220. It is deposed by him that the dead body was of young girl aged about 12 years. The Post-Mortem of Parvinbanu was conducted on 02.03.2002 at 2.05 P.M. till 3.15 P.M. There were 3rd degree burns over right upper limb, left upper limbs, pale, right anterior chest, right lateral abdomen, left lateral chest and burns over back with post chest. 3rd degree burns were scatters over face, right lower leg, right dorsal Further, there were carbon particles present in the nose and trachea. Right ventricle was full and left was empty. As per the say of Dr.P.P.Soni, cause of death was shock due to extensive

burns. The documents which are produced by Dr.P.P.Soni supports the say of Dr.Soni. This witness is cross-examined at length about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns injuries. Inquest Panchnama of Parvinbanu, produced at Exh.223 supports the say of this witness. As per F.S.L. Report in respect of Muddamal Article Nos.9/1 and 9/2, which are the clothes of Parvinabanu, smell of kerosene was coming from said Muddamal Articles.

The prosecution has relied upon the deposition of **P.W.3 - Dr.Babubhai Nathubhai Chaudhari**, who is examined at Exh.233 and from his deposition and Post-Mortem Report, it appears that there was a mistake in identification of dead body of Zayadabanu Ibrahimmiya Rasulmiya instead of Ruksanabanu Ibrahimmiya Rasulmiya Shaikh and accordingly, it is amended and it is produced vide Exh.236.

The Inquest Panchnama of Zayadabanu, produced at Exh.223, supports the say of witness. As per F.S.L. Report

in respect of muddamal article Nos.4/1 and 4/2, which are the clothes of Zayadabanu, smell of kerosene was coming from the said Muddamal Articles.

P.W.4 - Dr.Ishvarsinh Ratansinh Solanki, who is examined at Exh.244 had performed the Post-Mortem of Yunushusen Sherumiya Rasulmiya and his Post-Mortem Report is produced at Exh.245, Posthumous Form at Exh.246 and Cause of Death Certificate is produced at Exh.247. It is deposed by him that the dead body was of male child about the age of 12 to 13 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 15.25 hours. It is deposed by the doctor that there was a tattoo mark over the body, the teeth was intact, the body was fairly built, rigor mortis was present all over the body, P.M. lividity was not detected, eye lid slightly open with eye lashes burnt, fact stain with black sooty particles, mouth cavity slightly open, teeth intact, blood staining seen in both nostril and ear was intact - right ear pina burnt. There were 3rd degree burns over both leg below knee joint with skin charred over burnt area. There were also deep burns over right hand with finger tips lost. 3rd degree burns over hand dorsal aspect, 3rd degree burns over face mouth

towards right cheek and right supra orbital region with hair singeing over scalp. 3rd degree burns over front part left side of chest about 5 cm diameter and right ear pina burnt. All the injuries were ante mortem, there were carbon particles present in trachea and larynx, all the four chambers of heart were filled with blood. As per the say of Dr.I.R.Solanki, cause of death was due to burns with asphyxia due to suffocation. Documents produced by this witness supports his version. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns.

On perusal the Inquest panchnama of Yunushusen Sherumiya Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report in respect of muddamal article Nos.21/1 and 21/2 which are the clothes (shirt and pant) of Yunushusen, there was smell of kerosene coming from the said Muddamal articles.

Dr.Ishwarbhai Ratansinh Solanki had also performed the Post-Mortem of another deceased namely, Arifhusen

Manubhai Shaikh. Post-Mortem Report of the deceased is produced at Exh.248, Posthumous Form at Exh.249 and Cause of Death Certificate is produced at Exh.250. It is deposed by him that the dead body was of Muslim male aged about 13-14 years. The Post-Mortem was conducted on 02.03.2002 at about 14.15 hours to 16.30 hours. It is deposed by the doctor that the body was fairly built and cold. Some smoke and dust present over face and in front of chest. Two both tooth mouth cavity slightly open up, teeth and nose intact. 3rd degree burns over right cheek towards right ear. 3rd degree burns over both palm and towards wrist. All the injuries were ante mortem. Carbon particles were present in trachea and larynx with congestion. All four chambers filled with blood. As per the say of Dr.Solanki, cause of death was due to shock due to asphyxia and burns.

On perusal of the documents which are produced by Dr.Solanki, it supports his version. In the cross-examination much has been asked about the burns but from the whole cross examination, nothing has come out from which we can come to conclusion that there were no burns or death has not been caused due to burns. On

perusal the Inquest Panchnama of Arifhusen Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report, Muddamal Article Nos.22/1 and 22/2, which are the clothes (shirt and pant) of Arifhusen, there was smell of kerosene coming from the said Muddamal Articles.

P.W.5 - Dr.Prakshbhai Laxmandas Shah is examined on oath at Exh.252, who has performed the Post-Mortem of deceased namely: Sultanbhai Mahemudmiya Shaikh. Post-Mortem Report of the deceased is produced at Exh.253, Posthumous Form at Exh.254 and Cause of death Certificate is produced at Exh.255. It is deposed by him that the dead body was of male child aged about 7 years. The Post-Mortem was conducted on 02.03.2002 at about 14.15 hours to 15.25 hours. It is deposed by the doctor that the body was normal and cold. Both eyebrows were burnt. Nostrils burnt. Both ears burnt. Long hairs seen on the head. The hairs were twisted with each other. Right face burnt and skin of face had turned black due to burns. Left face skin was more severe and desquamated from face, base red. Both upper limbs - level shoulder to wrist joint burnt and scattered desquamated skin. There were 3rd degree burns seen. Both hand fingers and thumbs, both hands bend towards head, chest, abdomen not burnt. Back region

black due to the burns. Both lower limbs, hip joint to ankle joint, skin black in colour and desquamated. It suggest 3rd degree burns, left foot burnt blackish and toes are full burnt. Foot bend (flexion). Right foot burnt and black in colour in comparison with left foot. All the injuries were ante mortem. Carbon particles present in trachea. As per the say of Dr.P.L.Shah, cause of death due to severe burns with asphyxia and due to suffocation.

On perusal of the documents which are produced by Dr.Shah, it supports the say of Dr.Shah. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, when we peruse the Inquest Panchnama of Sultanbhai Mahemudmiya Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report in muddamal article No.17/1 and 17/2 which was the clothes of Sultanbhai, smell of kerosene was coming from the clothes.

P.W.5 - Dr.Prakshbhai Laxmandas Shah has also performed the Post-Mortem of another deceased namely:

Javedmiya Mustumiya Shaikh. Post-Mortem Report of the deceased is produced at Exh.256, Posthumous Form at Exh.257 and Cause of Death Certificate is produced at Exh.258. It is deposed by him that the dead body was of male child aged about 4 years. The Post-Mortem was conducted on 02.03.2002 at about 14.15 hours to 16.50 hours. It is deposed by the doctor that both eyes, eyebrows were burnt, Mouth, both nasal were burnt, Right face burnt and blackish in colour. In few parts of face abrasion. There were 3rd and 1st degree burns. The right upper limb was bent at elbow joint towards face, chest and abdomen. Both knee joints - skin cover were out after burns. Scattered skin was coming out from both lower limbs and on back region black skin. All the injuries were ante mortem. Carbon particles were present in trachea and larynx. As per the say of Dr.P.L.Shah, cause of death was asphyxia due to burns and suffocation. On perusal of the documents which are produced by Dr.Shah, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of

Javedmiya Mustumiya Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report, smell of kerosene was coming from the hairs of the deceased.

P.W.6 - Dr.Shailshkumar Shivabhai Patel has performed the Post-Mortem of deceased namely: Rasidabanu Jamalbhai Shaikh. Post-Mortem Report of the deceased is produced at Exh.263, Posthumous Form at Exh.264 and Cause of Death Certificate is produced at Exh.265. It is deposed by him that the dead body was of female aged about 35 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 15.20 hours. It is deposed by the doctor that the body of the deceased was well built, well nourished and cold. Back of body was burnt. The eyes were closed, teeth were seen, mouth was semi open, tongue inside the mouth cavity and there was no ENT discharge. There were 3rd degree burns on scalp forehead, neck. Both pina burnt. Black particles seen in ear canal. 3rd degree burns on whole chest region. 3rd degree burns on left arm, forearm and hand. 3rd degree burns on anteriors. Surface of right arm, forearm and hand. Deep burns on posteriors surface of right arm and shoulder. 3rd degree burns on anteriors side of both thigh up to knee joint. 3rd degree burns, antro medial side of right leg of

middle part. 3rd degree burns on back of chest, abdomen and on buttock. The above injuries were ante mortem. There were burnt hair on scalp. Both pina were burnt. 3rd degree burns on whole chest region. Carbon particles present in trachea and larynx. All chambers filled with blood. As per the say of Dr.S.S.Patel, cause of death was shock due to extensive burns. On perusal of the documents which are produced by the Dr.S.S.Patel, it supports his say. In the cross examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, when we peruse the Inquest Panchnama of Rasidabanu Jamalbhai Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report, from Mark 15/1, 15/2 and 15/3, which were the clothes of Rasidabanu, there was smell of kerosene coming from the clothes.

P.W.6 - Dr.Shaileshkumar Shivabhai Patel had performed the Post-Mortem of another deceased namely: Idrishbhai Akbarbhai Shaikh. Post-Mortem Report of the deceased is produced at Exh.266, Posthumous Form at Exh.267 and Cause of Death Certificate is produced at

Exh.268. It is deposed by him that the dead body was of male boy aged around 19 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 16.30 hours. It is deposed by the doctor that the body was well built, well nourished and cold. Lividity seen on back of abdomen, back of chest and buttocks. The mouth of the body was semi open, eyes closed, upper teeth seen, tongue inside mouth cavity and nasal watery discharge. It is the further say of the witness that abrasion on front forehead 4 X 2 Cm. transversally. Deep burns from left shoulder to left elbow joint on dorsal surface. Deep burns on dorsal surface of left hand. 3rd degree burns on ventral surface of left arm, forearm and hand. 3rd degree burns on right hand. 3rd degree burns on anterior abdominal wall from lower end of sternum to umbilicus. 3rd degree burns on antrolateral and posterior side of left thigh. There were hair singeing over scalp. Carbon particles were present in trachea and larynx. All chambers were full with blood. Further, 50 cc urine present in bladder. As per the say of Dr.S.S.Patel, cause of death was shock and asphyxia due to burns and suffocation. On perusal of the documents which are produced by the Dr.S.S.Patel, it supports his say. In the cross-examination much has been asked about the burns

but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Idrishbhai Akbarbhai Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report, from Mark 10/1 and 10/2, which were the clothes of Idrishbhai, there was smell of kerosene coming from the clothes.

P.W.7 - Dr.Anju Muljibhai Parmar has performed the Post-Mortem of deceased namely Mahemudabibi Sherumiya Rasulmiya Shaikh. Post-Mortem Report of the deceased is produced at Exh.272, Posthumous Form at Exh.273 and Cause of Death Certificate is produced at Exh.274. It is deposed by her that the dead body was of female aged about 30 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 15.00 hours. It is deposed by the doctor that the clothes were stained with smoke and sand. The body of the deceased was averagely built and averagely nourished and cold. Eyes were closed, mouth closed, tongue inside the mouth, teeth not seen, no discharge from nostrils, ears were open and there was no discharge from ears. Hairs were singing over the scalp. 3rd degree burns were there on face and on both

forearms and hands. There were 2nd degree burns on legs and feet as well as abrasion on right knee and 3rd degree burns on back and 1st degree burns on chest. It is the say of the witness that all the injuries were ante mortem. Black sooty carbon particles present in trachea and larynx. All chambers full with blood. Fiscal material with gas present in intestine. 50 CC urine present in bladder. In the uterus, transverse scar was present over the anterior abdominal wall. Uterus was absent. As per the say of Dr.A.M.Parmar, the cause of death was shock due to burns with suffocation. On perusal of the documents which are produced by the Dr.A.M.Parmar, it supports her say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Mahemudabibi Sherumiya Rasulmiya Shaikh at Exh.223, it supports the say of the witness. As per F.S.L. Report, from Mark 25/1 and 25/2, which were the clothes of Mahemudabibi smell of kerosene was coming from the clothes.

P.W.7 - Dr.Anju Muljibhai Parmar had also performed the Post-Mortem of another deceased namely Vahidabanu Nazirbhai Akbarmiya Shaikh. Post-Mortem Report of the deceased is produced at Exh.275, Posthumous Form at Exh.276 and Cause of Death Certificate is produced at Exh.277. It is deposed by her that, the dead body is of Muslim female, aged about 24 years The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 16.00 hours. It is deposed by the doctor that the clothes were stained with smoke and sand. The body was moderately built and nourished and cold. It is the say of the witness that the hairs were singeing over scalp. There were 3rd degree burns on face and over both forearms and hands. 2nd degree burns on both legs and feet. skin charred on right leg. There were 3rd degree burns also on the left buttock. All the injuries were ante mortem. Black sooty carbon particles were present in trachea and larynx. All chambers were full with blood and congested Faecal material with gas present in intestine. There was non gravid uterus. Further, 50 cc urine present in bladder. As per the say of Dr.A.M.Parmar, the cause of death was shock due to burns and suffocation. On perusal of the documents which are produced by the Dr.A.M.Parmar, it supports her say. In the cross

examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Vahidabanu Nazirbhai Akbarbhai Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, from Mark 2/1 and 2/2, which were the clothes of Vahidabanu, smell of kerosene was coming from the clothes.

P.W.8 - Dr.Nilima Ajaybhai Talvelkar had performed the Post-Mortem of deceased namely Bismillabanu Bhikhumiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.279, Posthumous Form at Exh.280 and Cause of Death Certificate is produced at Exh.281. It is deposed by her that, the dead body is of Muslim female aged about 40 years. The Post-Mortem was conducted on 02.03.2002 14.05 hours to 16.00 hours. It is deposed by the doctor that the clothes were blackish and stained. The body was moderately built, nourished and cool. The deceased had sustained injury such as Abrasion 4 x 2 Cm. over right cheek. Abrasion 2 x 2 Cm. over nose.

Slight 1st burns over right leg and skin curled up. Both sole of feet were blackish and unburnt. Both hand unburnt. It is the say of the witness that all the injuries were ante mortem. Brain tissues and meninges congested. Black sooty carbon particles present in nasopharynx, trachea and larynx. Dark red colour blood had come out on cut section and were also present on cut section. Gas and Faecal material with gas present in intestine. 30- 50 ml. urine present in bladder. As per the say of Dr.N.A.Talvelkar, the cause of death was shock due to asphyxia and due to suffocation. On perusal of the documents which are produced by the Dr.N.A.Talvelkar, it supports her say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Bismillabanu Bhikhumiya Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, from mark 12/1 and 12/2, smell of kerosene was coming from the body of the deceased.

P.W.9 - Dr.Kokilaben Maganbhai Solanki had

performed the Post-Mortem of deceased namely Barubibi Babumiya Motumiya. The Post-Mortem Report of the deceased is produced at Exh.284, Posthumous Form at Exh.285 and Cause of Death Certificate is produced at Exh.286. It is deposed by the doctor that the dead body is of Muslim female aged about 50 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 15.00 hours. It is deposed by the doctor that the clothes were stained with smoke, sand and blood. The body was moderately built, nourished and cold. The deceased had sustained injury such as 1st to 2nd, 3rd degree burns in both hands and foot region. 1st degree burns on face, neck and front of chest. Contused Lacerated wounds admeasuring 4 cm X 1 cm X scalp deep on right side of forehead region. It is the say of the witness that all the injuries were ante mortem. The hair singeing over scalp and blood stained were about 1 foot in size. Brain congested. Carbon particles were present in trachea and larynx. Heart congested and was full with blood. Gas and Faecal material with gas present in intestine. 50 CC urine present in bladder. There was no gravid uterus. As per the say of Dr.K.M.Solanki, the cause of death was shock due to burns and suffocation. On perusal of the documents which are

produced by the Dr.K.M.Solanki, it supports her say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, On perusal of the Inquest Panchnama of Barubibi Babumiya Motumiya, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in Muddamal article Mark 18/1 and 18/2, smell of kerosene was coming from the clothes of the deceased.

P.W.9 - Dr.Kokilaben Maganbhai Solanki had also performed the Post-Mortem of another deceased namely Faridabanu Mahebubbhai Shaikh. The Post-Mortem Report of the deceased is produced at Exh.287, Posthumous Form at Exh.288 and Cause of Death Certificate is produced at Exh.289. It is deposed by the doctor that the dead body is of Muslim female aged about 25 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 16.05 hours. It is deposed by the doctor that the hairs were stained with blood about 1 foot in size and singing partly. The clothes were stained with smoke and sand. The body was moderately built, nourished and cold. Rigor mortis

present on all over body. The deceased had sustained injuries such as 1st to 2nd degree burns on face, both hands and both legs. 1st Degree burns on neck, front of chest, abdomen and both foot region, Contused Lacerated Wound on middle of forehead about 4 cm X 1cm x scalp deep. Contused Lacerated Wound on right temporal region 4 cm X 1 cm x scalp deep. All the injuries were ante mortem. Brain was congested. Carbon particles present in trachea and larynx. Heart is congested and full with blood. Faecal material with gas present. 50 CC urine present. Non gravid uterus. As per the say of Dr.K.M.Solanki, the cause of death was shock due to severe burns. On perusal of the documents which are produced by the Dr.K.M.Solanki, it supports her say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, On perusal of the Inquest Panchnama of Faridabanu Mahebubhai Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in muddamal article Mark 6/1 and 6/2, smell of kerosene was coming from the clothes of the deceased.

P.W.10 - Dr.Sangeetaben Kailaschandra Jain had performed the Post-Mortem of deceased namely Ruksanabanu Abbasmiya Kesarmiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.291, Posthumous Form at Exh.292 and Cause of Death Certificate is produced at Exh.293. It is deposed by the doctor that the dead body is of Muslim female aged about 35 years. The Post-Mortem was conducted on 02.03.2002 from 14.05 hours to 16.00 hours. It is deposed by the doctor that the body was cold, well built and nourished. 1st to 3rd degree burns over left leg and below knee of left leg. Both sole were black and burnt. Both hands were unburnt. The injuries were ante mortem. Brain tissues were congested. Black carbon particles present in nasopharynx, trachea and larynx. Heart was congested and full of blood. Dark red blood present in heart on cut section. Gas and Faecal material with gas present in intestine. 30.50 ml urine present in bladder. There was no gravid uterus. As per the say of Dr.S.K.Jain, the cause of death was shock and asphyxia due to burns and suffocation. On perusal of the documents which are produced by the Dr.S.K.Jain, it supports her say. In the

cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Ruksanabanu Shaikh produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in muddamal article Mark 4/1 and 4/2, there were smell of kerosene coming from the clothes of the deceased.

P.W.11 - Dr.Alkaben Dungarbhai Patel had performed the Post-Mortem of deceased namely Mumtazbanu, W/o.Makbulhusen Kesarmiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.296, Posthumous Form at Exh.297 and Cause of Death Certificate is produced at Exh.298. It is deposed by the doctor that the dead body is of Muslim female aged about 30 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 15.00 hours. It is deposed by the doctor that the clothes of the deceased were stained with smoke and sand. The body was cold, averagely built and averagely nourished. The deceased had sustained 3rd degree burns over external genitals. Singing of scalp hair were seen. 3rd degree burns on face, neck and on chest and

back. 3rd degree burns on both UL and on both LL. 3rd degree burns on external genitals. All the injuries were ante mortem. Brain congested. Black sooty carbon particles present in trachea and larynx. The heart is full with blood and congested. Gas and Faecal material with gas present in intestine. 50 CC urine present in bladder. There was no gravid uterus. As per the say of Dr.A.D.Patel, the cause of death was shock due to extensive burns . On perusal of the documents, which are produced by the Dr.A.D.Patel, it supports her say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose,on perusal of the Inquest Panchnama of Mumtazbanu Makbulhusen Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in muddamal article No.11/1, 11/2 and 11/3, smell of kerosene was coming from the clothes of the deceased.

P.W.11 - Dr.Alkaben Dungarbai Patel had performed the Post-Mortem of deceased namely Mumtazbanu Sherumiya Shaikh. The Post-Mortem Report of the

deceased is produced at Exh.299, Posthumous Form at Exh.300 and Cause of Death Certificate is produced at Exh.301. It is deposed by the doctor that the dead body is of female aged about 24 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 16.00 hours. It is deposed by the doctor that clothes were stained with smoke and sand. The body was average built, average nourished and cold. White froth was discharging from Nostril. There was singeing of scalp hair. 3rd degree burns on face. Abrasion on forehead. 3rd degree burns on both forearm and hands, abrasion on left arm, 2nd degree burns on both feet, abrasion on just below the right knee and 1st degree burns on front of chest. All the injuries were ante mortem. Brain congested. There were black sooty carbon particles present in trachea and larynx. Heart full with blood and congested. Faecal material and gas present and 50 Cc urine present. As per the say of Dr.A.D.Patel, the cause of death was shock due to burns with suffocation. On perusal of the documents which are produced by the Dr.A.D.Patel, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death

has not caused due to burns. For this purpose, on perusal the Inquest Panchnama of Mumtazbanu Sherumiya Shaikh produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the Muddamal article at Mark 20/1 and 20/2, there were smell of kerosene coming from the clothes of the deceased.

P.W.12 - Dr.Prakash Pravinbhai Patva had performed the Post-Mortem of deceased namely Joharabanu Manubhai Shaikh. The Post-Mortem Report of the deceased is produced at Exh.303, Posthumous Form at Exh.304 and Cause of Death Certificate is produced at Exh.305. It is deposed by the doctor that the dead body is of a female aged about 40 years. The Post-Mortem was conducted on 02.03.2002 from 14.05 hours to 16.00 hours. It is deposed by the doctor that there was smell of kerosene from the clothes of the deceased as per the Column No.8 of the Post-Mortem Report and that the colour of the clothes had turned blackened. The body of the deceased was averagely built, nourished and that the body was cool. The face was burnt. The hair over the forehead was showing 1st, 2nd and 3rd degree burns over face, both shoulder, forearm, arm with epilation, epidermis over some burns

were found in the body of the deceased. Both sole of the foot and hand were unburnt. Redness seen over burnt area. It is the say of the witness that all the above injuries were ante mortem. Black sooty carbon particles were present inside chest, Nasopharynx, Trachea, Larynx were congested. On dissection, dark red blood had come out from the heart. There was dark red colour present in the heart. As per the say of Dr. Prakash Pravinbhai Patva, the cause of death was shock due to burns with suffocation. On perusal of the documents which are produced by the Dr.Prakash Pravinbhai Patva, it supports his say. In the cross- examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, On perusal of the Inquest Panchnama of Joharabanu Manubhai Shaikh produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the Muddamal article at Mark 7/1 and 7/2, smell of kerosene was coming from the clothes of the deceased.

P.W.13 - Dr.Kantilal Babaldas Patel had performed the Post-Mortem of deceased namely Husenabibi

Hizbulmiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.309, Posthumous Form at Exh.310 and Cause of Death Certificate is produced at Exh.311. It is deposed by the doctor that the dead body is of a female aged about 23 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 15.45 hours. It is deposed by the doctor that the body of the deceased was burnt and it was adhered to the clothes. The body of the deceased was averagely built, nourished and fair and cold. The body of the deceased was disfigured due to extensive burns. There were 1st to 4 degree burns all over the body. The scalp hair was singeing. It is the say of the witness that all the above injuries were ante mortem. Black sooty carbon particles were present inside **Nasopharynx, and Trachea.** Heart was congested. Right side was full, left side was empty. There was fluid blood. As per the say of Dr. K.B.Patel, the cause of death was shock due to extensive burns. On perusal of the documents which are produced by the Dr.K.B.Patel, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this

purpose, On perusal of the Inquest Panchnama of Husenabibi Hizbulmiya Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the muddamal article at Mark 23/1, smell of kerosene was coming from the clothes of the deceased.

P.W.14 - Dr.Bharatkumar Babubhai Solanki had performed the Post-Mortem of deceased namely Rifakathusen Hizbulmiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.313, Posthumous Form at Exh.314 and Cause of Death Certificate is produced at Exh.315. It is deposed by the doctor that, the dead body was of a boy aged about 5 years. The Post-Mortem was conducted on 02.03.2002 from morning 14.10 hours to 15.30 hours. It is deposed by the doctor that the clothes were stained and were blacken due to smoke. The body of the deceased was fairly built and cold. There were 1st to 3rd degree burns all over the body except penis scrotum. It is the say of the witness that all the above injuries were Antemortem. Blackish carbon particles present in Nasophaynx, and Trachea. The left chamber of the heart was empty. As per the say of Dr.B.B.Solanki, the cause of death of the deceased was shock due to extensive burns. On perusal of the documents, which are produced by the

Dr.B.B.Solanki, supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Rifakathusen Hizbulmiya Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the Muddamal article at mark 5/1 and 5/2, smell of kerosene was coming from the clothes of the deceased.

P.W.15 - Dr.Jagdishkumar Khodabhai Solanki had performed the Post-Mortem of deceased namely Manubhai Husenbhai Shaikh. The Post-Mortem Report of the deceased is produced at Exh.318, Posthumous Form at Exh.319 and Cause of Death Certificate is produced at Exh.320. It is deposed by the doctor that the dead body was of male aged about 40 years The Post-Mortem was conducted on 02.03.2002 from 14.05 hours to 15.45 hours. It is deposed by the doctor that the clothes were blackish and were blood stained. The body of the deceased was well built, well nourished and body was cold. There were clotted blood with blackish discharge from mouth and both nostril.

There were 1st to 3rd degree burns over right upper limbs, left upper face and forehead. There were abrasion of 2 cm X 2 cm over right leg anterior oblique. It is the say of the witness that all the above injuries were Antemortem. Blood stained frothy fluid and carbon particles present in nose, nasopharynx and trachea. Both chambers of the heart were full of blood and that the colour of blood was cherry red. As per the say of Dr.J.K.Solanki, the cause of death of the deceased was shock due to burns with asphyxia due to suffocation. On perusal of the documents which are produced by the Dr.J.K.Solanki, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, when we peruse the Inquest Panchnama of Manubhai Husenbhai Shaikh produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the Muddamal article at Mark 16/1 and 16/2, smell of kerosene was coming from the clothes of the deceased.

P.W.16 - Dr.Vijaykumar Vitthalbhai Oza had performed the Post-Mortem of deceased namely Bachumiya

Nathumiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.323, Posthumous Form at Exh.324 and Cause of Death Certificate is produced at Exh.325. It is deposed by the doctor that the dead body was of male aged about 55 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 15.30 hours. It is deposed by the doctor that the clothes were stained with blood. The body of the deceased was well built, well nourished and cool. The deceased had sustained 1st to 2nd and 3rd degree burns on back of right hand. Fracture at lower ends of right radius and ulna bones. There were 1st, 2nd and 3rd degree burns on left forearm and left fingers. There were fracture of left index finger and left fingers. Fracture at vertex of the skull. It is the say of the witness that all the injuries were ante mortem. Carbon particles were present in trachea. All the chambers of the heart were filled with blood. As per the say of Dr.V.V.Oza, the cause of death of the deceased was shock due to burns and head injuries. On perusal of the documents which are produced by the Dr.V.V.Oza, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no

burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Bachumiya Nathumiya Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the muddamal article at Mark 8/1 and 8/2, smell of kerosene was coming from the clothes of the deceased.

P.W.16 - Dr.Vijaykumar Vitthalbhai Oza had also performed the Post-Mortem of another deceased namely :- Sherumiya Rasulumiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.326, Posthumous Form at Exh.327 and Cause of Death Certificate is produced at Exh.328. It is deposed by the doctor that the dead body of male aged about 40 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 16.45 hours. It is deposed by the doctor that the clothes were stained with blood. The body of the deceased was well built, well nourished and cool. The deceased had sustained 1st to 2nd and 3rd degree burns at the left knee. There were 1st to 2nd and 3rd degree burns at right ear, back of neck, left index finger and right and 1st and 2nd fingers, on back of chest, abdomen and gluteal region. All the injuries were ante mortem. Carbon particles were present in trachea and

larynx. As per the say of Dr.V.V.Oza, the cause of death was shock due to burns and suffocation. On perusal of the documents which are produced by the Dr.V.V.Oza, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to the conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Sherumiya Rasulmiya Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the muddamal article at Mark 13/1 and 13/2, smell of kerosene was coming from the clothes of the deceased.

P.W.16 - Dr.Vijaykumar Vitthalbhai Oza had also performed the Post-Mortem of another deceased namely Sherumiya Rasulumiya Shaikh. The Post-Mortem Report of the deceased is produced at Exh.326, Posthumous Form at Exh.327 and Cause of Death Certificate is produced at Exh.328. It is deposed by the doctor that the dead body was of a male aged about 40 years. The Post-Mortem was conducted on 02.03.2002 from 14.15 hours to 16.45 hours. It is deposed by the doctor that the clothes were stained

with blood. The body of the deceased was well built, well nourished and cool. The deceased had sustained 1st to 2nd and 3rd degree burns at the left knee. There were 1st to 2nd and 3rd degree burns at right ear, back of neck, left index finger and right and 1st and 2nd fingers, on back of chest, abdomen and gluteal region. All the injuries were ante mortem. Carbon particles were present in trachea and larynx. As per the say of Dr.V.V.Oza, the cause of death was shock due to burns and suffocation. On perusal of the documents which are produced by the Dr.V.V.Oza, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to the conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Sherumiya Rasulmiya Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the muddamal article at Mark 13/1, 13/2 and 13/3, there was smell of kerosene coming from the clothes of the deceased.

P.W.17 - Dr.Arvind Kantilal Kapadia had performed the Post-Mortem of deceased namely Abbasmiya Kesarmiya

Shaikh. The Post-Mortem Report of the deceased is produced at Exh.332, Posthumous Form at Exh.333 and Cause of Death Certificate is produced at Exh.334. It is deposed by the doctor that the dead body was of Muslim male aged about 40 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 15.10 hours. It is deposed by the doctor that the body of the deceased was averagely well built, well nourished and cold. There were 1st, 2nd and 3rd degree burns all over the body. Both chambers of the heart were full of blood. As per the say of the Dr.A.K.Kapadia, the cause of death was shock due to extensive burns. On perusal of the documents which are produced by Dr.A.K.Kapadia, it supports his say. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to the conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Abbasmiya Kesarmiya Shaikh produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the muddamal article at Mark 27/1 and 27/2, smell of kerosene was coming from the clothes of the deceased.

P.W.17 - Dr.Arvind Kantilal Kapadia had also performed the Post-Mortem of another deceased namely:- Raziabanu, D/o. Ibrahimbhai Rasulbhai Shaikh. The Post-Mortem Report of the deceased is produced at Exh.335, Posthumous Form at Exh.336 and Cause of Death Certificate is produced at Exh.337. It is deposed by the doctor that the dead body was of female aged about 18 years. The Post-Mortem was conducted on 02.03.2002 from 14.10 hours to 16.15 hours. It is deposed by the doctor that the body of the deceased was average, well built, nourished and cold. The deceased had sustained contusion on forehead region medically 3 cm. x 2 cm. 1st, 2nd and 3rd degree burns all over the body. Both the chambers of the heart were full of blood. As per the say of the Dr.A.K.Kapadia, the cause of the death was shock due to extensive burns. On perusal of the documents which are produced by the Dr.A.K.Kapadia, it supports the say of Dr.Kapadia. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to conclusion that there were no burns or death has not caused due to burns. For this purpose, on perusal of the Inquest Panchnama of Raziabanu, D/o.Ibrahimmiya

Shaikh, produced at Exh.223, it supports the say of the witness. As per F.S.L. Report, in the muddamal article at Mark 26/1 and 26/2, smell of kerosene was coming from the clothes of the deceased.

P.W.18 - Dr.Vinayakrao Vasudev Patil had performed the Post-Mortem of deceased namely Abedabanu Manubhai Shaikh. The yadi is produced at Exh.340, the Post-Mortem Report of the deceased is produced at Exh.341, Posthumous Form at Exh.336 and Cause of Death Certificate is produced at Exh.337. It is deposed by the doctor that the dead body was of a Muslim female aged about 10 years. The Post-Mortem was conducted on 02.03.2002 from 00.10 hours to 02.00 hours. It is deposed by the doctor that the body of the deceased was averagely well built, well nourished and that the temperature of the body was of room temperature. The deceased had sustained injuries which are 1st degree thermal burns present on left forearm and elbow up to the dorsum of wrist, margins of the wound were inflamed and reddened. All the injuries were ante mortem. Chest was congested and inflamed. Trachea, larynx and lower respiratory tract were inflamed. Both lungs were congested. On the left side of

lung, there was cut section from where the reddish blood stained forth was coming out. Stomach was empty. As per the say of Dr.Patil, the cause of death was due to burns and its complications (hot smoke injury to lungs). On perusal of the documents which are produced by the Dr.V.V.Patil, it supports his say. In the cross- examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to the conclusion that there were no burns or death has not caused due to burns. For this purpose, Inquest Panchnama of Abedaben Manubhai Shaikh is produced at Exh.712, it supports the say of the witness.

P.W.19 - Dr.Dharmesh Somabhai Patel had performed the Post-Mortem of deceased namely Rafikbhai Manubhai Shaikh. The Post-Mortem Report of the deceased is produced at Exh.345, Posthumous Form at Exh.346 and Cause of Death Certificate is produced at Exh.347. It is deposed by the doctor that the dead body was a male aged about 12 years. The Post-Mortem was conducted on 02.03.2002 from 11.15 hours to 12.00 hours. It is deposed by the doctor that there was no cloth on the body of the deceased. Skin was burnt at various places. The deceased had sustained injuries such as (1) Base of burns are red in

colour of places, (2) Both palm and soles have 1st to 2nd degree burns and burns were present on face, (3) front of chest, front of abdomen, both thigh and (4) about 36 to 40 percent of total surface area were burnt. All the injuries were ante mortem in nature. Carbon soot mixed with material present in trachea. Both lungs, Heart and blood vessels were congested. Blood is fluid in quality and is of cherry red in colour. As per the say of the Dr. D.S.Patel the reason of death was due to shock as a result of burns. On perusal of the documents which are produced by the Dr.D.S.Patel it supports the say of Dr.Patel. In the cross-examination much has been asked about the burns but from the whole cross-examination, nothing has come out from which we can come to the conclusion that there were no burns or death has not caused due to burns.

P.W.19 - Dr.Dharmesh Somabhai Patel had also performed the Post-Mortem of another deceased namely Firoz Mahemudhusen Shaikh. The Post-Mortem Report of the deceased is produced at Exh.348, Posthumous Form at Exh.349, Cause of Death Certificate is produced at Exh.350 and Yadi 351. It is deposed by the doctor that the dead body was of a child (male) aged about 8 months. The Post-Mortem was conducted on 02.03.2002 during 11.00

hours to 12.00 noon. It is deposed by the doctor that there were no cloth on the dead body. The dead body was averagely built and nourished. Dead body is cold. It is the say of the witness that the deceased had sustained (1) Contused Lacerated Wounds present on the left side of head on the left front- temporal region. The C.L.W. is surgically stitched bearing size 3 x 3 x 1 cm. (2) Bases of the burns were red in colour at the place on dead body, (3) 1st to 2nd degree burns present on the head, face, neck, back of chest and abdomen and on both thighs and (4) About 36 to 40 % burns present on the body surface area. All the injuries were ante mortem. Carbon soot mixed with other material present in trachea. Both the lungs were congested and oedematous. Heart and blood vessels were also congested and that the blood was cherry red in colour. It was dark and fluid. As per the say of the Dr. D.S.Patel , the reason of death was due to shock as a result of burns. On perusal of the documents which are produced by the Dr.D.S.Patel it supports his say. In the cross-examination much has been asked about the burns but from the whole cross- examination, nothing has come out from which we can come to the conclusion that there were no burns or death has not caused due to burns. For this purpose,

Inquest Panchnama of Firoz Mahemudhusen Shaikh is produced at Exh.357 and it supports the say of the witness. As there were no clothes on the body of the deceased, there is no F.S.L. Report.

P.W.95 - Bihola Vikramsinh Narsinh, who is serving in the Kagadapith Police Station. At the time of incident, he was in Shahibaug police station, he was present in the Civil Hospital, and he received a message that Firoz Mahemoodhusen Shaikh, aged about 8 Months was brought to the hospital due to burn injury, in the incident occurred in Sardarpur, Ta.Vijapur, Dist.Mahesana, who was declared dead, at about 12:30. EPR No. 290/6/02, was posted, and Inquest Panchnama of Firoz Mehmoodhusen Shaikh was done in the presence of panchas, which is produced vide Exh.357. Dead body was identified by Maqbul Husen Kesarmiya. As per his disposition, the deceased was aged about 8 Months and he had sustained head injury as well as he also sustained burn injuries in chest. He has produced Posthumous Form vide Exh.349, he also performed Inquest Panchnama of Rafikbhai Manubhai Shaikh aged about 12 Years, who was declared dead in Ahmedabad Civil Hospital on 02.03.2002 at 12:30. Inquest panchnama is produced vide Exh.359, Panchnama

was prepared in the presence of Panchas and dead body was identified by Rafik Mohamedhusen. Posthumous Form is produced vide Exh.346. Information entry is produced vide Exh. 717. For this purpose, Inquest Panchnama of Rafikbhai Manubhai Shaikh is produced at Exh.359, which has been Exhibited with consent and it supports the say of the witness. As there were no clothes on the body of the deceased, there is no F.S.L. Report.

P.W.2 - Dr.Pravinkumar Popatlal Soni has deposed on oath that the Post-Mortem of Irfanhusen Mahemudmiya Shaikh was conducted by Dr.S.H.Patel and that Dr.P.P.Soni had worked with Dr.S.H.Patel. It is also further deposed that Shri S.H.Patel had retired four years back and he can identify the writing and signature of the Dr.S.H.Patel. Post-Mortem form was brought by the police which is produced at Exh.412 and Dr.P.P.Soni has identified the signature of Dr.S.H.Patel. Post-Mortem Report and Death certificate is produced vide Exh. 412 & 414.

The Inquest panchnama of Irfanhusen Mahemudmiya Shaikh is produced at Exh.223. As per F.S.L. Report, in the muddamal article at Mark 3/1 and 3/2, there was

smell of kerosene coming from the clothes of the deceased.

Inquest Panchanama of Firoz Manubhai Shaikh is produced vide Exh.357 which was done in the presence of P.W.22 - Parmar Pravinkumar Arjanbhai and he has deposed on oath vide Exh.356 that, the Inquest panchnama of Ashiyanabanu was done in his presence at about 2.30 P.M. on 02.03.2002 at Civil Hospital, Mahesana. Two police men and father of the deceased, were present and panchnama was executed in his presence and thereafter, he had signed the Panchnama. In support of his say, he has produced the Panchnama vide Exh.357. From the cross-examination, nothing comes out from which we can deny the chief-examination.

P.W.94 - Solanki Chandansinh Nanusinh - A.S.I. has been examined vide Exh.711, who has deposed on oath that from 02.03.2002 at about 20.00 hours to 03.03.2002 upto 08.00 hours, he was at Ahmedabad Civil Hospital. On 02.03.2002, at about 21.00 hours, he received an information about the death of Abedabanu Manubhai Shaikh and therefore, he had written a Yadi to the Executive Magistrate for Inquest Panchnama and after

obtaining permission, Inquest Panchnama was prepared in the presence of panchas and dead body was identified by Imtiyazkhan Mahemudhusen Sipai, who happens to be the uncle of the deceased. In support of his deposition, he has produced Inquest Panchnama vide Exh.712. After filling the Posthumous Form, the dead body was sent for Post-Mortem and after the Post-Mortem, dead body was handed over to the relatives and he has produced the documents vide Exh.714. The documents produced vide Exh.712 and Exh.714 supports the say of this witness. Nothing comes out from the cross-examination, from which we can deny the determents made in chief-examination as well as documents produced on record.

Further when we peruse the evidence of the complainant as well as the evidence of witnesses as well as the evidence of police officers, it has come out that 28 persons have died on the spot at the place and time of the incident and rest of the four deceased died during treatment. In their deposition, complainant as well as witnesses have identified the clothes of the deceased which were sent to the F.S.L. in proper manner and the Report of F.S.L. is received, which has been Exhibited with consent.

When we peruse the deposition of P.W.110 - Vaghela Kakusinh Ranjitsinh Exh.810, who happens to be the Investigating Officer has deposed on oath that, soon as he received the message about the incident, he went to Sardarpur and the persons who were injured and the dead bodies which were brought from Mahemudmiya's house were shifted to Civil Hospital, Mahesana. Inquest panchnama of Aashiyanabanu Aashiqhusen Bachumiya was executed by A.S.I. Shri H.N.Sadhu, he received all the concerned papers and he received the cloths, recovered from the dead bodies, panchnama of scene of offence was executed by him in the presence of Panchas. Further during his investigation, he received the certificates of Abedabanu Manubhai Shaikh, Bhikhumiya Kalumiya Shaikh, Aminabibi Bachumiya Shaikh, Fatmabibi Dostmohmad Shaikh and has received Post-Mortem Reports of Manubhai Husenbhai, Parvinbanu, D/o.Ibrahim Rasulmiya, Aminabanu Mustufamiya, Asrafkhan Hizbulmiya. He has also received the Inquest Panchnama, Receipt of dead bodies handed over to their respective relatives and all the concerned documents are produced alongwith the Charge-sheet. His deposition supports the version of Medical Officers, Panchas and other witnesses.

Considering the arguments advanced on behalf of the accused as well as on behalf of the prosecution side and on perusal of the deposition and documents as well as F.S.L. Report, doctors are independent witnesses and the doctors who have performed the Post-Mortems have deposed before the Court. Not only that but the documents produced on record speaks about the same that the clothes which were taken from the dead body were sent to F.S.L. in its original condition and in F.S.L. Reports, residues of Kerosene and Hydro Carbon are found and that Report of F.S.L., supports the medical evidence therefore, the say of the medical officers in respect of homicidal death of Thirty two persons is acceptable and there is nothing in cross- examination or otherwise which can create doubt about the homicidal death of above said thirty two persons. From the deposition of witnesses alongwith the police witness, it has come out that deceased were shifted to Mahesana Civil Hospital and Post-Mortems were performed in Mahesana Civil Hospital and Post-Mortem was also performed in Ahmedabad Civil Hospital. Thus, from the above all evidences, it is proved beyond reasonable doubt that **32 persons died due to homicidal death**. It is not the say of the accused that those persons have not died.

24. So far as the death of Suhanabanu Safikmiya Shaikh is concerned, P.W.97 - Lodha Hafijbhai Nasirbhai has deposed vide Exh.725, wherein he has deposed that the burial ritual of Suhanabanu was done in his presence in the graveyard and in support of his say, he has produced the Certificate vide Exh.726. Further, he has deposed that Talati-cum-Mantri has prepared the Panchnama in his presence on 03.03.2002 which is signed by him and the same is produced vide Exh.572. Further, he has deposed that Police Inspector, Vijapur was informed about the Death of Suhanabanu and letter of Bachumiya Imammiya Shaikh, Certificate produced vide Exh.726 and Panchnama Exh.572, supports the say of the witness. There is no cross-examination of this witness. Thus, from the deposition and documents, it is proved by the prosecution that Suhanabanu Safikmiya Shaikh has died and her burial rituals was performed in the graveyard of Taluka : Ilol, District : Himmatnagar on 03.03.2002. But from the evidence on record whether her death is the result of the injuries sustained by her in the incident, it is not proved by the prosecution beyond reasonable doubt. To establish the homicidal death, it is the first and foremost duty of the prosecution to prove beyond reasonable doubt that,

deceased died due to injuries sustained in the incident and death is the result of those injuries. Here, in case of Suhanabanu, it is not proved beyond reasonable doubt by the prosecution to the best satisfaction of the court that, death of Suhanabanu Safikmiya Shaikh is the homicidal death. Therefore, I answer Point No.1 accordingly in the affirmative.

POINT NOS.2 TO 17:

25. The subject matter of all these points is so co-related and therefore, for the sake of convenience and brevity, it is desirable to discuss and decide all the points simultaneously. Hence, I am discussing and deciding all these points altogether.
26. To decide all the above points, the first and foremost requirement is to discuss about the time, date and place of the incident. As per the case of the prosecution, incident occurred in the village Sardarpur. Major portion of the incident occurred in Shaikh Maholla and that is too in Mahemudmiya's house. As per the case of the prosecution, panchnama of scene of offence was drawn in the presence of Panchas. Some articles were also recovered from the scene of offence.

On the basis of the Panchnama of the scene of offence and deposition of witnesses, map, videography and photography, it is submitted by the Spl. Prosecutor Shri Shah that it is proved by the prosecution that, in Mahemudmiya's house there was an iron door towards the back side of the house and that the iron door was in broken condition and force was used for breaking that iron door. In the second iron door there were signs of using force and finger prints were also found in the wall inside the house. It is further argued by Shri Shah that, first mob had tried to break the doors and then set on fire the line of the houses falling towards graveyard. Opposite line is just adjacent to the house of Patel Maholla and in the hinder wall of Patel Maholla houses, there were windows also. If the houses of Shaikh Maholla falling towards the hinder wall of Patel Maholla were burnt, it would have also affected the Patel Maholla. Therefore, intentionally, the line of houses of Shaikh Maholla falling towards the graveyard was set on fire.

Further, it is submitted by Spl. Prosecutor Shri Shah that as per the say of the defence, a mob came from the

backside of Mahemudmiya's house while as per the Panchnama, at first, the cabins, cycle, jeep and scooter were set on fire and thereafter, the houses falling towards the graveyard were burnt and to save their lives, persons from Shaikh Maholla went to the house of Mahemudmiya and the house of Mahemudmiya was burnt. Thus, mob came from the front side of the Maholla. From the Panchnama and deposition of panch witness, this fact gets support that the much damages are caused to the houses falling towards the graveyard while only one house in the line falling towards the hinder wall of Patel Maholla was burnt. There is normal damage to that house. It is also argued by Shri Shah that one jeep was just adjacent to that house, was also burnt by the mob, which house is only the house falling in the line towards the hinder wall of Patel Maholla. On the basis of deposition and Panchnama, Shri Shah has further argued that, there was damage in graveyard also. Muddamal articles which were recovered from the place of offence were sealed and slips of signature of panch witnesses were kept inside, which are produced vide Exh.425 to Exh.432. Muddamal has been identified by the panch witnesses in the court. Drawing the attention towards the backside of Mahemudmiya's house it is argued

by Shri Shah that, half burned pieces of wood lying there also suggest that, mob had attacked Mahemudmiya's house from the backside also. Further, it is submitted by him that the measurement of the house of Mahemudmiya was taken at the time of preparing Panchnama whereas measurement of rest of the portion was not taken. Further, it is argued by him that, while entering in the Maholla, first there is a road and from that road, Mahemudmiya's house can easily be seen and the persons standing in the Maholla can see the persons standing outside the Maholla. Mob of 1000 to 1500 persons can enter in the Maholla. Further, referring to the Panchnama produced vide Exh.424, it is argued by Shri Shah that there is one gallery in between Abbubhai's house and Bachumiya's house which is known as "Naveli".

While relying upon the deposition of panch witnesses and Videography cassette and deposition of P.W.66 - Shaikh Akbarmiya Rasulmiya, it is argued by Shri Dhruv that all these evidences show that almost all the houses of Shaikh Maholla were found ransacked and set on fire. P.W.59 - Shaikh Mohmad Sattar Bachumiya and P.W.60 - Shaikh Bachumiya Imammiya have deposed about the loot in certain houses. Further, the scooter and jeep are also found

to be set on fire in Maholla. Videography, photographs and the deposition of P.W.38 - Shaikh Inayat Husen Bachumiya and P.W.88 - Modi Hasmukhlal Thakorlal, shows that the position of front and rear side windows of the house of Mahemudmiya and the front and rear doors, residue of burnt herbage were found on the ground level near the windows of the houses of Mahemudmiya, the walls were blackened near the rear side window of the house. Further, on the basis of the depositions of the witnesses, it is argued by Shri Dhruv that, there is exclusive damage to the house of one Fakir witness, situated at the entrance of village : Sardarpur. Coming from village Sundarpur, Shaikh Maholla is situated. Besides the graveyard, at the outskirts of village: Sardarpur, shops, cabins and road of the market were also set on fire. There is no damage to the house of Muslims or Muslim Maholla, which are surrounded by the house of Patels and other Hindu community. There are two roads leading to the Shaikh Maholla. One road passes through the village to Shaikh Maholla and the other road known as Sundarpur-Kamalpur Road, coming from Sundarpur to village Kamalpur, comes after passing the house of Fakir witness and the Telephone Exchange of village. It also passes through the Mahadev temple and

graveyard. The said road leads to Rawalvas from the backside of Shaikh Maholla. It is argued by Shri Dhruv that maps prepared by Circle Inspector does not disclose the actual and real position of scene of offence. Those maps are not as per the scale and maps are prepared on the basis of Panchnama only. There is nothing to show that, those maps are prepared after verification of the spot. Except the Mahemudmiya's house, no measurement of other houses are mentioned in the map produced vide Exh.420. Names of owners of the houses are mentioned on the basis of Panchnama. No distance has been recorded by the Circle Inspector and house of Thakor Laxmanji Bhikhaji is situated in the entrance of Shaikh Maholla upto the house of Mahemudmiya in the Shaikh Maholla. No measurement has been recorded by the Circle Inspector nor the distance has been mentioned in the map. Houses in Shaikh Maholla are in two row. One on the right hand and other at the left side. Measurement between the two rows is not mentioned. It is further argued by Shri Dhruv that looking to the map, the distance between the two rows is shown to be at equal distance. While from cross-examination, it comes out that distance is not at equal distance. The distance differs at each and every house. Relying upon this fact, it is also

argued by Shri Dhruv that, Circle Inspector has not visited the scene of offence. Further, it is argued that the measurement of wall of graveyard is also not taken. Map which was prepared on 17.09.2004 shows the situation of two cabins, one handcart, scooter, jeep, two plastic cans, one cabin and cycle only and the blood stains in the house of Mahemudmiya. All these things are shown in the map on the basis of Panchnama. Further, it is argued by Shri Dhruv that actual position of iron rods in the windows of Mahemudmiya's house as well as the actual position of walls of Mahemudmiya's house are also not shown properly. Even the houses were ransacked and burnt and that condition is not shown in Exh.420. Further, distance between the house of witness Sabirhusen Imamhusen and Shaikh Maholla is not mentioned in the map. The map does not reflect all the roads of the village. Thus, it is argued by Shri Dhruv that maps are prepared only on the basis of Panchnama. Witness had not visited the place and it does not reflect the real and correct position of scene of offence immediately after the incident therefore, those maps cannot be relied upon.

Considering the arguments advanced on behalf of

both the sides as well as on perusal of the depositions, Panchnama as well as keeping in mind the settled proposition of law, I would like to discuss first about the map produced vide Exh.420 and 421. Both the maps are produced in the deposition of Circle Inspector.

P.W.37 - Sathwara Babubhai Khodidas has been examined vide Exh.418 who has deposed that on 07.08.2003, he was posted as Circle Officer and till the year 2006, he was Circle Officer and on 30.06.2008, he retired from the said job. It is the say of the witness that when he was present at Vijapur at that time, he received a police reminder for making map of the incident occurred at village : Sardarpur, on 19.07.2004. It is the further say of the witness that when he went for preparing the map, he took the Panchnama alongwith him and also called two panchs of village : Sardarpur namely : Prajapati Babubhai Ganeshbhai and Revabhai Jeenabhai Prajapati and they went to Shaikh Maholla. It is the further say of the witness that when he had made the map at that time, there were two kachcha shops of pan, one handcart and one cycle towards the north of the public road. Shaikh Maholla is located from south to north and public road is located from east to west. After leaving the shop, there is one Dhaliya of

Thakor Laxmanji Bhikhaji towards north, then after, following houses are located in chronological order:-

- House of Painter Manubhai Aalamkhan
- House of Akbarmiya Nathumiya,
- Open space of Shaikh Babubhai Mahemudbhai, wherein a scooter was positioned in a burnt condition as per the Panchnama.
- House of Ikbalmiya Rasulmiya
- House of Abumiya Ismailmiya
- House of Rafikbhai Mahmadbhai
- House of Makbulmiya Kesarmiya Shaikh
- House Bachumiya Nathumiya
- Houses of Akbarmiya Rasulmiya and Ibrahimmiya Rasulmiya.
- House of Abbasmiya Kesarmiya.
- House of Sherumiya Rasulmiya

Thereafter, 28 Ft. ahead, the house of Mahemudmiya Husenmiya, admeasuring 16 x 11 Ft. is situated, it is constructed by Cement plaster, with pakka terrace and in the north-south of the said house, there is iron window, there is slab measuring 9 Ft. wide from inside and 6 Ft. in length and 32 Ft. in height and in the front of the said

house, there is pakka Opla, admeasuring 6 x 11 Ft., there are two iron windows and in the north south direction there are two doors. The door facing north direction was opening towards inside and in which direction the second door opens or not is not known by this witness. Both the windows have two doors. There was plastic bag in the east of the house in which H.P.L. was written as per Panchnama. There was a roof of Steel sheets. Outside the room in the north direction and at the back side of the room Bathroom is situated. Towards the south direction of the room there is an open space Veranda of 22 Ft. which belongs to Mahemudmiya and in the south direction, house of Rasulmiya is situated, then house of Bhikumiya Kalumiya, then house of Balamiya, then house of Abubhai Rasulbhai, then there was an open space, the house of Bachumiya Imammiya Shaikh is located, then house of Imammiya, then house of Akbarmiya Rasulmiya, then house of Mustufamiya Rasulmiya, then house of Patel Tulsibhai Zaverbhai is situated in the southern direction. There was also a Jeep bearing No.GJ-17-A-8775 shown in panchnama and near to that jeep there is one plastic Gallon is shown. House of Mahemudmiya Husenmiya ad-measuring 11 X 16 Ft. is also shown in the Panchnama and

towards the western direction, wall of graveyard has been shown and after that wall, graveyard is shown. Towards, the eastern side of the said house, on back side houses of Patel communities are situated. When the witness saw the houses it was like sunken (khander). The wires of windows and doors of many houses were uprooted and crooked. The terrace and walls had turned black in colour. There were blood spots inside the room as per the Panchnama and the said witness had prepared the map as per the Panchnama. The houses of the Muslim people shown in the map are in sunken and broken condition. When the map was prepared there was no habitation in the houses. It is the further say of the witness that the said witness had received another yadi for taking his statement and at the time of making map, there were many things which were remaining to be drawn and hence, for further making of map, the witness alongwith the Circle Officer present on 02.08.2008 had prepared the additional map. The said maps have been produced at Exh.420 and Exh.421. The accused side had taken objection to Exhibit both the maps and both the maps were given tentative Exhibit at the time of recording of evidence. Now, first and foremost question which requires to be decided is that whether both the maps are required to

be Exhibited regularly. For this purpose, when we peruse the deposition of Shri Sathwara, he has deposed that he has prepared the Panchnama of the place of incident and it is mentioned in the maps that the maps are prepared on the basis of police Panchnama. Map produced vide Exh.420 is signed by two panchas and also by Circle Inspector and it was prepared on 17.09.2004 i.e. after two years of incident while the map which is produced vide Exh.421 is the additional map which is prepared on 02.08.2008. It is signed by two panchas and Ex-Circle Inspector and present Inspector and place mentioned is Sardarpur. No doubt, in Exh.420, place where this map has been prepared, is not mentioned but it is signed by two panchas and Circle Inspector. Panchas are not examined by the prosecution. In the cross-examination, he has admitted that he has not mentioned below Exh.420 that map has been prepared at the place of scene of offence. It is also admitted by him that in which the major incident took place, is also not mentioned in the map. Furthermore, as to how many houses were burnt or ruined (Khander) is not mentioned in the map. Only the measurement of Mahemudmiya's house was taken by him. The names which are mentioned in the map are mentioned on the basis of Panchnama and the

name of Ibrahimmiya Rasulmiya is mentioned at the say of panchas. Distance between the houses, is also not written. Not only that but the height of wall of graveyard is neither measured nor mentioned. Distance between the house of Sherumiya Rasulmiya till the doors of the house of Mahemudumiya, is shown on the basis of Panchnama. The items which are shown in the map are shown on the basis of Panchnama. Hinder wall of Patel's house is mentioned and on what basis it is mentioned is not specified in the map. That, the wall is also shown on the basis of Panchnama. Blood stains in the house of Mahemudmiya are also on the basis of Panchnama. It is admitted by him that the house in Shaikh Maholla are in two lines but they are in zigzag condition. Distance between the two lines and the houses are different. It is also admitted by this witness that he has not prepared the map after the measurement. Whether there is any change in the place for that no Report of Talati was obtained. Thus, from the whole deposition of the witness, it transpires that map produced vide Exh.420 is totally based on police Panchnama. Witness had visited the place. No doubt, panchas are not examined nor in the map, the place has been mentioned but it is the say of witness that he had visited the place and thereafter, on the

map, prepared on the basis of panchanama, cannot be discarded and it can be given regular Exhibit and hence, now it is regularly Exhibited as Exh.420. Evidential value of this map is a different thing, as it is prepared after two years. It can be considered only for rows of the houses shown in the map and the directions of roads and distance between the two rows as this map is totally based on the Panchnama and hence, we have to consider this map in support of Panchnama only. So far as map vide Exh.421 is concerned, it is very much clear that it is prepared at the place of offence by the present and Ex-Circle Inspector and both have marked their signatures and it is prepared in the year 2008 and it is an additional Panchnama. Now, it is to be regularly Exhibited as Exh.421. It is also totally based on Panchnama but from the deposition of this witness as well as from these two maps, it transpires that witnesses have visited the place of scene of offence and prepared the maps accordingly. Therefore, the situation which is shown in the maps are required to be considered alongwith the situation shown in the Panchnama. Hence both are to be considered and appreciated alongwith the Panchnama.

So far as the Panchnama produced vide Exh.424 is concerned, P.W.38 - Shaikh Inayat Husen Bachumiya has

been examined vide Exh.423 and he has deposed that on 03.03.2002, he was called by the police as panch at the police station and then, they had gone to the village : Sardarpur between morning 6.30 to 7.00 hours. It is the say of the witness that when they reached the Sardarpur village, there were one P.I., two Constables and witness himself in the police jeep. One Bachubhai with another person was also there as panch and on asking the name of that person, he told that his name was Ajitbhai Joshi. It is the say of the witness, the said person had drawn their attention to the spot where the people were burnt and that place comes under Shaikh Maholla. It is the further say of the witness that at the entrance of the said place there was a cabin which was also set on fire and that cabin belongs to Rafikbhai and the said cabin had turned into ashes. The said cabin was shown by Bachubhai and in the same line of the cabin, there was one cycle in the burnt condition and adjoining to that, cabins of Abumiya and Iqbalbhai were there and those cabins were also in a burnt condition. Nearer to the one sided slopping roof, there existed house of Manubhai and on inspecting the said house, articles of the house were found burnt, which were turned into ashes and all the articles were lying down, the doors were broken,

burnt and turned into ashes. The house adjoining to the house of Manubhai was also inspected wherein also, the articles were lying down and black particles were on the doors. The witness does not remember the owner of the house but as per say of the witness adjoining to that house, house of Akbarmiya existed and on inspecting, it was found that articles were scattered on the floor which was totally burnt and there were black particles in the iron bed. In front of the same, one lane was there and in front of lane, there was one Bajaj Chetak Scooter in a burnt condition and he did not remember the number of the Scooter and in front of lane, there existed electric line and nearer to that there was one house and he did not remember the name of the owner. On inspecting the said house, it was found that the articles were lying on the floor in burnt condition and doors were broken. The second house was also inspected wherein the articles were lying scattered, burnt and in broken condition. Further going ahead, there was one pakka house and there is distance of 28 Ft. from rest of houses mentioned above and the said house is of Mahemudmiya. There is one small platform which is about 3 to 4 ft. wide having length of 11 Ft. and a writing “*Ya Garib Nawaz*” was inscribed on the wall of the said platform

alongwith the figures "786" and "Year-2001" in Arabi language. Entering the said house, there existed an iron door with shutter and a widow ad-measuring 3 x 6 Ft. and the said panch has opened the door with force and entered into the house. The iron door was in tight condition due to the flame of fire. The shutters of the door were fixed with wires which were broken with force and were lying on the ground. Then after, entering the house, there was an iron bed and household items were burnt. Furthermore, the electric wires of the P.V.C. Pipe were also burnt and hanging. On further inspecting the house, torn clothes were found which were kept in a plastic bag as per say of the panch and a slip of paper bearing the signature of the panch was put into the bag and the said bag was sealed and given to the panch. On proceeding further into the house, there was another door which was also an iron door with two shutters and wires and both the doors opened from inside the house and adjoining to the door, there were iron windows with wires opening from inside. On the said wall, there was one space for lightning of lamp for God and one Islamic Calendar was also pendent on the wall which had turned black in colour. On the said wall, scratches of the five fingers of hands were seen. The Constable had

taken the sample of the same through cotton and signature of the panch in a piece of paper and the same was handed over to the panch. It is the further say of the witness that adjoining to the main door, there existed an iron window with iron wires which opened from inside and under the base of the window there were blood marks which were taken by the Constable through cotton and the same were kept into a plastic bag alongwith a chit containing the signature of the panch and the same was sealed and handed over to the panch. Furthermore, there was a fan on the ceiling which turned into ashes due to burns and one tube-light which was also turned into black in colour. The utensils were also scattered on the grounds. The floor and ceiling of the house had also turned blackish in colour. In one wall in the height of 3 Ft. one constructed wall is situated for keeping water utensils. After that, the panch and other police officials had made their exit from the main door of the house. Next to the said house, there was Veranda (compound wall) of Patel community. Between the Veranda and house, there was a Gallon lying on the side and for holding that one wire was tagged to it and on smelling the same, there might be a smell of kerosene or petrol. Signature of the panch was taken in a slip of papers

alongwith the other panch which was taken into the possession. Further moving two steps ahead, there was another Gallon, on which H.P.L. was written and on picking up the same, there was 100 Gms. of kerosene inside the Gallon. The police officials had recovered the same with a cap and took the signatures of both the panch and other on the slip of paper and the same was taken into the possession. On the back portion of the house, there was one bathroom and behind the house there was one Dung Hill and beside the Dung Hill, house of one Rawal is situated and from there, the panch and other officials returned back through main door. In the front of the door there was a small platform and adjoining to it, there is sink in the size of 4 x 4 Ft. From there, they went in the opposite lane, where there is open space and nearer to that open space there existed a house and that house was also set on fire. On entering the house, the articles were lying on the ground and the panch did not remember the name of the resident of the said house. In the said lane, there were about 13 to 14 houses and open space and on the say of Bachumiya, the name of the owners were mentioned in the Panchnama. All the houses were broken- fielded and all the articles were lying on the ground and on the said lane,

Bachumiya occupied two houses. The doors of both the houses were different and on entering one house, it was broken fielded, articles lying on the ground and stones were lying on the roof of the houses. One of the roof was in open or broken condition. In the front of the house, one jeep had turned into ashes and beside the said jeep, there was one gallon lying on the ground, which the police officials had taken into their possession and on the same, the signatures of both the panchas were taken and the same was sealed and given to panch to keep in his possession. The said jeep is of Mahindra & Mahindra Company. The panch did not remember the registration number of the jeep. At the end of the 13-14 houses and before the starting of public road, the wall of the Patel community's houses is situated. On the left side of the house of Mahemudmiya, one Veranda for Graveyard has been constructed. On entering the graveyard, there were 4-5 graves which were broken, the bricks were removed from it and damages were caused to the graveyard. After existing from there and on moving ahead, there was a godown of cement with broken doors. The tubs of washroom were also broken. As per say of Bachumiya that godown belongs to one Memon whose name was not known by the panch. Near to it, there was a

cloth shop which was also set on fire. Near to that shop, shop of goldsmith was situated and damages were also caused to that shop but the panch did not remember the quantum of damages. From there the panch and other police officials have proceeded towards Sundarpur and there was one Pan shop which was turned into ashes. On proceeding further, there was one more shop opposite to the temple which was a pakka shop whose shutter was in broken and burnt condition. On proceeding further, there was one Hut of Fakir near to the Telephone Exchange but the panch was unable to remember the name of the Fakir and as per the say of Bachumiya, stones were pelted and two Huts were set on fire. Accordingly, Panchnama was prepared and panch alongwith other panchas in the presence of P.I., had put his signature in the Panchnama which is produced at Exh.424 which fully corroborates the say of the panch.

In the cross-examination, he has deposed that prior to this incident, he had never visited Sardarpur. In the morning when he was sitting just in the front of Panchayat, police had called him and took him with them and they went to Sardarpur. He has admitted that at that place

except Bachumiya no other person was present and there was no gallon inside the house of Mahemudmiya. He has also admitted the fact that inside the house of Mahemudmiya, piece of burnt wood were lying a mentioned, which is true. He has admitted that there were two routes for entering into the bathroom one from inside room and one from outside room. He has also admitted that there is only one door in bathroom, and i.e. from outside. He has admitted that no measurement was taken of any houses in Shaikh Maholla except Mahemudmiya's house. Measurement of the wall and graveyard was taken but it is not mentioned in the Panchnama. From the house of Mahemudmiya to the entrance of Shaikh Maholla, measurement was not taken, electric pole is not mentioned in the Panchnama, backside wall of Patel Maholla is about 25 Ft. in height and there are two doors in Mahemudmiya's house. He has also admitted that Bachumiya Imammiya has not told as to where was he at the time of incident. There were two iron rods to the windows of the house of Mahemudmiya. All the walls and the roof of Mahemudmiya's house was blackened. The floor and window were also blackened, iron rods were free from welding due to heat. There were Dung Hill behind the house

of Mahemudmiya and towards the right side, Rawalvas is situated and on left side, there is road for passing towards graveyard. It is admitted by him that a person can pass from Rawalvas to Kamalpur from the left side of road from graveyard to Mahadev then the main road which goes towards Sundarpur via Telephone Exchange is 1.00 Km. away from Shaikh Maholla. Situation which is shown in the deposition of this panch is supported by the Panchnama drawn vide Exh.424.

P.W.48 – Sabirhusen Kadarmiya Shaikh, vide Exh.491 has deposed in this regard that, he is the resident of Sardarpur, his house is situated just opposite to Kapoorvas, at the time of incident he was residing with his family members, Sharifmiya was residing in the adjacent house, he was residing with his family members, on one side of the house of this witness, house of Sharifmiya was situated vide on other side there was another house, Sharifmiya was doing driving, on the day of occurrence he was in his house, he has denied that, his brother had left the house on 01.03.2002 and went to Shaikh Maholla. They went to Shaikh Maholla at about 7.00 – 7.30 P.M., during whole incident they were in Shaikh Maholla. Further, it is

deposed by him that, just adjacent to his house there are Muslim Houses and Pathanvas is situated, on left side there is way for passing towards Shaikh Maholla and on right side there is a way to approach to Pathanvas. Pathanvas is situated at the distance of 90 to 100 Ft., approximately, 40 to 45 houses are situated in Pathanvas while Shaikh Maholla is situated at the distance of about 200 Ft., there is no door of Pathanvas, Kapoorvas is at the distance of 30 Ft., Patels are residing in Kapoorvas, there are only 3 houses of Shaikh, that is not known as Shaikh Maholla. The houses, where the incident occurred is known as "Shaikh Maholla". Further it is deposed by him that, just in front of his house there is a way for passing towards Rawalvas and that way passes through Kapoorvas and there are agricultural fields towards Rawalvas.

P.W.49 - Shaikh Iqbalmiya Rasulmiya has admitted that, his house is just in front of Bachumiya Imammiya Shaikh. His house is falling towards the graveyard while Bachumiya's house is falling towards the hinder wall of Patels. Doors of Bachumiya's house and those houses are not face to face. Further, the doors of both the houses are not in one line. There is road in between the two houses.

There is approximately 10 Ft. distance in both the houses. Thus, behind the house of this witness, graveyard is situated. If a person wants to go to graveyard from his house, he can go by jumping the wall. Area of graveyard is approximately 500 Ft. which is open and from graveyard a person can go to agricultural field and Rawalvas which is just behind the house of Mahemudmiya, there was Heap of Grass and from backside, a person can go to Rawalvas and graveyard. Furthermore, from Shaikh Maholla to the right and left side of the house of Mahemudmiya, a person can go from both the sides.

P.W.110 - Vaghela Kakusinh Ranjitsinh has deposed at Exh.110 that, on 03.03.2002, he has called two panchas for preparing Panchnama of scene of offence, scene of offence was shown by Bachumiya Imammiya Shaikh. Four Gallons were recovered from place of offence, out of which in one Gallon there was 100 Ml. kerosene and from the house of Mahemudmiya, half burnt pieces of clothes and clothes with blood stains were recovered in the presence of panchas and both were sealed in the presence of panchas. Both the panchas have signed the slips as well as the Panchnama and Panchnama had started at about 7.30 A.M. and it was

completed at about 11.30 A.M. It was written by the writer Manharsinh as per his instruction and thereafter, it was read over to the panchas. Panchas have admitted and signed the Panchnama. Cabins, jeep, scooter and houses, were burnt. The house of Mahemudmiya was pakka house having measurement of 11 Ft. towards East–West and was 16.5 Ft. wide in length towards North–South. There were two iron doors one in the front side and second in the rear side and two windows. It was pakka construction. It was burnt inside and blackened marks were inside the room, wires were also burnt, house articles were also burnt, stones were lying in the Maholla, graveyard is situated towards the north side of the house of Mahemudmiya which was also damaged while breaking the wall and taking the bricks from grave, grass was also burnt, Muddamal article No.29, 35, 36, iron gallon, red colour plastic gallon and one gallon of gulf company and another gray colour plastic gallon were recovered from the place of offence. Muddamal article No.31, 32, 33 and 34 are cotton gauze, half burnt clothes, dots of blood which were taken from the place of offence. All the articles were sent to the F.S.L. He has admitted in his deposition that signatures in slips which are produced vide Exh.425 and Exh.432 are the slips

which are signed by the panchas in his presence. Further, the videography and photography were also done in his presence and damages which were done in Shaikh Maholla as well as graveyard were recorded in videography and thereafter, the photographs of the house of Mahemudmiya were taken. The duration of taking photographs took about one hour to one and half an hour. The said photographs are produced vide Exh.764 and photographs album is produced vide Exh.765.

In the cross-examination, he has admitted that the places which are mentioned in the Panchnama were shown by Bachumiya Imammiya and he met them at Sardarpur. The house of the painter Manubhai Abubhai was shown by Bachumiya. Manubhai was not present therefore, the damages are not mentioned in Panchnama. It is admitted that no measurement of the distance of the Mahemudmiya house from the entrance of Shaikh Maholla was taken. No measurement of distance between the two rows was taken. It is also admitted that it is not mentioned in the Panchnama as to whether the person can see the house of Mahemudmiya from the entrance of Shaikh Maholla. Measurement of wall from Shaikh Maholla to graveyard was not taken. It is denied by Investigating Officer, that from the

entrance of Shaikh Maholla, house of Mahemudmiya cannot be seen. It is admitted by I.O, that two rows in Shaikh Maholla are in zigzag and he has prepared the Panchnama from the entrance of Shaikh Maholla to graveyard, Darbargadh, Masjid, Memonvas, Holi chakla, Jogni Matas' temple, Sundarpur road, Telephone Exchange and house of Fakirs are situated. It is also admitted by Investigating Officer that, he has no knowledge about the way which is passing towards Sundarpur from Kamalpur, situated on the back side of Mahemudmiya's house. Photographs and videography were taken after the completion of Panchnama and photographs were taken in his presence. It is admitted by him that he has knowledge about the preparation of map and maps should be prepared in its scale map. It is denied by the Investigating Officer that persons who have seen the incident are required to remain present at the time of preparing the map. Verification of map with the witnesses were not done by Investigating Officer. From the deposition of Investigating Officer as well as from the deposition of Panch witnesses, Panchnama of scene of offence was prepared at the earliest, Panchnama supports the fact. No doubt, maps were prepared subsequently. Much reliance cannot be placed

upon those maps but those maps can be looked into for calculating the situation of the houses in Shaikh Maholla and situation of Sardarpur, which are mentioned in the map.

So far cross-examination of this witness, in respect of scene of offence is concerned, accused have tried to bring on record that as to whether anything is remaining absent or whether anything is written in access in the Panchnama and for that, the witness has stated that whatever, they have seen, they have narrated in the Panchnama. Suppose, something remains then also, from that, no doubt can be created about this Panchnama drawn by the Investigating Officer. It has also come out from the cross-examination of this witness that on 03.03.2002, he went to draw the Panchnama of scene of offence and at that time, he had not felt to take the photographs and Videography as there was no reason to wait for Videographer and photographer for drawing the Panchnama. When the Videographer and photographer came, Panchnama of place of offence was completed and there is no reason for not drawing the Panchnama of Videography and photography. The Videography and Photography were done in his presence and he has not seen the Videography. He had not seen the

Videography and photography, till the Videography was completed. The articles which were recovered from the place of offence were not sealed. He has not recorded the statements of Videographer and photographer. So far as the map is concerned, he has admitted that, to prepare the map is important. In fact, in such serious offence, he has admitted that till the map is prepared, place of offence is required to be protected. There is no reason for not preparing the map immediately. He has denied the fact that at the time of preparing the map, the witness who had seen the incident are required to remain present and from where they have seen the incident is required to be mentioned in Panchnama. He has not verified the map with the eye witness to clarify as to from where the witnesses have seen the incident. He had not instructed how to prepare the map. The distance between Shaikh Maholla to Pathanvas is 150 to 200 Mtr. and he is unable to say the distance between Telephone Exchange and place of offence. He is unable to say the distance between Telephone Exchange and residence of Fakir. Further, as per the cross-examination, he has not made investigation about the distance of Harijanvas and field from Shaikh Maholla. He has not inquired whether a person can see the offence form

Harijanvas or from field. He had informed the Videographer to record everything from Shaikh Maholla to market and of every place where obstacles were there. From Sardarpur road, the Videographer had started the recording and at that time, he was present. During Videography, from Sardarpur to 1 Km. towards the Vijapur, they have recorded Videography. There were hurdles towards the left side of Sardarpur, one road passes towards Kamalpur. No Videography of that road was recorded. They have recorded Videography of place where damages were caused and lastly they went to Shaikh Maholla and started Videography from Sardarpur road.

P.W.108 - Oza Vipulkumar Bhogilal has been examined vide Exh.760 who runs a Studio in the name of "Oza Studio" at Vijapur, on Khatri Kuva Road and the witness is the owner of that studio. On 03.03.2002, he was called by the Vijapur Police for taking the photography and Videography of village : Sardarpur. He had first gone to police station and then they went to Shaikh Maholla at Sardarpur village and he had taken the Videography of all the houses at Shaikh Maholla. It is the say of the witness that all houses were having roofs and they were burnt. There were 10-10 houses in both direction and in the last,

there was one pakka house which was also included in the Videography. The said Videography continued for one hour and there are 15-16 numbers of photographs. Near to that there was one graveyard and he did not remember whether he had taken the Videography of the said graveyard. The said Videography has been produced at Exh.764 and photographs are produced at Exh.765.

In the cross-examination, he has admitted that, photographs were taken of the scene of offence as it is in position and at that time P.I. Shri Vaghela and two Police Constables were present. It is admitted by the witness that photograph No.15 was not taken by him. Some questions were asked about the photograph No.2 and 15 which are admitted by this photographer but it is also admitted that photograph No.15 was not taken by him while photograph Nos.4, 5, 6 and 10 are of front side of the house. The photograph Nos. 4, 5 and 6 were handed over to the police while photograph No.10 was not taken by him and photograph No.10 and 15 were not given by him to the police.

In pursuance of deposition of this witness, it is argued by Spl. Prosecutor Shri Shah that, he is the owner of Studio

and he was called for photographs and Videography of Sardarpur Village. The photography and Videography were done by him. There is no audio in the Videography. This Videography and photographs support that, the incident occurred in Shaikh Maholla from the entrance. Further, there is no dispute about the place of offence. Independent police officers have also narrated the place of offence that incident occurred in the house of Mahemudmiya.

P.W.88 - Modi Hasmukhlal Thakorlal has deposed on oath at Exh.674 and has stated that, on receiving the message, he went to Village Sardarpur and personally visited the scene of offence and report was prepared by him. On visiting the scene of offence, it was found by him that, there was one Pakka house, there was iron rod on front side and second on rear side, accordingly there were two windows from inspection of said house from outside, there are marks of pelting brick stones on the out sider walls and brick stones were lying in the open and on the back side of the house, just below the windows burnt pieces of wood were lying and there were dots on the wall of the window and there were marks of using force on the windows and five iron rods of the door was separated from welding. There was blackish in half door of window, there was blackish on

aldrop also, door was opening inside and on the back side of the house also there was blackish in the door, aldrop and which was not closed from inside, in the house there were half burnt pieces of cloths and thee were red colour dots, there was blackish on the walls, doors and following samples were taken by them. Blackish (mesh) from burnt pieces of clots, reddish dots on tin, one plastic gallon were recovered from there accordingly he has prepared the report, which is produced on record at Exh.675 and Yadi is produced at Exh.676.

In the cross examination, it is admitted by him that in all the four walls and ceiling, it was black. There is no mentioning about the electrical switch, he had not inquired about the short-circuit. As the burnt pieces of wood were outside therefore, in the wall, the dots which were shown were not mentioned, whether they were inside or outside. Whether those dots were due to petrol or kerosene, he had not inquired. Force was used in window. Force was used from inside the window. Efforts were made to open the window from outside and there were marks of force from outside also. Whether there were stoppers inside the window or not, it is not mentioned in his record. No marks of force were seen in the front side of window. No

photographs of stoppers were taken when he had visited the place of scene of offence. Whether the stopper was open from outside or inside, it is not inquired by him. There were dots of blood in the room. How many dots were there is not written. Samples were taken by Investigating Officer therefore, he had not taken the sample towards the backside of the house nor window. The burnt piece of wood and clothes were lying and red dots were there in the floor. In support of his deposition, when we peruse Exh.675, it supports the say of Scientific officer.

In support of their case, prosecution has produced the F.S.L. Report vide Exh. 677 in which article No.29, there were one plastic gallon with 100 ML. kerosene, one gallon in which HP 100 was duly written, one gauze cotton from the wall of Mahemudmiya where hydro carbon was found, half burnt piece of cloth from the room of Mahemudmiya, gauze cotton with blood stains in the room of Mahemudmiya, plastic gallons with smell of kerosene. Article No.29 and 30, 36 and 35 were recovered and were sent to F.S.L.. As per the deposition of Scientific Officer and as per the Report produced vide Exh.677 and Exh.675, the say of the panch witness is supported. As per the Report of F.S.L. produced

vide Exh.675, in windows, marks of force were found and both doors were not closed from inside.

P.W.112 - Barot Gautamkumar Vishnubhai has visited the place of offence. As the map was incomplete, he had instructed the Circle Inspector to complete the map and letter is produced vide Exh.904. He has admitted that mob has not scaled the map and the map which is prepared for second time is also not scaled map. From the entrance place of Shaikh Maholla to Mahemudmiya's house, distance is about 50 to 60 Ft. Houses are in two rows on the right side and on the left side. Measurement of the houses has not been recorded. It is true that all the houses in two rows are not equal. He had not taken the measurement of the wall from graveyard side and from Shaikh Maholla side. It is admitted by him that the place which are shown in Panchnama, measurement of those distances have not been recorded. He was not there at the time of preparing the map. From where the witness has seen the incident he had not inquired this fact by himself. By going to Shaikh Maholla no demonstration of Panchnama was prepared.

An application for local inspection of the place of offence and other surrounding places, was requested by

accused at the stage of closing of evidence of prosecution side. The Learned Advocate for the accused has made an application after recording further statement praying that, local inspection should be carried out and contended in the application that the incident occurred in the year-2002 and witnesses have deposed about different roads, houses and the roads connecting other villages and has further deposed about houses in Shaikh Maholla and other Muslims houses and Patelvas etc. To appreciate the evidence of those witnesses, it is very much necessary to have an inspection of the inside road of Shaikh Maholla by the Court. Unless, the Court personally visits the place of incident, Court will not be in a position to appreciate the evidence properly. Some of the witnesses claimed that they have seen the accused from the particular place but unless the court visits the place, it will be very difficult to appreciate the evidence. The houses in Shaikh Maholla are in row and zigzag condition and there is distance between houses of Shaikh Maholla. It is not possible that, mob of 1000 to 1500 persons could enter in Shaikh Maholla. If cabins were burnt, then from where would the witnesses have seen the incident of burning. Further, it is not coming on record as to what is the location, from Shaikh Maholla to Harijanvas

and Rawalvas, agriculture field and position of road from front and backside of Shaikh Maholla to Pathanvas, position of graveyard, Shaikh Maholla to Pathanvas, location of houses of Pathanvas and surrounding houses and position of approach road from one village to other village road. For the accurate decision, it is necessary for the Court to visit the place for conclusive proof. None of the witnesses who claims to have seen the accused and grave prejudice will be caused to the accused, if this is not done at this time. Considering contents of the application it appears that it is necessary to have a visit of the place of the offence just to reach at conclusive and accurate decision in the present matter in respect of the facts mentioned in the application. Therefore, this application was allowed and local inspection was carried out on insisting by accused, in the presence of Special Prosecutor and all advocates appearing on behalf of accused accordingly. Memorandum of the facts observed in the said inspection which is produced on record vide Exh.1081.

Considering above all oral as well as documentary evidence on record, we have to appreciate the evidence of the witnesses by keeping in mind the above situation of scene of offence and also by keeping in mind the note

prepared at the time of Inspection visit by the Court.

P.W.36 - Chaudhari Ishvarbhai Bababhai has been examined by the prosecution at Exh.405. He is serving as Clerk in the office of the District Magistrate. He has produced Notification dated 25.03.2002, which was published from their office, which is produced vide Exh.406. He is cross-examined by the defence. In his cross-examination, he has admitted that he has deposed by verifying the record. Whole procedure was not done through him. He has admitted that in the notification the words pipe and dhariya are not mentioned but he has deposed willingly that in the notification weapons by which a person can sustain physical injury is mentioned. Thus, from the deposition as well as from the document produced vide Exh.406, prosecution has proved that, at the time of incident Notification under Section 135 of B.P.Act was in force. The evidence adduced in this regard much supported by the documentary evidence is reliable and trustworthy, there is no reason to discard this evidence.

From the deposition of P.W.38 - Shaikh Inayat Husen Bachumiya, which is supported by the panchnama,

produced at Exh.424, it has come out that, at the time of drawing Panchnama it was found that, on entering into graveyard there were 4 to 5 graves, which were broken, bricks were removed and damages were caused to the said graves. In support of this fact, P.W.112 - Barot Gautamkumar Vishnubhai has deposed that during investigation, he found that 13 other persons were also involved in the mob. They were absconding and therefore, to search them, a letter was written by him to P.I., Vijapur and D.S.P. Further, as per the deposition of this witness, damage was caused to the religious place. He had recorded the statements of Javan and Home-guard and therefore, from their statements and Panchnama, it has come out that damage was caused in the religious place of Muslims and in the graveyard and Section 295 was not added therefore, he had sent one Report to J.M.F.C. to add said section which is produced vide Exh.905 and has also submitted Report to add Section 153K for creating tense atmosphere between the two communities. He has also written one letter to Government Secretary, seeking permission under Section 196(1) of Cr.P.C. which is produced vide Exh.720. All the papers were attached with that application. Thereafter, he received sanction which is

produced vide Exh.721. Exh.722 is the application written by him to the Additional Secretary, Home Department, Gandhingar. Exh.722 is the papers, on the basis of which officer can decide whether sanction should be granted or not and sanction is produced vide Exh.723.

In support of this fact, P.W.96 - Purshottambhai Nathabhai, Additional Secretary (SCST Department), Gujarat Government, has deposed that he received an application from Investigating Officer Shri G.V. Barot, to add section 153-A, of I.P.C. against Babubhai Vanabhai, Rameshbhai Kacharabhai, Babubhai Kanjibhai, Kanubhai Revabhai, Natubhai Kacharabhai, Ashwinbhai Baldevbhai and Joitaram Ramabhai. Report was submitted alongwith Ferist of 200 pages and after going through the statement of witnesses and after applying mind, a note was prepared by him and subsequently sent to higher authority i.e. the Principal Secretary - Shri Balwant Singh, which was sanctioned on 31.08.2008, and accordingly he has passed an order on 05.09.2008. During his deposition he has produced the Letters of requesting to grant sanction to file charge-sheet against the accused under section 196(1) at Exh.720 to 723 and copy of Gazette showing that, he is the competent authority to grant sanction, to add Section 153-

A of I.P.C. is produced on record at Exh.724.

In the cross-examination of this witness, defence has tried to bring on record whether the papers were received by Post or by hand, whether they were inwards or who had inwards but all these points are immaterial as the facts that, all the papers alongwith the application were received by the witness on 29.08.2008. In the cross-examination of this witness, it itself transpires that, after going through all the papers and after applying his mind he has submitted his Report to Principle Secretary on 29.08.2008. When we go through the documents produced vide Exh.720 to 724, all supports the say of prosecution. Thus, prosecution has fully satisfied on this point that, after applying mind and after going through the papers the sanction was granted and on the strength of the sanction, prosecution has tried to satisfy the names of persons, mentioned in the application, and had tried to criminal harmony in the society.

Thus, with the support of above evidence, it is proved by the prosecution that, damage to graveyard was caused and sanction was accordingly sought and granted after adopting due procedure and applying mind fully and

Section 153-A of I.P.C. has been added as mentioned in the application. All documents produced supports this fact.

27. So far as arrest of accused in the present case is concerned, prosecution has examined P.W.23 – Patel Ishvarbhai Gopalbhai has been examined vide Exh.362, who has deposed that, he was called upon by the Police Inspector at the Sardarpur Gram Panchayat. Said witness was called at 13.30 hours in the afternoon. It is the say of the witness that, there were other panch – Maheshbhai Jivabhai. It is the say of the witness that, he was called for preparing panchanama of the physical condition of the accused. He has not asked the name of the accused and had marked his signature without asking for any information.

It is the say of the witness that he has identified the accused – Ramesh Kanaji and Chaturbhai Vitthalbhai. It is the say of the witness that, physical identification of the accused were performed in the presence of the witness and he has described the clothes worn by the accused and the panchnama was read over to him and thereby, he had marked his signature in the panchnama.

The Panchnama of **Ramesh Kanaji and Chaturbhai**

Vitthalbhai is produced vide Exh.363 which is as follows:-

- Accused **Ramesh Kanaji Patel, Resident of village : Sardarpur**, had worn white shirt and blue colour pant and no material has been found from the said accused.
- Another accused **Chaturbhai Vitthalbhai Patel, Resident of village : Sardarpur**, had worn white and blue colour printer Bushirt and Pant of Green Colour. Nothing was recovered from the accused.

During the cross-examination conducted by the learned advocate Mr.B.C.Barot, it was admitted by the witness that, what was the position of the accused, he had not seen. Further, he has admitted that, he has not gone through the Panchnama, he has only signed the Panchnama, he has no knowledge about the cloths of accused. He has signed the panchnama, only at the instance of police. P.W.110 - Vaghela Kakusinh Ranjitsinh has deposed on oath that, he has arrested above accused on 03.03.2002 and Arrest Panchnama was prepared in the presence of Panchas.

P.W.25 - Thakor Jayantiji Varvaji has deposed on oath vide Exh.365 that, in his presence, Arrest Panchnama of Ashwinbhai Baldevbhai was executed on 26.06.2002. In support of his say, he has produced Panchnama vide Exh.366. From his cross-examination nothing comes out from which we can discard this Arrest panchnama. P.W.111 - Patel Kantibhai Parshottamdas has deposed on oath that, he has arrested above accused on 26.06.2002 and Arrest Panchnama was prepared in the presence of Panchas.

P.W.26 - Goswami Chandrakantgiri Ramgiri and P.W.27 - Kadia Shamalbhai Gopalbhai have deposed vide Exh.368 and Exh.370 respectively, on oath that, in their presence, Arrest Panchnama of 13 persons was prepared on 03.09.2008, which is produced vide Exh.369. In their respective cross-examination they have admitted that, they have no knowledge about 13 persons, simply they were sitting in Police Station and panchnama was prepared. P.W.107 - Chauhan Ramtuji Kanaji has deposed on oath that, he has arrested above accused on 03.09.2008 and Arrest Panchnama was prepared in the presence of Panchas and nothing recovered from said accused.

P.W.29 - Patel Naranbhai Manilal and P.W.30 - Patel

Babubhai Mathurbhai have deposed vide Exh.376 and 387, respectively, who are the panch of Arrest Panchnama of accused Rameshbhai Kantilal, Dashrathbhai Ambalal, Baldevbhai Ranchhodbhai, Madhabhai Vitthalbhai, Ramanbhai Jivanbhai, Vishnukumar Prahladbhai, Rajeshbhai Punjabhai, Chaturbhai Kanabhai, Sureshbhai Baldevbhai, Tulsibhai Girdharbhai, Sureshbhai Ranchhodbhai and Rajeshbhai Karshanbhai, which is produced at Exh.822. But they have not supported the facts of Arrest Panchnama. P.W.110 - Vaghela Kakusinh Ranjitsinh has deposed on oath that, he has arrested above accused on 08.03.2002 and Arrest Panchnama was prepared in the presence of Panchas.

P.W.31 – Patel Arvindbhai Becharbhai and P.W.32 – Patel Babubhai Varvabhai has deposed on oath vide Exh.389 and 391, who are the panch of Arrest Panchnama of Rameshbhai Ramabhai Govabhai, Ashwinbhai Jagabhai Vanabhai, Prahladbhai Jagabhai Patel and Parshottambhai Mohandas Patel, which is produced on record at Exh.829, But they have not supported the facts of Arrest Panchnama. P.W.110 - Vaghela Kakusinh Ranjitsinh has deposed on oath that, he has arrested above accused on

12.03.2002 and Arrest Panchnama was prepared in the presence of Panchas.

P.W.33 – Thakor Amraji Kodarji has deposed on oath vide Exh.392 that, on 15.03.2002, he was called by the Police and his signature was taken by the Police. He is hostile Panch. He has not supported the Arrest Panchnama of Ambalal Magandas Kapoor, Kanaiyalal Nathalal and Rameshbhai Prabhahai. Said Panchnama is produced on record at Exh.834. P.W.110 - Vaghela Kakusinh Ranjitsinh has deposed on oath that, he has arrested above accused on 15.03.2002 and Arrest Panchnama was prepared in the presence of Panchas.

P.W.34- Oza Manishkumar Babubhai and P.W.35 – Chauhan Fulaji Somaji have deposed on oath vide Exh.396 and Exh.399. They have not supported the facts of Arrest Panchnama of eight accused – Jayantibhai Ambaram, Jivanbhai Dhawarkadas, Dahyabhai Kacharabhai, Aashutosh Murlidhar Marwadi, Rameshbhai Ganeshbhai Prajapati, Mathurbhai Trikambhai Patel, Kanubhai Joitaram Patel and Rameshbhai Baldevbhai Patel. Said Panchnama is produced on record at Exh.778. P.W.109 -

Baranda Rohitkumar Dhuljibhai has deposed on oath that, he has arrested above accused on 11.06.2002 and Arrest Panchnama was prepared in the presence of Panchas. And he has not recovered anything from said accused persons.

Particulars of the Arrest panchnama Exh.822 is as follows:-

Exh.822- Complainant - Shaikh Ibrahimmiya Rasulmiya has lodged the complaint against 12 accused.

Said panchnama is regarding the deadly weapons recovered from the accused. The first accused is **Rameshbhai Kantibhai Patel**, aged about 24 years, Resident of village : Sardarpur, Taluka : Vijapur having white hair. He had worn red shirt and black pant. No any injury marks have been found over his body. He had deadly weapon such as Dhariya affixed to wooden sticks in length of 25 inches including the iron part measuring 10.5 inches with width measuring 2.5 inches alongwith sharp edge on front side having monetary value of Rs.5/-.

The second accused is **Dashrathbhai Ambalal Patel** Age

about 26 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt in the shade of white and blue, and gray pant. He had worn leather chappals in his feet. No any injury marks have been found over his body. He had deadly weapon such as Dhariya affixed to iron pipe in length of 24 inches and the iron part measuring 9.5 inches with width measuring 2 inch alongwith sharp edge on front side having monetary value of Rs.5/-.

The third accused is **Baldevbhai Ranchhodbhai Patel**, Age about 40 years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt in the shade of brown and blue colour pant. No any injury marks have been found over his body. He had deadly weapon such as rusted sword with its hilt comprising of iron which is in the broken form. The sword is sharp and pointed with length measuring 28 inches and width 1.25 inches. The length of the hilt is 6 inch and there was no writing upon it, having monetary value of Rs.5/-.

The fourth accused is **Rajeshkumar Karsanbhai Patel**, Age about 22, resident of village : Sardarpur, Taluka : Vijapur. He had worn white full sleeve shirt and gray pant. No any

injury marks have been found over his body. He had deadly weapon such as iron pipe in length measuring 33 inches. There were no any blood stains on the iron pipe having monetary value of 0.50 Paisa.

The fifth accused is **Madhabhai Vitthalbhai Patel**, Age about 33 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt in the shade of red, white and black and shade of green (Mahendi) pant. No any injury marks have been found over his body. He had deadly weapon such as pipe in length of 26 inches. There were no blood stains on the pipe having monetary value of Rs.1/-.

The sixth accused is **Ramanbhai Jeevanlal Patel**, Age about 29 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt of cream colour shade and brown pant. No any injury marks have been found over his body. He had deadly weapon such as Dhariya at the time of offence but the same was affixed to an iron pipe in length measuring 35 inches and the iron part measuring 8 inches with width measuring 1.5 inches alongwith sharp edge on front side. No blood stains were found on the said iron pipe and its monetary value is Rs.5/-.

The seventh accused is **Vishnukumar Prahaladbhai Patel**, Age about 23 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt in the shade of brown and blue colour and slate colour pant. He had worn chappals in his feet. No any injury marks have been found over his body. He had deadly weapon such as Dhariya affixed to iron pipe in length of 29 inches and the iron part measuring 6.5 inches with width measuring 1.5 inches alongwith sharp edge on front side having monetary value of Rs.2/-.

The eighth accused is **Rajeshkumar Punjabhai Patel**, Age 28 Years, resident of village: Sardarpur, Taluka: Vijapur. He had worn shirt in the shade of brown and white colour, and blue jeans. There were slippers in his feet. No any injury marks have been found over his body. He had deadly weapon such as stick in length measuring 59 inches. There were no blood stains on the stick and its monetary value is Rs.1/-.

The Ninth accused is **Chaturbhai Kanabhai Patel**, Age about 31 Years, resident of village: Sardarpur, Taluka :

Vijapur. He had worn white blue shirt and blue pant. He had worn chappals in his feet. No any injury marks have been found over his body. He had deadly weapon such as iron pipe in length of 38 inches. There were no blood stains on the iron pipe and its monetary value is Rs.50 Paisa.

The tenth accused is **Sureshbhai Baldevbhai Patel**, Age about 20 years, resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt in the shade of white and shade of brown pant. No any injury marks have been found over his body. He had deadly weapon such as stick in length of 59 inches. There were no blood stains on the stick and its monetary value is Rs.1/-.

The eleventh accused is **Tulsibhai Girdharbhai**, Age about 34 years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn shirt in shade of ash colour with half sleeves and slate colour pant. No any injury marks have been found over his body.

The Twelfth accused is **Sureshbhai Ranchhodbhai Patel**, Age about 22 years, resident of village : Sardarpur, Taluka : Vijapur. He had worn white shirt and brown shade pant.

No any injury marks have been found over his body.

The panch witnesses have signed the panchnama after verifying and understanding the contents written in the panchnama. Said panchnama is signed by Patel Narayanbhai Manilal and Babubhai Mathurdas Patel on 08.03.2002 between 11.15 to 13.15 hours.

Particulars of the Arrest panchnama Exh.829 are as follows:-

Exh.829- Complainant - Shaikh Ibrahimmiya Rasulmiya has lodged the complaint against 4 accused.

The said panchnama is regarding the deadly weapons recovered from the accused. The first accused is **Rameshbhai Ramabhai Govabhai Patel**, Age about 36 years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn full sleeve black lining shirt and shade of brown pant. No any injury marks have been found over his body. He had deadly weapon such as Dhariya affixed to iron pipe in length of 2 Ft. and one inch including the iron part measuring 9.25 inches. There were no any blood stains on

the said Dhariya having monetary value of Rs.5/-.

The second accused is **Ashwinkumar Jagabhai Vanabhai**, Age about 21 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn light yellow colour shirt and black pant. No any injury marks have been found over his body.

The third accused is **Prahaladbhai Jagabhai**, Age about 23 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn Marun colour full sleeve shirt and black pant. No any injury marks have been found over his body.

The fourth accused is Parshottambhai **Mohandas Patel**, Age about 45 Years, Resident of village : Sardarpur, Taluka : Vijapur. He had worn white black shirt and light green pant. No any injury marks have been found over his body.

No any articles were recovered from the accused. The panch witnesses have signed the panchnama after verifying and understanding the contents written in the panchnama. Said panchnama is signed by Patel Arvindbhai Becharbhai and Patel Babubhai Varvabhai on 12.03.2002 between 13.00 to 14.30 hours.

Particulars of the Arrest panchnama Exh.834 are as follows:-

Exh.834- The said panchnama is regarding the deadly weapons recovered from the 3 accused.

The first accused is **Ambalal Maganbhai Patel (Kapoor)**, Resident of village : Sardarpur, Taluka : Vijapur. He had worn black and white shirt with brown pant. No any injury marks have been found over his body. He had deadly weapon such as Dhariya affixed to iron pipe in length of 2 feet and 1.5 inches including the iron part measuring 9 inches with width 5.2 inches. There were no identification marks on the dhariya having monetary value of Rs.5/-.

The second accused is **Kalabhai @ Kanaiyabhai Nathalal**, Resident of village : Sardarpur, Taluka : Vijapur presently residing at Ghatlodiya, Ahmedabad. He had worn sky blue colour shirt with violet colour pant. No any injury marks have been found over his body and clothes. He had deadly weapon such as stick in length of 11.5 inches. There were no identification marks on the stick having monetary value of Rs.1/-.

The third accused is **Rameshbhai Prabhobhai Gopalbhai**,

Resident of village : Sardarpur, Taluka : Vijapur. He had worn white and gray colour shirt with black pant. No any injury and identification marks have been found over his body and clothes. The accused has produced the Dhariya at his own will which was affixed to iron pipe in length of 2 feet and one inch including iron part measuring 10 inches and width 2 inches. There were no identification marks on the stick having monetary value of Rs.5/-.

The panch witnesses have signed the panchnama after verifying and understanding the contents written in the panchnama. Said panchnama is signed by Babubhai Sankalchand Panchal and Thakor Amraji Kodarji on 15.03.2002 between 17.00 to 18.15 hours.

Particulars of Panchnama produced vide Exh.814 are as under :-

Present panchnama is in respect of arrest of 25 accused namely Patel Karshanbhai Tribhovanbhai, Lakhvara Narayanlal Shitalmal, Patel Jayantibhai Mangalbai, Patel Amratbhai Somabhai, Prajapati Babubhai Lavjibhai, Prajapati Rajeshkumar Amrutbhai, Patel Bhaveshkumar Kanubhai, Patel Jayantibhai Jivanbhai, Patel Jagabhai Davabhai, Patel Prahladbhai Somabhai, Prajapati

Bharatbhai Rameshbhai, Patel Kacharabhai Tribhovandas, Patel Jayantibhai Baldevbhai, Patel Mangalbai Mathurbhai, Prajapati Gordhanbhai Revabhai, Patel Bhikhabhai Joitabhai, Prajapati Rohitkumar Ramanbhai, Prajapati Ravikumar Amratbhai, Patel Babubhai Kantibhai, Patel Dineshkumar Baldevbhai, Patel Vishnubhai Gopalbhai, Patel Kanubhai Karshanbhai, Prajapati Dahyabhai Varvabhai, Patel Raghubhai Revabhai and Patel Mathurbhai Ramabhai. No blood stains on the cloths and no any injury mark are found on the body and nothing recovered from any of the accused during the Panchnama. Panchnama was prepared on 04.03.2002 during 15.15 hours to 17.15 hours.

Particulars of Panchnama produced vide Exh.778 are as under :-

Present panchnama is in respect of arrest of 8 accused namely Patel Jivanbhai Dhwarkadas, Patel Jayantibhai Ambalal, Patel Kanubhai Joitaram, Prajapati Ramanbhai Ganeshbhai, Marvadi Aashutosh alias Pavankumar Murlidhar, Patel Dahyabhai Kacharabhai, Patel Rameshbhai Baldevbhai and Patel Mathurbhai Trikamdas. Patel Jayantibhai Ambalal has produced one Lathi of 5 Ft.

having 7 knotty parts and there was no injury mark on his body and there was no blood stains on his cloths. Patel Jivanbhai Dhwarkadas has produced one iron pipe of 2 Ft. - 12 Cms. and there was no injury or burns mark on his body and there was no blood stains on his cloths. Patel Dahyabhai Kacharabhai has not produced anything and there was no injury or burns mark on his body and there was no blood stains on his cloths. Marvadi Aashutosh alias Pavankumar Murlidhar has also not produced anything and there was no injury or burns mark on his body and there was no blood stains on his cloths. Nothing recovered from Prajapati Ramanbhai Ganeshbhai and there was no injury or burns mark on his body and there was no blood stains on his cloths. Nothing recovered from Patel Mathurbhai Trikambhai and there was no injury or burns mark on his body and there was no blood stains on his cloths. Nothing recovered from Patel Kanubhai Joitaram and there was no injury or burns mark on his body and there was no blood stains on his cloths. Nothing recovered from Patel Rameshbhai Baldevbhai and there was no injury or burns mark on his body and there was no blood stains on his cloths. The Panchnama was prepared during 17.00 to 18.30 hours on 11.06.2002.

Particulars of Panchnama produced vide Exh.971 are as under :-

Present panchnama is in respect of arrest of 8 accused namely Patel Babubhai Vanabhai, Patel Rameshbhai Kacharabhai, Patel Babubhai Kanjibhai, Patel Kanubhai Revabhai, Patel Natvarbhai Kacharabhai, Patel (Nagar) Ashvinbhai Baldevbhai, Patel Dahyabhai Vanabhai and Patel Joitaram Ramabhai. Nothing recovered from any of the accused and there was no injury or burns mark on their body and there was no blood stains on their cloths. Panchnama was drawn during 15.00 to 16.00 hours on 26.05.2008.

Particulars of Panchnama produced vide Exh.369 are as under :-

Present panchnama is in respect of arrest of 13 accused namely Patel Kantibhai Prabhudas, Patel Laxmanbhai Dhulabhai, Patel Mahesh Jivanbhai, Patel Mathurdas Dhwarkadas (Davabhai) (Doctor), Prajapati Prahladbhai Varvabhai, Patel Jagabhai Jivanbhai, Patel Upendra Manilal, Patel Sanjay Ambalal, Patel Kalabhai Bhikhabhai,

Patel Govindbhai Mohanbhai, Patel Babubhai Gokaldas, Patel Ramesh Tribhovandas and Patel Arvindbhai Kashiram. Nothing recovered from any of the accused and there was no injury or burns mark on their body and there was no blood stains on their cloths. Panchnama was drawn during 16.00 to 17.00 hours on 03.09.2008.

Particulars of Panchnama produced vide Exh.366 are as under :-

Present panchnama is in respect of arrest of 1 accused namely Patel Ashvinbhai Baldevbhai Joitabhai. Nothing recovered from the accused and there was no injury or burns mark on their body and there was no blood stains on their cloths and no smell of kerosene from his cloths. Panchnama was drawn during 10.30 to 11.15 hours on 26.06.2002.

P.W.112 - Gautamkumar Vishnubhai Barot has deposed that on 22.08.2008, 8 accused were sent to Judicial Custody and they were Charge-sheeted and on 03.09.2008, 13 accused were arrested by P.S.I. Chauhan.

They were handed over to this witness on 04.09.2008. He received a fax message in this regard which is produced vide Exh.907 and 13 accused handed over to this witness which is produced vide Exh.908. They were remanded to police custody for the period of 7 days and thereafter, they were sent to judicial custody. He has deposed that on 24.08.2008, 12 accused were Charge-sheeted after receiving sanction.

28. Before appreciating the evidence of the prosecution, it is desirable to look into the citations as well as arguments advanced by learned Spl. Prosecutor Shri Shah as well as written arguments furnished on behalf of the original complainant. In support of case of prosecution Shri Shah has relied upon following citations :-

In the case of **AIR 2009 SUPREME COURT 2163, SATBIR SINGH & ORS. v. STATE OF U.P.**, the Hon'ble Supreme Court of India has held that, presence of injured eye-witnesses at place of occurrence cannot be doubted.

In the case of **2004 (2) G.L.H. 651** **MANI PAL**
AND ANOTHER v. STATE OF HARYANA & ORS. The

Hon'ble Supreme Court of India has observed that, in a case of related witness - courts are required to critically analysis his evidence with caution - because he is related or his conduct somewhat unnatural, does not affect credibility. It is further held that, Every person cannot act or react in a particular or very same way and it would depend upon the mental set-up of the person concerned and the extent and nature of fear generated and consequently on the spot his reaction in a particular way has to be viewed on the totality of all such circumstances. It is further held that, Eye witness is related - if his evidence found to be truthful and credible - opinion of doctor regarding fire arm injury - opinion contradictory with the eye witnesses' account - opinion of doctor cannot have binding force - doctor's evidence cannot wipe out evidence of eye witness. It is further held that, the paramount consideration of the court is to ensure that miscarriage of justice is prevented.

In the case of **2002(1) G.L.H. PAGE 684,**
ALLARAKHAN K. MANSURI v. STATE OF GUJARAT the
Hon'ble Supreme Court of India has observed that,
Contractions in the evidence of witness pointed out by

Trial Court being minor did not undermine prosecution case.

In the case of **2003 (1) G.L.H. PAGE 699, STATE OF GUJARAT v. RAGHU @ RAGHAVBHAI VASHRAMBHAI & OTHERS**, the Hon'ble Supreme Court of India has held that, past history of the witnesses no ground to discard his evidence - evidence of friends or relatives cannot be discarded on the ground that they are interested witnesses - minor contradictions and insignificant discrepancy in evidence, sometime gives guarantee of the truth. It is further held that, principle of falsus in no falsus in omnibus (false in one thing false in everything), do not apply. It is further held that, Appreciation of evidences - Evidence of hostile witness cannot be discarded ipso facto - can be used for corroboration if found reliable and truthful. It is further held that, interest of victim of crime ought not be ignored - compensation should be given - suggestions made to improve criminal justice system.

In the case of **AIR 1997 SUPREME COURT 1654, STATE OF U.P. v. DAN SINGH AND OTHERS**, the Hon'ble Supreme Court of India has held that, the villagers assaulted the marriage party with sticks and stones. Six

members of marriage party were burnt five of them having been locked inside house of only Schedule Caste resident of village whose house was also burnt. Eight others were pursued and then mercilessly beaten and were killed. Evidence of injured eyewitness, a Scheduled Caste whose house was burnt by villagers, cannot be rejected on ground that he had not named assailants to Investigation Officer. Testimony of other eye-witness, a teacher in school cannot also be rejected merely because he had not mentioned names of persons who had set on fire the house in FIR. Their testimony fully corroborated by other eye-witness. It is further held that, testimony of eye witnesses cannot be rejected only because of some inconsequential contradiction or exaggeration. It is further held that, when people killed during a riot, there may be a possibility at the incident being exaggerated or some innocent persons being named as being part of assailant party. This may happen wittingly or unwittingly. But just because there may be some inconsequential contradictions as exaggeration in testimony of the eye-witnesses that should not be a ground to reject their evidence in its entirety in the cases of rioting where there are a large number assailants and number of witnesses, it is but natural that the testimony of witnesses

may not be identical. What has to be seen is whether basic features of the occurrence have been similarly viewed and/or described by the witnesses in a manner which tallies with the outcome of the riot.

In the case of **AIR 1956 SUPREME COURT PAGE 181, BALADIN AND OTHERS v. STATE OF U.P.**, the Hon'ble Supreme Court of India has held that, the statements made before Police during investigation are not substantive evidence. It can be viewed only for contradiction and corroboration purpose and those statements can be viewed with the fact that, earlier statement of witnesses as recorded by the police is tainted record and has not as great value as otherwise would have in weighing all the material on record as against each individual accused.

In the case of **AIR 1981 SUPREMECOURT PAGE 697, STATE OF PUNJAB v. WASSAN SINGH**, the Hon'ble Supreme Court of India has held that, mere fact that the witnesses succeeded in escaping unhurt or that there are discrepancies in statements is no ground for holding that they were not eye witnesses. Further it is observed in it that, where the witnesses were examined at the trial 17

months after the incident such discrepancies in regard to collateral or subsidiary facts or matters of detail occur even in the statements of truthful witnesses, particularly when they are examined to depose to events which happened long before their examination. Such discrepancies are hardly a ground to reject the evidence of the witnesses.

Further it is observed in the cited ruling that, Relative or interested witnesses – There antecedents or mere interestedness is not a valid ground to reject their evidence.

In the case of **AIR 1986 SUPREME COURT 1769, STATE OF U.P. v. BRAHMA DAS**, the Hon'ble Supreme Court of India has held that, evidence of eye witness and other witnesses if found to be trust-worthy. Conviction can be based on it.

In the case of **AIR 1993 SUPREME COURT PAGE 1544, PARESH KALYANDAS BHAVSAR v. SADIQ YAKUBBHAI JAMADAR AND OTHERS**, the Hon'ble Supreme Court of India has held that, when eye-witness injured in the occurrence his presence at scene cannot be

doubted. Further it is observed in the cited ruling that, delay in examining the injured witness who have suffered serious injuries would not effect their evidence if the evidence is found cogent, convincing and truthful. Further it is observed in the cited ruling that, statement of eye-witnesses that kerosene was poured over deceased and they were burnt alive but the panch witnesses or medical witness not saying that dead bodies smelled of kerosene. However, medical evidence stating that, death of deceased was because of burns. Complaint lodged of the occurrence also speaking burning by kerosene. It was held that, it could not be said that there is an infirmity in the evidence of eye-witnesses. It is further held that, Examination of witnesses - delay - witnesses, victims who have suffered serious injuries - their evidence found to be clear, cogent convicting and truthful - delay in their examination by police would not affect their evidence.

In the case of **AIR 2002 SUPREME COURT 1051, ALLARAKHA K. MANSURI v. STATE OF GUJARAT**, the Hon'ble Supreme Court of India has held that, defective investigation by itself cannot be a ground for acquitting accused.

In the case of **2002(1) G.L.H. PAGE 176, VINUGIRI MOTIGIRI v. STATE OF GUJARAT**, the Hon'ble High Court of Gujarat has observed in the cited ruling that, every person who witnesses a murder reacts in his own way different than others. Further it is held that, minor inconsistency with reference to possibilities suggested to the medical expert - where the evidence and trustworthy, medical opinion pointing to alternative possibilities cannot be accepted as conclusive - the opinion of doctor as to how an injury was caused cannot overrule unimpeachable testimony of eye witnesses - on facts, held that the account given by eye witnesses is inherently consistent and probable. Further it is observed in the cited ruling that, though witnesses have turned hostile, even without the discovery panchnamas, the evidence found on record is reliable to connect all the accused with the crime.

In the case of **2004(1) G.L.R. PAGE 592, KOLI BOPA PREMJI v. STATE OF GUJARAT**, the Hon'ble High Court of Gujarat has observed in the cited ruling that, facts touching motive of crime not dispute. It was held that, omissions and contradictions pertaining to motive would be of little significance in such a case. Further it is observed

in the ruling that, unreal assumptions about human conduct and sophisticated approaches cannot be applied when appreciating evidence of witness from rustic background - Similarly, there is no hard and fast rule with regard to reaction of persons when confronted with a crime scene. It is further held by the Hon'ble High Court of Gujarat that, a witness cannot be expected to possess photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. It so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental facilities, therefore, cannot be expected to be attuned to absorb the details. There cannot be any such pattern or uniform rule of human reactions and to discard a piece of evidence on the ground of his reaction not falling within a set pattern, is unproductive and a pendent exercise.

In the case of **2007(1) G.L.H. 325, DHIRUBHAI BABUBHAI CHAUHAN v. STATE OF GUJARAT**, the Hon'ble High Court of Gujarat has observed in the cited ruling that, Evidence of injured eye witnesses who are

relatives supports prosecution case - testimony of a witness inspiring confidence cannot be discarded on the ground of he being related or interested witness - on facts held that it was a preplanned incident and intention was to kill the deceased. Further it is observed that, delay of 4/5 hours in lodging the F.I.R. was not found fatal in view of the nature of the incident.

In the case of **1994 CRI.L.J. PAGE 1103,**
NAVGANBHAI SOMABHAI AND OTHERS v. STATE OF
GUJARAT, the Hon'ble Supreme Court of India has observed in the cited ruling that, accused umbering about 13, 14 and variously armed - Deceased and injured witnesses taking shelter in a house - Accused making big hole in roof of house and attacking victims - Witnesses not in position because of injuries on them to give consistent and detailed account - They making improvements - No ground to acquit accused. It is further held that, where a large number of accused as many as 13 or 14 variously armed went to the house where the deceased as well as eye-witnesses had taken shelter and climbed the roof of the house and made a big hole in the roof and then attacked the deceased and the eye-witness, even if the eye-witnesses

had improved and had not given consistent version regarding the part played by each of the accused, that by itself will not be a ground to acquit the accused when, having regard to the number of injuries on them, it would have been impossible for the witnesses to give a detailed account and all the accused continued to be members of the unlawful assembly. In a case of the aforesaid nature, section 149, I.P.C. was applicable and what the Court has to see is whether the assailants formed into unlawful assembly and shared the common object either by participation or by being present as members of unlawful assembly knowing that such common object would be to cause grievous hurt.

In the case of **AIR 2002 SUPREME COURT PAGE 1965, KRISHNA MOCHI AND OTHERS v. STATE OF BIHAR**, the Hon'ble Supreme Court of India has observed in the cited ruling that, participation of accused in incident proved by unimpeachable ocular evidence - Recovery of no incriminating material from accused - Cannot alone be ground for their acquittal. Further it is observed in the cited ruling that, occurrence took place in the night but the night of occurrence was not dark, there was sufficient light

coming due to fire set by accused in houses of villagers and heaps of straw - Identification of accused by witnesses - Cannot be doubted. Further it is observed in the cited ruling that, evidence showing that accused persons arriving at village of occurrence, then entering houses by breaking open doors, forcibly taking inmates of houses after tying their hands to particular place and massacring them by slitting their throats - All such acts done pursuant to conspiracy hatched up by them to eliminate members of particular community in village - Merely because some accused are not said to have assaulted either any of the deceased or injured persons, it cannot be inferred that they had no complicity with the crime - Moreso, when according to the evidence those accused were also armed with deadly weapons, like firearms, bombs, etc., but did not use the same. Further it is observed in the cited ruling that, appreciation of evidence - Evidence of witness - Deficient regarding some accused - But sufficient to prove guilt of other - Conviction can be based on it - Falsus in uno falsus in omnibus - Has no application in India. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his

conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. All that the maxim amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-shop. Further it is observed in the cited ruling that, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock

and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

29. Learned advocate Mr.Y.B.Shaikh, appearing on behalf of original complainant has submitted written arguments vide Exh.1042. I have gone through the whole arguments and those arguments are in respect of appreciation of witnesses against the accused persons, which requires to be decided at the time of appreciation of evidence of witnesses. Further learned advocate Shri Shaikh has adopted the arguments of learned Public Prosecutor Shri Shah in respect of scene of offence, recovery panchnama, medical evidence, F.S.L. Reports, Videography and Photography of scene of offence and Post-Mortem Reports and has sought compensation under section 357 of Cr.P.C. and has argued that, the accused side has tried to discredit the witnesses by attacking the natural deposition of the witnesses and there is no reason to disbelieve the evidence of witnesses and

relying upon the citations produced by him, he has submitted that, the evidence of the witnesses is trustworthy, reliable and the prosecution has proved the case against accused, witnesses are illiterate, poor persons and considering the social, economical, geographical condition of the witnesses evidence is required to be appreciated accordingly and accused should be convicted for such a heinous crime. In support of their case, has relied upon the following citations :-

In the case of **(1995) 4 SUPREME COURT CASES 392, RANBIR YADAV v. STATE OF BIHAR,** citation of *Shivaji Sahabrao Babade v. State of Maharashtra, 1972 SCC PAGE 801* is referred, in which it has been observed by the Hon'ble Supreme Court of India that, the scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details,

contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.

In the cited ruling *Bajwa v. State of U.P., 1973 SCC PAGE 725* is referred in which it has been observed that, the evidence through which we have been taken by the learned counsel at the bar has been examined by us with care and anxiety because in cases like the present where there are party factions, as often observed in authoritative decisions there is a tendency to include the innocent with the guilty and it is extremely difficult for the court to guard against such a danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on acceptable evidence which in some measure implicates such accused and satisfies the conscience of the court (see *Kashmira Singh Vs. State of M.P. and Bhaban Sahu v. King*) In the case in hand, no doubt the prosecution witnesses claiming to have seen the occurrence have named all the appellants and the approver has even named those acquitted by the High Court, but in our view it would be

safe only to convict those who are stated to have taken active part and about whose identity there can be no reasonable doubt.

In the case of **AIR 1999 SUPREME COURT 382, KISHORI v. STATE OF DELHI** the Hon'ble Supreme Court of India that, Accused persons members of mob alleged to have attacked and killed three persons – No discrepancy in testimony of eye witness about the death of the deceased and in identifying presence of accused persons in mob. Details as to role attributed to several persons in mob or narration as to succession of events taking place not relevant – Guilt of accused persons as members of mob established – Conviction was found proper.

In the case of **AIR 2004 SUPREME COURT 4570, DANI SINGH AND OTHERS v. STATE OF BIHAR**, the Hon'ble Supreme Court of India has observed in the cited ruling that, Witness related or friendly with deceased evidence of, cannot be discarded on that ground. Court is required to carefully scrutinize evidence and find out if there is scope for taking view about false implication.

In the case of **(1994) 4 SUPREME COURT CASES**

397, KAKI RAMESH AND OTHERS v. STATE OF A.P.,

the Hon'ble Supreme Court of India has observed in the cited ruling that, it is well established rule that exaggeration, embellishments and inconsistencies on the fringe do not make the witnesses unreliable. It is further held that, Criminal Trial - Motive - Parties belonging to different factions in the village - Held, that might have provided motive for the crime instead of false implications.

30. It is argued by Shri Shah and it is submitted by Shri Shaikh, appearing on behalf of the original complainant that, in the present sessions case, Hon'ble Supreme Court of India has directed in Writ Petition (Cri.) No.109 of 2003, **(NATIONAL HUMAN RIGHTS COMMISSION v. STATE OF GUJARAT AND OTHERS, REPORTED IN (2009) 3 SUPREME COURT CASES (CRI.) 44)** for further investigation and inquiry by forming S.I.T. and as per the directions of the Hon'ble Supreme Court of India, S.I.T. (Special Investigation Team) is formed and S.I.T. has investigated and inquired into the matter accordingly. In such circumstances, contradictions and omission in the deposition and statement of witnesses, have got no value. In

major portion of cross-examination of the witnesses, contradictions and omissions are asked. The investigation which was done earlier is not washed out. The investigation, which is done by S.I.T. is not fresh investigation, it is an additional investigation. The statements which were recorded earlier are to be considered on record and additional statements recorded by S.I.T. to be considered as continuous statements.

It is argued by Shri Shah that, here there is a case of attack by unlawful assembly, in which witnesses have sustained injuries in the course of occurrence and therefore, there cannot be doubt about their presence at the spot of incident. Injured witnesses would not spare real assaults and falsely involved innocent persons. Further, it is argued by Shri Shah that, here no doubt eye-witnesses have improved and have not given consistent version regarding part played by each of the accused but that by itself will not be a ground to acquit the accused when having regard to the number of burns injuries on them. It would have been impossible for the witnesses to give detailed account and all the accused continued to be members of unlawful assembly. In such a circumstance the court has to see whether assailants formed the unlawful

assembly and shared the common object either by participation or by being present as members of unlawful assembly. Knowing that such common object would cause grievous hurt. Further, it is argued by him that here it is a case of mass killing. Prosecution has proved that, accused were members of unlawful assembly which have caused common object of murder, loot and burning properties. In that circumstances proof of specific overt act in such a situation is not necessary. Further, it is submitted by him that, accused were among writers having common object of killing persons of particular community and looting and burning of their properties. Minor discrepancies and contradictions in the testimonies of the witnesses would not amount fatal to the case of prosecution. In a circumstances when a witnesses coming before the court after a span of eight years. Further, it is submitted that, prosecution has proved participation of accused in occurrence by oral evidence of the witnesses. In the circumstances, recovery of no incriminating material from accused cannot alone be a ground of acquittal. Further, it is submitted by Shri Shah that, there is evidence showing that, accused came in the form of mob and burned the houses of Shaikh Maholla and tried to break the door of Mahemudmiya's house and by

pouring kerosene and petrol, mob burnt the house and the result is burning of witnesses as well as 33 persons died due to burns injuries. In that circumstances, if witnesses are not saying about overt act of some of the accused, it cannot be inferred that, they had no complicity with the crime. Further, it is submitted by Shri Shah that, if major portion of evidence is found to be deficient in case of residue is sufficient to prove guilt of an accused. It is the duty of the court to separate grain and chaff. In that circumstances, it is open for the court to convict the accused considering the fact that, evidence has been found to be deficient to prove guilt of other accused persons. The doctrine "*falsus in uno falsus in omnibus*" has no application in criminal trial. So far as the normal discrepancies and material discrepancies, normal discrepancies in evidence are those which are due to normal errors of observations due to lapse of time, due to mental disposition at the time of occurrence, while material discrepancies are those which are not normal and not expected of a normal person. Here, the discrepancies which are in a normal nature are required to be ignored, there is no material discrepancies in the evidence of the witnesses.

Further, it is submitted by Shri Shah that, here in this case accused and witnesses belong to the same village and witnesses are residing in Shaikh Maholla and are known to each other very well. In that circumstances if the witnesses are identifying the accused in the court for the first time, it is admissible in evidence, failure to make identification parade does not make the evidence of identification in the court as failure. Further, it is submitted by Shri Shah that, every witness reacts in his own way different from others. Further, if there is any conflict between oral version of the witness, evidence of eye-witness if found credible and trustworthy, opinion of Medical Officer, pointing to alternate possibilities cannot be accepted as conclusive. Further, case of discovery of weapon, Panch witnesses turned hostile. In that circumstances if the Police Officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the version to be correct if it is not otherwise shown unreliable. Even without the discovery panchnama the evidence on record found reliable to connect all the accused with the crime, a person can be convicted. Further, it is submitted by Shri Shah that, here the injured eye-witness are the real relatives of the deceased and they are supporting the

prosecution case. Testimonies of the witnesses are inspiring confidence and therefore, their testimonies cannot be discarded on the ground that, they are related or interested witnesses. Further, it is submitted by Shri Shah that, the fact that, eye-witness succeeded in escaping on hurt there is no reason to discard the testimony of the eye-witness on that count. Here in the present case witnesses have stated that, accused were the members of unlawful assembly, having common object of committing riots and were armed with stones, barrels of kerosene and petrol etc. therefore, it can be inferred that, they were having common object. Further, it is submitted by Shri Shah that, no doubt earlier there were some defects in investigation but defective investigation cannot be a ground for acquittal. Further, simply because of injured witnesses are the relative witnesses of the deceased, their version cannot be discarded on that count as their deposition are found reliable and trustworthy and well supported with the Medical evidence.

Further, it is submitted by Shri Shah that, mere interestedness is not a ground to reject the evidence of eye-witness, particularly those who were injured. Their

presence during the occurrence cannot be doubted. Secondly injured witnesses would be the last persons to live out the real culprits and implicate other falsely. Further, it is submitted by Shri Shah that, in a case of communal riots if there is delay in examining the witnesses by the police, here the victims have suffered serious injuries and they were having no shelter and under such a grave and tense atmosphere if there is delay in recording the statement by the police, it would not effect their evidence as the evidence of the witnesses is clear, cogent and convincing and truthful. Medical evidence is supporting the version of the witnesses that, deceased died due to burns. Further, it is submitted by Shri Shah that, there is no rule of evidence that, no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as member of unlawful assembly. Even a testimony of single witness is sufficient however, in case of large size of unlawful assembly court can insist at least two reliable witnesses for identification of accused. Here, more than two eye-witnesses have identified the accused. Here, the mob was in large size. Large number of accused have participated in incident. Here the presence of the witnesses at the time of occurrence is reliable and there is no reason

for them to falsely implicate the accused. Further, if there is conflict between oral evidence and medical evidence and evidence of eye-witnesses is credible and trustworthy, opinion of medical evidence is required to be ignored. Further, even without discovery panchnama if the evidence on record is reliable and trustworthy to connect the accused with the crime, it can be relied upon. Further, referring the deposition of P.W.70 - Pathan Munsafkhan Yasinkhan many questions were asked in his cross-examination about his past history for that, Shri Shah has argued that past history of the witness is not a ground to discard his evidence. So far as motive of crime is concerned, here the prosecution is same with specific case of motive. Omissions and contradictions pertaining to motive would be of little significance. Further, it is submitted by Shri Shah that, here the people are killed during riots, there is possibilities of incident being exaggerated and some innocent persons being named as being part of the assailant party but just because there may be some inconsequential contradictions or exaggerations in the testimonies of the eye-witness, that cannot be considered as ground to reject their testimonies in its entirety. In the present case of rioting where there

were a large number of assailants and number of witnesses, it is but natural that, testimonies of the witnesses may not be identical. Court has to see whether the basic features of the occurrence had been similarly viewed and described by the witnesses in a manner which tallies with the outcome of the riots. Testimonies of the eye-witnesses cannot be rejected merely because in his statement he has not stated that, who set on fire the house. Here the testimonies of the witnesses are fully corroborated by the evidence of other witnesses as well as police witnesses etc. In respect of contradictions and omissions, it is submitted by Shri Shah that, the contradictions which are pointed out by the accused being minor one did not undermine the prosecution case. Here, as discussed earlier F.I.R. was sent to the Magistrate on 02.03.2002, at 23-45 hours would not amount that, no incident took place at all.

Further, it is submitted by Shri Shah that, here the witnesses are belonging to labour class, uneducated persons and therefore, their evidence should not be judged at the standard as that of urban witness. Relying upon the evidence on record as well as cited rulings it is argued by Shri Shah that, if no definite role is scribed to the accused

persons though they were members of unlawful assembly. It would not fatal the case of prosecution, court is required to carefully scrutinize the evidence on record.

31. It is argued by Shri Dhruv that, in a criminal trial, to prove the guilt of the accused beyond reasonable doubt, is the burden of the prosecution. The accused need to lead any evidence by entering into the witness box and has to show only doubt that there is false involvement of the accused. The standard of proof for showing doubt in the case is not as heavy as much as it is on the prosecution to prove the case against the accused beyond reasonable doubt. If the accused is successful in creating doubt with regard to the involvement of the accused which is found to be reasonable, the Court has to accept it. Even while convicting the accused also, if there are two views possible the one favouring the accused is to be accepted. The burden of proof never shift on the accused in criminal trial. The prosecution has to stand on its own legs. Prosecution cannot seek support for proving his case against the accused from the infirmity or even by defencing in defence of accused. In support of his say, he has relied upon the following authorities.

In the case of **1973 (SCC) (CRI.) 1048, KALI RAM v. STATE OF HIMACHAL PRADESH**, it is held by the Hon'ble Court that, General principles regarding Presumption of innocence of accused – Burden of proving guilt of accused on whom – Benefit of doubt – Reasonability of doubt regarding the guilt of accused – Rule of consistency of evidence – In case of two alternative, court to accept the view favourable to accused – Special relevance in case of circumstantial evidence – Whether different considerations apply in cases of statutory presumption against the accused are discussed. Further, one of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the Courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the

existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

In the case of **1991 CRIMINAL LAW JOURNAL 15**
DILAVAR HUSSAIN S/O. MOHAMMADBHAI LALIWALA v.
STATE OF GUJARAT, it is observed in the cited ruling that, misgiving also prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether it is an ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, if depositions are honest and true. Whether the witnesses,

who claim to have seen the incident in this case, withstand this test is the issue ? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of. It is further held that, to bring home the guilt the prosecution was required to prove the presence of witnesses, possibility of seeing the incident by them and identification of the appellants. But mere presence of witnesses was not sufficient. More important was if they saw the incident.

In the case of **1998 SCC (CRI.) PAGE 1064, MOHD. IQBAL M. SHAIKH v. STATE OF MAHARASHTRA**, it is observed in the cited ruling that, merely because a witness was examined after a considerable period from the date of occurrence his evidence need not be discarded on that ground alone but at the same time while testing the credibility and assessing the intrinsic worth of such witnesses the delay in their examination by the police has to be borne in mind and their evidence would require a stricter scrutiny before being accepted. It is further held that, it is the duty of Court to separate chaff from grain – Where evidence of all the eyewitnesses are wholly unreliable, question of one witness corroborating the other

would not arise, nor would the question of separating chaff from grain arise – Unless there is conclusive proof conviction cannot be recorded on conjectures and surmises.

It is submitted by Shri Dhruv that considering the fact that Hindus were attacked in Sabarmati Express train at Godhra, communal riots in Gujarat erupted, there was Gujarat Bandh, Bharat Bandh and that the Kar Sevaks were set on fire in train by Muslims, majority were from Mahesana District. Atmosphere in Mahesana District was tensed but there were no riots reported in Sardarpur. Muslims carried out on their daily pursuits very easily on 27th, 28th and 1st, March of 2002. It is admitted by the witness that they had gone to their work, they had offered Namaz and even moved around the village. There was communal harmony prevailing in Sardarpur village though in adjoining village, case of riots was reported. No communal disharmony was reported in Sardarpur because due to the communal disturbance in village Sundarpur, approximately 50 Muslims had shifted to Sardarpur and they were transported in different vehicles with the help of police of Sardarpur. Further, a meeting for peace was

arranged by P.S.I. Valbhabhai Khemabhai Parmar at the request of Munsufkhan Pathan and thereafter Muslims from Sundarpur were shifted to Pathan Maholla. Thus, Sardarpur was more safe as Muslims from Sundarpur were brought to Pathan Maholla of Village Sardarpur. There is no gate or closed premises which can be easily targeted for attack but in spite of knowing all these things very well, Muslims in Pathan Maholla were not targeted. If any act of killing of Muslims is to be carried out by the village people Pathan Maholla was very soft target than the house of Mahemudmiya. It is one of the very first reason for the said alleged act and in the present case, it is not committed by the persons of Sardarpur. Secondly, house of Mahemudmiya was attacked from backside where the mob from village Sundarpur can easily target it. Even the prosecution witnesses have stated about the attack by mob of village Sundarpur. Keeping in mind the flame pattern and damage to the burnt house of Mahemudmiya, it suggests that the act of setting on fire the house of Mahemudmiya, was done from backside by the mob from Sundarpur and not by the mob of Sardarpur which supports the defence more probable that the house of Mahemudmiya was attacked from backside by the mob of

Sundarpur. Further, it is argued by Shri Dhruv that it is evidence on record that there were 100 houses of Muslims in Sardarpur having population of 400 Muslims in different Maholla like Shaikh Maholla, Ila, Memonvas, Nagroivas, Pathanvas, including 3 houses just opposite to Kapoorvas. Upto 11.30 P.M. on 01.03.2002, there was no case of communal disharmony reported in village : Sundarpur. The instance of cabins set on fire on 28.02.2002 were owned by the people of different caste including Patel, Muslims and other community. If the village people had to set on fire the cabins pursuant to the Godhra incident, they would have targeted the cabins of Muslims only. Here, the cabins of other caste were also set on fire which suggests that the acts was done by unknown persons who were not knowing about the ownership of cabins. Further, no witnesses have seen any of the accused while setting on fire the cabins on 28.02.2002. Further, it is submitted by Shri Dhruv that one Kar Sevak – Mukeshbhai Madhabhai from Sundarpur had arranged some meeting and instigated village people to attack the house of Muslims in the village. Therefore, the Muslims of Sundarpur migrated to Sardarpur as it was safe. There is evidence on record that Muslims of Sundarpur had requested to shift them to

Sardarpur. Some of the Muslims from Sundarpur came on foot in spite of that, no Muslims in Sardarpur village was attacked till 01.03.2002 till 11.30 P.M. Further, it is argued by Shri Dhruv that mob of village of Sundarpur was lathi charged and the tear gas was lobbed at 10.00 P.M. on 01.03.2002. Thus, mob of village Sundarpur was behind the Muslims therefore, possibility cannot be ruled out that present alleged incident have been committed by mob of village : Sundarpur. Further, it is argued by Shri Dhruv that there is road on the backside of Shaikh Maholla leading to village : Kamalpur and mob from Sundarpur can reach upto the backside of house of Mahemudmiya, Again there is evidence on record to the effect that the house of Mahemudmiya was attacked on backside. On the backside of the house of Mahemudmiya, there was burnt bushes and flame pattern which suggest that there was an attack from the backside of the house. However, photographs of front side of house of Mahemudmiya does not suggest that any attack or flame incident took place on the front side of the house which suggests that the house was set on fire from the backside. Even this fact gets support from the F.S.L. Report. It is further argued by him that Raiskhan was instrumental in preparing affidavits of victims with the

aid of Teesta Setalvad which clearly suggests that evidence was created in the shape of affidavits which were produced before Hon'ble Supreme Court of India.

Further, it is argued by Shri Dhruv that, out of 48 witnesses, 38 witnesses have involved different accused. 10 accused have not been named by any of the witnesses. Narayanlal Sheetalmal Lakhvara has not been identified by any of the witnesses though he was named by the witnesses. Accused Rajeshkumar Amratlal Prajapati is though named by Aashiqhusen Bachumiya Shaikh but has not been identified by the said witness. If he is known to the witness then witness would have certainly identified the accused in the Court. Ashiqhusen Bachumiya failed to identify Rajeshkumar Amratlal Prajapati which creates greatest doubt about the reliability of the witnesses. P.W.81 - Shaikh Dilavarkhan Abbasmiya has not given names of any of the accused in his statement and straightway he has identified Rajesh Amratlal Prajapati which also creates doubt about his reliability. Jivanbhai Dhvarkadas and Rameshbhai Baldevebhai have not been identified by any of the witness. P.W.79 - Shaikh Samimbanu Mahemudmiya and P.W.81 - Shaikh Dilavarkhan Abbasmiya has identified Jivanbhai and P.W.73 - Shaikh Faridabibi Aashikhusen has

not named in the mob before the Court but identified Rameshbhai Baldevbhai Patel for the first time in Court. Thus, above facts suggests that witnesses are threatened one and have come before the Court to involve more and more accused. Thus, it is very clear that against 14 accused out of 76 accused, there is no case at all from any corner and they deserve outright acquittal. Case against Jayantibhai Jivanbhai and Patel Kantibhai Prabhudas has been abated and Rohitkumar Ramanbhai Prajapati is referred to Juvenile Justice Board. Thus, there is case against 73 accused only. There is no evidence in respect of which accused killed whom, which accused attacked whom with deadly weapons, which accused had beaten whom, which accused set on fire the cabin, house etc., which accused entered in the house of witnesses and committed robbery or loot, which accused had entered in graveyard and damaged the tomb, which accused committed in deliberate or malicious act to outrage the religious feeling or class by intending his religion and which accused promoted enmity between different groups. It is upon the prosecution to prove that any of the accused has committed any substantive offence if there is no evidence that any named accused has committed offence of murder, no one can be

convicted with the aid of either section 34 or section 120B or Section 149 of the Indian Penal Code. In the present case, witnesses are naming and identifying accused with certain irrespective motive but they have miserably failed to give evidence on above respect. Further it is argued by Shri Dhruv that about 19 witnesses have not deposed before the Court about the incident dated 28.02.2002 with regards to setting on fire the lari, galla, cabin near the Gram Panchayat and bazaar. Further, about 17 witnesses have stated before the Court that Lari, galla and cabins were set on fire on 28.02.2002 but they have not stated that it was set on fire by the mob of Patel's of village Sardarpur. Therefore, it is the say that certain witnesses have deliberately come out to prejudice the Hon'ble Court to involve the present accused who are from village Sardarpur. Even their deposition are full of contradiction and on this vital issue, they are not reliable. 12 witnesses i.e. P.W.46 - Pathan Sabirmiya Akumiya, P.W.47 - Shaikh Ibrahimbhai Rasulbhai, P.W.48 - Shaikh Sabirhusen Kadarmiya, P.W.56 - Shaikh Ayubmiya Rasulmiya, P.W.66 - Shaikh Akbarmiya Rasulmiya, P.W.69 - Shaikh Mahemudmiya Husenmiya, P.W.70 - Pathan Munsafkhan Yasinkhan, P.W.71 - Rawal Mangabhai Ramabhai, P.W.72 - Rawal Prahladbhai

Nathabhai, P.W.77 - Shaikh Badrunnisha Akbarmiya, P.W.82 - Fakir Sabirabibi Sabirhusen and P.W.83 - Fakir Sharifabanu Sabirhusen have stated in their deposition about the incident occurred on 28.02.2002. It is submitted by Shri Dhruv that Talati-cum-Mantri has deposed that the cabins and galla which were set on fire on 28.02.2002 were of Muslims, Patels, Harijans and people from other caste of their village. In spite of that, witnesses have deposed that the mob of Patel set on fire those cabins. If the mob of Patel had to set on fire the cabins they could have easily identified the cabins and galas of Muslims only.

When we peruse the evidence of P.W.39 - Memon Janmahmod Ismilbhai, P.W.49 - Shaikh Iqbalmiya Rasulmiya, P.W.51 - Shaikh Nazirmahmed Akbarmiya, P.W.55 - Shaikh Aashiqhusen Bachumiya, P.W.59 - Shaikh Mohmad Sattar Bachumiya, P.W.66 - Shaikh Akbarmiya Rasulmiya, P.W.67 - Shaikh Imtiyazbhai Mahmadsusen, P.W.69 - Shaikh Mahemudmiya Husenmiya , P.W.73 - Shaikh Faridabibi Aashikhusen, P.W.74 - Shaikh Sikandarmiya Rasulmiya, P.W.78 - Shaikh Basirabibi Bachumiya, P.W.79 - Shaikh Samimbanu Mahemudmiya, P.W.80 - Shaikh Ruksanabanu Ibrahimmiya, P.W.81 -

Shaikh Dilavarkhan Abbasmiya, P.W.84 - Kureshi Imtiyazali Husenmiya and P.W.85 - Parmar Pravinkumar Khemabhai, none of them have deposed about the incident on 28.02.2002 with regards to setting on fire the gallas and cabins near Gram Panchayat or Bazar while P.W.40 - Memon Mahmood Aarif Janmahmod, P.W.41 - Memon Abdulkadir Ismilbhai, P.W.42 - Memon Altafhusen Valibhai, P.W.43 - Memon Aarifbhai Valibhai, P.W.44 - Mansuri Munirahmed Noormahmed, P.W.51 - Shaikh Nazirmahmed Akbarmiya, P.W.52 - Shaikh Hizbulmiya Husenmiya, P.W.54 - Shaikh Sharifmiya Bhikhumiya, P.W.57 - Shaikh Mustufamiya Rasulmiya, P.W.60 - Shaikh Bachumiya Imammiya, P.W.63 - Shaikh Bhikhumiya Kalumiya, P.W.64 - Shaikh Rafikmiya Babumiya, P.W.65 - Shaikh Akbarmiya Nathumiya, P.W.68 - Shaikh Gulamali Akbarmiya, P.W.75 - Shaikh Firozabanu Bachumiya, P.W.76 - Shaikh Hamidabibi Akbarmiya and P.W.87 - Patel Jitubhai Chhaganbhai have stated in their deposition that lari, galla and cabins were set on fire on 28.02.2002 but they have not stated that it was set on fire by the mob of Patel's of village Sardarpur while P.W.46 - Pathan Sabirmiya Akumiya has stated on oath that cabins and gallas were set on fire on 28.02.2002 by Patel's of village Sardarpur. In his

evidence, he has admitted that he has not witnessed the incident on 28.02.2002. In earlier investigation, his statement was not recorded, his statement was recorded by S.I.T. on 20.05.2008. He has not stated this fact in that statement. P.W.47 - Shaikh Ibrahimbai Rasulbai has deposed before the Court that on 28.02.2002, villagers of Patel community were moving around the village and they set on fire the cabins. He has lodged complaint on 02.03.2002. His statement was recorded on 10.03.2002. An application dated 01.06.2002 and affidavit on 06.11.2003 was tendered before the Hon'ble Supreme Court and his statement was recorded on 11.06.2008 by the S.I.T. He is silent about this fact therefore, it is argued by Shri Dhruv that it is vital improvement and it is proved as contradiction in the deposition of Investigating Officer.

P.W.47 - Shaikh Ibrahimbai Rasulbai has also admitted before the Court that on 28.02.2002, mob of village of Patel community set on fire the cabins. He has not stated this fact in his statement dated 06.03.2002. As per the say of Shri Dhruv, it is vital improvement and this contradiction is proved through Investigating Officer

P.W.56 - Shaikh Ayubmiya Rasulmiya has stated that

cabins were set on fire on 27.02.2002. He is not stating the incident on 28.02.2002. Here is not such case of prosecution. He has not stated this fact in his statement dated 10.03.2002 and 19.05.2008. P.W.66 - Shaikh Akbarmiya Rasulmiya has stated that three cabins near Shaikh Maholla were set on fire on 28.02.2002. No other witnesses have stated about the setting on fire near three cabins of Shaikh Maholla on 28.02.2002. P.W.69 - Shaikh Mahemudmiya Husenmiya has deposed before the Court that on 28.02.2002, cabins were set on fire by mob of village of Patel while in his statement dated 06.03.2002 this fact is not narrated before the Investigating Officer. P.W.70 - Pathan Munsafkhan Yasinkhan has deposed about the setting of fire the cabins by Patel villagers on 28.02.2002 but has not stated this fact in any of those statements. P.W.71 - Rawal Mangabhai Ramabhai and P.W.72 - Rawal Prahladbhai Nathabhai have also deposed about the incident dated 28.02.2002 with regards to setting on fire the cabins by the mob of villagers Patel. In 2008 they have made an application to S.I.T. refusing their statement was recorded on 20.05.2008 but they have not stated this fact before the S.I.T. P.W.77 - Shaikh Badrunnisha Akbarmiya has stated about setting on fire the cabins on 28.02.2002

by Patel of village Sardarpur but she herself has not seen the incident of cabins setting on fire on 28.02.2002. She is hearsay witness. P.W.82 - Fakir Sabirabibi Sabirhusen has also stated that mob of Patel by village had set on fire the cabins on 28.02.2002 and she has stated this fact on 28.02.2002 and 20.05.2008 before Investigating Officer. P.W.83 - Fakir Sharifabanu Sabirhusen has stated about setting on fire the cabins on next day of Sabarmati Express train incident.

Though minor contradiction and omission had been the fact of the prosecution case vital and material omission effects the varsity of the prosecution case. It is argued by Shri Dhruv that there are major and vital contradictions on the main incident. Witnesses have deposed diametrical and opposite story and come out with the version than that the previous statement. Accused who have not been named in the previous statement have been named and identified in the court. Further major contradiction, omission, embellishment and improvements made in the oral evidences are such as it is unsafe to rely upon such evidence and such evidence is required to be discarded. For this purpose Shri Dhruv has relied upon the case of **(2002) SCC (CRI.) PAGE 1377, TORAN SINGH v. STATE OF**

MADHYA PRADESH, wherein it is held by the Hon'ble Supreme Court of India that, prosecution's case should rest on its own strength, not on absence of explanation or plausible defence by the accused.

Relying upon the above citation and on the settled proposition of law, it is argued by Shri Dhruv that in the present case there are major contradiction and omission in the evidence of almost all the eye-witnesses and hence their evidence is required to be discarded directly.

It is argued by Shri Dhruv that there is delay in recording the statement of witnesses which were in relief campaign, run and administrated by other community people as brought out in the evidence. Even after long delay, they have not furnished written material on which they have affirmed and signed and sent to the Hon'ble Supreme Court by NGOs. Who have prepared the affidavits, where it was prepared, where it was typed and who translated the same in Gujarati or English, is still a mystery. Witnesses have come with their version of their case after 6 years to the alleged offence. Some witnesses are such whose statements were recorded for the first time after the formation of S.I.T. Even they have admitted that during

intervening period of 6 years, they had number of opportunities to ventilate their grievance but they choose to opt for said objection. No excuse or arguments for late recording of statements would be misconceived or misplaced. For delay in recording of statements, on the aspect of tacit silence and unusual conduct, all these are required to be considered by keeping in mind the following authorities :-

| Sr. No. | CITATION |
|------------|--|
| 1 | (2003) 10 SCC PAGE 670 MARUTI RAMA NAIK v. STATE OF MAHARASHTRA |
| 2 | (2004) 10 SCC PAGE 632 SHANKARLAL v. STATE OF RAJASTHAN |
| 3 | (2003)2 SCC 401 LALLU MANJHI AND OTHERS v. STATE OF JHARKHAND |

Relying upon the above authorities, it is argued by Shri Dhruv that if the explanation given for delay, tacit silence and unusual conduct, is found implausible and improbable, then it is highly unsafe to rely upon such testimony. Here in the present case, it is undisputed that witnesses have not been in a position to satisfactorily

explain regarding the delay in recording the statements and have also failed to explain their unusual conduct and tacit silence and hence, no reliance can be placed upon their testimony.

32. As per the case of the prosecution, accused are charged with allegations of conspiracy under Section 120-B. Shri Dhruv appeared on behalf of the accused has argued that, it is easy to allege conspiracy but difficult to prove conspiracy, as it has to be proved by the circumstantial evidence. Even if conspiracy is proved, the object of conspiracy is required to be proved. For that object and purpose, how the conspiracy was hatched is also important ingredient. If any link is missing in the circumstances leading to conspiracy accused would not be convicted under Section 120-B of I.P.C.

For this purpose, he has relied upon the Judgement of Parliament Attack Case **2005 SCC (CRI) PAGE 1715, STATE (NCT OF DELHI) v. NAVJOT SANDHU ALIAS AFSAN GURU** in which it has been observed that, those who committed offence pursuant to the conspiracy by indulging in various overt acts will be individually liable for

those offence in addition to being liable for criminal conspiracy but the non participant conspirators cannot be found guilty of offence or offence committed by the other conspirators. There is hardly any scope for application of principal agency in order to find conspirators guilty of substantive offence not committed by them. As per the case of the prosecution, the present incident is act of preplanned conspiracy. For this purpose, it is argued by Spl. Prosecutor Shri Shah that there can never be direct evidence in support of conspiracy. It depends upon the circumstantial evidence. It is well settled that all the persons involved in the conspiracy are liable for conviction even though only some persons have acted in this conspiracy. For this purpose, it is argued by Shri Dhruv that there can be no conspiracy between the accused without any agreement. No doubt, for the act of one, others will be vicariously liable if conspiracy proved, each conspirator is liable for conspiracy. Learned advocate Shri Dhruv has also relied upon another citation of **KALIRAM v. STATE OF HIMACHAL PRADESH, reported in (2005) 11 SCC PAGE 600.**

Here, considering the arguments advanced on behalf of both the sides and on perusing the evidence on record as

well as charge framed in respect of conspiracy against the accused and keeping in mind the settled preposition of law in respect of conspiracy alongwith the observation made and ratio laid down in the cited rulings, when we peruse the evidence, one of the evidence in respect of conspiracy is Hareshbhai's meeting and second Narayan Lallu's meeting, third halogen light, fourth direct illegal wire, fifth distribution of kerosene and sixth Basirabibi was told in the shop about the eating of Bhajia (edible food) when she took gram floor and seventh the key of the water works was taken before the incident. These are the incidents upon which the prosecution place reliance and has tried to prove the conspiracy. For this purpose, when we peruse deposition of P.W.46 - Pathan Sabirmiya Akumiya, it has come out that before 20 to 25 days of the incident Hareshbhai Bhatt, leader of Vishva Hindu Parishad had visited the village and meeting of Patel youths were organized and he addressed the people creating hatred towards the Muslims in them and also distributed Trishuls. When we peruse the deposition of P.W.47 - Shaikh Ibrahimbhai Rasulbhai, it is deposed by him that, Basirabibi met him and told that she had gone to purchase gram floor in the shop of accused Dahyabhai Vanabhai.

Dahyabhai Vanabhai told her that, “eat bhajia to-day, tomorrow you would not be able for it”. P.W.48 - Shaikh Sabirhusen Kadarmiya has deposed about the connection of electrical wire directly over the electric pole on tube light and making light available opposite to the house of the witness. The conversation took place between his father and accused Ambalal. P.W.49 - Shaikh Iqbalmiya Rasulmiya has deposed that, before 3 days to the incident meeting was convened between Narayan Lallu, M.L.A. of Unjha and Patels, in Mahadev's temple. He spoke do whatever you like Government is with us. P.W.54 - Shaikh Sharifmiya Bhikhumiya has deposed that on 01.03.2002 at about 7.00 P.M., Amratbhai Somabhai placed halogen light on the street pole. Amratbhai Somabhai told that in the evening they would enjoy beating Bandiyas. P.W.56 - Shaikh Ayubmiya Rasulmiya has deposed that halogen light was placed over the street light focusing it towards Shaikh Maholla. He inquired with Kanubhai Sarpanch as to whether electricity bill for Panchayat is paid or not and the reply was given affirmatively. Further, he has deposed that Kanubhai Sarpanch stated that now, they will enjoy beating Muslims. He has further stated that Mathurbhai Trikambhai was connecting halogen light and Bachumiya

Imtiyazmiya Shaikh stated about the meeting convened by Shri Haresh Bhatt. As per his deposition, Rajubhai Davabhai Patel told him prior to 27.02.2002, to remove his cabin as fodal preserved in his house would be burnt. He has further deposed that Mathurbhai Trikambhai had connected direct line on 28.02.2002 at about 5.00 P.M. over the street line pole situated at the entrance of his Maholla.

P.W.62 - Shaikh Rafikmiya Mahmadsusen has deposed that on 28.02.2002 certain persons of Patel told to close down his cabins and they threatened to set the cabins on fire.

P.W.63 - Bhikhumiya Kalumiya Shaikh has deposed that on 28.02.2002 at about 4.00 P.M. Shankarbhai who is having shop adjoining to the shop of Hanifbhai Abdulbhai, was vacating his shop and on query, he told that he wanted to get the rented shop at another place.

P.W.65 - Shaikh Akbarmiya Nathumiya has deposed that on 28.02.2002 at about 4.00 to 5.00 P.M., Mathurbhai Trikambhai - Wireman, Kanubhai Sarpanch and one Becharbhai Odhavbhai were there and they have placed focus lights.

P.W.68 - Shaikh Gulamali Akbarmiya has deposed that he heard conversation between Ambalal Kapoor and Becharbhai, to kill Muslims and on 01.03.2002, some of the accused were in room in village doing provocative

conversation like cut the Muslims and kill the Muslims. Further, he has deposed that when he was sitting at the entrance of his Maholla, at about 5.00 P.M., Mustufamiya Rasulmiya, who had gone to the shop of Dahyabhai Vanabhai informed that Mukeshbhai Dahyabhai was telling him to eat whatever he wants to eat. P.W.71 - Rawal Mangabhai Ramabhai has deposed that, on 01.03.2002 at about 9.00 P.M., Rameshbhai Mohanbhai parked one tractor containing 2-3-4 barrels of kerosene and one barrel of petrol on the road near his house and he has also deposed that certain accused were passing through the road near his house and going towards the house of Kantibhai Prabhudas. He has also deposed about the focus lights. P.W.74 - Shaikh Sikandarmiya Rasulmiya has deposed that while he was returning from field, Kantibhai Joitabhai Patel was sitting at the cabin of Ishwarbhai Joitadas who refused to give him "Kuber" (name of Tobacco Pouch) as their community people had set on fire the train at Godhra. P.W.78 - Shaikh Basirabibi Bachumiya has deposed that, on 28.02.2002, Jayantibhai had taken away the account book of bore-well of village from her husband. Further, she has deposed that, on 1st March, 2002, at about 5.00 P.M., she went to the shop of Dahyabhai Vanabhai for

purchasing gram floor. Dahyabhai asked her what she would do with the gram floor against which she replied that she would make Bhajiyas. Dahyabhai told her that, “to-day is her last day, eat Bhajiya to-day, tomorrow she will not be able to eat”. P.W.105 - Gehlot Anupamsinh Shreejaysinh, D.S.P. has admitted that, since it was night time, with the help of head lights of police vehicle and patrolling, the affected rooms were located. S.I.T. interrogated him on the issue of electric shock received by the persons in Shaikh Maholla. He was unable to state that whether those electric wire found in Shaikh Maholla were illegally obtained by resident of Shaikh Maholla or not. He has admitted in his statement dated 06.08.2008 that those scattered wires appear to have been fallen down from the burnt houses in which they have obtained electricity connection. P.W.105 - Gehlot Anupamsinh Shreejaysinh, D.S.P. has deposed that it is true that, S.I.T. has asked him about electric shock to the persons in Maholla. It is also admitted by him that, during the rescue operation he saw live electric wires lying on the road and some of police persons have also received electric shock from those wire which were kept aside by wooden stick. He is unable to say whether those wire were taken by the persons residing there from one house to

another house. He has admitted that, before S.I.T. on 06.08.2008 he has stated that it is his belief that, the wires which were lying on the road were taken by the persons residing in that area and those connection were illegal connection.

P.W.110 - Vaghela Kakusinh Ranjitsinh has stated on oath that, Sabirhusen Kadarmiya Shaikh has stated in his statement Dated 06.03.2002 that, when D.S.P was taken towards Mahemudmiya's house where the persons were burnt one iron rod with electric connection was put in side the window of the house as it was touched to D.S.P. He also felt electric shock. It has come out during his investigation that, no information about distribution of Trishul in Mahadev Temple by V.H.P. leader Haresh Bhatt came in his knowledge. Further, no information about instigating speech by Narayan Lallu, M.L.A., Unjha was received.

P.W.90 - Parmar Galbabhai Khemabhai, has stated that Nazir Mohamed Akbarmiya had made representation contending therein that 3 to 4 days prior to the incident, Narayan Lallu convened a meeting of Patel at Sardarpur village and because of that, there was atmosphere of fear in Muslim community. Nazir Mohamed informed the said

witness and sought for protection. In the deposition of Investigating Officer it has not come out during the investigation that, Mr. Haresh Bhatt of V.H.P. has distributed Trishuls in the village in the meeting held at Mahadev Temple and meeting by Narayan Lallu, M.L.A., Unjha. It is argued by Shri Dhruv that all the evidence in respect of conspiracy are created and concocted one. All these incidents never existed prior to the filing of first Charge-sheet. Every evidence has been created at the time of filing of affidavits after the Godhra riots. Further, there can never be conspiracy and unlawful assembly at a time. Either there will be conspiracy or unlawful assembly. On the issue of conspiracy, he has relied upon **(2005) 11 SCC Criminal page 1715**. In this respect, when we appreciate the evidence of P.W.46 - Pathan Sabirmiya Akumiya in as it is position that, before 20 to 22 days of the incident, Haresh Bhatt came, convened the meeting and distributed the Trishuls. The concerned Godhra Train Carnage incident had taken place on 27.02.2002. If a meeting was organized before 20 to 25 days, prior to the incident, then in that case, there is no connection between the meeting by Haresh Bhatt with the present incident. For the first time, this witness had sent an application dated 06.05.2008 to S.I.T.

and from this witness, we cannot infer that the present incident has come out of above preplanned meeting. So far as conspiracy regarding taking of key of water pump by Becharbhai Odhavbhai is concerned this witness has deposed that on 01.03.2002, Bechar Odhav came to him to take key of water works and he refused and hence, he went back and again he came at 8.30 P.M. seeking the key of water works from the witness. He had handed over the key to the witness thereafter, attack in Shaikh Maholla took place at about 9.30 P.M. This witness suggested that accused had conspired the incident and therefore, Becharbhai Odhavbhai took the key from Bore Operator with the intention that if Muslims are burnt there will not be any opportunity to extinguish fire due to the supply of water that care was taken by the accused. But this fact is stated after 6 years by way of an application dated 06.05.2008. Further, as per this witness, when D.S.P. went towards window of Mahemudmiya's house, he received electrical shock and electric wire was separated with the help of stick and the wire was coming from the electric pole situated near the house of Natvarbhai Prabhabhai and an iron rod was tied with the electric wire which was drawn into the house of Mahemudmiya. D.S.P. has falsified this

witness, Panchnama of scene of offence and panch witnesses of scene of offence also do not support this theory. So far as evidence in respect of gram floor for Bhajiya is concerned, it is submitted in the affidavit for the first time. So far as meeting of Narayan Lallu before 3 to 4 days of the incident is concerned, it is deposed by this witnesses. Before S.I.T. he has stated that he does not know Narayan Lallu and where the said meeting was organized. Basirabibi is not his sister. On perusal of evidence of P.W.47 - Shaikh Ibrahimbhai Rasulbhai it has come out that, in the affidavit before the Hon'ble Supreme Court of India name of the owner of the shop is stated as "Dahyabhai Hirabhai" whereas in the deposition before the Court, name is referred as "Dahyabhai Vanabhai" and Dahyabhai Hirabhai is not an accused before this court. On perusal of evidence of P.W.48 - Shaikh Sabirhusen Kadarmiya, it has come out that, Amratbhai Somabhai placed halogen light on street pole and Amratbhai Somabhai was there while as per evidence of P.W.56 - Shaikh Ayubmiya Rasulmiya, Mathurbhai Trikambhai had connected halogen light whereas as per evidence of P.W.65 - Shaikh Akbarmiya Nathumiya, Mathurbhai climbed street light pole and Kanubhai Sarpanch was there and placed

focus light. Thus, in fact who had connected the live wire with the street pole or who has connected the halogen in the street pole is not proved by the prosecution. Witnesses are telling differently. As per one witness, meeting of Haresh Bhatt took place before 20 to 25 days before, as per another witness meeting took place on 27.02.2002. There is much discrepancy. In support of evidence regarding gram floor Bhajiya whether it was shop of Dahyabhai Vanabhai or Dahyabhai Hirabhai is also not established. Further, taking away of key of Becharbhai Odhavbhai who is not the accused here, there is much difference between the evidence of witnesses. Further, the witnesses were silent for long time on this point. After filing of first Charge-sheet, history of halogen light and other incident is coming. Assuming that key of water works is taken it does not suggest evidence of conspiracy. As the Panchnama of scene of offence does not show the live wire lying on road. Considering the evidence of Shri Gehlot, he has not stated that electric connection was taken from Natavarbhai Prabhabhai house. Further, the complainant has not stated this fact in his complaint. From the evidence of Investigating Officer, meeting of Hareshbhai and distribution of Trishul as well as meeting of Narayan Lallu

are disproved. From the deposition of P.W.63 - Shaikh Bhikhumiya Kalumiya, in support of vacating his shop is concerned, it cannot be connected with conspiracy. So far as the evidence of P.W.71 - Rawal Mangabhai Ramabhai, he has seen Ramabhai Mohanbhai with tractor containing 2-3-4 barrels of kerosene and 1 barrel of petrol on the road near his house but he has stated this fact before S.I.T. only. In his deposition, he has stated that he has seen the person taking kerosene. Till the application before S.I.T. he has disclosed nothing. So far as evidence of P.W.74 - Shaikh Sikandarmiya Rasulmiya in respect of denial of "Kuber" is concerned, in his statement dated 22.05.2008, he has mentioned that Ishwarbhai Gopalbhai has refused to give him "Kuber" while in the Court this witness has stated that Kanubhai Joitaram has refused to give "Kuber". Assuming the "Kuber" is denied by any of the accused, it cannot be connected with conspiracy. So far as evidence of P.W.78 - Shaikh Basirabibi Bachumiya is concerned, her version is not corroborating with the say of the complainant about taking of gram floor for Bhajiya from the shop of Dahyabhai Vanabhai. In the earlier statement she has not stated about this fact. For the first time, she has stated the fact before this Court. She has further stated that, on 28.02.2002

Jayantibhai Ambarambhai has taken the account book of bore-well of village from her husband. Assuming this is true then also, it cannot be connected with conspiracy. Further, she has not stated this fact in her statement dated 17.04.2002 or 25.02.2008. So far as story of live wire is concerned, from the evidence of Gehlot, it appears that those scattered wires appears to have been fallen down from the burnt houses in which they had obtained electricity connection. As per evidence of P.S.I. Shri Parmar, one representation was made by Nazirmohmad Akbarmiya Shaikh 3 to 4 days prior to the incident of Narayan Lallu's meeting, because there was an atmosphere of fear in Muslims. In the cross-examination, he has admitted that, on 28.02.2002, no Muslim of Shaikh Maholla has ever met him and no such representation was made to him and he does not know Nazirmohamed Akbarmiya. Further, Hizbulmiya filed affidavits contending allegations that Jagabhai Jivanbhai Patel was carrying 4 bottles of acid and on inquiring by Hizbulmiya Shaikh reason for carrying 4 bottles, he was told that, it is for cleaning toilet but looking to the atmosphere Hizbulmiya told this fact to the present witness for protection. Thus, P.S.I. has stated that he does not know Hizbulmiya Husenmiya Shaikh and there was no

conversation between them on this fact. Further, on the point of Kuber, he was asked the question to which he has stated that he is not taking or smoking or chewing tobacco therefore, there is no question of either asking for it or demanding for it.

Here, when we peruse **2005(1) SCC page 600** in the light of present evidence, evidence in respect of Haresh Bhatt, meeting with Nararyan Lallu, halogen light, taking away the key of water works, taking of kerosene and petrol in tractor, denial of Kuber and gram floor for Bhajiya, all the above incidents cannot be considered as sufficient evidence for conspiracy.

33. As per the case of the prosecution, in the incident, 24 persons were injured during the incident. For this purpose when we peruse the deposition of P.W.47 - Shaikh Ibrahimbai Rasulbai, who has deposed on oath that, he sustained stone injuries on his head and on finger of right hand and on left shoulder and on left leg. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.161 and Case Papers at Exh.162 supporting his deposition, in which following details have

been noted by the Medical Officer :-

Patient aged about 42 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 A.M. by PSI M.L.Rathod and other relatives without police yadi.

History of: Rioting and pelting of stones as well as pouring of kerosene in locked room on 02.03.2002 between 00.30 hours to 2.30 A.M.

Injuries:-

- DTS Left Shoulder region
- DTS Left hand
- Tenderness at Pelvis
- Two small abrasions of 1.5 cm X 0.5 cm at left lap region
- Abrasions of 2 cm X 1 cm at the left side of forehead
- X-Ray bearing No.9517 showing fracture at medical border of Scapula.
- X-Ray bearing No.9518 showing fracture at the base of 1st Metacarpal
- X-Ray bearing No.9519 showing no fracture at Pelvis and both hips.

The patient was admitted in mow on 02.03.2002 at 5.00 A.M. and D.A.M.A on 02.03.2002 at 6.030 P.M. and was seen and treated by FT.OS.

Opinion:- The above injuries can be possible by Hard and blunt substance as both fracture can be recovered within 04 to 06 weeks and other injuries can be recovered within 05 to 07 days.

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in

the Injury Certificate and Cases Papers.

P.W.48 - Shaikh Sabirhusen Kadarmiya, who has deposed on oath that, he sustained stone injuries on his neck but there is no medical evidence supporting his said injuries. If he has sustained injuries whether he has taken any treatment evidence of this witness is silent about it.

P.W.51 - Shaikh Nazirmahmed Akbarmiya, who has deposed on oath that, in the incident he sustained stone injuries on Lt. Elbow and on Rt. Eye. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.174 supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 25 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m.PSI Vijapur and relatives without police yadi.

H/O. Patient Conscious, A/A by stones during riots.

Injuries:-

- An abrasion on left side chest 1cm X 1 Cm
- An abrasion 1cm just above right eye brow on right forehead
- DTS on left elbow region on lateral aspect.

Patient was treated in OPD:-

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 05 to 07 days

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate.

P.W.52 - Shaikh Hizbulmiya Husenmiya, who has deposed on oath that, in the incident he sustained stone injuries on his Rt.Wrist. He has also supported the injuries sustained by Ibrahimmiya Rasulmiya Shaikh. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.172 and Case papers at Exh.173 supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 32 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

H/o A/A stones during Riots.

Pt. conscious.

Injury:-

- Abrasion 1cm X 0.5 cm. with swelling surrounding on

upper / 3rd of left forearm.

X-Rays:-

Bearing No.9511 showing left elbow - NAD

Patient admitted in MOW on 02.03.2002 and was treated by FTOS and was DAMA on 02.03.2002 at 6.30 P.M.

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 05 to 07 days.

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate and Cases Papers.

P.W.57 - Shaikh Mustufamiya Rasulmiya, who has deposed on oath that, in the incident he sustained stone injuries. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.175 and Case papers at Exh.176 supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 30 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

Patient conscious.

H/o. A/A by stones during riots. C/o chest pain.

No any external injuries are found. Patient was treated symptomatically in OPD.

No definite opinion can be given

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate and Cases Papers.

P.W.61 - Shaikh Safikmiya Babumiya, who has deposed on oath that, in the incident he sustained injury on his Right Leg while Barubibi Babumiya, Faridabanu Safikmiya, Suhanabanu have sustained burns injuries but there is no medical evidence supporting his said injuries. If he has sustained injuries whether he has taken any treatment evidence of this witness is silent about it.

P.W.63 - Shaikh Bhikhumiya Kalumiya, who has deposed on oath that, his wife Bismillabibi Bhikhumiya Kalumiya was administered poison while his son-in-law Bhaimiya Alahmiya, daughter Johrabibi, nephew and niece Arif, Rafik and Abeda died. The witness himself had also sustained head injury on right and left side both due to pelting of stones. For this purpose prosecution has examined Dr.P.P.Soni vide Exh.211, who has deposed on

oath as well as has produced Medical Certificate vide Exh.219 and Case papers at Exh.218 supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient Admitted on 02.03.2002 at 11.15 A.M.

History of assaulted injury by pelting of at 1.00 A.M. on 02.03.2002.

O/c:-

- CLW of left parietal region front part 2x 1/4 cm. scalp deep vertical.
- CLW over right post parietal and occipital region 3 x 1/4 cm scalp deep.
- DTS on left shoulder.

Patient conscious and co-operative. Pulse- 88/min

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate and Cases Papers.

P.W.66 - Shaikh Akbarmiya Rasulmiya, who has deposed on oath that, he sustained injuries on Rt.Thigh lower part, Rt.lower back of Chest, Rt.Lower Leg and on Rt. side forehead. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well

as has produced Medical Certificate vide Exh.169, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 45 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

History of A/A by stones during Riots:-

Injury:-

- CLW on right lower leg 5cms X 1.5 cms. X skin deep.
- Abrasion on right thigh lower part 1cm X 1 Cm on lateral aspect
- Abrasion on right lower back of chest 2cm X1 cm
- CLW on right side of forehead 1 cm X 1/4 cm X scalp.

X-Rays:-

- T/F with ankle right bearing No.9527 shown NAD
- Skull bearing No.9525/26 shown NAD.

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 07 to 10 days

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate.

P.W.67 - Shaikh Imtiyazbhai Mahmadsusen, who has deposed on oath that, he sustained injuries on Small contusion Rt. Elbow region and upper and post part. For

this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.183 and case papers vide Exh.184, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 15 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

Patient conscious.

H/o. A/A stones during riots.

Injury

- A small contusion on right elbow region on upper and post part

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 05 to 07 days

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate and Cases Papers.

P.W.68 - Shaikh Gulamali Akbarmiya, who has deposed on oath that, he sustained injuries on Rt.Shoulder and on Lt. Leg Knee. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on

oath as well as has produced Medical Certificate vide Exh.182, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 24 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

Patient conscious.

H/o. A/A stones during riots.

Injury:-

- A small CLW on sole of left middle toe.
- A small contusion on right shoulder.
- DTS left ankle.

X-Rays:-

1. Bearing No.9513 of right shoulder shows no fracture.
2. Bearing no.9512 of left ankle showing no fracture.

Patient was admitted in MOW on 02.03.2002 and was seen and treated by FTS and was absconded on 02.03.2002 at 6.30 P.M.

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 07 to 10 days, if no complication occurs

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate.

P.W.73 - Shaikh Faridabibi Aashikhusen, who has deposed on oath that, she sustained injuries on 1st, 2nd and 3rd Degree burns on both legs, knees and foot and partially over face about 15% burns. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.189 and Case Papers vide Exh.190, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 25 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

H/o Burns during riots.

Patient conscious.

Injury:-

1st, 2nd and 3rd degree burns over both legs and knees and foots.

Partially over face about 15% burns.

Patient was admitted in FSW on 02.03.2002 at 5.00 A.M. and was seen and treated by FTS and was DAMA on 02.03.2002 at 6.30 P.M.

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in

the Injury Certificate and case papers.

P.W.75 - Shaikh Firozabanu Bachumiya, who has deposed on oath that, her nephew Aftab's head and elbow was burnt. Ashiyanabanu was also burnt. Bashirabibi Bachumiya was also injured. Farzana sustained injury in her leg, Ruksana had also sustained injury by stone in her head. Farida was also burnt.

P.W.76 - Shaikh Hamidabibi Akbarmiya, who has deposed on oath that, she has sustained injuries on Rt. Ankle and Lower Lip. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.185 and Case Papers vide Exh.186, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 40 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

Patient conscious.

H/o. A/A stones during riots

Injury

- Abrasion on right ankle
- A small abrasion on lower lip.

Patient was treated in OPD

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 05 to 07 days.

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate and case papers.

P.W.78 - Shaikh Basirabibi Bachumiya, who has deposed on oath that, she has sustained 1st, 2nd, 3rd Degree burns over face on Rt. Side, Rt.Knee, partially on Lt.Leg, Lt. Hand, Rt. Hand Posterior and 20% burns injuries. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.170 and Case Papers vide Exh.171, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 35 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

History: Patient Conscious burning during Riots.

Injury:-

1st, 2nd and 3rd Degree of burns over face on right side, right knee, left leg partial, left hand, right hand post pal, light pain

in throat around 20% of burns.

Patient was admitted in FSW on 02.03.2002 at 5.00 A.M. and was seen and treated by FTS and was DAMA on 02.03.2002 at 6.30 P.M.

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate and case papers.

P.W.79 - Shaikh Samimbanu Mahemudmiya, who has deposed on oath that, she saw her mother, 2 brothers – Irfran and Tipusultan and sister – Faridabanu while burning.

P.W.80 - Shaikh Ruksanabanu Ibrahimmiya, who has deposed on oath that, she has sustained injuries on Rt. Elbow region and abrasion on middle frontal region, 1st degree burns on face. For this purpose prosecution has examined Dr.D.J.Soni vide Exh.158, who has deposed on oath as well as has produced Medical Certificate vide Exh.195, supporting his deposition, in which following details have been noted by the Medical Officer :-

Patient aged about 20 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI

Vijapur and relatives without police yadi.

Patient conscious.

H/o injuries by stone and lathi and burns during riots.

Injuries:-

- CLW 24X 0.5 X skin on right eyebrow region
- Abrasion on mid frontal region 24 X 1cms
- 1st degree burns over face about 8%

Patient was admitted in FSW on 02.03.2002 and was treated by FTS and was DAMA on 02.03.2002 at 6.30 P.M.

Opinion:-

The above injury no.1 and 2 can be possible by H & B substance and can be recovered within about 07 to 10 days and injury no.3 can be recovered within about 10 to 15 days

Thus, the deposition of the injured witness is supported by the deposition of the Medical Officer alongwith details noted regarding injuries and history in the Injury Certificate.

Over and above, above referred injured witnesses, P.W.1 - Dr.D.J.Soni has also examined some other injured persons and the details of the said injured persons are as under :-

Medical Certificate of Rafik Manubhai Shaikh is

produced on record at Exh.163 and Case papers are produced at Exh.164. The details are as under :-

Certifying that Rafik Manubhai Shaikh aged about 11 years resident of Sardarpur, Taluka: Vijapur was brought to the hospital on 02.03.2002 at 5.00 A.M. by P.S.I.Vijapur and relatives the history as under:-

All of them were locked in a room and kerosene was poured on them on 02.03.2002 at about 00.30 hours to 2.30 hours. The patient is unconscious. There were 1st degree, 2nd degree and 3rd degree burns on the back of the chest and abdomen part of face, right hand and right forearm, part of buttock and 60% of deep burning . Patient was seen and treated by the FTS and was transferred to Civil Hospital, Ahmedabad on 02.03.2002 at 8.00 A.M.

Medical Certificate of Firozmiya Maqbulmiya Shaikh is produced on record at Exh.165 and Case papers are produced at Exh.166. The details are as under :-

Patient aged about 5 months resident of Sardarpur, Ta.Vijapur admitted on 02.03.2002 at 5.00 A.M. by PSI Vijapur and other relatives,

History of Burns during Riots. Patient conscious but drowsy.

1st Degree burns on occipital region by flame during riots with 5% burns.

Patient admitted in First Surgical Ward on 02.03.2002 at 5.00 A.M. and was seen and treated by Full Time Surgeon and was

transferred to Civil Hospital Ahmedabad on 02.03.2002 at 8.00 A.M.

Medical Certificate of Saidabibi Hizbulmiya Shaikh is produced on record at Exh.177 and Case papers are produced at Exh.178. The details are as under :-

Patient aged about 06 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

H/O. A/A by stones during riots.
Pt. conscious.
No mark of any external injury
No any C/o.
No opinion required.

Medical Certificate of Suhanabanu Safikmiya Shaikh is produced on record at Exh.179 and Case papers are produced at Exh.180. The details are as under :-

Patient aged about 08 months resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

H/o. Patient conscious. C/o. cry.
H/o. A/A by stones during riots.

Injury:-

- Abrasion 2.5 cm X 0.5 cm over occipital region.

H/o. : CO poisons

Patient was admitted in FSW on 02.03.02 and was treated by FTS and F.T. Pediatrician and was DAMA on 02.03.2002 at 6.30 P.M..

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 05 to 07 days, if no complication occurs.

Medical Certificate of Shainbanu Ayubmiya Shaikh is produced on record at Exh.187 and Case papers are produced at Exh.188. The details are as under :-

Patient aged about 25 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

Patient conscious.

H/o. A/A stones during riots

Injury:-

C/o. backache

No any external injury found treated in OPD sympathetically.

No definite opinion can be given.

Medical Certificate of Maqbulmiya Kesarmiya Shaikh is produced on record at Exh.191 and Case papers are produced at Exh.192. The details are as under :-

Patient aged about 30 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

H/O A/A by Bricks during Riots.
Patient conscious.

Injury:-

□ Contusion 10 Cms. X 5 Cms. oblique over right iliac region.

X-Ray:-

□ bearing No.9515 of pelvis showing no fracture with both hips

□ bearing No.9514 of abdomen showing NAD.

Patient was admitted in MSW on 02.03.2002 and was absconded on 02.03.2002 at 10.15 A.M.

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 05 to 07 days.

Medical Certificate of Shayanabanu Aashiqhusen Shaikh is produced on record at Exh.193 and Case papers are produced at Exh.194. The details are as under :-

Patient aged about 05 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 5.00 a.m. PSI Vijapur and relatives without police yadi.

Patient conscious.

H/o. A/A by stones during riots.

Injury:-

• A CLW 2 Cms. x 0.5 Cms. X skin and blood clots surrounding on right side of fact

Patient was treated in OPD

Opinion:-

The above injuries can be possible by Hard and Blunt Substance and can be recovered within about 07 to 10 days

Medical Certificate of Shayanabanu Aashiqhusen Shaikh is produced on record at Exh.193 and Case papers are produced at Exh.194. The details are as under :-

Over and above, above referred injured witnesses, P.W.2 - Dr.P.P.Soni has also examined some other injured persons and the details of the said injured persons are as under :-

Medical Certificate of Abedabanu Manubhai Shaikh is produced on record at Exh.213 and Case papers are produced at Exh.212. The details are as under :-

Patient aged about 13 years resident of Sardarpur, Ta.Vijapur brought to the hospital on 02.03.2002 at 9.30 A.M..
History of Electric Current giving yesterday evening. Convulsion on every body before 5 minutes with vomiting once.

Outer condition- G.C.Poor. Patient unconscious. Pulse -110/min. Blackening skin. Left forearm and Ant Aspect.

Patient admitted and transfer to Civil Hospital, Ahmedabad on 02.03.2002 at 9.50 A.M. for further investigation and

treatment by order of Full Time Pediatrician.

Medical Certificate of Aminabibi Abumiya Shaikh is produced on record at Exh.215 and Case papers are produced at Exh.214. The details are as under :-

Patient aged about 50years resident of Sardarpur Taluka: Vijapur, brought to the hospital on 02.03.2002 at 11.00 A.M.

History of :-

A/A of assaulted injury by pelting of stones at 1.00 A.M. on 02.03.2002.

Injury:-

. O/C- CLW Right frontal region 3 cm in length. Oblique in direction mild bleeding.

Contusion left side on back 2 x 2 cm.

Above injuries may be caused by hard and blunt object for admitted and discharged against medical advice on 02.03.2002 at 6.30 P.M.

Medical Certificate of Khatimabibi Dosmohmad Shaikh is produced on record at Exh.217 and Case papers are produced at Exh.216. The details are as under :-

Patient aged about 55 years resident of Sardarpur Taluka: Vijapur, brought to the hospital on 02.03.2002 at 11.00 A.M. by relatives

History of :-

A/A of assaulted injury by pelting of stones at 1.00 A.M. on 01.03.2002.

O/C:- Contusion at right knee joint and lower Ant. Tissue 8

X4 cm Reddish blue in colour. Updown in direction.

Above injury may be caused by hard and blunt object and may heal within 7 to 10 days if no complication occurs.

Thus, above injuries are well established by the prosecution by producing cogent and reliable evidence.

So far as no injury marks on cloths are concerned or no explanation by the witnesses in which cloths pelting stones marks were there, it is not such a grave irregularities on the part of the prosecution from which burning injuries or stone injuries can be discarded. There may or may not be marks of injuries of pelting stone on cloths therefore, the arguments of Shri Dhruv in this regard is not acceptable.

So far as arguments by Shri Dhruv that, as per the evidence of doctor, injury is possible by stone and hard and blunt substance is concerned, there are four certificates, which are produced on record vide Exh.163, 175, 177 and 187, they speak about no external injuries. Four certificates produced vide Exh.172, 167, 174 and 185 speak about abrasion and two certificates produced vide Exh.183 and

191 speak about contusion, five certificates produced vide Exh.169, 182, 195, 193 and 219 speak about C.L.W. The certificate produced vide Exh.161 shows two fractures, injuries about stones are shown, there is no bleeding injuries, three certificates produced vide Exh.170, 189 and 195 shows burns injuries. Thus there are injuries in addition to C.L.W. Some of these witnesses are examined, some of these witnesses are not examined though injuries certificates are on record. None of the injured witnesses who are examined says that they were bitten. Therefore, it is argued by Shri Dhruv that, on one hand it is the say of the doctor that, injuries are possible by hard and blunt substance and by stones, on other hand none of the witnesses have explained about these injuries. Further, it is submitted by Shri Dhruv that, so far as burns injuries is concerned the certificate is produced vide Exh.195, injuries are shown as C.L.W. while history is given stone, lathi, burns during riots. Said witness was inside the house of Mahemudmiya. There is specific evidence that, injuries are possible by hard and blunt substance and pelting stones. Therefore, it is argued by Shri Dhruv that, when the mob came the injured witnesses might have rushed from hither and thither and they might have received injuries. There is

no corroboration of injuries by stone For this arguments, when we consider the case of prosecution in the light of evidence on record, in some of the certificates injuries in pelting stones and by hard and blunt substance are mentioned. There are abrasion, fractures and burns injuries. From the evidence of P.W.56 – Ayubmiya Rasulmiya Shaikh has got no injuries, P.W.73 – Faridabibi Aashikhusen Shaikh has sustained 15% burns injuries, P.W.75 -Firozabanu Bachumiya Shaikh has sustained no injuries, P.W.78 – Basirabibi Bachumiya Shaikh has sustained 20% burns injuries, P.W.80 – Ruksanabanu Ibrahimmiya Shaikh has sustained 8% burns injuries plus injuries by stones and sticks, P.W.81 – Dilavarkhan Abbasmiya Shaikh has sustained no injuries. It is true that, deceased in the Mahemudmiya's house suffered suffocation and burns and there was inhale hot smoke. It is supported by other evidence such as F.S.L., Panchnama of Scene of offence, if some of the witnesses, who claiming that they were inside the house have not sustained any injuries or their cloths were not blackened. From that we cannot infer that, those witnesses were not inside the house, if it is otherwise proved from other evidence assuming that, those witnesses were not inside the house

of Mahemudmiya but presence of those witnesses in Shaikh Maholla cannot be doubted and no presumption in favour of accused can be drawn on this count. It is also evident that, other houses in Shaikh Maholla were set on fire and as per say of Investigating Officer and D.S.P. Shri Gehlot they save many injured from other houses. Further, if there was no effect to the cloths of witnesses, who suffered suffocation and carbon particles in trachea or the position of cloths not explained by the witness, it cannot discard the fact of carbon particles in trachea or suffocation as stated by the doctor and on that strength this fact cannot be disbelieved and we cannot infer that, they were not inside the house even otherwise they were in Shaikh Maholla it is well established it is quite possible that the persons might have rushed hither and tither to save them and if there is discrepancies where the witness was at particular point of time that is quite possible and on that count the testimony of witness cannot be discarded. The important fact is that, witnesses were very much present in Shaikh Maholla. Now the issue whether he saw the accused in the mob or not, will be decided at the relevant point in this Judgement.

34. So far as the evidence regarding administering the acid is concerned, it is argued by Shri Dhruv that, whether said injured was inside the Mahemudmiya's house or not, how she came out, how she sustained burns injuries, all these points are not explained by the prosecution. For this purpose when we peruse the evidence of P.W.63 – Bhikhumiya Kalumiya Shaikh, it is the say of this witness, after the incident, when the police came, he also came in Maholla and Sabirhusen Rasulmiya informed him that his wife is lying near the house of Abbasbhai. He went there and saw his wife unconscious. She was vomiting. Thereafter, Sabirhusen Kadarmiya and Akbarmiya Nathumiya took his wife outside the Shaikh Maholla and placed her on the otalla of Ishwarbhai Karsanbhai. His wife was taken to Hospital but this fact is not stated by this witness in his statement dated 10.03.2002. As per the say of this witness, he came to know about the conduct of his wife from Sabirhusen Rasulmiya but Sabirhusen Rasulmiya is not saying a single word about it. Sharifabnau Bhikumiya has stated that Bismillabanu was lying near Dung Hill but there is no Dung Hill near the Shaikh Maholla and it is admitted by Sharifabanu Bhikumiya Shaikh. As per the deposition of Sharifabanu, he told about

the fact that Bismillabanu was lying near Dung Hill, to D.S.P. and D.S.P. alongwith three persons went there and took her on the Otalla of Prahladbhai Varvabhai. Whether Bismillabanu was taken to the Otalla of Prahladbhai Varvabhai or Ishwarbhai Karsanbhai, there is contradictory version. Akbarmiya Nathumiya has stated that some one had administered acid to Bismillabanu. He alongwith Sabirhusen Kadarmiya, Bhikumiya and Mohamadmiya Latifmiya, took her to the Otalla of one Patel. P.W.77 – Badrunnisha Akbarmiya Shaikh is not saying about the administering of acid to Bismillabanu and that the Bismillabanu was taken to the Otalla of Ishwarbhai. Baddrunnisha is saying that her house was burnt, house hold items were burnt and that the ornaments and cash were looted while this witness is not saying about this fact. Thus, inter-se witnesses are giving contrary version. Sabirhusen Kadarmiya is not stating about this incident. As per the say of Akbarmiya, Bismillabanu was lying in Shaikh Maholla itself. While Akbarmiya Nathumiya is saying that Bismillabanu was lying in the Maholla. Thus, there is contradictory version. An application was preferred by this witness to SIT stating that his wife had been killed by administering acid while in the cross examination, he

has admitted that this fact is not stated in application made to S.I.T. Sabirhusen is not telling a single word about Bismillabanu. Thus, this witness is just trying to pose himself as eye-witness in the court which may not be relied upon. Looking to the Post-Mortem Report of Bismillabanu, there is no sign of administering acid to Bismillabanu. Looking to the case papers, it shows that Bismillabanu died due to ex-facie due to suffocation. Therefore, the story regarding administering acid to Bismillabanu is not supported. It is not case of anyone that Bismillabanu was brought out from the house of Mahemudmiya. There are 1st degree burns over the both extremity of Bismillabanu but here death is not caused, due to administering of acid. Thus, no reliance can be placed on the evidence of administering the acid to Bismillabanu and that can be considered as an improvement and exaggeration on the part of witnesses.

35. One of the main defence on which the case of the prosecution is attacked by the accused side is that, at the time of occurrence there was darkness, there was no light at all. Further, second defence is that the theory of Halogen light is subsequently, just to misguide the Court and it is an improvement. Further, it is submitted by Shri Dhruv

that, street light of the Village is not working as it was disconnected due to non payment, therefore, it is very crucial that, in the dark night how the witnesses could have known any of the accused.

Relying upon the evidence as well as relying upon the fact that it was a day of Maha Vad Bij means two days after Poonam, it suggests that there was full moon light at the time of incident. Thus, it is the say of the Spl. Prosecutor Shri Shah that witnesses have seen the accused in moon light and flame light and there was Halogen light and that on the day of incident, first time when police persons have taken patrolling there was light. Accused belongs to the same village and that there was sufficient light in which witnesses have identified the accused. As against that it is argued by Shri Dhruv that street light of village was not working as it was disconnected. Therefore, it was crucial that in the dark night how the witnesses could have known any of the accused. Certain witnesses have claimed that they have seen certain accused from the light of jeep which was set on fire while certain witnesses have come out with story that they have witnessed two of the accused fixing the Halogen light from the over head electric wires of the street. Certain witnesses claim that light was fixed from over head

electric wires of the street. If the electric connection was disconnected it was impossible that even from the overhead wires, electric connection could have been drawn. The story of fixing halogen light over the street light is not stated in the first available statement before the police nor in the first Charge-sheet, there is no any story of availability of light or halogen light at the time of incident. Availability of light or halogen light at the time of incident, is created subsequently. Police officers have not stated about the halogen light but the police officers have improved their version about the availability of light or tube light at the time of incident as they have not stated this fact in their statements first time. There is no independent witness in this regard. As there was dark night how and in what manner, the witnesses could have recognized certain accused. These things are required to be proved by adducing evidence. Further, the alleged place of incident is surrounded by graveyard. The top wall of the house of another Maholla to the road, where no street light is available and majority of the houses were having no electric connection, in that circumstances, people from village would finish their work and go to sleep early in the night. In that circumstances, there would be not chance of even

electric lights on in the houses. It is argued by Shri Dhruv that evidence given by the present witness with regard to connecting tube light to electric pole directly is unbelievable and created with a view to involve the accused. Further the electric pole is situated at Kapoorvas opposite to which stree houses of Shaikh Maholla are situated. The house of Sabbirkhan Kadarmiya is situated just front side of Kapoorvas and not at the Shaikh Maholla. Therefore, the say of Sabbirhusen is against the topography. Thus, witnesses have created the story of connecting tube light to electric pole and that too just near to Kapoorvas. Further, it is argued by him that there is contradiction as to who placed the halogen lamp. Not only that but the theory of tube light and halogen light are improved versions by prosecution witnesses with regard to the light at the time of incident and it is a created one with an intention to show that there was opportunity to the witnesses to recognize or identify any of the accused.

For this purpose when we peruse the evidence of P.W.86 - Patel Dineshbhai Bhagvanbhai, who has deposed vide Exh.664 that, Village Sardarpur is covered under his office and he received one letter from S.I.T., Gandhinagar seeking information about the position of electricity

connection and said information is submitted vide Exh.667. He has deposed on oath that electrical connection was disconnected on 24.12.2001 due to the non payment in street light connection. For industrial purpose separate three phase wires are required while for commercial purpose and house purpose single phase wire is required. When street light connection was disconnected other wires were live and person can connect the wire from live wire. In the cross-examination, it has come out that panchayat has not paid the amount of bill of electric consumption of street-light connection and therefore, street light connection was disconnected on 06.06.2002. From 24.12.2001 to 06.06.2002 street-light wires were disconnected. Cable, Meter etc. peripherals were withdrawn by the G.E.B. on 15.01.2002. When we peruse Exh.667 it shows that electric supply was continued during 22.30 to 8.30 hours and that supply was live for agricultural and industrial purpose. From 8.30 to 2.00 P.M. low sedding power closed, is shown, means for house, agricultural and industrial purpose, supply of power was closed. On 27.02.2002, 28.02.2002, 01.03.2002 and 02.03.2002, street-light connections was disconnected due to non-payment of bill of electric consumption and disconnection notice were issued to

Sardarpur Gram Panchayat on 15.11.2001 and 29.11.2001 for payment within 24 hours to the Panchayat and on 06.12.2001, street-light connection was disconnected and Report was submitted to the office and on 05.01.2002 a letter was written to Sardarpur linemen to withdraw the peripherals from the line. In support of his say, he has produced the documentary evidence vide Exh.666 to 668, 696 and 697. Exh.697 is in respect of electric connection in Shaikh Maholla of Village Sardarpur. There were 5 consumers in Shaikh Maholla and on the strength of this evidence, it is argued by Shri Shah that a person can illegally take connection from the live wire passing for the domestic and commercial use. As per Panchnama, there was electric connection in the house of Mahemudmiya and the wires were lying in broken position. It is not the say that, on the day of incident there was no light at all in the village. P.W.90 – P.S.I. Shri Galbabhai Khemabhaiparmar, P.W.99 – Police Constable – Krushnakumar Kantilal, P.W.100 – Police Constable – Rajakbhai Allahrakhabhai, P.W.102 – A.S.I. - Laljibhai Arjanbhai Desai and P.W.103 – Head Constable – Ganpatbhai Narsinhbhai have deposed in respect of position of light that on 01.03.2002, when they were on patrolling there were lights from panchayat to

houses in Shaikh Maholla. In his cross-examination, they have admitted that when they reached at Shaikh Maholla, after the incident, there was darkness and they have done whole rescue work with the help of Headlights of police vehicles. There were no lights in the Maholla. He saw the persons rushing from Shaikh Maholla and at that time, street lights were off at about 1.45 A.M.

P.W.105- Anupamsinh Shreejaysinh Gehlot, D.S.P. has deposed that it is true that, S.I.T. has asked him about electric shock to the persons in Maholla. It is also admitted by him that, during the rescue operation he saw live electric wires lying on the road and some of police persons have also received electric shock from those wires which were kept aside by wooden stick. He is unable to say whether those wires were taken by the persons residing there from one house to another house. He has admitted that, before S.I.T. on 06.08.2008 he has stated that it is his belief that the wires which were lying on the road were taken by the persons residing in that area and those connection were illegal connection.

Thus, from the deposition of all these witnesses as well as the witness from GEB, it transpires that no doubt,

street-light connection was disconnected but live wires were passing over the street and in Shaikh Maholla, 5 houses were having legal electrical connections and on the day of the incident, when these police persons have visited the place for the first time and when they were on patrolling, light was on, while when they reached at midnight after the incident, there was no electrical light and they have done their rescue work with the help of headlights of their vehicles and battery light. Considering the evidence on record, no doubt street-lights were not working but electric live wire for domestic and commercial purpose was passing over the Shaikh Maholla, any person can take illegal connection from that wires. Looking to the deposition of D.S.P. Shri Gehlot and other Police Officers, live wires were lying in Shaikh Maholla therefore, possibilities of taking illegal connection cannot be ruled out. No question has been asked in cross-examination to any witness with regard to the light in Shaikh Maholla's houses. From the record of GEB it transpires that, five houses were having electric connection and in that circumstances some light is bound to come on the street from those houses and at that hour at the time, one can hardly expect total darkness in a residential locality. Since the expect of position of light in

the houses in the locality is not even touched in the cross-examination of any eye-witness, we cannot infer that, there was no light in the houses at all. Further, some of the witnesses have claimed that, they had seen the occurrence in the light of flame of burning Jeep and Houses. Some light from the flame of burning Jeep and Houses is bound to be, in that circumstances if the witnesses are saying that, they had seen the incident in the light of flame of burning of Jeep and Houses is possible. Further, the day of occurrence was the second day after Poonam (Full moon). Keeping in mind the time of incident and that it was the end of month February, full moon light can be considered at that point of time. Thus, the evidence on record does not indicate absence of any light whatsoever. On the contrary evidence indicate the existence of light at any rate to be able to see the occurrence. Magnitude of fire as described by some other witness was so high that the witnesses could see from Rawalvas those lights. In that circumstances, it is impossible to think that, burning of Jeep, Houses, Cabins would not create sufficient light so as to unable a person to see occurrence. Thus, judging all, it can be considered that, there was considerable light due to fire. That was set on by the mob and it was very much possible for the witnesses to

see the incident. When the mob came and when the fire took place, the light that was created by the fire itself very much made it clear. For this purpose, Spl. Prosecutor Shri Shah has relied upon **2010(3) G.L.R. 2617, DAHYABHAI AMBARAM SOLANKI (CHAMAR) v. STATE OF GUJARAT,** in which it has been observed that, on facts it was found that, it was a full moon night besides there were electric light poles near the place of incident, in that circumstances it was held that, witness could have seen the occurrence. Further, it is observed in the citation that, the village person who used to stay in the agricultural fields during nights are trained to work in the darkness and therefore, no inference can be drawn that, the witness might not have seen the incident as it was night time. Here in the present case, considering the situations of locality and the persons residing in the said locality being labour class, we can infer like villagers, they are trained to work in dim light being habitual one therefore, if the witnesses say that, they have seen the incident in the light of flame of burning Jeep, cabins and houses, it cannot be doubted. And the arguments advanced by Learned Advocate Shri Dhruv in this regard is not acceptable that, there was total darkness and it was highly impossible to see the occurrence

therefore, the citation is applicable to the present set of facts also.

Prosecution has also relied upon **AIR 2009 SUPREME COURT 1729, STATE OF U.P. v. SUKHPAL SINGH & ORS.** It is observed in the citation that, there was full moon light and in moon light and lantern lights, witnesses had identified the accused. Further the accused were otherwise known to witnesses, they were not strangers to them. So far as this ruling is concerned here in the present case, from the evidence on record we can infer that, witnesses could see the occurrence and as per case of prosecution, persons in the mob were from the same village. So far as identification of accused in the present set of circumstances is concerned, it will be decided at the relevant stage. At present the ratio laid down in the Citation is to be considered only for the purpose that, in the moon light and in the light of flame of burnings, the witnesses have seen the occurrence.

So far as fact regarding Halogen light is concerned, this fact is developed subsequently. In earlier statements none of the witnesses had stated about halogen light. From the evidence of Investigating Officer Shri G.V.Barot or from

the evidence of other witnesses, it transpires that, Investigating Officer of S.I.T. has not investigated about the halogen light. As per his deposition when the Police reached at the place of incident, there was dark night and rescue operation was done with the help of headlights of their vehicles. From the deposition of Investigating Officer Shri K.R.Vaghela, it transpires that, it is not revealed from the statements of any one that, at the time of incident there was halogen light in the Shaikh Maholla. P.W.71 – Mangabhai Ramabhai Rawal is not stating about placing of any halogen light or focus light. Further P.W.65 - Shaikh Akbarmiya Nathumiya has deposed about halogen light after six years of incident before Investigating Officer of S.I.T. As per deposition of this witness on 28.02.2002 at about 4.00 P.M. to 5.00 P.M. on the street light Mathurbhai Trikambhai and Kanubhai Sarpanch have raised Focus lights. Munsafkhan Pathan has not stated about the availability of lights at the time of incident. He is admitting that, at the time of incident street-lights of Shaikh Maholla was not working. P.W.60 - Shaikh Bachumiya Imammiya has deposed that, on 28.02.2002 at about 5.00 P.M. Mathurbhai Trikamdhas had directly connected the line of street pole near Shaikh Maholla and focus light at the

graveyard. P.W.56 - Shaikh Ayubmiya Rasulmiya has deposed that, when he reached towards his house, he saw halogen light towards streetlight focused towards his Maholla. He asked Kanubhai Sarpanch whether the street light bill has been paid or not and he replied that street light bill has been paid and stated that he would enjoy beating Muslims. Mathurbhai Trikambhai had climbed and started the light. P.W.54 - Shaikh Sharifmiya Bhikhumiya has deposed that, Amratbhai Somabhai has placed halogen light on street on 01.03.2002 at about 7.00 P.M. As per the say of P.W.48 - Shaikh Sabirhusen Kadarmiya, a day earlier to the incident i.e. on 28.02.2002 at about 7.30 P.M. Ambalal Maganlal Patel and Amratbhai Somabhai Patel, came near the electric pole and Amratbhai Somabhai climbed the electric pole and joined the direct electric wire to the tube light. P.W.53 - Kulsumbibi Kadarmiya Shaikh, who happens to be the mother of P.W.48 - Shaikh Sabirhusen Kadarmiya is not saying anything about this incident. P.W.87 - Patel Jitubhai Chhaganbhai, who happens to be the Complementariness of Village Sardarpur, has stated that on the street light pole, there were bulbs and tube lights but the panchayat has not paid the bill of electric consumption and therefore, the electric connection

was disconnected by the G.E.B. In his cross-examination, Talati-cum-Mantri has admitted that, before the day of incident, on the day of incident and after the day of incident, street-light of village Sardarpur was off. He has stated in his deposition that on 01.03.2002, at about 7.30 P.M., he traveled from village Sardarpur to Firozपुरa from graveyard of Sardarpur. It was winter time and there was darkness. There was no street light at that time. He had not seen halogen lamps or lights at the street light pole or any other place. P.W.91 – Mahendrasinh Lalsinh Rathod, P.S.I., has stated that at about 10.30 pm when he reached Sardarpur village, street lights were on. Thus considering the evidence of halogen light and the fact that, it is not inquired by Investigating Officer Shri G.V.Barot that, there were halogen lights at the time of incident, whether tube lights were on the pole, it was not investigated by him, no panchnama was drawn by him in this regard, no map is prepared of the place where the tube-light or halogen light were found. As per say of Investigating Officer when police reached at the place of offence after the incident, there was darkness. Considering above all the theory of tube-light or halogen light is not well established by the prosecution and much reliance cannot be placed on the evidence regarding

halogen light and tube-lights as deposed by the witnesses and those can be considered as improvement. But the fact that, there was sufficient lights and witnesses could see the occurrence cannot be discarded.

36. For appreciation of evidence in criminal trial to arrive at a correct conclusion there are certain golden thread in the administration of justice in respect of criminal trial for that for appreciation of evidence defence side has drawn the attention of this court towards the cardinal principles which are to be kept in the mind while appreciating the evidence of the witnesses. For that accused side have drawn the attention of the principles laid down in the following citations.

In the case of **(2011) 2 SUPREME COURT CASES (Cri) 375, SUNIL KUMAR SAMBHUDAYAL GUPTA (DR.) AND OTHERS v. STATE OF MAHARASHTRA,** it is observed in the cited ruling that, while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or

improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same against without justifiable reasons. It is further held that, where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. It is further held that, the discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. It is further held that, in case, the complainant in the FIR or the witness in his statement u/s.161 Cr.P.C., has not disclosed certain facts be meets the prosecution case

first time before the court, such version lacks credence and is liable to be discarded. In the case of State of Rajasthan v. Kalki, while dealing with this issues, Hon'ble Supreme Court of India has observed that, in the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. It is further held that, the courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. In the case of Biharnarth Goswami v. Shiv Kumar Singh, Hon'ble Supreme Court of India has examined the issues and held that, Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

It is further held that, while deciding such a case, the court

has to apply the aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited.

Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principles forms the basis of criminal jurisprudence of India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial Court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference. It is further held that, in exceptional cases where there are compelling circumstances, and the judgment under appeal

is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. The rule of appreciation of evidence require that court should not draw conclusions by picking up an isolated sentence of a witness without adverting to the statement as a whole. In such a fact situation, it is not safe to rely on his testimony for the simple reasons that he had made a lot of improvements/embellishments while deposing in court and vital contradictions exist with his earlier recorded statement. Thus, no reliance can be placed on his depositions to hold that the appellant had ill-treated the deceased or that appellant 3 had taken away/worn her ornaments or that she had been deprived of their love and affection or that she was not suffering from epilepsy, etc. The cumulative effect of the medical evidence given by three doctors leads us to the conclusion that the deceased had been suffering from manic depression and certainly

had some mental/epileptic/psychotic problem.

In the case of **1982 CRI. L.J. PAGE 630 (2), MOHANLAL GANAGARAM GEHANI v. STATE OF MAHARASHTRA**, it is held by the Hon'ble Supreme Court of India that, S. 145 applies only to those cases where the same person makes two contradictory statements either in different proceedings or into different stages of a proceedings. If the maker of a statement is sought to be contradicted his attention should be drawn towards his previous statement under Sec. 145 of Indian Evidence Act. Meaning thereby where the statement made by a person or witness is contradicted not by his own statements but by the statement of another prosecution witness the question of application of Sec.145 does not survive.

In the case of **2005 SUPREME COURT CASES (CRI.) PAGE 870, SHINGARA SINGH v. STATE OF HARYANA AND ANOTHER**, it is held by the Hon'ble Supreme Court of India that, the change in version of prosecution during the trial was deliberate and not merely accidental or on account of lapse of memory. It cannot be disputed that this was a very significant change.

The case of **2000 SUPREME COURT CASES (CRI.) 764**

SURESH RAI AND OTHERS v. STATE OF BIHAR,

was a case of Murder and group rivalry and false implication and eye-witnesses were closely related to each other as also to the deceased and inimical to accused-appellants – Having received the information about the murder, when investigating officer reached the place of occurrence – Names of the accused=appellants were mentioned only in the statement of a witness recorded by investigating officer after preparing inquest report – Statement of the eyewitnesses that in compliance with accused's order to move away as they wanted to do away with the deceased, they had meekly moved away leaving deceased there alone was unbelievable – On facts held, entire investigation was wholly tainted and the appellants have been implicated in the case on the collective mischief of the informant, and the investigating officer.

The case of **1977 SUPREME COURT CASES (CRI.)**

PAGE 374 RAM ASREY PANDEY v. STATE OF BIHAR,

was a case of eye-witness and it was observed in it by the Hon'ble Supreme Court of India that, Criminal Trial –

Witness – Eye-witness – When the eye-witnesses have unscrupulously spoken the untruth on all vital points, their testimony cannot be accepted and conviction based on such evidence has to be set aside.

In the case of **1965 (1) CRI.L.J. PAGE 226 (VOL.70, C.N. 73) MASALTI (IN CR.A.NO 30 OF 1964) MUNGA RAM AND OTHERS (IN CR.A.NO. 31 OF 1964) BHAGWATI AND OTHERS (IN CR.A.NO.32 OF 1964) CHANDAN SINGH AND OTHERS (IN CR.A.NO.33 OF 1964) LAXMI PRASAD (IN CR.A.NO.34 OF 1964) v. THE STATE OF UTTAR PRADESH**, it is held by the Hon'ble Supreme Court of India that, it is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorized. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the Court can also call such witnesses in the box in the interest of justice. It is further observed in the cited ruling that, when a criminal Court has to appreciate

evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. But, it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

It is further held in the cited ruling that, under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction, But where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.

In the case of **(2010) 1 SUPREMECOURT CASES**
(CRI.) PAGE 413 = (2009) 10 SUPREME COURT CASES

(CRI.) PAGE 773, PANDURANG CHANDRAKANT

MHATRE AND OTHERS v. STATE OF MAHARASHTRA, it is observed by the Hon'ble Supreme Court of India that, in Muthu Naicker V. State of T.N. Hon'ble Supreme Court of India has held that, where an occurrence takes place involving rival factions, it is but inevitable that the evidence would be of a partisan nature and rejection of such evidence on that ground may not be proper.

Further it is held that, the dominant question to be considered in the instant case is whether the witnesses, despite being interested, have spoken the truth and are credit worthy. Once it is found by the court, on an analysis of the evidence of an interested witness that there is no reason to disbelieve him then the mere fact that the witness is interested cannot persuade the court to reject the prosecution case on that ground alone. It is further held that, in cases involving rival political factions or group enmities, it is not unusual to rope in persons other than those who were actually involved. In such a case, court should guard against the danger of convicting innocent persons and scrutinize evidence carefully and, if doubt arises, benefit should be given to the accused.

In the case of **1988 CRI. L.J.1812 = AIR 1988 SUPREME COURT PAGE 1785, SMT.LICHHAMADEVI v. STATE OF RAJASHTHAN,** it is observed by the Hon'ble Supreme Court of India that, the statement of disinterested persons the Medical Officer that, deceased told him that her mother-in-law had burnt her accepted though he has not recorded the same in medical register. It was a communication by a patient to the doctor who treated her. Doctor was a Government Servant, on duty in the Hospital and nothing was elicited from his cross-examination that he was interested in or inimical towards the accused.

In the case of **1976 CRI. L.J. 1985 = AIR 1976 SUPREME COURT 2468, STATE OF ORISSA v. MR.BRAHMANANDA NANADA,** it is observed by the Hon'ble Supreme Court of India that, where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eye-witness and this witness did not disclose the name of a assailant for a day and a half after the incident and the explanation offered for non disclosure was not believable. It was held that such non disclosure was serious infirmity which destroy the credibility of evidence of the witness.

37. Considering the arguments advanced on behalf of both the sides and on perusing the oral as well as documentary evidence produced by the prosecution as well as on going through the Further Statements of the accused and the documents attached with Further Statements alongwith the cited Rulings on behalf of both the sides, when we appreciate the evidence on record by keeping in mind the citations and submissions of both the sides, when we peruse the deposition of **P.W.47 - Shaikh Ibrahimbai Rasulbai**, he has deposed on oath that, there was Gujarat Bandh on 28.02.2002. He had gone to the village for labour work and in the afternoon he had come back to his house for lunch at that time, he saw mob moving around in the village. After lunch, again he went to his field and returned back at about 7.00 P.M. to his house and at that time also, he saw mob moving around in the village. He has also stated that in the market 2 to 3 cabins of Muslims and other castes were set on fire in the presence of P.S.I. – Mahendrasinh Lalsinh Rathod and Galbabhai Khemabhai Parmar. Again, he has deposed that 4 to 5 Patels came near to his Maholla and Rajendrakumar Punjabhai Tribhovanbhai put one burning rag of petrol below the cabin of this witness. The complainant removed that

burning rag. In the cross-examination, he has admitted that he had not seen the mob setting on fire the cabins. Further, it is admitted by him that he has not seen setting on fire the cabins of Muslim and other community in the presence of P.S.I. -Rahtod and Parmar. Thus, from his evidence it becomes clear that he has not seen the incident of setting on fire the cabins of Muslims and other community on 28.02.2002. If, this fact is not stated in the complaint or any of his statement it is not going to effect the prosecution's facts which are proved. Now the question is whether the said mob was of Patels and cabins were burnt in the presence of both the Police Sub-Inspectors. For this purpose when we go through the deposition of P.W.90 - Parmar Galbabbhai Khemabhai, it comes out that on receiving information about burning of cabins near panchayat they went to Sardarpur and tried to extinguish the fire of cabins and fire fighters were called by them. It suggests that the say of this witness that cabins were set on fire in the presence of these two Police Inspectors is not supported by this witness. They reached subsequently at the place of burning of cabins and at that time there was no mob. Further from the cross examination it itself appears that he himself has not seen setting on fire the

cabins. Once the witness himself is admitting that he has not seen the mob setting on fire the cabins in the market. Therefore, the say of this witness that the said mob was of Patels cannot be accepted. No doubt witness has not seen the incident of burning in the market but, thereafter, mob came towards their Maholla, at that time putting of burning rag by Rajeshbhai Punjabhai under his cabin which was thrown by him is concerned, this incident occurred near to Maholla and his cabin. Therefore, his presence near Maholla or his cabin cannot be doubted. Simply, because this fact is not narrated in the complaint or in his statement even otherwise this fact is not going to disprove the main incident. However, three cabins were burnt near Shaikh Maholla, supported by Panchnama and other evidence. Nothing comes out from cross-examination from which we can discard this fact. Therefore, the arguments advanced by Shri Dhruv in this regard are not sustainable.

The fact that mob was moving around the village as stated by the witness personally seen cannot be discarded simply because this fact is not stated in the complaint or statements. Therefore, the arguments advanced by Shri Dhruv in this regard becomes insignificant. Even otherwise

if, these facts are not stated in complaint or statement it is not going to effect the other material facts as it is in respect of incident dated 28.02.2002. **We are mainly concerned with the incident dated 01.03.2002.** For that, first of all I would like to appreciate the evidence of witnesses of Shaikh Maholla.

38. Further **P.W.47 - Shaikh Ibrahimbhai Rasulbhai** has deposed that on 01.03.2002, there was Bharat Bandh call. At about 10.00 P.M., a mob of Patel's came from Mahadev temple side and they were shouting slogans to cut, beat the bandiyas, no one should be left alive and they came towards Shaikh Maholla and they burnt 3 cabins of Rafik Mohamed, Iqbalmiya and one cabin of the complainant and started pelting stones. Police came and disbursed the mob. Thereafter, police went away. After patrolling, again mob of Patel's gathered and shouted slogan to beat and cut the Bandiyas. They were having dhariya, sword, trishul, spear, petrol gallons and kerosene gallons in their hand and they have started burning houses. They burnt the house of Mahemudmiya, Akbarmiya, Rasulmiya, Jamalmiya Dosumiya, Dilsajmiya Darji and Kesarmiya. He saw the mob.

They came towards Maholla by burning the houses leading and causing damage to the house and then they burnt the jeep of Bachumiya Imammiya. This part of deposition of this witness is supported by Panchnama which shows damage to the house and door of house of the witness and his family members were inside Mahemudmiya's house from where dead bodies were taken or those who are alive but injured were brought and taken to Civil Hospital, Mahesana. This fact is supported by police witnesses and other witnesses and also by injury certificates, P.M Reports etc. Further, this witness was very much present in the Shaikh Maholla. He was injured in the incident which is supported by medical evidence. Hence, his presence in the Maholla cannot be doubted. Therefore, the say of witness in this regard cannot be discarded. Patels were throwing stones from their house and from graveyard also, they were pelting stones. Due to the pelting of stones, door of his house had broken. He asked his wife and children to go to the house of Mahemudmiya to save their lives and therefore, his family members and other members of his Maholla went to the house of Mahemudmiya. Mob had poured kerosene and petrol

around the house of Mahemudmiya with the pelting of stones. He sustained injury on head and other parts of his body. He fell down in his house and due to the injury he could not go to the house of Mahemudmiya. As the police came and went towards the house of Mahemudmiya, the house was burnt. Police took the injured persons and dead bodies to the Civil Hospital.

Accused side has opposed the version of the complainant and has argued that this witness has tried to make change in timing but the version of the witness with regard to timing of first mob in complaint it is mentioned as 11.30 P.M. while in his deposition he is stating time as 10.00 P.M. No doubt there is such difference in timing because witness is a labour and uneducated person. As per prosecution case mob came twice, first at about 9.30 P.M. and second time mob came at about 11.30 P.M. The incident occurred during night if, there is variation in respect of timing in deposition as well as in statement it is not so, to compel a reasonable prudent person to discard whole incident. It is not going to effect adversely or no prejudice is going to be caused to the accused due to such variation in timing. Considering above all, variation in

timing is to be considered as natural one and not intentional nor tutored one and under the circumstances and gravity and nature of offence, the incident occurred if there is such difference in stating the time of occurrence, it does not effect the fact that, the mob had come on 01.03.2002 at about 9.30 P.M. to 10.00 P.M. and set on fire three cabins just at the entrance of Shaikh Maholla and also set on fire houses in Shaikh Maholla. Thus, the fact of this incident remains as it is. Further, this fact is supported by Panchnama, deposition of panchas, Videography etc. Further setting on fire of cabins as well as burning of houses are not much more opposed by the defence. Panchnama shows the damage to the house and door of house of witness. So far as the fact regarding burning of jeep of Bachumiya Immamiya is concerned, this fact is also supported from the Panchnama and other evidence. Therefore, the say of this witness regarding burning of jeep and burning of houses and cabins are supported by other witnesses also. So far as evidence regarding damage to the house of Mahemudmiya is concerned and that his family members were inside the Mahemudmiya's house is concerned, from Post-Mortem Reports, Injury Certificates, Inquest Panchnamas and from the evidence of police

witnesses it is supported that family members as stated by this witness in his deposition were inside the Mahemudmiya's house and they were burnt and brought out either alive or their dead bodies were taken out from the house.

He has further admitted in his affidavit dated 06.11.2002 that 33 lives were lost in this brutal preplanned electrocution and burning alive incident. Attack continued till 2.30 A.M. His brother-in-law who had escaped by jumping upon the grave in the nearby graveyard, helped to pull out the survivors after police arrived at 3.30 A.M. When he pulled him out among the corpses by their near and dear ones, the skin of the dead bodies was struck to their bodies. In this regard, this witness has admitted in his cross-examination that he was not in the house in which the incident took place and persons were burnt. He has also admitted that house of Mahemudmiya is the house in which the incident took place and also admitted that during the whole incident, he was in his own house. He has denied the fact that when the incident took place in the Mahemudmiya's house at that time, he was in the house. It suggests that he was not in the house in which the main

incident took place. He has also deposed that he was pulled out from the heap of dead bodies and skin of those dead persons struck to his body. Thus, on this strength, it is argued by Shri Dhruv that either this witness has stated false facts before the Hon'ble Supreme Court or has given false account on that point before this Hon'ble Court. Further, it is argued by Shri Dhruv that it is deposed that he was not able to move to the house of Mahemudmiya in which the incident took place. He was asked in cross-examination as to which of these two facts is correct facts against which he has deposed that, what is stated in affidavit is correct one. Keeping in mind both the situations whether the witness was in his house or in Mahemudmiya's house. When we consider the facts, assuming it is true that complainant fell down in his house or he went to Mahemudmiya's house prior to that there was sufficient opportunity for him to see the mob as incident was going on in the Maholla. It is only after door was broken, persons from his house went to Mahemudmiya's house and from entrance of Shaikh Maholla mob came by burning the houses. Therefore, under above circumstances it is not of much importance and no much weightage can be given to this fact. So far as history given by the complainant is

concerned, when we peruse the certificate of complainant, which is produced on record vide Exh.161, in the certificate history of pelting stones and burning by pouring petrol and kerosene in the room on 02.03.2002 at between 00.30 to 2.30 A.M. patient was conscious is mentioned. Whether this history is given by the complainant, this certificate is silent about it. However, the arguments advanced by the learned advocate Shri Dhruv that, this fact is not narrated in the complaint and as per evidence, he was not in the house of Mahemudmiya while as per his affidavit he was in the room and thus contradictory statements are there in this regard and history given by the complainant is not reliable is concerned, from the history it transpires that, this history is given by the complainant and he was fully conscious at the time of narrating the history. From the words narrated in the history, it appears that, history is in general manner. It is not made clear in the history whether the complainant was inside the house of Mahemudmiya or in his own house though this history can be considered as corroborative piece of evidence. There is discrepancies in the evidence of the complainant whether he was inside the Mahemudmiya's house or in his own house but the fact that, before receiving injuries he was in his house and he

was having sufficient opportunities to see the mob is well established by the prosecution.

This witness has stated in cross-examination that, in Shaikh Maholla, his house is situated near the house of Bachumiya Imammiya whose jeep was burnt by the mob which was seen by him. He has also admitted that when jeep was set on fire, mob was spread over surrounding to the house of Mahemudmiya. He has also admitted that when jeep was set on fire, at that time, there were nearly 20 persons in his house. He has further stated that when the door of his house was broken, all 20 persons had come out from his house and went inside the house of Mahemudmiya. He slept by the side of his house. For this evidence, it is argued by Shri Dhruv that if at all, the mob which was spread over by the house of Mahemudmiya, the person who had come out from the house of the witnesses can be assaulted by the mob itself. Mob had allowed nearly 20 persons to come out from the house of this witness and to go into the house of Mahemudmiya. It is further argued by him that this fact suggests that witness has not seen actual incident and has projected himself as eye-witness and complainant of the case. The manner in which real

incident occurred has not been stated by the witness. The main genesis and occurrence is suppressed by the prosecution from this Court. It is admitted by this witness that, door of his house opens in Maholla and there is no other route from where these 20 persons can go to the house of Mahemudmiya. Thus, this say of the witness is highly improbable. This witness has committed mistake in giving name of his wife and had given name of his daughter. There is possibility that at the time when the complaint was given, he was not knowing who has died as he is not the witness of the incident and the complainant is not narrating the true version of the incident in his words and at the instance of someone, complaint is created.

To decide the fact whether complainant was in his house or Mahemudmiya's house as argued by Shri Dhruv is concerned, when we peruse map, Panchnama of the house of Ibrahimmiya Rasulmiya there is two rows in Shaikh Maholla and in between the two there is a passage for ingress and egress and the house of Mahemudmiya is at the end of the row and it is at the center. While house of Ibrahimmiya Rasulmiya is between the row. Mob was attacking the houses in Shaikh Maholla and door of the

house of the complainant was broken in that circumstances if by trying themselves to save their lives 20 persons went from the house of the complainant to house of Mahemudmiya. That is the natural conduct of the witnesses. There cannot be a mathematical calculation on such a situation. Every person would try to save himself by avoiding mob and if, the victims went to the house of Mahemudmiya safely that is possible. Looking to the distance between two houses on seeing mob in attacking mood, a person can go to Mahemudmiya's house without being injured. Therefore, arguments of accused side on this point is not sustainable. Therefore the arguments on behalf of accused that this witness is coming with his fanciful version which has never occurred and if at all, it has occurred, it is not being stated for 8 years as to the occurrence is not acceptable.

As per the case of prosecution **P.W.48 - Shaikh Sabirhusen Kadarmiya**, he was inside the house of Mahemudmiya. When we go through the deposition of this witness he has deposed that on 28.02.2002 at about 7.30 P.M., Ambalal Maganbhai and Amratalal Somabhai came near the electric pole which is opposite to the house of the

witness. Amratbhai Somabhai climbed the electric pole and connected the tube light with the electric line. Further he has deposed that he and his father was sitting, at that time, Ambalal Maganlal on seeing his father told that now, they would enjoy beating Bandiyas. It is further deposed that, on telling the above sentence to his father and mother, they went away. So far as this fact is concerned, this fact is not getting much support from other evidence. Even otherwise if, a person connects an electric wire with the electric pole it cannot be said that it was a preplanned for a conspiracy assuming it is true then also it is not going to effect adversely to the actual incident but at the same time we cannot conclude that he is telling whole incident falsely, at the most it can be considered as exaggeration.

Further, it is deposed by him that on the same day, at night, the cabins just in front of Shaikh Maholla were burnt and more cabins of Muslims and other community were also burnt. On 01.03.2002, he saw his cabin in burning condition which was situated in the Veranda of Gram Panchayat. On that day, there was Bharat Bandh. He came back to his house and told his father about the burning of cabins. Due to fear they went to Shaikh Maholla in the

evening. In the night at about 10.00 P.M. Patel's from their village had attacked Shaikh Maholla alongwith Dhariya, stick, pipe, kerosene and petrol gallon and other chemicals. Houses in the Maholla were burnt. Three cabins at the entrance of Maholla were burnt at that time focus light was there and they were instigating the mob and pelting stones. House of Patel Maholla were in height whereas house of Shaikh Maholla were low. They were throwing stones from their houses. Patels were throwing stones from Veranda of Graveyard. From all sides, they were pelting stones and the people from Shaikh Maholla tried to save them and they had also pelted stone just to save them. He sustained injury in his neck and he went to the house of Akbarmiya Rasulmiya. The mob came towards the Shaikh Maholla and by burning house of Shaikh Maholla they reached up to the house of Mahemudmiya Husenmiya. This version of this witness supports the say of the complainant. Further, it is deposed by this witness that they had broken window by pouring petrol and kerosene. They had burnt the houses. There was one iron rod, with that electric current was joined and put in the house of Mahemudmiya. For this purpose Shri Dhruv has argued referring to the deposition of this witness with regard to the evidence that one long

iron rod was joined with the current and placed in the room. Persons inside the house were screaming for help. It is argued by Shri Dhruv that it is not stated before the police in the statement dated 06.03.2002 but for the first time, he is coming with this story before the court and witness is tutored one. Even this witness has gone to explain that the rod with current was placed in the window of the house, touched by D.S.P. and D.S.P. received electric shock while in earlier deposition, he has stated that said iron rod was placed in the room while D.S.P. Gehlot is not saying about the electrical shock having been received by him. He has not so stated in any of his statement. This fact is not getting support from Panchnama and from other evidence. No doubt there is electric burn injury to one injured witness and electric live wire was lying in Shaikh Maholla. There is an evidence to that extent but putting of iron rod in Shaikh Mahemudmiya's house is an exaggeration.

Persons from Mahemudmiya's house were screaming for help from 10 P.M. to 12 A.M. but no one came to save them. At about 2.30 A.M. D.S.P. and other police persons came and the mob ran away. As the police came, the

persons from Shaikh Maholla came out and went towards the house of Mahemudmiya Husenmiya. In that house, iron rod with electric current was lying and the lock of the door was broken by gun and current wire was also broken by gun. So far as this part of evidence is concerned Shri Dhruv has argued referring to deposition of this witnesses that, the door of the house of Mahemudmiya was locked and it was broken upon with the help of rifle of the police even live electrical wire was separated with the help of rifle. Thus, door of Mahemudmiya's house had locked, is a new story put forth by this witness. Therefore, witness are saying different account on this point. Some of the witnesses are saying that they have locked the door and window from the inside the house but none of other witness has ever stated that house of the Mahemudmiya was locked from out side by any one either at the time of incident or even after the incident. Even the police officers who are examined and who have brought out the dead body from the house have never stated that the door was closed from out side and it was locked from out side nor they have stated that it was broken with the help of rifle. Further, this fact is not stated in the statement dated 06.03.2002. This fact is stated before this court for the first time after

six years. So far as this point is concerned every person used to describe the incident as per his own understanding. There was a big mob. It is evident that the door was closed and it was opened, whether it was closed from inside or from out side the fact remains that it was closed. Witness might have understood that it is broken by rifle. Assuming it is an exaggeration then also it is not going to the root of the case and on this point one cannot conclude that witness is telling a lie.

Further it is deposed by this witness that 28 persons were dead and some persons were burnt and had sustained injuries, who were sent to Mahesana Civil Hospital. This fact is supported by other eye-witnesses, police witnesses and medical evidence. He is son-in-law of complainant. He sustained injury by brick but he had not taken any treatment. He had submitted one application before S.I.T., his statements were recorded on 06.03.2002 and 10.05.2008, respectively. His house is just 30 Ft. away from Kapoorvas and Kapoorvas belongs to Patel community. He came to Shaikh Maholla. Due to fear, that is natural conduct. There is no question of identification parade as he is residing in Shaikh Maholla since his birth

therefore, there is no question of identification of accused by the witness. Further, it is argued by Shri Shah that, house of Akbarmiya Rasulmiya is towards the right side in Shaikh Maholla means adjacent to the back of Patels Maholla. His house is 2nd in line from the entrance. On perusing map, if a person stands near to his house, he can see the persons going and coming in the mob.

Further, it is argued by Shri Dhruv referring the evidence that, mob had come for the first time near the Shaikh Maholla and they had set on fire the three cabins near Shaikh Maholla and started pelting stones. On arrival of police, mob disbursed. After police went away and again the same mob came. This story is not stated before the police and contradictions are proved in this regard. As per say of this witness incident took place at about 10.00 P.M. There is no theory or story of mob disbursed and again assemble. This witness is telling different story from others. This evidence supports the say of the prosecution that mob had set on fire three cabins just at the entrance of Shaikh Maholla, pelting stones etc., which supports the say of other witnesses simply because this witness has stated that on arrival of police mob disbursed and again assemble the version about setting on fire cabins pelting stones etc.,

cannot be discarded. As per the case of the prosecution first mob came and on arrival police lobbed shells and mob disbursed and second time mob came at the most it goes in minor discrepancy and minor contradiction. Simply because there is some minor discrepancies in narrating the fact it cannot be concluded that the version of this witness in respect of setting on fire of cabins, houses requires to be discarded. So far as evidence regarding closing/breaking of door of Mahemudmiya's house is concerned, it is a fact on record that door was closed either from inside or from outside and it was broken or opened after the police came, in such circumstances whether the door was broken with the help of rifle or in other way. It is not evident that the witness was too near to the house. There were police persons alongwith other persons were present in the Maholla and they were trying to open the door and thereafter, they took the dead bodies out of the room and injured were brought out from the room in that circumstances, it becomes immaterial whether the door was opened with the help of rifle. While opening the door help of rifle might have been taken, if not, then also fact remains that door was opened by the police. Therefore, the arguments advanced by L.A. Shri Dhruv in this regard

cannot be considered. At the most this evidence is to be covered under minor discrepancy, not affecting the root of the case. Therefore, on this basis it cannot be said that this witness is not believable on this point.

P.W.50 - Shaikh Jakirhusen Kadarmiya has deposed that at the time of incident, he alongwith his family members was residing just in front of Patel Maholla and there is Rawalvas also. On 01.03.2002 at about 9.30 P.M., a mob of the village from Mahadev temple side came to the Shaikh Maholla and had burnt three cabins near Shaikh Maholla. As the police came, the mob disbursed. Soon as the police went back, again they came to Shaikh Maholla and they caused damage to the houses, burnt the houses and pelted stones. At that time, Kantibhai Prabhudas, Upendra Manilal and Jagabhai Jivanbhai, were instigating the mob and telling the mob to cut, beat the bandiyas. As the mob came in the Maholla, they went towards the field just to save their lives, his brother Sabbirhusen Shaikh remained in the Maholla. He, his mother and his father, went towards the field and from the field they saw that the persons were screaming for help and they also heard the voices of mob shouting to cut Bandiyas and after two and

half hours, there was silence therefore, they came back from the field and thereafter, they saw police van in Shaikh Maholla therefore, they went to Shaikh Maholla where he came to know about the injuries sustained by the persons of Shaikh Maholla and about the death due to burns in Shaikh Maholla. As per say of Shri S.C.Shah the evidence of this witness supports the say of complainant and prosecution case.

Referring to the deposition of this witness, on seeing the mob entering in Shaikh Maholla, to save their lives, they went to the field which was far away from the scene of incident. He has stated that Kantibhai Prabhudas Patel, Jagabhai Jivanbhai Patel and Upendra Manilal were instigating the mob. This witness has deposed that Jagabhai Jivanbhai Patel and Upendra Manilal Patel were not present in the mob. He has identified Kantibhai Prabhudas. Both Jagabhai Jivanbhai and Upendra Manilal were present in the Court. Placing reliance upon this evidence, it is argued by Shri Dhruv that this witness has tried to falsely rope the accused in the incident. If in the evening, out of fear this witness moved to Shaikh Maholla and when there was nothing in open, it is quite unnatural that he would wait in Shaikh Maholla and entered in

Shaikh Maholla and giving him opportunity to depose that these three accused were instigating. Such a fearful person would ever hear commotion of mob would certainly ran away from the place which he had done. Further, in his statement dated 06.03.2002, this witness has not referred the names of any person on the contrary, he has stated that he is not knowing anything with regards to the presence of mob and this contradiction is proved in the deposition of Investigating Officer Further, in his statement dated 06.03.2002, he has not even claimed that he can identify the accused before the court. Further, in his statement dated 11.06.2008 before S.I.T., he has stated that while running away towards the field he saw the persons of mob while this fact is denied in the Court and in the statement made before police, he has not stated that he witnessed the incident and in his deposition, he has admitted that from the field the cabins situated near the Shaikh Maholla cannot be seen. This omission is proved by contradiction. It is argued by Shri Dhruv that there is material improvement. This witness has stated different facts on different times. In his statement dated 06.03.2002, he has given time of incident as 12.30 A.M. and referring to the deposition of Zakirhusen, Kulsumbibi and Sabirmiya,

it is argued by him that they have not witnessed the incident and have posed themselves to be the eyewitnesses of main occurrence though they were in the field at the time of incident.

For these arguments when we appreciate the evidence of this witness it is not say of this witness that prior to coming of mob they went to field. From the evidence of this witness it transpires that first mob came, he saw the mob, mob entered in Shaikh Maholla. Thereafter, they went to the field. Meaning thereby that he had sufficient opportunity to see the mob. Considering the situation of the house of this witness which is just in front of Patel Maholla, entrance of Shaikh Maholla can easily be seen as it is very near to the entrance of Shaikh Maholla and a person can easily see what is happening in the entrance of Shaikh Maholla. Considering the time of incident the presence of this witness nearby to his house cannot be doubted either he may be in Shaikh Maholla or near to his house. But considering his whole evidence, it can be gathered that he could have seen the incident till he went to the field and he was having sufficient opportunity to see the mob. After that he might have heard the voices from Shaikh Maholla. So far as the deposition of this witness on

this point is concerned, as per his say mob was shouting to cut, beat the bandiyas and victims from Shaikh Maholla were screaming for help. For this we have to appreciate the evidence as to what the witness wanted to say i.e. sense of his say is to be considered not the words which he used. Here, the witness has stated that he has seen the persons screaming. From, the whole evidence it transpires that he had heard the voices of the persons screaming for help. Thus, we should not accept it as word but, by accepting it as sense of his saying we can conclude that he intended to tell what he had heard. Simply because this witness went to Shaikh Maholla in the evening because his house is just in front of Patel Maholla. Under the atmosphere of tense if a person living out side the Muslim Maholla will naturally feel unsafe and will try to go to Muslim Maholla for safety. If this witness is stating so, there is nothing unnatural conduct on the part of their family and if he is stating about seeing of mob at about 9.30 P.M. on 01.03.2002 first and burning of three cabins and second time again the mob came. There is nothing unnatural. Second as per the say of this witness when the mob came they went towards the field just to save their lives. There is nothing unnatural in their conduct. Therefore, the arguments of Shri Dhruv is

not acceptable on this point.

So far as instigation of mob by Kantibhai Prabhudas, Jagabhai Jivanbhai and Upendrabhai Manilal and about their false involvement is concerned, it is true that this witness has not identified Jagabhai Jivanbhai and Upendrabhai Manilal in the court though both were present in the court. In his statement dated 06.03.2002 this witness has not referred the name of any person and in his statement dated 11.06.2008 before S.I.T he has stated that he had seen the persons of mob while running towards the field. No doubt this witness has not specifically stated before the police that he had witnessed the incident. Further it is true that from the field a person cannot see what is happening in the Shaikh Maholla but, at the time of going to field witness has seen the mob. Meaning thereby before he went to field he saw the mob and there was possibility and opportunity to see the mob. Witness is deposing before the court after 10 years approximately therefore, the position of contradictions and improvements are required to be considered accordingly by keeping in mind the situation under which incident occurred and statements were made and the period after which the depositions are recorded. Further, tendency of witness to

exaggerate also required to be kept in mind. Keeping all above in mind when we consider this fact, this witness has not identified Jagabhai Jivanbhai and Upendra Manilal in the court and their names are not mentioned in any statements. Therefore, we can consider this fact as exaggerated one. So far as presence of Kantibhai Prabhudas is concerned, witness has identified him and has stated that he was instigating the mob. Simply, this witness is denying that while running towards the field he saw the persons of mob appeared to be some confusion in the mind of witness. Considering the deposition of witness as a whole on this point, it transpires the say of the witness is that he saw the mob before going to the field. Therefore, the contradictions in this regard are required to be ignored. And the fact that the witness saw Kantibhai Prabhudas instigating the mob is fully satisfied by the witness. So far as arguments of Shri Dhruv regarding timing of incident is concerned if the witness is telling the time as 12.30 A.M. it was a night time, witness is an illiterate person and the circumstances under which the incident was going on, no one will go to see the watch, he will try to save him first and under such tense atmosphere the mental position of the witness is to be considered and in that circumstance if the

witness is stating some change in time, it is required to be ignored as the fact remains as it is that mob had come in the night.

Therefore, the arguments advanced by Shri Shah that this witness is not injured eye-witness. He has identified eight accused and stated that they were in that mob having weapons in the hand. He has further deposed that he is the brother of P.W.48 - Shaikh Sabirhusen Kadarmiya. He is only the eye-witness and he went to Savala after the incident. He has not stated the names of the accused in the statement dated 06.03.2002. He has stated the names in the statement dated 11.06.2008 before the S.I.T. He has identified Kantibhai Prabhudas in the Court and has stated that Jagabhai and Upendrabhai are not present in the Court. As per the deposition of this witness, agricultural field is $\frac{1}{2}$ km away from Maholla. He had seen the persons screaming for help. We have to appreciate the evidence as to what the witness wanted to say i.e. sense of his say is to be considered and not the words which he used. Here, the witness has stated that he has seen the persons screaming. From the whole deposition, it transpires that he had heard the voices of the persons shouting and screaming for help is

acceptable.

P.W.53 - Shaikh Kulsumbibi Kadarmiya has deposed that, there was no house surrounding her house and on the day of Bharat Bandh due to fear, she alongwith her family members went to Shaikh Maholla. This is a natural conduct. Her house is situated just in front of Patel Maholla, there was no Muslim house surrounding to her house. In such a tense atmosphere anyone would try to go to safer place. Therefore, for her and her family members Shaikh Maholla being Muslim Maholla was much safer. If, due to fear, she alongwith her family members went to Shaikh Maholla that is a natural conduct. Further, it is deposed by her that at about 9.30 P.M., a mob of Patels of their village came from Mahadev Temple side to Shaikh Maholla shouting slogans to cut the Bandiyas and burn them and the mob had burnt three cabins at the entrance of Shaikh Maholla. As the police came, they went away. Thereafter, soon, as the police went away, the mob again came in Shaikh Maholla and they caused damage and also burnt the houses. From this evidence it transpires that for the first time mob came she was in Shaikh Maholla and had an opportunity to see the mob. Her presence in Shaikh Maholla at the time of first mob cannot be doubted.

Further, when second time mob came having weapons in their hands she was in Shaikh Maholla, it is only after seeing mob burning houses, three cabins at the entrance etc., she alongwith family members went to the field, in that circumstances if she is stating that she had seen the mob is believable as she had sufficient opportunity to see the mob as she has stated that the mob burnt the houses and started pelting stones. People from mob were having sticks, Dhariya, pipes, kerosene and petrol gallons and therefore, to save their lives, they went to the field from the backside of the Mahemudmiya's house and her younger son – Sabirhusen Shaikh remained in the Maholla. From the above evidence it transpires that it is only after seeing the mob having weapons in their hand and started ransacking, burning the houses etc., they went to the field. Further, it is deposed by her that in the field, they heard the voices from Shaikh Maholla screaming for help to save them. From the burning flame of houses in Shaikh Maholla, light of fire was seen by her from the field. Looking to the situation of Shaikh Maholla and the field where the witness was, a person can see the flame of light of Shaikh Maholla from the field but cannot see what is happening inside the Shaikh Maholla. It is argued by Shri Dhruv that, it is

denied by her that she alongwith her husband and family members at about 12.00 midnight before the incident, went to the field and they saw mob coming towards their Maholla. However, this witness has stated this fact in her statement dated 06.03.2002. Accepting it as it is true then also alongwith her family members she went to the field at about 12.00 midnight at that time mob had already entered the Shaikh Maholla. Therefore, she is saying that on seeing mob with weapon, ransacking, burning cabins at the entrance of Shaikh Maholla and houses in Shaikh Maholla etc., that is believable and in that circumstances this contradiction becomes insignificant. Therefore, the say of Shri Dhruv that she alongwith her family members went to the field before the mob came and she has not witnessed the incident is not acceptable on this point. Further, it is deposed by her that soon as the police came, there was silence. They came to the Shaikh Maholla. Her son Sabirhusen Shaikh had told about the burning of persons in the Shaikh Maholla that is a natural conduct and from other evidence and from police evidence it transpires that it is only after police came the persons who were hiding here and there came out. Therefore, this say of this witness is reliable.

It is argued by Shri Dhruv that this witness is giving different story than which is stated by her before the police. She has not given the name of any of the accused in her available statements. She has improved her version about Sabirhusen having remained in Shaikh Maholla just to corroborate the say of Sabirhusen that he was in Shaikh Maholla. This fact is not stated by her in her statement dated 06.03.2002. To judge this version, I have to consider other evidence on record which will be discussed and decided at the relevant time in judgment. Further, it is deposed that Kantibhai Prabhudas was instigating the mob to cut the Bandiyas and burn their houses. And the mob burnt the houses and started pelting the stone. People from mob were having sticks, dhariya, pipes, kerosene and petrol gallons with them. For this deposition it is argued by Shri Dhruv that, this witness has deposed in her deposition that when the mob entered in Shaikh Maholla for the second time and started ransacking the house and set on fire the house, she saw Kantibhai Prabhudas instigating the mob. This is an improvement in her deposition. In her statement before the police, she has not given the names of any of the accused. She has named Kantibhai Prabhudas who has

died prior to her deposition so that she may not have to identify the accused. As discussed above she was having an opportunity to see the mob. Therefore, if she is saying instigation by Kantibhai Prabhudas who has died, remains of no use. Assuming it is an improvement then also it becomes insignificant. She has sustained no injury. She was sitting just in front of Kapoorvas. She saw Kantibhai Prabhudas instigating the mob to cut, beat and burn the Muslims. House of this witness was near to Patel Maholla due to tense atmosphere and due to fear if she alongwith her family members went to Shaikh Maholla, there is nothing unnatural as their house was alone and it was not surrounded by Muslim community and they felt unsafe there. In that circumstances when the mob at about 9.30 P.M. came in Shaikh Maholla her presence cannot be doubted. When they went to field from the back side of Mahemudmiya's house prior to that she was in Shaikh Maholla and on seeing the mob shouting slogans, burning cabins and houses in Shaikh Maholla, she went towards the field from back side of Mahemudmiya's houses. In that circumstances her presence in Shaikh Maholla during that period cannot be doubted and the arguments advanced on this point by Shri Dhruv cannot be accepted. So far as

instigation of mob by Kantibhai Prabhudas is concerned, it will be decided at the relevant time and relevant stage.

P.W.54 - Shaikh Sharifmiya Bhikhumiya has deposed that, due to fear he alongwith his family members went to the house of Bachumiya Imammiya. At about 9.00 P.M. a mob of Hindus from the Mahadev Temple side came. They were having pipes, swords, dhariya in their hands. They burnt three cabins at the entrance of Shaikh Maholla. After sometime, police came and mob disbursed. After the police went, the mob again came shouting to burn the Muslims and they were pelting stones. They burnt the houses of Manubhai painter, Akbarbhai and Nathubhai, he went towards the field from the backside way of Mahemudmiya's house. In the field , he heard the voices of persons screaming for help and he also saw flame of fire.

In this regard, it is argued by Shri Dhruv that, this witness has also improved his evidence materially as he has deposed that mob again came and set on fire the house of Manubhai Painter, Bachumiya Imammiya and ransacked it and at that time, he saw the persons and at that time due to fear, he went to the field with all his family members. While in his statement dated 06.03.2002, he has stated

that after hearing commotion of mob and pelting of stones, he alongwith his family members ran away towards the field and from the field he witnessed the incident. Thus, this witness has materially changed his deposition to believe him as witness to the main incident such as setting on fire the house of Mahemudmiya. As per his statement, it is clear that after hearing the commotion, he ran away there was no possibility of the presence of this witness at the time of incident and identifying any of the persons in the mob. This improvement is proved by way of contradiction with his earlier statement. From where he saw and identified the persons in mob, is also an improved version which is also proved by contradiction since from the field there is no possibility of witnessing event of setting on fire the house of Shaikh Maholla.

It is a natural conduct of a witness which is supported by other witnesses also. At the time of first Mob his presence in Shaikh Maholla cannot be doubted. So far as coming of mob, second time is concerned, it transpires from the version of the witness that on seeing the mob with weapons ransacking/burning/pelting stone, he alongwith his family members went to field from the back side way of Mahemudmiya's house. Thus, he was having opportunity to

see the mob and on seeing the mob he went to the field and there he heard the voices from Shaikh Maholla in that circumstances if the witness is saying that he saw the flame of light from the field, looking to situation of field and Shaikh Maholla a person can see the flame of light of Shaikh Maholla from the field. Therefore, his this say is reliable. Therefore under above circumstances if, the witness is saying that he witnessed the incident from the field means, he wants to say that he heard the voices from the Shaikh Maholla and he saw the flame of light from the field. Therefore, in his statement dated 06.03.2002. It is mentioned that he witnessed the incident from the field. It cannot be considered as material improvement or contradiction, we have to consider sense of the say of the witness, not the words. Considering whole evidence of this witness we can conclude that this witness has seen the mob till he went to the field and before that when he saw the mob he was having sufficient opportunity to see the persons in the mob. Thus the arguments advanced by Shri Dhruv in this regard is not acceptable.

Further, it is argued by Shri Dhruv that this witness has admitted that he has filed an affidavit before the

Hon'ble Supreme Court of India on 06.11.2003 in which it is stated that "he got safe as he was quietly hiding in the house". Even before S.I.T., he has stated that in the night at the time of attack, since they were quietly hiding, they were safe. This omission is proved. Further, in the affidavit before the Hon'ble Supreme Court of India and statement before S.I.T., he has stated that they were hiding in their houses therefore, there is no question of witnessing the incident. He has given different story and opposite version about his presence at the time of incident and place of hiding. Further, in his affidavit, he has not narrated that while houses were set on fire, he can see the named persons. It is also not stated in the affidavit that apart from that, he went to the field and could see the persons.

So far as these arguments are concerned whether the witness was hiding in his house for the whole time, during night at the time of attack and he had not at all gone to Shaikh Maholla is not narrated. Simply, omission of this fact before S.I.T. or Investigating Officer or in affidavit would not discard the whole version of this witness. Much importance under such a tense atmosphere and circumstances cannot be given to this omission. Possibility

cannot be ruled out that he might have hidden himself in his house and on feeling the tense atmosphere he alongwith his family members went to the Shaikh Maholla that would be the natural conduct of a person. Therefore, on the strength of this contradiction or omission the say of Shri Dhruv is not acceptable.

Further, it is submitted by Shri Dhruv that house of witness is situated just opposite to Kapoorvas where three houses i.e. his house, his father's house and his uncle's house, are situated and those houses were not set on fire. There is a straight leading road towards the field while going to Shaikh Maholla. Witness has not stated in the statements dated 06.03.2002 and 22.05.2008 that he went to the field from Shaikh Maholla. There is possibility that he might have straight way gone to the field. In the affidavit before the Hon'ble Supreme Court of India, he has claimed that he was hiding in his house therefore, he was safe while in the deposition, he has stated that in the evening, he alongwith his family members, went to the house of Bachumiya Imammiya in Shaikh Maholla. The said fact is not stated in the statement dated 06.03.2002. Neither Bachumiya Imammiya nor any of the witnesses from his

family has stated that this witness or his parents came to their house. Further, there were ample opportunities but this witness has not informed anyone including police about the incident. Thus, his deposition is contrary on material issues. While going to Savala also, he has not stated anything about the incident.

So far as these arguments are concerned, it is true that witness alongwith his father are having three houses just in front of Patel Maholla and there is a straight passage for passing to field just in front of their house. But, the said passage is passing from Patel Maholla and under such a tense atmosphere no one will dare to go from that passage and he will try to go to field to Shaikh Maholla which is more safer. Therefore, on this strength also deposition of this witness cannot be discarded. Further, omission of this fact before the Hon'ble Supreme Court of India or by Bachumiya Imammiya or by other witness, under such situation cannot be given much importance. So far as silence on the part of this witness as argued by Shri Dhruv is concerned, considering the circumstances under which the incident occurred, no one can expect such a prompt information by a person who was passing from such a

mental stress. Therefore, the say of Shri Dhruv that there was sufficient opportunity for the witness and witness has not stated this fact earlier in time becomes of no importance.

Further, it is deposed by the witness that at about 2.30 P.M., there was silence. When he came towards his house from the field, Bismillabibi Bhikhumiya was lying in the heap which is at the backside of the Maholla. He came back to Kapoorvas then to Shaikh Maholla and he informed about the same to D.S.P. and D.S.P. sent three persons and brought Bismillabibi at the entrance of Shaikh Maholla. At that time, he is not stating the incident to the D.S.P. especially when there were several opportunities to this witness but he has not narrated the incident before the police or anyone.

Fact regarding Bismillabibi Bachumiya lying on the heap of garbage behind the Shaikh Maholla is not stated by this witness either before Shri Vaghela, Investigating Officer or before Shri G.V.Barot. D.S.P. and other police officials are silent about it. Further, looking to medical evidence there was no sign of consumption of acid by Bismillabibi. On the contrary burns injuries were found on the body of

Bismillabibi. Assuming Bismillabibi was lying on the heap of garbage behind Shaikh Maholla and this witness approached to D.S.P. or other police officials for help to take her, in that circumstances also if the witness has not narrated the incident before the police at that time and he was silent about the witnessing the incident at that time is required to be considered with the circumstances and an atmosphere in which incident occurred. Therefore, at that time, the silence of this witness becomes of no importance.

P.W.49 - Shaikh Iqbalmiya Rasulmiya has deposed that, at the time of incident, he was residing in Shaikh Maholla alongwith his family members. On 01.03.2002, there was Bharat Bandh. At about 9.00 P.M. a mob of Hindu's came shouting slogans to beat, cut and burn the Bandiyas and at the entrance of Shaikh Maholla, there were three cabins which were burnt by the mob. Out of three cabins, one was of Raifkmiya Mahemudmiya, second one was of Ibrahimmiya Rasulmiya and third one was of this witness. As police came, the mob disbursed and thereafter, at about 11.30 P.M. again, the mob came shouting the slogans to cut, beat and burn the Bandiyas and mob started pelting the stones and mob came forward

by pelting stones and mob started ransacking and the houses were burnt by mob. Babubhai Kanabhai and Rameshbhai Kacharabhai, were instigating the mob and were shouting that no one should be left alive and at that time, one stone pelted on his head, right leg and one stone on the head of Ibrahimmiya Rasulmiya. There was bleeding in his head and to save his life, he went towards the house of Ibrahimmiya Rasulmiya. The mob came forward by burning the house and the witness went into the house of Ibrahimmiya Rasulmiya while mob proceeded towards the house of Mahemudmiya and by surrounding the house of Mahemudmiya, the window of Mahemudmiya's house was broken by pouring petrol and kerosene. The children and ladies were burnt. The persons who were inside the house were screaming for help. He heard the voices of those persons and thereafter, police came and at the say of the police, the witness came out and went towards the house of Mahemudmiya Husenmiya. He took Ayubmiya Rasulmiya from the house of Mahemudmiya Husenmiya and Samimbanu – his wife was also burnt. He took her also from the house of Mahemudmiya. There were other persons also burnt. He saw Zaved aged about 4 years was dead. Samimbanu was also dead. Total 28 persons were dead.

It is argued by Shri Dhruv that this witness has not disclosed the incident from 01.03.2002 to 09.03.2002 to anyone. He has not given any application nor his statement was recorded. As per his deposition, if police would not have come, he would have waited for the police for giving his statement. On 02.03.2002, at about 2.30 A.M., police came. He has not stated anything about the incident. He went to the hospital, stayed in the hospital up to 6.00 P.M. of 02.03.2002 and thereafter, in the company of police, he went to Ilol. Still however, he has not narrated the incident to the police. There is a case of late disclosure of the incident by the witness though having full opportunity to disclose it. This witness was silent for about 9 days.

This witness is the injured witness. Injuries are supported by medical evidence vide Exh.167. Further, he is resident of Sardarpur by birth and at the time of incident, he was in Shaikh Maholla. As per his deposition, he has seen the incident. He has seen the accused having weapons in their hands. Under above circumstances his presence in Shaikh Maholla cannot be doubted. If a person under such a traumatized condition and under terrible experience is not disclosing the incident up to 09.03.2002, late disclosure of incident cannot be given much importance.

In his cross-examination, it has come out that he is handicapped and his brother is also handicapped. From 28.02.2002 to 01.03.2002, he was in his house and therefore, he is unable to say, who burnt the cabins and what happened in the village. As per the deposition of this witness, except his brother Abdulmiya, rest of his brothers were sitting in Shaikh Maholla. Further, it has come out in his cross-examination that he can walk in normal speed but he cannot run. It is denied by him that it was safer to rush towards the graveyard. As per this say, when the jeep was burnt, first he went to the house of Ibrahimmiya Rasulmiya. There was no mob towards the graveyard. Person can go to graveyard by jumping the wall. He had hidden himself behind the jeep at that time he had not thought to go out of Shaikh Maholla alongwith his family members. He had not felt that as so many houses are burnt, the house of Ibrahimmiya Rasulmiya shall also be burnt therefore, he should go towards the graveyard. Door of the house of Ibrahimmiya Rasulmiya was broken and it was burnt. It is admitted by him that during the whole incident, no kerosene or petrol was poured on him and it is admitted by him that he was not burnt. This witness was

not inside the house of Mahemudmiya therefore, there is no question of smell of kerosene and petrol and there is no question of sustaining burn injury to him. So far as the incident dated 28.02.2002 is concerned, as per his say, he has seen the incident and he sustained stone injury. Thus, impliedly admits about the burning of cabins on 28.02.2002.

Further, it is argued by Shri Dhruv that this witness does not remember the names of the deceased who have died in the incident. However, he gives the detailed names of certain accused which suggests that this witness is tutored one to gave names of the accused. As per the deposition of this witness, he saw the mob ransacking and leading towards the Shaikh Maholla. At that time, he saw the accused and gives names of certain accused. This improvement is not stated in the statement dated 10.03.2002. Simply because witness could not remember the names of deceased and he is stating about the mob ransacking and leading towards the Shaikh Maholla and he had seen the accused and is giving names of some of the accused cannot be considered as tutored one, if at all this witness is tutored one then he would have not committed

natural mistakes in his deposition. Therefore on this count the say of Shri Dhruv is not acceptable.

Referring to deposition of this witness, it is argued by Shri Dhruv that this witness is not deposing that out of all the accused who ransacked and who looted the property. No overt act is assigned to any of the accused though he has assigned muddamal article with different accused but what overt act is played by which accused, is not deposed by this witness. If a mob comes with predetermined mind to attack or kill persons of particular community and they carry such muddamal article for not using the same, cannot be believed.

Further, as per the deposition of this witness, when he went inside the house of Ibrahimmiya Rasulmiya, mob proceeded towards the house of Mahemudmiya. Mob had surrounded the house of Mahemudmiya from all the four sides and after breaking the window, petrol and kerosene was poured and women and children were set on fire. When this witness was inside the house of Ibrahimmiya, how he can see where the mob had gone and in what manner, they have committed the act. Ibrahimmiya Rasulmiya has not

stated that the present witness was in his house. Further, this witness has not stated about the story of 1st mob and 2nd mob. 1st Mob had set on fire three cabins, at about 9.30 P.M., situated near Shaikh Maholla. This fact is not stated in the statement dated 10.03.2002. There is omission in the statement dated 10.03.2002 with regard to the setting on fire the cabins in the village. Police fired for disbursing is proved by contradiction. As per his statement dated 10.03.2002, 2nd mob set on fire the cabins of Shaikh Maholla at about 12.00 A.M. The say of this witness is contrary on the point of time and event of setting on fire the cabins near Shaikh Maholla while he has deposed before the Court that mob had come at 11.30 P.M. Thus, it is submitted by Shri Dhruv that this witness is not sure about the time and place of setting on fire the cabins. Further, it is argued that as per the deposition of this witness, mob proceeded towards the house of Mahemudmiya and surrounded the house from all sides and broke the window to pour kerosene and petrol and that the women and children of their community were burnt alive. At that time, the people from their community were screaming and seeking for help. Thereafter, police came and shouted that those who are alive may come out then he

came out. This fact is not stated by this witness in any of his statement before the police. Thus, it is argued by Shri Dhruv that this witness has not witnessed the incident though he is posing himself as eye-witness.

From this deposition presence of the witness in Shaikh Maholla cannot be discarded. He had seen the incident till he went inside the house of Ibrahimmiya Rasulmiya therefore, the say of Shri Dhruv that this witness has not seen who had broken the window and petrol, kerosene was poured, is acceptable. So far as incident regarding 9.30 P.M. is concerned, it is supported by other evidence that three cabins were burnt therefore, omission in the statement, in this regard becomes insignificant.

P.W.51 - Shaikh Nazirmahmed Akbarmiya deposed before this Court that at the time of incident, he was sitting in Shaikh Maholla and on 01.03.2002, due to the Bharat Bandh, all family members were present in Maholla. At about 9.10 P.M. Patels from the village came shouting and they came towards the Maholla and at the entrance of the Maholla, there were three cabins which were burnt by

them. As police came, mob disbursed and then after some time, when the police went back, again the mob came by shouting slogans to cut, beat and burn the Bandiyas and had started pelting stones. Mob of 1000 to 1500 persons was there. They caused damage to the houses of Muslims and burnt the houses. Then, mob proceeded towards the house of Mahemudmiya Husenmiya where in that house, children and ladies were feeling it safe. In the pelting of stones, he sustained injuries on left hand elbow and right eye. Due to the injury, he hide himself in his old house and mob went towards Mahemudmiya's house and mob had broken the window and poured kerosene and petrol from the window and burnt the house. At about 2.30 A.M., when the police came then he came out of his house and there was silence in the atmosphere and the Maholla was burning. Voices from Mahemudmiya's house was coming. Police opened the door and there were dead bodies and injured persons. Police took them to the Civil Hospital, Mahesana.

It is argued by Shri Dhruv that location of his old house is not stated by him in chief-examination but in cross-examination he has admitted that on the left side of

his house there is house of Abbasmiya Kesarmiya and Bachumiya Kesarmiya. It is stated by him that the house in which he was at the time of incident, behind that, there is graveyard. He has no knowledge how many persons of mob entered the house on the left side of his house. He is unable to state as to whether the mob had entered the house. He has admitted that he was in his house and his house was not ransacked. Looking to the Panchnama and map, while entering into the Shaikh Maholla, house of this witness is 2nd on the right side and his another side is 3rd last on the left side of road since mob had entered Shaikh Maholla and started ransacking, it was not possible for the witness to move from one house to another house in a circumstances when one house is right at the entrance and 2nd house is interior in the Maholla. If mob had come to attack any particular community they would not have spared the victim witness.

It is true that the witness has not stated in chief-examination about the location of his old house but on perusing map, Panchnama and inspection visit Report and other evidence, location of the house is very much clear. Simply because witness has not explained the location of

his house it cannot be said that witness is telling lie and if, he is unable to say how many persons entered the house on the left side of his house it does not mean that witness was not present in the Maholla and in his house. Considering his evidence, as a whole, it transpires that, during whole incident he was not in a particular place, some time he was standing just in front of house of Mustufamiya, some time he was in his house and for some time he was in Naveli. Meaning thereby that he was not at one place but moving in the Maholla to get him safe and if, the witness was moving in Maholla here and there to save himself that can be considered as natural conduct. By hiding himself from the mob, he was moving. In that circumstances if he was safe and not attacked by the mob it does not mean that he was not present in the Maholla. He is the resident of Shaikh Maholla. Considering the time of incident, presence of this witness in Shaikh Mohalla cannot be doubted, every one would like to stay in his house Maholla during night and that too in such a tense atmosphere. Therefore, the argument of Shri Dhruv in this regard is not acceptable.

Further, it is argued by Shri Dhruv that as per the deposition of Hizbulmiya, he had also taken shelter in the

same house but he has not referred about the presence of anyone in the house. As per the Panchnama, witness was staying in the right side row of the Shaikh Maholla. There was excessive damage to the house as it was set on fire and as per the say of this witness there is damage to the house to the tune of Rs.2,00,000/-. Thus, there is no possibility that this witness would have hidden himself in his another house. His presence in Shaikh Maholla is doubtful. Further, when first time, mob came and started pelting stones, the resident of Shaikh Maholla during that time, he might have received injury. Merely, he sustained injury, it cannot be said that he was in Shaikh Maholla and has witnessed the incident. This witness has not stated about the incident nor has given names of the accused before the Doctor in hospital. Simply, Hizbulmiya who claims to be inside the same house, is not saying about the presence of this witness in the house, omission of this fact by Hizbulmiya, in the circumstances becomes insignificant because presence of this witness in Shaikh Maholla is satisfactorily proved by the prosecution.

Further, it is argued by Shri Dhruv that as per this witness, after police came, they were shifted to hospital.

Even though, he is not disclosing anything to police. Even in hospital, he is not stating anything before police. Up to 10.03.2002, police was with them even though he has not narrated anything about the incident before the police up to 10.03.2002. He has also not stated anything about the incident to police or anyone. It is argued by Shri Dhruv that, there were other injured witnesses with him but he does not remember the names of persons who were there with him in the Hospital. On the other hand, he is giving full name of the accused. Relying upon this version Shri Dhruv has argued that how the witness is taking names of accused thus, the witness is tutored one. Admittedly there were other injured witnesses with him and he could not state the names of persons who were with him in the hospital. If a witness is telling names of whom he had seen in the mob but, not giving the names of injured persons, it cannot be considered as abnormal conduct nor appears to be tutored one. If the witness is tutored one then he would have certainly named the injured witnesses also. Non stating names of injured witness would not amount that the witness is telling a lie in whole. Further, it is submitted by Shri Dhruv that at the time of pelting stones by mob, he went towards hinder wall of Patels. There was ample

opportunity for this witness who entered in the house of Shaikh Maholla. He went towards the hinder wall of the house of Patels. If, a person feels safe and goes towards hinder wall of Patel's just to save himself it cannot be expected from the witness why he went towards the hinder wall of Patel's instead of going to Shaikh Maholla. Witness might have felt it much safer. He has not deposed about setting on fire of jeep car in Shaikh Maholla. Simply, omission of this fact would not compel a prudent person to disbelieve the presence of this witness in Shaikh Maholla in the circumstances where the presence of this witness is proved by the prosecution by satisfactory evidence. Furthermore, silence in narration of incident before Doctor/police/anyone up to 10.03.2002 in such a terrible experience in such a traumatized condition and that to so many persons sustained severe injuries and so many persons have died, much importance cannot be given to that omission and silence on the part of witness.

Further, he has deposed that he has seen the persons of the mob when the mob had started also pelting stones and named the accused but it is not stated by him that they were pelting stones. He has not stated which of the

accused proceeded towards the house of Mahemudmiya, which accused broke opened the window of Mahemudmiya and which accused poured kerosene and set on fire the house and who ransacked the house of Shaikh Maholla. From where he saw those persons is also not specified by him. It is the say of Shri Dhruv that this witness is tutored one and he has not witnessed the incident.

It is true that this witness has not stated about specific role of particular accused. If he is tutored one then in that case he would have certainly added overt act and specific role about pelting stones or which of the accused proceeded towards Mahemudmiya's house, which accused broken the door, who poured kerosene/ petrol, set on fire the house, who ransacked the houses etc. Non stating all these specific suggests the witness more natural rather than tutored one.

It is submitted by Shri Dhruv that this witness in his statement dated 10.03.2002 has stated that from the house of Mahemudmiya alongwith other injured alive persons Ibrahimmiya Rasulmiya was also rescued. This witness is nephew of Ibrahimmiya. Ibrahimmiya is not saying this

fact. Ibrahimmiya has posed himself in Shaikh Maholla itself. Thus, it is say of Shri Dhruv that this witness is tutored and got up witness and not eye-witness. There is some confusion about this fact as in the statement, before 'Ibrahimmiya' 'Ruksanabanu' is written, thus there is confusion whether it is Ruksana Ibrahimmiya or it is Ibrahimmiya Rasulmiya. But, for this, when we consider the evidence of the present witness, he has not stated that they took Ibrahimmiya Rasulmiya from Mahemudmiya's house. Further Ibrahimmiya Rasulmiya is not stating so therefore, this fact as stated in the statement dated 10.03.2002 cannot be given much importance. So far as arguments advanced by Shri Dhruv regarding from which distance the witness had seen the mob, not stated by the witness is concerned, it is true that witness has not stated from which distance he saw the mob but he has stated that at the time of coming of mob and incident where he was. Looking to the situation of Shaikh Maholla and deposition of this witness, where ever he had gone during the incident as stated by him it can easily be inferred that he could see the mob and the incident. Simply distance is not mentioned, does not amount to discard the whole veracity of this witness. Therefore, the arguments advanced by

Shri Shah that he is injured eye witness, his statements were recorded on 10.03.2002 and 06.11.2003. As per the deposition, on receiving injury on his elbow and eye by stones, he had hidden himself in his old house and the mob proceeded towards the house of Mahemudmiya and set on fire and he had seen the incident is acceptable.

P.W.52 - Shaikh Hizbulmiya Husenmiya has stated on oath that he was residing in Sardarpur since last 16 years. He was residing in house of Prahladbhai Varvabhai which is just in front of Shaikh Maholla. Just adjacent to the house, there is Veranda of Ishwarbhai Conductor. He is working in brick-kiln of Prahladbhai Varvabhai. On 01.03.2002, shops and cabins were closed. He alongwith his family members were in his house. At about 9.30 P.M., a mob of Patels from their village came shouting slogans to cut, beat and burn the Muslims. Then they burnt the cabins. Police came, mob disbursed. Again the mob came shouting slogans to cut, beat and burn the Muslims and they came towards Shaikh Maholla. First, they pelted stones towards Shaikh Maholla. To save themselves and their family members, all went to the house of Mahemudmiya, If in such a tense atmosphere to save themselves and their family they went to the house of

Mahemudmiya which is only pakka constructed house in the Maholla that is natural one. Further, it is deposed by the witness that mob had started pelting stones, Ibrahimmiya was injured and fell down this fact supports the say of the complainant that he sustained injuries in pelting stone and he fell down. Injuries of complainant is supported by medical evidence. Further, it is deposed by this witness that to hide himself he went behind the Shaikh Akbarmiya's house. He sustained injuries on his right hand wrist. His injuries are supported by medical evidence. Further, it is deposed by him that mob had burnt the houses of Shaikh Maholla and cabins then went towards the Mahemudmiya's house. He heard the voice of children, ladies from the house of Mahemudmiya. As the police came, all the Muslims went towards Mahemudmiya's house where his wife Husenabibi – Son Rifakat alongwith others were burning alive. His daughter Saiyeda was injured. All were taken to Mahesana Civil Hospital. He incurred loss of Rs.27,000/- by virtue of causing damage.

This witness has not stated about the mob that came for the second time. As per this witness, mob started setting on fire, the cabins and house and then proceeded towards the house of Mahemudmiya. He has not stated

from how far he had seen the persons in the mob. Further, it is argued by Shri Dhruv that looking to the construction of the house in Shaikh Maholla, there is common wall in each house in continuous room. Therefore, it is impossible to hide oneself by the side of any house. As per the deposition of this witness, Ibrahimmiya fell down after receiving stone injury. He hid himself in the side of Akbarmiya's house. Out of fear, he hid himself but these facts are not stated in statement dated 19.05.2008, 11.06.2008 and 05.08.2008 and in affidavit dated 06.11.2003. In the deposition of this witness, it is stated that from the courtyard of the house, he has not seen the incident. Looking to the cross-examination, map of Shaikh Maholla, there is no Courtyard in the said house. Both the houses of Akbarmiya was also burnt. It was impossible for anyone to take shelter or hide himself in any burning home. As per the deposition of this witness, he had seen the mob from 2 to 5 Ft. and in that circumstances, it is impossible that a mob would spare this witness. It is true that looking to construction of houses in Shaikh Maholla there is common wall in each house in continuous room but there is space between hinder wall of Patel Maholla and one side row of Shaikh Maholla. Further there is a passage known

as Naveli. Further, there is some space between graveyard wall and row of Shaikh Maholla. Further, it has come out from his deposition that towards the graveyard also, there was mob. As per his say, some of the persons in the mob were behind the house of Mahemudmiya and this witness was towards the adverse side of jeep. On one side of the Akbarmiya's house, there is Chopal and he was there. Chopal is in between the doors and otlla of Akbarmiya's house. As per his say, mob was wandering near to graveyard. Even in such a tense atmosphere every one would try to hide himself where ever he gets the space safer. Under above circumstances if the witness is saying that he went to hide behind the Akbarmiya's house and looking to position of Akbarmiya's house that is possible. No specific role is assigned by this witness to any specific accused for setting on fire the cabins or house or pelting of stones. Who attacked the house of Mahemudmiya is also not specifically stated. In history of Doctor, he has not given names of the accused. As per the deposition of this witness, he had accompanied the police upto the house of Mahemudmiya. After the incident, he had not stated anything about the incident to the police not even in the Civil Hospital. Thereafter, he was shifted to Ilol and relief camp at Kanpur

upto 10.03.2002. This witness is silent.

It is true that this witness has not deposed about the second time mob. So far as distance from where he had seen the mob is concerned, when we peruse his evidence, it was a time about 9.30 P.M. his house is just in front of Shaikh Maholla, when the mob came he was in his house, this witness has not specifically mentioned the distance from where he had seen the mob but we can infer from whole deposition, when the mob came he would have seen the mob from his house. He had seen the setting on fire the cabins/house and mob proceeded towards Mahemudmiya's house. He is silent about second time mob but when we go through examination-in-chief of this witness as a whole he is saying first mob came, burnt the cabins, police came mob disbursed, again mob came and proceeded towards the Shaikh Maholla and first started pelting stones then proceeded towards the Mahemudmiya's house. This evidence itself suggests about coming of mob second time but time is not stated by this witness and this witness has not narrated the incident in sequence. This witness is a labour class person if, he is tutored one then he would have certainly spoken as per instruction. Therefore, such discrepancy is bound to be. Thus he is a natural witness.

He is the injured person and in the incident, he has lost his wife and son. His daughter Saiyeda was also injured. His brother-in-law, his wife and daughter have died in the incident. As per his deposition, persons of mob were also going towards the graveyard side get support from the evidence of this witness. Further, the medical evidence, P.M. Report, injury certificates etc. support this say of the witness.

Therefore, the arguments advanced by Shri S.C.Shah that he is the original resident of Satnagar but staying in Sardarpur after his marriage. At the time of incident, he was present and he has narrated the incident and named the accused persons and also stated that 4 persons were having weapons and acid in their hands and in that circumstances, it is natural that he was outside the room and the arguments advanced by Shri Dhruv that presence of this witness at the time of incident in Shaikh Maholla is doubtful and this witness has tried to involve the accused in the crime falsely is not acceptable. Under above circumstances and that from other evidence it is established that this witness was very much present in Shaikh Maholla therefore, simply because this witness has not stated in his affidavit dated 06.11.2003 that he had ever

seen the incident is of no importance.

P.W.55 - Shaikh Aashiqhusen Bachumiya has deposed that at the time of incident, he was in Shaikh Maholla and he was alongwith his family members residing in Shaikh Maholla. On 01.03.2002, he was in his house. At about 9.30 P.M., mob of Hindus came from the side of Mahadev shouting slogans to cut, beat and burn the Muslims. They were having sticks, Dhariya, swords, pipe, kerosene and petrol gallons, burning rag and three gallons at the entrance of Shaikh Maholla, they were causing damage by looting the property. As the police came, mob disbursed, thereafter again the mob came towards the Shaikh Maholla shouting and causing damage to the property and pelting stone. Then his father had told his wife, his children and other family members to go to the house of Mahemudmiya as the house of Mahemudmiya was pakka constructed house. His all family members went to the house of Mahemudmiya. One jeep was burnt by Kacharabhai Tribhovandas and Ambalal Ganeshbhai, as mob came towards the Mahemudmiya's house, when police came, he also came towards Shaikh Maholla and saw that all the injured and deceased were taken to Mahesana Civil Hospital. On the way Ashiyanabanu died.

It is argued by Shri Dhruv that, as per the deposition of this witness, Inquest Panchnama of his daughter was executed on 02.03.2002 at about 7.30 A.M. in Mahesana Civil Hospital. Even though he has neither complained nor informed about the incident to the police. In this regard, when we consider the evidence, it transpires that in the Civil Hospital complaint was given by Ibrahimmiya Rasulmiya on 02.03.2002 and the statement of this witness was recorded on 02.03.2002 by P.I. Vaghela. Therefore, if this witness has neither informed the police nor complaint is given by this witness, under the tense and such a traumatized circumstances and that too his statement is recorded on the very same day, it becomes insignificant. Further, looking to the Panchnama and deposition of panch witness, right side houses were more burnt and damaged. Houses of Mustufamiya Rasulmiya and Akbarmiya Rasulmiya are towards the right side row of Shaikh Maholla. It is the say of this witness that at the time of incident when the mob ransacked the houses, he saw them and at that time, he was standing near the wall of Akbarmiya's house. It cannot be believed. Admittedly house of Akbarmiya is towards right side. As per this witness, he saw the mob from there as he was standing there, the

house, of Akbarmiya is not at the beginning of Shaikh Maholla. If, this witness was standing near the wall and saw the mob ransacking, burning as the mob came from the entrance side of Shaikh Maholla he was having sufficient opportunity to see the mob. He is the resident of Shaikh Maholla and at the time of incident he was very much present in the Shaikh Maholla. Considering the time and circumstances his presence in Shaikh Maholla cannot be doubted. As the mob proceeded towards Mahemudmiya's house then he went to Pathan Maholla till then he had an opportunity to see the mob. Therefore, the argument of Shri Dhruv on this point is not acceptable. Further, it is argued by Shri Dhruv that in his statement dated 02.03.2002, he has stated that from the Harijanvas, he saw the burning of houses and in the cross-examination, he has admitted that from Harijanvas, entrance of Shaikh Maholla and house of Mahemudmiya could not be seen. There is material improvement in the statement before the Court. He has not witnessed the incident but posing himself as eye-witness. Admittedly, from Harijanvas a person cannot see what is happening in Shaikh Maholla but the witness is saying he saw the burning of houses. The flame and burning light can easily be seen from Harijanvas. We have to consider an

evidence as per what the witness wants to say rather than pressing on the word which is used by the witness. Intention of a witness for what he wants to say is important. Thus, here it cannot be considered material improvement by the witness before the court. Further, it is argued by Shri Dhruv that this witness has claimed that he has seen the incident of ransacking and setting on fire the cabins outside the Shaikh Maholla but he is not giving the names of any accused. Even who set on fire the house or who set on fire the house of Mahemudmiya is not stated by this witness. Further, As per the say of this witness, he went to Pathan Maholla when the mob went towards the house of Mahemudmiya. It is impossible that anyone can see the mob in Shaikh Maholla or towards Pathan Maholla as both are in opposite direction. True that this witness has not attributed overt act of the accused, it does not mean that he has not seen the mob setting on fire cabins/houses in Shaikh Maholla but it is acceptable that when the mob was proceeding towards Mahemudmiya's house at that time he went to Pathan Maholla. Therefore, it transpires that he had not seen that who set on fire the house of Mahemudmiya as Pathan Maholla is in opposite direction of Shaikh Maholla. Therefore, this arguments of Shri Dhruv is

acceptable. Further, it is argued by Shri Dhruv that as per the say of this witness, he has dropped his family members at the house of Mahemudmiya. Thereafter, his jeep was burnt but it is not mentioned in his statement dated 02.03.2002, 19.05.2008 and 11.06.2008 and in affidavit dated 06.11.2003. From the evidence on record, it is proved by prosecution that daughter of the witness Ashiyanabanu was burnt but she was alive, his wife and son were also burnt. They sustained injury of burns on their legs, his daughter Sainabanu sustained injury on right ear, other persons were also burnt. In the incident, jeep of his father was burnt. This witness has narrated the incident. In his deposition, his daughter Ashiyanabanu was burnt, his wife and son were also burnt. On the way, Ashiyanabanu has died. It has also come out from the deposition that his father told him to send his wife, children and other members of the family to the house of Mahemudmiya, as it was pakka house and he went alongwith his family members to Mahemudmiya's house. Thereafter, jeep was burnt. His statement was recoded on the very same day in the Civil Hospital by P.I. Shri Vaghela. Therefore, the say of this witness is supported by above evidence. In that circumstances if the witness has not stated this fact in his

statement dated 02.03.2002, 19.05.2006, 11.06.2008 and affidavit dated 06.11.2003 it becomes insignificant. Further, it is argued by Shri Dhruv that as per the deposition of most of the witnesses, mob was from all four sides means from backside of Mahemudmiya's house also, there was mob. Therefore, it was not possible to go to Pathan Maholla even from the backside of Mahemudmiya's house therefore, the say of this witness that he went to Pathan Maholla and stayed there for whole night is not correct. In this regard when we peruse the cross-examination of the witness no question has been put to him by the accused side how he went to Pathan Maholla when the Shaikh Maholla was surrounded by all corners. Further, there is open space behind and in between Patel Mahollas' hinder wall and Shaikh Maholla row. Unless witness questioned, grievance of accused side cannot be accepted in this regard. Further, it is argued by Shri Dhruv that as per the statement dated 02.03.2002, his younger brother had hidden himself in his house. As per the evidence of panch witness, houses were ransacked and were set on fire. Even Mohmad Sattar and his father Bachumiya Imammiya has deposed that there was a loot in their house since the house was ransacked and set on fire.

It was not possible that mob had entered the house and looted the house. The evidence regarding ransacking and setting on fire their house is supported by Panchnama and other evidence. So far as the evidence of this witness that his brother was inside the house is concerned, there is possibility that the witness might have thought that his brother is inside, in fact he was not inside. Therefore, due to this evidence the testimony of this witness cannot be discarded on this point.

P.W.57 - Shaikh Mustufamiya Rasulmiya has deposed on oath that at the time of incident, he was staying in Shaikh Maholla in Sardarpur. On 01.03.2002, there was Bharat Bandh therefore, he was in home. At about 9.30 A.M., he went to the house of Rameshbhai Dahyabhai. who told him to supply water to his field and told that nothing will happen in their village. He was not willing to go to the field by leaving his family members in the Shaikh Maholla. On the very same day, at about 9.30 P.M., Rameshbhai Dahyabhai was in the mob and mob of Patels came with shouting slogans with petrol and kerosene gallons and other weapons in their hands and they had broken and burnt the cabins. As police came, they disbursed. Again at about 11.30 P.M., they came by shouting slogans to cut,

beat and burn the Bandiyas. No one should be left alive. They were having weapons and kerosene gallons in their hands. His wife and son went towards the house of Mahemudmiya. The mob had burnt the house of Mahemudmiya by pouring petrol and kerosene inside the room and this witness went behind the house of Bachumiya Imammiya. He heard the voice of persons asking for help. He was injured by stones. In the morning, the police came and hence, he went towards the house of Mahemudmiya. 28 persons have died. His wife Samimbanu and his son Javed both were dead and they were taken to the Mahesana Civil Hospital. Other injured persons were also taken to Mahesana Civil Hospital.

It is argued by Shri Dhruv that as per the deposition of this witness, on the day of incident, in the morning, he went to Rameshbhai Dahyabhai and told him to carry on work in the field and had told that nothing will happen in their village. This evidence of the witness is not denied by the accused. Therefore, it is proved that he was working in the field of Rameshbhai Dahyabhai, and on the day of the incident he had carried work in the field.

It is argued by Shri Dhruv that, as per the deposition of this witness, he had seen the persons who have set on fire the house by pouring petrol and kerosene. At that time, he hide himself by the side of the house of Bachumiya Imammiya. Referring to this deposition, it is the say of Shri Dhruv that this fact is not stated in statement dated 10.03.2002, 19.05.2008, 05.08.2008 and affidavit dated 06.11.2003. For the first time, this fact is narrated before the Court. To support this fact, maps which are produced show that the house of Bachumiya Imammiya is having door east to west. Just in front of his house, jeep was burnt and plastic gallon was lying and from the map it transpires that, there is gap just adjacent to the house of Bachumiya Imammiya. He is the injured witness and had taken treatment in the Mahesana Civil Hospital. As per his deposition, at the time of incident, he could see but now, he is unable to see due to Petrygium. Looking to the map, Panchnama and other evidence on record, it transpires if a person hides himself by the side of the house of Bachumiya Imammiya he can see what is happening in the house of Mahemudmiya but, this fact is not narrated by the witness in any of his statement and it is an omission. But , the fact that his wife and son have died in the incident. He himself

was injured. Medical Certificate and case papers are produced vide Exh.175 and Exh.176, respectively which supports this fact. Therefore, the say of the witness that the mob went towards the house of Mahemudmiya and they poured kerosene and petrol in the house at that time, he had hidden himself by the side of Bachumiya' house gets more weightage as his presence in Shaikh Maholla at the time of incident is natural one as he is resident of Shaikh Maholla and the incident occurred during night. His presence in Shaikh Maholla at the time of incident cannot be doubted. Earlier, he could see but now he is unable to see due to petrygium. Further, it argued by Shri Dhruv that as per deposition of this witness on the very same day, accused was in the mob. Referring to this deposition, it is argued by Shri Dhruv that this fact is not narrated in the statement dated 10.03.2002, affidavit dated 06.11.2003, statements dated 19.05.2008 and 05.08.2008.

Further, it is argued by Shri Dhruv that as per the say of this witness, cabins were set on fire near Shaikh Maholla by the mob while in the statement dated 10.03.2002, witness has stated that at about 10.00 P.M., mob gathered in the village and set on fire the cabins in the

village and police resorted to firing. Thereafter, mob disbursed. This omission is proved by contradiction in affidavit. Also this fact is not narrated by the witness. So far as this discrepancy is concerned, it is proved by the prosecution that three cabins at the entrance of Shaikh Maholla were set on fire by mob. It is also proved that cabins in the village were also set on fire by the mob. But it is on record that the cabins in the village were set on fire on 28.02.2002 and the fact that three cabins were set on fire at the entrance of Shaikh Maholla. Panchnama supports this fact. This fact is supported by other evidence also. Therefore if the witness has not stated about the setting on fire cabins at the entrance of Shaikh Maholla in his statement dated 10.03.2002 and now he is deposing so before the court such an omission in the statement in the present set of circumstances becomes insignificant. Witness is a labour class if he is telling about setting on fire cabins in village at about 10.00 P.M. whether he is telling this fact in respect of incident dated 28.02.2002 or 01.03.2002, is not clear but from this contradiction, it is not disproved that three cabins were not set on fire by the mob at the entrance of Shaikh Maholla. Further, it is argued by Shri Dhruv that this witness has no knowledge about the house

of Fakir Imamshah. As per the say of this witness, Sabirhusen was staying there. He has no knowledge about the names of children of Muslims in the village. However, he is giving full names of the accused person in the mob which suggests that witness is tutored one. In this regard when we consider the evidence of present witness, it transpires that witness is having no knowledge about Fakir Imamsha and about the names of Muslims children and he is telling names of accused in the mob on this count we cannot conclude that this witness is tutored one. If in fact he is tutored one he would have stated about Fakir and children also. Possibility of not knowing fakir and names of Muslim children cannot be ruled out. Therefore, on the strength of this testimony which is otherwise proved by the prosecution cannot be doubted.

Further, it is argued by Shri Dhruv that as per the say of the witness, mob entered in the Shaikh Maholla and started ransacking it. He hide himself by the side of the house of Bachumiya Imammiya which is on the right hand side of Shaikh Maholla. He is referring Courtyard as side. From Courtyard, road of Shaikh Maholla is 4 to 5 Ft. away. As per the panch witness, right hand side of Shaikh Maholla was worstly affected and houses were set on fire

and ransacked while Bachumiya Imammiya has deposed that his house was ransacked and there was loot in his house which suggests that mob entered even Courtyard of his house therefore, the say of Shri Dhruv that anyone can hide himself or take shelter in the Courtyard of said house and presence of this witness in the Courtyard of Bachumiya Imammiya is doubtful. Referring to the statement of 10.03.2002, it is argued by Shri Dhruv that this witness has stated that he hide himself in the house of Akbarmiya which is contrary to his own deposition. Since there are two houses of Akbarmiya, in which house he hide himself is not stated. Though, he has deposed that house of Akbarmiya Nathumiya is just opposite to his house even that house was also set on fire. Second house of Akbarmiya Rasulmiya is on the right side of entrance of Shaikh Maholla. Even though house of Akbarmiya Rasulmiya Shaikh was set on fire and was destroyed completely therefore, presence of this witness in the house of Akbarmiya Rasulmiya as claimed in his statement dated 10.03.2002 is doubtful. The witness has improved his version. True that there is discrepancy regarding hiding of this witness whether he hide himself in Bachumiya's house or Akbarmiya's house or second house of Akbarmiya

Rasulmiya's. Looking to evidence and panchnama house of Akbarmiya Rasulmiya was destroyed completely. Thus, there is discrepancy in which house this witness has hid himself. But from this fact presence of this witness in Shaikh Maholla cannot be doubted and that he hid himself is also not doubtful. Simply where he had hide himself is the discrepancy. Further considering the evidence of this witness as a whole he was very much present in the Shaikh Maholla and he had hide himself only after when the mob proceeded towards Mahemudmiya's house. Thus he was having sufficient opportunity to see the mob. Therefore, the say of this witness that he had seen the mob with weapons, petrol and kerosene gallons, shouting slogans, to cut, beat and burnt Bandiyas, no one should be left alive is acceptable.

Further it is argued by Shri Dhruv that, Ayubmiya Rasulmiya is brother of this witness who has deposed that he was brought alive from the house of Mahemudmiya alongwith his wife and daughter while this witness is claiming that after the incident, police came and he went to the house of Mahemudmiya where his wife and son of this witness have died. This witness is not saying that Ayubmiya Rasulmiya alongwith his wife and daughter was brought

alive from the house of Mahemudmiya. As per say of this witness, name of his mother is Barubibi, who has died in the riots. As per the deposition of Ayubmiya Rasulmiya, brother of this witness has stated the name of his mother Sharifabibi Rasulmiya. In the affidavit before Hon'ble Supreme Court of India, this witness has stated that his mother has died in the incident and just to justify the affidavit filed before the Hon'ble Supreme Court of India he is deposing that Barubibi had adopted him though Barubibi had two sons. The witness could not give names of his sons, wife and grandsons of Barubibi. If this witness is adopted by Barubibi, he must have knowledge of the names of family members of Barubibi. Further, in his statements dated 10.03.2002, 19.05.2008 and 05.08.2008, he has not stated that Barubibi is his mother. Even in the affidavit dated 06.11.2003, he has stated that his mother has died but not giving the names of his mother as Barubibi. As per the deposition of this witness, his mother has died before 5 to 6 years while two sons of Barubibi – Sharifhusen Balumiya and Rafikmiya Balumiya, are not stating that this witness was ever adopted by their mother. Further, in affidavit dated 06.11.2003 and on reading the deposition of this witness, it comes out that this witness has stated in

his affidavit the facts which were not within his knowledge though that affidavit is claimed to be filed by himself. Omission on this part that his brother and his wife and daughter were brought alive from Mahemudmiya's house would not discard the facts narrated and proved by the prosecution. Further, his brother is telling the name of mother as Sharifabibi while this witness is telling the name of Barubibi and that he was adopted by Barubibi. There is discrepancy on this point but this fact is not such which goes to the root of the case. Therefore on this ground whole testimony of this witness which is otherwise proved, cannot be discarded. Further, it is argued by Shri Dhruv that this witness has not given the names of the accused, before the doctor, who were in the mob at the time of incident. He went to the Civil Hospital alongwith police but he has not narrated the incident to the police nor even lodged the F.I.R. Even, he went to the relief camp in the company of the police still however, he is not saying anything about the incident to the police. When we consider the evidence of this witness on this point, after the incident, his wife, daughter have died under such a tense atmosphere if he has not narrated the incident before Doctor/police nor lodged complaint, it is natural one. No one can expect from

a person a prompt action in this regard under such a circumstances. No doubt he was silent up to relief camp though police was with him that is also natural conduct.

It is argued by Shri Dhruv that this witness has not assigned any specific role to any accused as to which accused ransacked or set on fire which house and that is also not deposed by this witness. Even at the house of Mahemudmiya, which accused played what part, is also not deposed by this witness, this will be decided at the relevant time and stage.

P.W.59 - Shaikh Mohmad Sattar Bachumiya has deposed on oath that at the time of incident, he was sitting in Shaikh Maholla. His family members were also with him. On 28.02.2002 there was Gujarat Bandh therefore, he was in his home. On 01.03.2002, there was Bharat Bandh. His father asked him not to go out. On that day, at about 9.00 to 10 P.M., a mob of Patels came towards Shaikh Maholla from Mahadev Temple side, shouting slogans to cut, beat and burn the Muslims, and had burnt three cabins at the entrance of Shaikh Maholla. The cabins were looted and damaged by the mob. As police came, the mob disbursed.

At about 11.30 – 12.00 P.M., again the mob came shouting to cut, beat and burn the Muslims no one should be left alive because the Muslims have burnt the Hindu persons in Godhra train and thereafter, they started pelting stones. Persons from Shaikh Maholla had also started pelting stones just to save themselves. Mob was setting on fire and damaging the houses of Muslims and due to fear his father asked him to take his family members to the house of Mahemudmiya as it was pakka constructed house therefore, all the family members went to the house of Mahemudmiya. As the mob came too near, he went inside the house of Akbarmiya Rasulmiya. From the window of the house, he saw that there was one jeep just in front of his house, which was burnt by the mob. Mob has burnt the houses of Shaikh Maholla as mob went towards the house of Mahemudmiya, the witness went to his house. The voices of people were coming from the house of Mahemudmiya to save them but due to fear he was inside and when the Police came then only they went to the house of Mahemudmiya and rescue operation was done by the police with their help. In the incident, his house was damaged and ornaments of his sister and mother were looted and cash worth Rs.70,000/- were looted by the mob. He was

caused damage worth Rs.10,000/-.

At the time of incident, he went inside the house of Akbarmiya Rasulmiya and in the light of burning flame he saw the accused. While in the second incident, when the mob was inside the Shaikh Maholla and went towards the house of Mahemudmiya, he had hidden himself inside the house of Akbarmiya Rasulmiya. For this purpose, when we peruse the maps, house of Akbarmiya is shown adjacent to the house of Bachumiya. As per the deposition of this witness, light was on. As per the deposition of Dy.Engineer there was light in Shaikh Maholla. There were total 28 accused whom he had seen in the mob. He had seen the accused in the flame of burning jeep. His sister-in-law and niece have died due to burns in the house of Mahemudmiya. As per the deposition of Dy.Engineer, and other evidences, there was light in the street. Assuming, there was no light in Shaikh Maholla, then also, as per the say of this witness, he had seen the accused with weapons in the flame of burning jeep. To discard this fact, there is no reason and this witness had seen 20 accused.

While it is argued by Shri Dhruv that as per the statement of this witness, as soon as the mob came and

started pelting stones, he alongwith his family members went inside the house which suggests that he was having no occasion to recognize any of the accused. Assuming he alone went inside the house, then how he has named four persons in his deposition. How he has seen that the three cabins were ransacked and set on fire. Even, he is giving different version in respect of first mob. Further, which of the accused ransacked or set on fire the cabins, is not stated by this witness. He has improved his version before the Court. Further, it is submitted by Shri Dhruv that this witness has also stated in the statement dated 02.03.2002 that same mob had come again at 11.30 P.M. This witness has improved the version also before the Court. As per the deposition of this witness, again, same mob came shouting slogans like to kill the Muslims and had started pelting stones and setting on fire them, no Muslims is to be spared today etc., still however which particular accused were shouting slogans or who started pelting stones or who ransacked the house or set on fire the jeep, is also not stated by this witness in his deposition.

In this respect when we consider the evidence given by this witness soon as mob had started pelting stone, his

father asked them to shift their family in Mahemudmiya's house and his elder brother had shifted their family in Mahemudmiya's house as mob came much near. Due to fear this witness went inside the house of Akbarmiya Rasulmiya and from the window he had seen that their jeep was burnt and in the light of flame he had seen the mob. Therefore, firstly till the mob came near to him, he had an opportunity to see the mob and on seeing the mob he went inside the house of Akbarmiya and from the window of that house he witnessed further incident. Thus, he was having sufficient opportunity to see three cabins ransacked and set on fire. For this, when we peruse the map, house of Akbarmiya is shown adjacent to house of Bachumiya in that circumstances if the witness is saying that from the window of Akbarmiya Rasulmiya's house he has seen burning of jeep is reliable. So far as his version regarding first mob is concerned, it is denied by the witness that at the time of first incident at about 9.30 P.M. either he or he alongwith his family members went inside the house. But, there is contradiction on this point as Investigating Officer has deposed that this witness has stated before him that at the time of first incident he/his family members went inside the house but, this contradiction is in respect of first mob

not for second time mob. It is true that he has not specifically mentioned which of the accused ransacked or set on fire three cabins. But this omission can not discard the fact that mob had set on fire three cabins at the entrance of Shaikh Maholla. In his statement dated 02.03.2002, it is stated by the witness that same mob came second time. In his deposition also, he has stated that same mob came second time. Further, it is argued by Shri Dhruv that as per the say of this witness, mob was proceeding fast towards Shaikh Maholla and due of fear, he took shelter in the adjacent house of Akbarmiya Rasulmiya and light was put off by him. He had seen the jeep from the window which was set on fire by the mob. As per the deposition of this witness, he has seen the persons in the mob in the flame of burning jeep. This witness has not stated this fact in the statement dated 19.05.2008 and affidavit dated 06.11.2003 that he took shelter in the house of Akbarmiya Rasulmiya or he had seen persons in mob from the house of Akbarmiya Rasulmiya. As per the affidavit dated 06.11.2003, he was in front of his house when stone pelting took place. Attack was continued for several hours and atmosphere was tensed. When we appreciate evidence of this witness on this point, in his

cross-examination witness has admitted that he has not stated this fact in affidavit dated 06.11.2003, statement dated 19.05.2008 but when he was asked question in cross-examination, he has specified when the mob went towards Mahemudmiya's house at that time he went inside in his house from the house of Akbarmiya. It is also made clear in cross-examination that, he had seen the mob from the window of the house of Akbarmiya not from his house. Once this evidence has come in cross-examination in that omission of this fact in affidavit and statement dated 19.05.2008 becomes insignificant. Further it is submitted by the accused side that police came at about 3.30 A.M., he was hiding alone in his house as his family was away from him who were trapped with others. In this regard, when we consider the evidence of this witness this fact is stated by the witness in his deposition as well as in his statement that their family members were sent to Mahemudmiya's house. There is no contradiction or omission on this point. Further it is submitted by accused side that when he was asked by S.I.T. he had stated that he alongwith his cousin Rafikmiya Babumiya was in his house while Rafikmiya has deposed that at the time of incident, he was in Naveli of Bachumiya Imammiya. Thus, both are contradictory on

this point. While Ashikhusen, in his statement dated 02.03.2002, states that present witness had hidden himself in his own house. So far as this contradiction is concerned, from the whole evidence it transpires that witnesses were hiding themselves here and there wherever they felt safe in such a tense atmosphere. It is not so that each and every witness was only at one place. This witness was also earlier in front of his house as mob came near he went inside the Akbarmiya's house as mob proceeded towards the Mahemudmiya's house, he went inside to his house. There is Naveli also near to his house. In that circumstances if this witness is saying that Rafikmiya Bachumiya was in his house while Rafikmiya is saying he was in Naveli while Ashikhusen is saying that the present witness was in his house. This contradiction is quite natural considering the map, Panchnama and position of Shaikh Maholla as personally visited by the court, Naveli, Akbarmiya' house and Bachumiya's house are too close to each other and they are very small houses like one or two rooms as Row houses in that circumstances this contradiction in the depositions as well as in the statements by the witness are bound to be and those can be considered as natural one and no importance can be given to that contradiction on the very

fact that witness was very much there nearby. And he was having sufficient opportunity to see the mob and incident of burning the jeep. Thus the the deposition of this witness on this point is natural one. There cannot be mathematical calculation in narrating the incident hence, on this contradiction we cannot discard the testimony of this witness which is reliable one.

Further, it is submitted by Shri Dhruv that as per the say of this witness, at the time of incident of setting on fire the jeep, he was inside the house of Akbarmiya Rasulmiya and from the window of the house of Rasulmiya, he saw the house. When the jeep car was set on fire, the mob went up to the house of Mahemudmiya. Further, he is saying that mob started ransacking the houses and set on fire the house of Mahemudmiya and proceeded towards Mahemudmiya's house. This witness was inside in his own house. As per this witness, voices seeking help were coming from Mahemudmiya's house and witness himself had hidden himself in his own house. On this point, this witness is self-contradictory in his deposition. There is contradictory version in the deposition as to from where he has seen the incident. Further, it is highly impossible for anyone to go from one place to other place when mob was inside the

Maholla. Further, as per the say of this witness, mob was very much present in the Shaikh Maholla when he came out from the house of Akbarmiya Rasulmiya which is highly improbable that person would come out in circumstances when mob has come to kill them.

Further, when both the houses of Akbarmiya Rasulmiya were set on fire, the house of this witness was also set on fire. Even as per this witness, there was loot from his house which suggests that mob had entered in the house of Akbarmiya Rasulmiya and the house of present witness. If that is true, then this witness could not have taken shelter in it. This witness has not sustained any injury. Therefore, it is submitted by Shri Dhruv that evidence of this witness on this point is also not reliable.

In this regard when we appreciate the evidence of this witness house of Akbarmiya Rasulmiya is just adjacent to his house. He had hidden himself in Akbarmiya Rasulmiya's house when mob proceeded towards Mahemudmiya's house he went to his house he was very much present in Shaikh Maholla. From whole evidence of this witness, it transpires that he was not at one particular place. During whole incident he was at different places near by to his house and

Akbarmiya Rasulmiya's house. When his house and Akbarmiya Rasulmiya's house were looted whether he was inside of his house. This question is not asked by accused in cross-examination. His house was set on fire. He was trying to hide himself safely. Houses of Shaikh Maholla are so close to each other and that they are like Row houses. Therefore, in that circumstances the discrepancy as narrated by accused in this regard is concerned, those are of natural one and those are bound to be. Witness is a labour class person unaware about the legal provisions.

Further, as per the say of this witness, he was alone in the house of Akbarmiya Rasulmiya. In affidavit, he has stated that he was alone in his own house but looking to the evidence of Sabir Husen Rasulmiya, Hizbulmiya Rasulmiya and Mustufamiya Rasulmiya, they were inside the house of Akbarmiya Rasulmiya. Thus, deposition of this witness is contradictory to the version of other witnesses on this point.

While appreciating this evidence when we consider the evidence of this witness on record at the time when he was in Akbarmiya's house he was alone. Thereafter, he went to his house. There also he was alone. When he was inside

Akbarmiya Rasulmiya's house whether at that time Sabbirhusen, Hizbulmiya, Mustufamiya were inside the house of Akbarmiya Rasulmiya or prior to that they were inside or after this witness went to his house at that time they were inside no questions are asked in this regard by the accused in cross-examination. Further looking to the situation of houses in Shaikh Maholla these discrepancies are bound to be. In absence of these discrepancies evidence of the witness can be doubted or can be treated as tutored one. Thus, those contradictions, omissions, discrepancies are natural one. And the fact remains as it is that witness was very much present in Shaikh Maholla either in his house or Akbarmiya's house or near by to those houses and we cannot calculate the evidence in mathematical manner.

Further, it is submitted by Shri Dhruv that as per the say of this witness, jeep car was parked just opposite to the house from which he has seen the incident. If we consider this deposition with map then also house of Akbarmiya is not just opposite to side where jeep was.

Thus, both the houses are to close looking to carpet area of both the houses and situation of Shaikh Maholla if

the jeep was standing just in front of Bachumiya's house and house of Akbarmiya is just adjacent to Bachumiya's house and both the houses are having same direction. In that circumstance if the witness is saying that he saw the incident in the light of flame of jeep that is quiet possible. A person can see from the window of Akbarmiya Rasulmiya's house the incident of burning jeep. Thus the attention towards these discrepancy as shown by accused in this regard is of no significance.

Further, it is submitted on behalf of accused that as per the deposition of this witness, incident of setting on fire the jeep and flames of burning of jeep is concerned, he had seen the accused but in his statement dated 19.05.2008, he has stated that the names mentioned in the statement dated 02.03.2002 were not given by him to the police. Further, this witness has identified four accused who had ransacked and set on fire three cabins outside the Shaikh Maholla. When we compare the deposition from other witnesses, they had seen the incident of setting on fire and ransacking three cabins and they have given the names of above referred accused in the mob. They have not stated

that these four accused are responsible for setting on fire the cabins. Thus, alone this witness is claiming the role of four accused setting on fire three cabins. Further, as per the deposition of this witness, setting on fire three cabins situated outside the Shaikh Maholla, at about 9.30 P.M.

So far as these arguments are concerned from Panchnama and map and other evidence it is proved by prosecution that three cabins were set on fire out side the Shaikh Maholla. So far as specific role of the accused who were involved in the incident and what role has been played by which accused will be discussed and decided at the relevant time at later stage and omission contradictions in the statements will be decided at that time.

Further it is submitted on behalf of accused side that referring to the affidavit before the Hon'ble Supreme Court of India in respect of telephonic talk with Teesta Setalvad and Raiskhan Pathan, it is admitted by this witness that it is false. It is submitted by Shri Dhruv that this witness has stated false fact on oath before the Hon'ble Supreme Court of India also. It is argued by Shri Dhruv that this witness is posing himself as eye witness but from his evidence, it

becomes clear that he has dare to state false statements even before the Hon'ble Supreme Court of India therefore, he cannot be relied upon.

So far as this arguments is concerned witness is an illiterate person if he takes some help from any agency like citizen for justice and peace headed by Teesta Setalvad and Raiskhan Pathan for getting justice there is nothing wrong. So far as admission by this witness in respect of telephonic talk with Teesta Setalvad he has stated that it is false. For this purpose when we consider the affidavit it was prepared in English. If a fact is not mentioned in it or if, something contrary is mentioned possibility of that fact being wrong cannot be ruled out due to illiterateness of the witness or due to some misunderstanding between the agency and the witness. On that count we cannot conclude that witness has intentionally stated false fact by way of affidavit before the Hon'ble Supreme Court of India. It is quiet possible addition and omission alteration on the part of agency we have to find out the truth by applying grain and chaff policy. Thus, the considering above evidence of the witness it is reliable, trustworthy and the facts which are proved in his evidence cannot be discarded.

P.W.60 - Shaikh Bachumiya Imammiya has deposed that on 28.02.2002 in the night, cabins of Muslims and other communities were burnt. On 01.03.2002, there was Bharat Bandh. All the members of Shaikh Maholla were present. At about 9.30 P.M., mob from Mahadev Temple side alongwith weapons, petrol and kerosene came and they burnt three cabins which were situated in the entrance of the Maholla. The cabins were burnt by pouring petrol and kerosene. At that time, police came and mob disbursed. Again at about 11.00 P.M., mob came and started pelting stones and burning the house of Manumiya Alammiya. Thereafter, second house of Akbarmiya Nathumiya, third house of Bachumiya Nathumiya then Rasulmiya Nanumiya and then after, they burnt the house of Jamalmiya Dosabhai. Thereafter, they burnt the jeep by pouring petrol and kerosene. Ambalal Maganbhai had poured the kerosene and petrol whereas Rajeshbhai Punjabhai had burnt the jeep. Thereafter, mob of the village went towards the house of Mahemudmiya and they had broken the window and by pouring the kerosene and petrol, they burnt the house in which 28 persons have died. Others sustained injuries. When police came, police asked the persons to come out. The police then managed a vehicle and took the deceased

and injured persons to Mahesana Civil Hospital. Thereafter, he went to Vijapur where the Constable Navalsinh asked him to come to Sardarpur for drawing Panchnama. Then he came with the police persons in the vehicle and he had shown the house of Mahemudmiya to the police. He also told the police as to which of the houses were owned by whom.

He is the resident of Shaikh Maholla and he is a retired Government servant. The jeep which was burnt in the incident was of his ownership. On 28.02.2002, there was tense atmosphere in the village, burning rag was thrown on the vehicle and burnt his jeep. Thereafter, mob went towards the house of Mahemudmiya. He has shown the place of incident at the time of drawing the Panchnama of scene of offence. His statement was recorded on 03.03.2002 as early as possible after the incident. He is the eye witness.

It is submitted by Shri Dhruv that as per the say of this witness, the pole falling towards the graveyard was also having focus light directing towards the Maholla. This fact is also not stated in the statement made before police. For this evidence fact of focus light is developed subsequently.

Initially at the time of first investigation this fact is not coming out. Therefore, it is to be considered as improvement and not stated in his earlier statement and no importance can be given to this fact. Further, it is submitted by the accused that as per the deposition of this witness, at about 9.00 to 09.30 P.M., from Mahadev Temple side, a mob of village people with weapon, petrol and kerosene came and in the light, this witness had recognized the accused and as per the say of this witness, those persons ransacked and set on fire three cabins near entrance of Shaikh Maholla therefore, police came and mob disbursed. This fact is also not stated in police statement.

So far as three cabins at the entrance of Shaikh Maholla set on fire and ransacked is concerned, the fact of burning three cabins is supported by Panchnama and other evidence. It is also supported by other evidence that soon as police came mob disbursed. Once, it is supported by other evidence in that circumstances omission of this fact in police statement becomes insignificant. Whether this witness has identified the accused it will be decided at the relevant time at later stage. Further, it is submitted by accused that again, as per the say of witness, at about

11.00 P.M., mob had come, pelted stones and first, the house of Manumiya Alammiya was set on fire. Then after, another house of the witness was set on fire, by the mob. No other witness has stated about this fact. The witness had given evidence only with regards to setting on fire the house in Shaikh Maholla. This witness has improved his version about the setting on fire the houses in Shaikh Maholla.

When we consider this evidence in the light of contradictions, omissions and with other evidence on record, the fact that again mob came at about 11.00 P.M. and had started pelting stones, setting on fire the houses in Shaikh Maholla. This witness has specified setting on fire of houses in Shaikh Maholla but the gist of the evidence is same that houses in Shaikh Maholla were set on fire. Therefore, the evidence of this witness in this regard cannot be considered as improvement or false.

As per the say of this witness, mob had set on fire his jeep by pouring kerosene and petrol. This fact is also not stated in his statement before the police. Further, no other witness is stating specifically attributing the role of any particular accused about setting on fire the jeep car. Thus,

there is improvement by this witness. As per the say of this witness, mob came at 9.00 – 9.30 P.M. from Mahadev Temple side and persons of village came and set on fire the cabins outside the Shaikh Maholla and this witness has named the persons while in his statement dated 03.03.2002, he has stated that on 01.03.2002 at about 9.00 to 9.30 P.M., mob of Hindus came shouting slogans due to fear, they went inside their house. If the witness was inside the house, how he can see the setting on fire cabins by the mob.

In this regard, when we consider the evidence on record from Panchnama and map and other evidence it is evident on record that three cabins were burnt at the entrance of Shaikh Maholla and it was set on fire by mob at 9.30 P.M. In his statement mob of Hindus is written while in deposition persons of village came is mentioned. Whether the mob was of village persons or of out of village persons it will be decided at the relevant stage. But the evidence adduced by this witness in respect of setting on fire three cabins by mob at about 9.30 P.M. remains as it is. So far as evidence regarding, 'due to fear he went inside' is concerned, mob came shouting slogans and burnt the

cabins and witness went inside. Possibility cannot be ruled out that after seeing burning of cabins by mob he might have gone inside his house. His house is not at the entrance of Shaikh Maholla, his house is situated after leaving four to five houses in Shaikh Maholla. Therefore, on seeing mob and setting on fire cabins he went inside and that possibility cannot be ruled out. Even otherwise looking to situation of his house a person can see what is happening at the entrance of Shaikh Maholla by standing front side of house. Therefore, under above circumstances this contradiction becomes insignificant.

Further, it is argued by Shri Dhruv on behalf of accused that this witness has stated that, when police came, mob disbursed while in his statement dated 03.03.2002, he has stated that when someone informed the police, police came and resorted to fire to disburse the mob.

While considering this evidence, so far as coming of police is concerned, it is supported by other evidence and also his statement 'police came' is mentioned. Whether on information from someone police came or how police came that is not material on the point of appreciation on this

evidence of this witness. But the fact remains proved that police came. Further, this witness is not stating about resorting of fire by police to disburse the mob and mob disbursed accordingly. This is mentioned in his statement dated 03.03.2002. Thus there is omission of this fact in the deposition of this witness. Effect of this omission will be discussed at the relevant time in judgment.

It is argued by Shri Dhruv on behalf of accused that as per the say of this witness, police came at about 2.30 A.M. and called for vehicles while he has deposed that dead bodies were taken in handcart. This witness has not stated this fact in all his statements. So far as this evidence in this regard is concerned, whether dead bodies were taken in the hand cart and it is not stated in any statement it is not going to effect adversely the evidence which is proved by the prosecution from other supporting evidence that dead bodies were taken from Mahemudmiya's house and taken to Civil Hospital, Mahesana. Thus omission of this fact in his statements becomes of no importance.

Further, it is argued by Shri Dhruv on behalf of accused that, in his cross examination this witness is

asked as to from where, he has seen the mob and where was he at the time of incident. It is argued by Shri Dhruv that this witness was not in Shaikh Maholla at the time of occurrence. In his statement dated 03.03.2002, he has stated that he had hidden himself near the jeep car while in his cross-examination, he has shown his ignorance & narrated this fact in his statement dated 10.05.2008, he has stated that at the time of incident, he was inside his house. In his statement dated 03.03.2002, he has stated that on seeing his jeep car while burning, he took shelter in another house and what happened thereafter, he did not know.

Considering the above evidence as a whole it supports the say of prosecution that he was present in Shaikh Maholla. We have to consider the evidence of this witness with extra care and caution. Considering the state of mind of the witness and with regard to his power of memorizing, suppose in his statement dated 03.03.2002 he has stated that he had hidden himself near jeep car and in cross-examination he has shown ignorance, in statement dated 10.03.2008 he has stated that at the time of incident he was inside the house or he took shelter in another house. Incident occurred at about 9.00 - 9.30 P.M. thereafter at

about 11.30 P.M., not for a while but for long period it is natural that witness might have hidden himself near jeep or went inside his house or another house that is quite natural. It is not so that during 9.30 P.M. till the incident over he was at one place only. In that circumstances if in his deposition and statements the discrepancies which are pointed out by Shri Dhruv is concerned, those are bound to be and natural one. We cannot expect from one person standing at one place during the whole incident, naturally a person will go here and there nearby where ever he feels safe. The fact that he was very much present in Shaikh Maholla at the time of incident and he was in a position to see the incident. We have to consider his evidence what he intent to say rather than to consider the words used by the witness.

Further, it is argued by Shri Dhruv on behalf of accused that in his cross-examination, he has deposed that at about 9.00 – 9.30 P.M., he was just near the house of Akbarmiya and for about half an hour, he stayed there and from 9.30 to 11.30 P.M., he had not gone inside the house while in his statement dated 03.03.2002, he has stated that at about 9.00 – 9.30 P.M., when the mob came, he

went inside his house. So far as this discrepancies is concerned, he was near Akbarmiya Rasulmiya's house for half an hour meaning thereby he must be there for some time then he went inside. He is labour class person narrating the incident in his own manner but over all considering his evidence, it transpires that he was standing outside and when the mob came he went inside that is natural conduct. For, how far time he was where for that discrepancies bound to be but that cannot discard the presence of this witness at the place and the time of incident and these discrepancies are of no value.

Further, it is argued by Shri Dhruv on behalf of accused that in his deposition, this witness has deposed about the pelting of stones continued for about half an hour but who were pelting the stones, is not stated by this witness. As per the say of this witness, houses in row were set on fire one by one. Who set on fire those houses, is not stated by this witness. If he has seen the setting on fire the houses, he can certainly say who set on fire those houses. As per the say of this witness, he was 10 Ft. away from the jeep car. If that is so, then mob would not have spared him.

This witness is narrating pelting of stones, setting on fire cabins, houses if he has not stated specifically who had pelted stones, burnt the Jeep/cabins/houses, it does not mean that he was not present at the time and place and has not seen the incident. Further, he was 10 feet away but he has tried to save himself by hiding himself wherever he found it safe in that circumstances if he was safe and not attacked by mob that is probable.

Further, it is argued by Shri Dhruv on behalf of accused that as per the say of this witness on seeing the jeep car burning, he went inside the house of Sherumiya Rasulmiya. When the mob proceeded towards the Mahemudmiya's house, it was not possible for the witness to go to Sherumiya Rasulmiya's house. It is further argued by Shri Dhruv that house of Sherumiya Rasulmiya was burnt.

Looking to the map, Panchnama and situation of scene of offence after open space (Naveli) leaving three to four houses, house of Sherumiya Rasulmiya is situated and there is a passage between hinder wall of Patels and row of Shaikh Maholla's houses. Looking to the situation of

Mahemudmiya's house it is quite possible to go to house of Sherumiya Rasulmiya when the mob was proceeding towards Mahemudmiya's house. Probability of going of witness to Sherumiya's house cannot be ruled out. So far as house of Sherumiya was burnt is concerned, houses in Shaikh Maholla were burnt and witness says that he was trying to hide here and there to save himself. At what particular point of time house of Sherumiya Rasulmiya was burnt and what particular time witness was there. No question in this regard is asked in cross-examination to explain this point. Further, considering whole evidence probability of going of this witness to Sherumiya Rasulmiya's house cannot be ruled out. Further, the presence of this witness in Shaikh Maholla considering the time and place of incident and the fact that he is resident of Shaikh Maholla, his presence in Shaikh Maholla cannot be doubted and as discussed above probability of seeing the incident by the witness cannot be ruled out. Therefore the arguments of Shri Dhruv that taking shelter in the house of Sherumiya is also contradictory version to his previous version is of not much force.

So far as statement before the S.I.T. that he was hiding himself in his house and there was loot in his house.

He is not having any bills of ornaments as it was burnt while before the Court he has stated that his house was burnt from the front side. It will be decided at the relevant time and stage.

P.W.61 - Shaikh Safikmiya Babumiya has deposed on oath that at about 9.30 P.M., mob of Patels of their village had come and ransacked and set on fire three cabins, outside the Shaikh Maholla and they were shouting slogans to cut and burn the Bandiyas. As the police came, mob disbursed. Again, the same mob, came at about 11.30 P.M. shouting to cut, beat and burn the Bandiyas and started pelting stones. He sustained injury on his left leg. The mob was coming by burning the houses in the Shaikh Maholla. He hide himself in the Naveli of Bachumiya. The mob came towards the house of Mahemudmiya and surrounded the house by pouring the kerosene, petrol in the house and then they burnt the house. Persons who were inside the room were shouting to save them. At about 2.30 A.M., police vehicle came and asked the persons to come out therefore, the persons alongwith him who were hidden there, came out and went towards the house of Mahemudmiya and saw that 28 persons were burnt alive, his mother Shaikh Barubibi Babumiya was also inside the

house, his wife- Faridabanu and his daughter – Suhanabanu were also burnt. Other members of the Maholla were also burnt. They took the persons out and took them to the Civil Hospital, Mahesana for treatment. Thereafter, he alongwith his wife and daughter went to Ilol where on the next day, his daughter – Suhanabanu died. No Post-Mortem was done.

It is argued by Shri Shah that, Suhanabanu has died in the incident. His wife- Faridabanu has been injured. He is the injured witness. He has identified seven accused with weapons in their hands. In the incident, his mother- Barubibi has died and he has identified six accused in the Court. As per the map, there is Naveli just adjacent to the house of Bachumiya Imammiya and as per the say of this witness, he has hidden himself in the Naveli of Bachumiya Imammiya. Maps support this fact.

It is argued by Learned Advocate Shri Dhruv that, this witness has not stated as to who ransacked or set on fire the cabins. Further, he has not deposed that the persons recognized by him in the mob, were the same persons who proceeded towards the house of Mahemudmiya. He has not deposed the name of the accused who poured the petrol or

kerosene or who set fire on houses. Thus, it is the say of Shri Dhruv that, enough role or overt act by any of the accused is not being stated by this witness. For this purpose when we consider the evidence on record simply because accused has not attributed specific role who pelted stones, who set fire on houses, it does not mean that he has not seen the incident at all. He is the resident of Shaikh Maholla, during the time of incident his presence in the Shaikh Maholla is natural one and it cannot be doubted. So far as identification of weapon by the witness in the court is concerned whether he has rightly identified in the court or not will be decided at the relevant time in the Judgement. This witness has not tried to indulge any of the accused by attributing specific role. If he intended to indulge the accused wrongly, he could have specifically attributed the role to the accused. Therefore, in this regard the arguments on behalf of the accused are not acceptable. Further, it is argued by Shri Dhruv that, this witness has stated about the injury sustained and treatment given to his wife and daughter but no injury certificates are produced. If his wife was burnt inside the house of Mahemudmiya, she would surely have taken the treatment in the hospital. This witness is claiming that his wife and

daughter were inside the house of Mahemudmiya but looking to the deposition, it is not possible for person who was inside the house, would survive. Even, complainant, given three different names of the persons who were rescued from the house and they died subsequently. His wife had not taken any treatment. It is not the say of the prosecution that she had not taken any treatment. This witness in his statements dated 10.03.2002 and 10.05.2008 has stated about the burn injuries sustained to his wife. This witness may not be telling truth about the injury sustained to him or to his wife. This witness has not deposed that his daughter was treated in Civil Hospital. Simply, as per his say, his daughter has died due to communal riots. His daughter received burn injury in the incident is not stated in his statements. In his statements dated 10.03.2002 and 10.05.2008, he has not stated that his daughter Suhanabanu has died on account of the alleged incident or she was buried at Ilol. In his statement dated 10.03.2002 and 10.05.2008, he has not even stated about burial rituals of his daughter. No treatment papers of Suhanabanu is produced and looking to the injury certificate, hospital would not discharge the patient without informing the police. As per the say of this witness, his

daughter has died due to burn injury sustained to her in the house of Mahemudmiya. His daughter has died. The reason of death of his daughter might be different one but it is not proved by this witness. As per the Certificate Exh.179, Suhanabanu had abrasion in occipital region. Thus, this is a case of simple injury and cannot be said that Suhanabanu died due to injury sustained inside the house of Mahemudmiya. There is no burn injury to Suhanabanu which creates doubt about the presence of Suhanabanu inside the Mahemudmiya's house. Wife of this witness is not examined. Therefore, the say of this witness that his wife was inside the house and received burn injuries is not sustainable.

In this regard when we consider the evidence of this witness, it is true that the fact of his wife and daughter is not mentioned in his statement. But the fact that, his daughter died and was buried, is supported by documents produced vide Exh.726 and 727 and from the deposition of P.W.97 - Lodha Hafijbhai Nasirbhai vide Exh.725 and panchnama is produced vide Exh.572 and Death Registration Certificate, issued by the Ilol Gram Panchayat is produced on record, supports the version of this witness.

In this circumstances, if this fact is not narrated in his statement dated 10.03.2002 and 10.05.2008, it becomes insignificant. Medical Certificate and case papers of Suhanabanu are produced on record at Exh.179 and 180 respectively. So far as burns injuries sustained to Firozabanu is concerned, there is no medical evidence, supporting the injuries sustained by Firozabanu. Further, she is not examined as a witness by the prosecution. It is admitted by the Investigating Officer that, this witness has not stated about burns injuries to his wife. His brother Rafikmiya Bachumiya Shaikh is not telling about the injuries to Firozabanu. On perusing medical evidence, it transpires that, there is no medical evidence at all to satisfy the burns injuries, sustained by Firozabanu. If she had burns injuries then she would have certainly taken some treatment somewhere, but there is no evidence to support this fact. Hence, the burns injuries, sustained by Firozabanu, as deposed by this witness is not established by the prosecution. Further she is not coming forward before the Court to say about injuries or any treatment taken by her or other facts in respect of incident. Therefore, the say of this witness with regard to injury to Firozabanu in the incident can be considered as an improvement, in his

version. Further, as per deposition of this witness those who were burnt in the incident were treated in the Civil Hospital but he has not specifically stated about the treatment of his wife. This version also suggests that, there is an improvement in his version in this regard. But so far as his version regarding injury to his daughter Suhanabanu is concerned, from the Medical Certificate and other documents and deposition of the Medical Officer the fact that Suhanabanu was treated in the Civil Hospital, whether Police was informed about her discharge or not that is not of much importance because she sustained injuries and she died on the next day at Ilol and that fact is established by the prosecution. Therefore, the arguments advanced in this regard cannot be considered at all. No doubt looking to the Medical evidence, injuries sustained by Suhanabanu were simple in nature but no cause of death of Suhanabanu is certified by the Doctor. Therefore, cause of death is not established but she sustained injury, that is proved by the prosecution. Whether his wife and daughter were in side the house of Mahemudmiya or not, he is claiming that they were inside the room while as per say of accused no one could survive in such an atmosphere in Mahemudmiya's house. But looking to the evidence of other

witnesses, as discussed earlier there are other injured eye-witnesses, who were brought outside from Mahemudmiya's house by the Police and other persons and were sent to Civil Hospital, Mahesana for treatment. Therefore, the arguments that, no one can survive in the room in such a situation is not acceptable. Referring to the complainant's deposition, it is argued by Shri Dhruv that, as per say of complainant only three persons were brought out from Mahemudmiya's house, who subsequently died. In this regard when we peruse the evidence, it is true that, complainant has deposed that, three persons were brought out from the Mahemudmiya's house. But considering the evidence of Police and other witnesses some other persons were also there brought out from the Mahemudmiya's house. But other witnesses are not saying that Firozabanu was brought out from Mahemudmiya's house and they are not saying about her presence in Mahemudmiya's house. In such circumstances, it is quite possible that, she may or may not be in the room. As per the say of this witness, when same mob came in Shaikh Maholla and set on fire the houses, he saw and recognized the accused and due to fear, he had hidden himself in the Naveli of Bachumiya Imammiya. This fact is not mentioned in any of his

statements. Mohamed Sattar Bachumiya hide himself in the adjoining house of Akbarmiya, is not stated by this witness and it is proved as contradiction in his statement dated 10.03.2002. Thus, it is argued by Shri Dhruv that the presence of this witness at the place of hiding is contradictory. Looking to the position of the house in which he alongwith Mohamed Sattar had hidden themselves, that house was exclusively damaged due to burns. There was no possibility for a person to hide himself in the house. In this regard, when we consider the time and place of occurrence, this witness is the resident of Shaikh Maholla, his presence in the Shaikh Maholla at the time of occurrence in the Shaikh Maholla is natural one. Further, it is argued by Shri Dhruv that, as per the deposition of this witness, three cabins outside the Shaikh Maholla were burnt on 01.03.2002 at about 9.30 P.M. This fact is not stated in his statement dated 10.03.2002. In his statement dated 10.03.2002 he has stated that cabins situated near the entrance of Shaikh Maholla were set on fire. This is an improvement and omission in his deposition and statements. So far as this contradiction is concerned, burning of three cabins at the entrance of Shaikh Maholla is established by the prosecution on the basis of

Panchnama, Map and other evidence on record. In that circumstances if this witness is stating this fact in his deposition it cannot be discarded simply due to omission of this fact in his statement dated 10.03.2002. Further it is argued by Shri Dhruv that, in all his statements, he has not stated about the surrounding of Mahemudmiya's house by the mob. This fact creates doubt about the presence of this witness in Shaikh Maholla. Further, this witness has accompanied police to Civil Hospital, then Ilol but he has not stated anything about the incident to the police. So far as this contradiction is concerned, it is true that it is not stated by him in his statement but he is telling about mob proceeded towards Mahemudmiya's house and this fact is supported by other cogent and reliable evidence that mob was proceeded towards Mahemudmiya's house and in that circumstances this contradiction becomes insignificant and omission of this fact would not create the doubt about the presence of this witness, in the Shaikh Maholla, at the time of occurrence. There is not much distance between the version of this witness with regard to incident, as per prosecution as revealed from the police report and accompanying documents. So far as the arguments regarding silence on the part of witness is concerned, it is

true that police was with him up to Ilol but he was silent, not narrated about this incident to Police. A person whose daughter was injured, subsequently died, having no roof for shelter, considering the mental agony of that person in such a grave and tense atmosphere, we cannot expect such a prompt action on the part of such witness. Every person behaves in his own manner in the similar set of circumstances therefore, if this witness was silent though Police was with him till Ilol, we cannot doubt about his trustworthiness and we cannot discard those facts, which are already proved by the prosecution beyond shadow of doubt.

P.W.62 - Shaikh Rafikmiya Mahmadsusen has deposed on oath that he is the resident of Shaikh Maholla in Sardarpur. On 28.02.2002, he was sitting in his cabin and at about 9.00 to 10.00 P.M., some of the Patels came and were asking to close the cabins. They asked him to close the cabins otherwise they will burn him. Therefore, he has closed the cabin. Some scuffle took place between him and Patels - Rameshbhai Kantibhai, Sureshbhai Baldevbhai and Rajeshbhai Punjabhai. Thereafter, he went to his Maholla and the mob went towards the Mahadev Temple. Thereafter, in the evening, the mob of Patels

gathered and they were talking with each other to destroy shops and cabins of Muslims at during the night, they burnt the cabins of Muslims which were near the Panchayat. On 01.03.2002, there was Bharat Bandh and he was in his Maholla. Atmosphere was tensed, mob of Patels gathered and they were talking that no Muslims should be left alive. To see that if there is any damage to his house or cabin, he went inside the Maholla. At about 9.30 P.M. mob of Patels came from Mahadev Temple side shouting slogans to cut, beat and burn the Muslims. They had burnt three cabins of Muslims in the entrance of the Shaikh Maholla, out of which one cabin was of this witness, second of Iqbalmiya Rasulmiya and third of Ibrahimmiya Rasulmiya and thereafter, police came and mob disbursed. Again, the same mob came at about 11.30 P.M. shouting slogans to cut and beat the Muslims and started pelting stones. First they caused damage to the house of Manumiya Alammiya and then second house of Akbarmiya Nathumiya and thereafter, one by one, they had burnt, the houses in Shaikh Maholla and witness went towards house of Ibrahimmiya Rasulmiya to save himself. He saw the persons coming inside therefore, he went inside the house of Ibrahimmiya Rasulmiya then the persons went towards

the house of Mahemudmiya in which ladies and children and other persons were there and they were burnt by the mob. At about 2.30 A.M. police came and asked to come out. This witness alongwith other persons had come out and went towards the house of Mahemudmiya where they brought out the dead bodies from the house and took the injured persons to the Mahesana Civil Hospital in the police van. The witness himself had also gone to the Mahesana Civil Hospital as he too was injured and he took treatment. Thereafter, three persons were serious and they were sent to Ahmedabad Civil Hospital. The witness himself, his mother, his uncle – Makbulmiya Kesarmiya and his brother- Imtiaz Mahmadsusen went to the Civil Hospital alongwith these three persons. These three persons were Firozmiya Makbulmiya, Rafikmiya Bhaimiya and Abedabanu Bhaimiya, who were admitted in the Civil Hospital, Ahmedabad wherein Firozmiya Makbulmiya, Rafikmiya Bhaimiya and Abedabanu Bhaimiya died after two days. Doctor asked them to take the dead bodies. The witness has deposed that he asked for Ambulance but the doctor refused to give the ambulance to them because as the atmosphere was tense, it was not possible to take three dead bodies to anywhere. Thereafter, the doctor had told

him to send the dead bodies for Post-Mortem and then after three days, burial rituals of the three deceased were performed in Juhapura graveyard. Thereafter, they stayed in Juhapura and came after six days to Himmatnagar.

Spl. Prosecutor Shri Shah has argued that, Rafikmiya Mohmadhusen Shaikh, is the resident of Shaikh Maholla, Sardarpur and doing business of pan bidi and when at 11.30 P.M. again mob came and burnt the house of Akbarmiya Nathumiya. Shri shah has further argued that, the name of his wife Vahidabanu is written by mistake in fact, her real name is Arifabanu.

It is submitted by Shri Dhruv that this witness is not referring presence of any other witness in the cabin at the time of incident while Bachumiya Imammiya says that he was present alongwith Rafikmiya. Bachumiya Imammiya further says that Rameshbhai Kantibhai caught hold of this witness from the collar but this witness is not saying about this fact. Either of the two is false. The incident dated 28.02.2002 at about 9.00 to 10.00 A.M. as narrated by this witness is not narrated by Bachumiya Imammiya. Both the witnesses are giving different facts. Further, this witness has not stated about those events in his statements dated

10.03.2002 and 10.05.2008. For the first time this fact is narrated before the Court by this witness. This witness has stated some scuffle took place between him and mob of Patels and he was there in that circumstances if, he has not specified that he was caught hold from collar it does not mean that he is telling lie. Every person describes the incident in his own manner and such discrepancy in narrating the incident is natural one and creates more trustworthiness. This witness has not stated about the presence of Bachumiya Imammiya but it will not create the doubt about the presence of this witness in the cabin Bachumiya Imammiya is also telling about the incident of caught holding the collar of this witness. Thus, both have narrated the incident in their manner meaning thereby something happened between the witness and accused in mob. In that circumstances, presence of this witness at that time cannot be doubted on account of omission in his statement about the presence of Bachumiya Imammiya. Further, Bachumiya Imammiya has not narrated the incident dated 28.02.2002 at about 9.00 to 10.00 A.M. is concerned it is true that he has not specifically narrated the incident of that time as he is narrating the incident about this witness was caught hold from collar. Therefore,

the say of accused that Bachumiya Imamamiya has not narrated the incident dated 28.02.2002 at about 9.00 -10.00 A.M. and the present witness and Bachumiya Imamamiya are telling different story is not acceptable. Difference in narrating the incident is natural one, not tutored one. So far as omission of this fact in the statement dated 10.03.2002 and 10.05.2002 is concerned, some incident happened between this witness and mob of Patels that is supported by Bachumiya Imammiya and it is also proved from the evidence of other cogent evidence that on 28.02.2002 mob was asking to close the shops, cabins due to Gujarat Bandh that is not in dispute. In that circumstances if the fact of holding of collar of this witness or scuffle is deposed in the deposition for the first time in the court, the possibility of such an incident in such an atmosphere cannot be ruled out. In that circumstances non stating of this fact in both the statements becomes insignificant.

Further it is submitted on behalf of accused as per the deposition of this witness, on 01.03.2002, in the evening, mob of Patels gathered and they were talking that not a single Muslims should be spared. This fact was not

informed by this witness to any witness. Further, he had run away from that place or stayed there. There is major improvement in his deposition just to show pre-planning on this point.

In this regard when we consider the evidence on record, gathering of person in response to Godhara train incident and aggressive talk between them against Muslim is also natural conduct. If this witness is not stating this fact to any witness it is not going to effect the other facts of incident which are already proved. Assuming it is an improvement then also it is not of much importance.

Further, it is submitted by Shri Dhruv that with regard to the fact that mob of Patels came from Mahadev Temple side at about 9.00 - 9.30 P.M. and set on fire three cabins outside Shaikh Maholla, is not stated by this witness in his statement dated 10.03.2002 and 10.05.2008. He has stated in his statement that there was a mob which gathered in the evening and set on fire the cabins near the panchayat office. He was standing near his house so that his cabins may not be set on fire.

On this point when we consider the evidence on record, from Panchnama and other evidence burning of three cabins at the entrance of Shaikh Maholla is proved if this witness is stating this fact in deposition and not stated in statements dated 10.03.2002 and 10.05.2008, this contradictions becomes insignificant and this fact which is other wise proved cannot be discarded on the ground of this contradiction. So far as burning of cabins near panchayat in the evening is concerned, it is stated in his statements, is about evening, not about 9.00 - 9.30 P.M. we cannot club both the facts considering the timing and if this witness was standing near his cabin just to see that his cabin may not be set on fire that is also natural one. Every prudent person would try his best to take all precaution to save his property. Thus, it transpires that his cabin at the entrance of Shaikh Maholla was not burnt in the evening but it was burnt at about 9.00 - 9.30 P.M. Therefore, the discrepancy in his statements and deposition in this regard is of no importance.

Further, it is submitted by Shri Dhruv that he has not seen the incident of setting on fire on those cabins. This witness has never stated that any persons from the mob

had tried to beat him. Considering his presence near to his cabin and house if this witness is saying that he saw the mob from the distance of 10 to 15 feet that is quite possible as Panchnama, map and inspection visit note supports this distance and houses/cabins were burnt. Flame of light is bound to be if this witness has seen the mob from the distance from 10 to 15 feet that is more reliable and trustworthy. Presence of this witness as stated by him cannot be doubted. This witness is saying that he has not seen setting on fire cabins by mob. He could have improved his version by adding facts but he is not adding anything to improve this fact and telling truth that he has not seen setting on fire those cabins which gives more force to rely the trustworthiness of this witness. Further, a person can see in flame of light from a distance of 10 to 15 feet no doubt can be created about it. So far as beating is concerned, it is true that he is not saying that he was beaten but talking about scuffle.

Further, it is submitted by accused side that as per the say of this witness, at about 11.30 P.M. mob had come shouting slogans cut Muslims and kill Muslims and then set on fire the house of Bhaimiya Alammiya after

ransacking it. Thereafter, mob proceeded towards the house of Akbarmiya Nathumiya. At that time, he saw the persons in the mob and he has given the names of certain accused with weapons. To save their lives, he went inside the house of Ibrahimmiya. This fact is not stated by him in his statement dated 10.03.2002 and 10.05.2008. In his statement dated 10.03.2002, he has stated that at about 12.00 O'clock in the night, persons started gathering in the village and thereafter, due to fear, he alongwith his brother – Imtiyaz had hidden themselves by the side of their house while Imtiyazbhai Mahemudhusen Shaikh has deposed that he took shelter in the house of Sherumiya Rasulmiya while as per the say of this witness, he took shelter in the house of Ibrahimmiya Rasulmiya. Ibrahimmiya Rasulmiya has not deposed that the present witness took shelter in his house. Ibrahimmiya has deposed that door of his house being broken, the persons who took shelter in his house went to the house of Mahemudmiya.

So far as this contradiction is concerned, it is not stated in the statement dated 10.03.2002 and 10.05.2008 he is an injured eye-witness, he sustained injury in the pelting of stone. He is the resident of Shaikh Maholla

having pan bidi cabin near Maholla considering time and place of the incident his presence in Shaikh Maholla or nearby Shaikh Maholla cannot be doubted. If there is any discrepancy about his hiding at one point of time, he is saying he went inside the house of Ibrahimmiya while in statement he has stated that he had hidden himself by the side of their house. Looking to the Panchnama and map there are only two small houses between Ibrahimmiya's house and the house of this witness. Considering distance between the two, if this witness is saying he went inside Ibrahimmiya's house or he alongwith his brother Imtiyaz took shelter by the side of his house and house of Sherumiya Rasulmiya is in opposite row but these all houses are nearby to each other. We have to consider the natural conduct of a person in a circumstances when a mob coming what a person will do. He will try to save him and for that he may go heather and theather, he will not be at one place. In that circumstances a person may go inside the house or hide himself besides the house or may go to any neighboring house. We cannot expect explanation from the witness in a mathematical calculation more particularly in such a tense atmosphere. If there is such discrepancy that is bound to be and the fact that witness is deposing

before the court after a long span of time. The very fact that the witness was very much present in Shaikh Maholla cannot be discarded. As per the say of this witness he had seen the mob when the mob proceeded towards Akbarmiya Nathumiya's house. House of Akbarmiya Nathumiya is at No.3 from the entrance of Shaikh Maholla while there are four small houses in between his house and Akbarmiya Nathumiya's house. There was sufficient opportunity for this witness to see the mob irrespective of the fact where he hide himself. Assuming he alongwith his brother Imtiyaz hide themselves by the side of their house or he went inside the house of Ibrahimmiya Rasulmiya or inside in his house or his brother went inside house of Sherumiya Rasulmiya then also he was having sufficient opportunity to see the mob as his house is at a reasonable distance from Akbarmiya Nathumiya's house. Witness was having opportunity to hide himself and also to see the mob. Therefore, under above circumstances this discrepancy becomes insignificant. Further, the arguments that Ibrahimmiya Rasulmiya is not saying about this witness inside his house is concerned, omission of this fact on the part of Ibrahimmiya Rasulmiya is not going to effect the fact that this witness has seen the mob and that omission is

not so material. Further, Ibrahimmiya Rasulmiya is saying that door of his house was broken and persons who were inside his house took shelter in the house of Mahemudmiya. The present witness might have taken shelter in the house of Ibrahimmiya Rasulmiya prior to the door broken that possibility cannot be ruled out even otherwise as discussed above this contradiction is not going to effect the fact that this witness was having sufficient opportunity to see the mob. Thus the arguments advanced by Shri Dhruv in this regard are having no force.

Further, it is argued by Shri Dhruv that the deposition of this witness is full of contradictions and omissions and he cannot be considered as eye witness. As per the say of this witness, he saw the incident, from the slit of the door of Ibrahimmiya but looking to the house of Shaikh Maholla, there is no such position. This witness has deliberately omitted who were there alongwith him in the house of Ibrahimmiya Rasulmiya. As per the Panchnama, houses of right hand side of Maholla were set on fire and therefore, presence of this witness in Ibrahimmiya's house is not believable. Further, major part of the incident is not stated by this witness in his statement dated 10.03.2002 and 10.05.2008. As per the say of this witness, Imtiyazbhai

received injury by stone while in his statement dated 10.03.2002, he has stated that his brother Imtiyaz received injury with stick. Thus, it is the say of Shri Dhruv that this witness is changing his version.

So far as this argument is concerned, simply because this witness is not saying who were there with him in the house of Ibrahimmiya Rasulmiya on that ground it cannot be discarded that he has not seen the mob. Admittedly when the house of Ibrahimmiya Rasulmiya was set on fire and door was broken, there were other persons in the room who went towards the Mahemudmiya's house. Possibility of this witness inside the house prior to setting on fire the house and seeing the mob from slit of the door cannot be ruled out assuming that he has not seen the mob from slit or door then also he was having opportunity to see the mob as discussed above. The changes which are pointed out by accused side in the version of this witness are of such, which cannot compel a prudent person to disbelieve the fact of seeing the mob.

Further, it is submitted on behalf of accused side that as per the say of this witness, police came at 2.30 A.M. In

respect of that, he has not informed the police about the incident. He reached at 4.30 A.M. at Mahesana Civil Hospital in police vehicle. There was 5 to 6 police persons in the vehicle but this witness has not stated about the incident to them. Further, at Ahmedabad in one Panchnama, police had taken his signature even though he had not informed the police about the incident. There is no evidence showing that he has informed the police at Ahmedabad Civil Hospital. His statement was recorded on 10.03.2003 till then he was silent. Considering the evidence on record, it is argued by Shri Dhruv that presence of this witness in Shaikh Maholla at the time of incident is doubtful.

In this regard while considering the evidence on record non informing the incident is concerned, in such a tense atmosphere and circumstances it is quite natural that a prudent person will try to take medical help first or try to rescue the persons, no one can expect from a person first to go to the police or other person to narrate the incident living injured a side without treatment. In addition to that we have to consider the mental and physical condition of a witness under such a tense atmosphere, we

cannot expect from a witness to see a natural conduct in a regular manner. In one circumstances different persons act in different manners. His statement was recorded on 10.03.2002 till then he was silent, it does not mean that nothing happened and he has not witnessed the incident. He was busy in treatment of other injured persons who were serious and subsequently died in that circumstances his silence up to 10.03.2002 will not compel a prudent person to discard the testimony of this witness and his presence. So far as denial about firing is concerned, he is having cabin near Shaikh Maholla and also residing in Shaikh Maholla while incident of firing took place near Fakirvas, the entrance of Sardarpur. Shaikh Maholla is at the end of Sardarpur. There is much distance between the two. Witness may not be having knowledge about the incident of firing. Therefore, denial of firing incident cannot be given much importance. He is injured eye witness. Therefore, there is nothing in the evidence which would indicate that it was not possible for the eye witness to have seen the incident. On the contrary the evidence indicates that there was every possibility of this witness being able to see the mob. As the mob was present in Maholla for considerable time .

So far as the incident dated 28.02.2002 for closing down the shop is concerned, he has given names of three accused but nothing has been stated by him in his statement is concerned as discussed above. Simply it is not stated in the statement but otherwise it is established that they were compelled to close down the shop and there was Gujarat Bandh on that day. So far as names of three accused as narrated by this witness is concerned it will be discussed and decided while appreciating the evidence on that point. Thus, the evidence of this witness is trustworthy and reliable one.

P.W.63 - Shaikh Bhikhumiya Kalumiya has deposed that on 27.02.2002, he went to Kanubhai Varvabhai for colour work. On 28.02.2002, the cabins were burnt in the market and at about 4.00 P.M., again he went to the market where Shankarbhai was vacating his shop. His shop is just adjacent to the shop of Hanifbhai Abdulbhai. He asked him why he is vacating the shop suddenly. He answered that he has kept the shop somewhere else and he had kept his material in the Mahakali's temple. Further, he has deposed that on 01.03.2002 at about 9.30 P.M., Patels of their village came in the Shaikh Maholla and set on fire, the cabins of their Maholla. Thereafter, the police came and the

mob was disbursed and again, they came at about 11.30 P.M. and started pelting stones and set on fire the houses. He sustained injury on his right head and left eye and thereafter, he hide himself by the side of jeep of Bachumiya. The mob came shouting slogans to cut, beat and burn the Bandiyas. Thereafter, they burnt the jeep and thereafter, this witness went inside the house of Bachumiya and from there he went in the passage. Again, mob came and family members of Shaikh Maholla were in the house of Mahemudmiya who were screaming for help from that house to save them and this mob went away. Thereafter, this witness came out. Sabirmiya Kadarmiya told him that his wife is lying in the Timba of the house of Abbasbhai therefore, he went there and saw that his wife was unconscious white froth was coming out from her mouth. Thereafter, Sabirhusen Kadarmiya and Akbarmiya Nathumiya brought her to the otla of Ishwarbhai Karsanbhai thereafter, he alongwith his wife went to the Civil Hospital, Mahesana and on the way his wife has died. The witness was also admitted in the Civil Hospital and thereafter, went to Ilol.

It is argued by Shri Shah that, Bhikumiya Kalumiya

Shaikh is the resident of Shaikh Maholla. He is the injured eye witness. As per his deposition, in the incident, Bismillabibi, Son-in-law Bhaimiya Alammiya, daughter Zoharabibi, grand sons and daughter – Arif, Rafik and Abeda died. he has identified the clothes of his wife i.e. Article No.12.

It is argued by Shri Dhruv that, as per the say of this witness, Shankarbhai was removing his goods from shop. On asking, he told that he will go to some other place. Goods were lying in the Courtyard of Mahakali temple. This fact is not stated in statement dated 10.03.2002. Referring to this deposition Mr. Dhruv has argued that, it is an improvement in the version of witness which is pleaded by the witness to prejudice the Court and to show that it was preplanned. True that this fact is not stated in his statement dated 10.03.2002 and it is an improvement in the version of witness but from this improvement we cannot infer that, this improvement is with the intention to show the pre-plan. Further it is submitted by Mr.Dhruv that, as per the say of this witness, at 9.30 P.M. Patels of their village came in Maholla and set on fire the cabins of Maholla. Police came and disbursed the mob. Again at

11.30 P.M., mob had started pelting stones and set on fire the house which this witness has seen. This fact is not narrated in the statement before S.I.T. Further, this witness has not stated in his statement dated 10.12.2002, application made to S.I.T. and in statement recorded by S.I.T. At about 11.00 P.M., mob had come and ransacked and set on fire. It is true that this fact is not stated in his statement before S.I.T. It is also true that ransacking and setting on fire is not stated before S.I.T. Setting on fire the cabins, houses are supported by Panchnama and other evidence such as depositions of Police witnesses and in that circumstances if it is not stated before S.I.T. and statement dated 10.03.2002 and in application it becomes insignificant. So far as version regarding ransacking of houses is concerned, it is not supported by other evidence. Thus, it is an improvement. From the cross-examination of this witness no where it comes out that, setting on fire the cabins, houses is not stated in his statement dated 10.03.2002. Therefore, if it is not stated before S.I.T. it makes no difference. Witness is not supposed to state each and every thing in second statement, the fact which he already has stated in his earlier statement. Further it is argued by Mr.Dhruv that, while in his statement, he has

stated that at the night hours, on 01.03.2002, cabins of Muslims were set on fire near the panchayat office and on arrival of police, police resorted to fire to disburse the mob. There is omission of this fact in his statement. This witness has stated that cabins near the panchayat were set on fire while before the Court, he is saying that he was present in Shaikh Maholla and witnessed the incident. So far as setting on fire cabins near Panchayat and resorting of fire incident is concerned, firing was resorted near Panchayat at the entrance of Village Sardarpur while incident of Shaikh Maholla occurred subsequently. In that circumstances if this witness is telling his presence in Shaikh Maholla i.e. reliable. There is far distance between Panchayat and Shaikh Maholla. This witness may not have knowledge about the incident of firing. Therefore, the presence of this witness in Shaikh Maholla cannot be doubted. Further it is submitted by Shri Dhruv that, as per the deposition of this witness, he took shelter besides the jeep of Bachumiya. Mob had come by shouting slogans to kill the Muslims and burning rag was thrown on the jeep and jeep started burning. Therefore, he went inside the house of Bachumiya. This fact is not stated in his statement dated 10.03.2002. Further, as per the say of this

witness, house of Mahemudmiya is 20 to 25 Ft. away from the entrance of Shaikh Maholla. Looking to the situation, there are number of houses situated in Shaikh Maholla and as per the say of this witness, he saw the mob from 10 to 15 Ft. but no one from the mob has attacked him. There were 2 to 3 persons with him. There were 10 to 15 persons in the Shaikh Maholla. Where they were attacked by mob he has no knowledge though he is claiming that he had seen the incident from very near. It is true that, he has not stated in his statement dated 10.03.2002 that, he took shelter besides the Jeep of Bachumiya Imammiya soon as burning rag was thrown he went inside the house of Bachumiya Imammiya. It is evident that, Jeep was burnt in that circumstances if this witness is telling that, on burning Jeep he went inside the house of Bachumiya Imammiya that is quite possible. Looking to the Panchnama, Map and other evidence on record Jeep was standing just in front of House of Bachumiya Imammiya. Therefore, we can infer in above circumstances if witness is saying he went inside the house of Bachumiya, that is quite natural conduct and this contradiction becomes of no importance. Except pelting stones no incident of attacking the individuals in open is claimed by the prosecution. Claim of the prosecution is

burning of cabins, houses and pelting stones etc. In that circumstances if this witness or other persons were not publicly attacked it does not mean that this witness is telling lie. Further it is submitted by Shri Dhruv on behalf of the accused that, though he has seen the incident but who set on fire the cabins, who pelted stones, who set on fire the houses and who were there near the house of Mahemudmiya, is not stated by the witness. All these facts suggest that this witness is not an eye-witness. In this regard when we consider the evidence of witness no doubt no specific role is attributed by this witness but he is narrating the incident of setting on fire the houses. In that circumstances he would have tried to save his life by hiding himself but in above circumstances his presence in Shaikh Maholla and claiming that he has seen the incident cannot be discarded. He was having ample opportunities to see the mob as he hide himself besides the Jeep which was lying near Bachumiya's house. Bachumiya's House is situated in Maholla leaving 4 to 5 houses from the entrance of Shaikh Maholla, which also suggests that this witness was having sufficient opportunities to see the mob. Further it is submitted on behalf of accused that, this witness has no knowledge about the application preferred by him to S.I.T.

Further, this witness took treatment in Mahesana Civil Hospital. At that time, he is not giving the names of the accused. It is argued by Shri Dhruv that this witness has given different versions on different times and changed his version and therefore, he cannot be relied upon at all. It is supported by Medical evidence that, this witness took medical treatment in Mahesana Civil Hospital. It is also true that, at that time he has not narrated the incident to the Police or any authority or he has not named any accused but considering the circumstances and brevity of offence simply on this stand we cannot infer that, he is not injured eye witness. In the facts and circumstances, his presence in Shaikh Maholla is otherwise established. He is the resident of Shaikh Maholla. He is injured eye witness. He has identified the cloths of his wife – Muddamal Article No.12. Under above circumstances the say of Shri Dhruv that, this witness is giving different version at different times and changing his version is not acceptable. This witness is giving deposition after 6 to 7 years of the incident and the changes in his version are natural one, which are not going to effect the main incident and those changes are natural one and if those changes are not found in the deposition then it can be considered as tutored one. Thus,

changes are natural and evidence of this witness is reliable.

P.W.64 - Shaikh Rafikmiya Babumiya has deposed on oath that he is the resident of Sardarpur. On the next day of Godhra Train incident, there was Gujarat Bandh and on third day, there was Bharat Bandh and on the second day, mob had burnt the cabins just in the front of Gram Panchayat and on the third day, the mob of Hindus gathered. He was in his house alongwith his family members and at about 9.30 P.M. a mob of Hindu – Patels came from Mahadev Temple side shouting slogans to cut, beat and burn the Bandiyas and they came towards Shaikh Maholla and burnt three cabins at the entrance of Shaikh Maholla. As the police came, mob disbursed. Thereafter, again at 11.30 P.M., mob came shouting slogans to cut, beat and burn the Muslims and started pelting stones in their Maholla and burnt the houses. The persons who where inside the Maholla have also pelted the stones to save themselves. The ladies, children and other persons went to the house of Mahemudmiya to save their lives. He saw Kanubhai Joitaram instigating the mob. The mob went towards the house of Mahemudmiya and surrounded that house. Due to fear, this witness went to Ravaliyavas. He

heard the voices of persons from Maholla screaming for help. After some time, he came back and saw that the houses were burnt including the house of Mahemudmiya. Persons who were inside the house of Mahemudmiya were taken out. There were 28 persons who died and others were injured. They took them to Mahesana Civil Hospital, in police vehicle.

It is submitted on behalf of the accused, as per the deposition of this witness, he was not injured in the incident and his statement is recorded after 25 days. Though, he went to Civil Hospital, Mahesana in police vehicle, he is not saying that Ibrahimmiya Rasulmiya, Mohamad Sattar and Bachumiya were there with him in the hospital. It is stated by him that, he witnessed the incident, he does not remember whether the names of accused involved in the incident were noted in Mahesana Civil Hospital or not, this witness was in Ilol camp alongwith brother Safikmiya Babumiya but does not remember who were with him in the Ilol camp and who were present in the burial ceremony of his brother's daughter. He has stated that in Ilol he stayed in the house of someone who is his relative but he is not telling the name

of that relative. Even at Ilol, he has not narrated the incident to anyone. He stayed in Panpur-patia and there also, he has not stated the names of the accused. Mohmad Sattar Bachumiya, Ibrahimmiya Rasulmiya, Faridabibi Aashikhusen Shaikh were in the Panpur-patia who came there but this witness has no knowledge about other persons in the camp. These witnesses are the resident of Shaikh Maholla and the present witness is also resident of Shaikh Maholla. Further, Panpur-patia relief camp was located near Himmatnagar while as per the deposition of Investigating Officer Shri Vaghela, camp near Himmatnagar was known as Nazira camp. Gulamali Akbarmiya and Safikmiya Babumiya are brothers of this witness and their statements were recorded on 10.03.2002 at Panpur-patia. While as per the say of Shri Vaghela, statement of Gulamali and Safikmiya were recorded at Nazira camp alongwith the statements of other witnesses. Camp at Nazira at Himmatnagar and Panpur-patia is one and same. As per the say of present witness, statement of nearly 18 witnesses were recorded on 10.03.2002 in Nazirabad camp. Thus, in spite of the fact that Investigating Officer had visited Panpur-patia camp where the present witness was present, no statement was given by this witness to the police

officers. His statement is recorded only on 27.03.2002. As per the say of Investigating Officer statement of this witness was recorded on 25.03.2002 and that statement is suppressed by prosecution. This witness is not an injured but he is resident of Village Sardarpur. It is true that, from the evidence on record it transpires that, statement of this witness was recorded after 25 days. Till then this witness has not narrated this incident to anyone though having sufficient opportunities. He has not disclosed the names of the accused. Further, statement of other witnesses were recorded in Nazira Camp, Panpur Patiya Camp. Thus, admittedly here is the case of delay in recording of statement of witness and there is no reason assigned to recording of such delayed statement. Further, as per Investigating Officer his statement was recorded on 25.03.2002 but no such statement is on record. We have to consider the evidence of this witness in the light of above situation. Further, it is submitted on behalf of the accused that, this witness has stated that at about 9.30 P.M., mob of Hindu Patels came shouting slogans to kill the Muslims and had proceeded towards Shaikh Maholla. Further, mob had set on fire the cabins near Shaikh Maholla. This fact is not stated by this witness in his statement dated

27.03.2002 and 22.05.2008. In his statement dated 27.03.2002 and 22.05.2008, it is stated by this witness that in fact, the incident having taken place at 9.30 P.M. has not been mentioned in it and instead of that, incident occurred at 11.30 P.M. – 12.00 A.M. is stated, which is not correct. Thus, as per the say of this witness, incident having occurred at 11.30 P.M. is not correct but it occurred at 9.30 P.M. while before the Court he is saying that at about 11.30 P.M. incident occurred. Thus, witness is changing his version and timing about the occurrence of incident. So far as this arguments are concerned, it is true that there is some changes about the timings of such incident but so far as mob came about 9.30 P.M. shouting slogans to kill the Muslims and proceeded towards the Shaikh Maholla is concerned, it is evident from Panchnama, Police witnesses and other eye-witnesses that, first mob came at about 9.30 P.M. and second mob came at about 11.30 P.M. This witness is giving confusing evidence in this regard whether cabins near Shaikh Maholla were burnt at about 9.30 P.M. or about 11.30 P.M. Much reliance cannot be placed on this evidence of this witness but the fact that, mob came twice, first at 9.30 P.M. and second at 11.30 P.M. and that is to be relied upon as it is much supported by other's evidence.

Further it is submitted by Mr.Dhruv that, his niece Suhanabanu was burnt over backside of her head who died and was operated at Ilol, is a contrary version to his previous statement. Looking to the cross-examination about time of incident, is highly doubtful. When we consider the evidence of this witness in this regard, it transpires that, Suhanabanu was having burnt injuries over backside of her head and she died and buried at Ilol is proved from the evidence of other witnesses and from the documents. Therefore, if this witness is stating this fact, which is not in his previous statement, no prejudice is going to be caused to the accused and it is not going to adversely effect the fact Suhanabanu died due to burn injuries and she was buried at Ilol. It is true that, this witness is giving confusing version in respect of timings of this incident and much reliance cannot be placed upon the version of this statement with regard to timings of this incident. Further, it is submitted on behalf of the accused that, as per the say of this witness when the incident was going on, persons in Shaikh Maholla were running here and there. He has not taken shelter in any body's house while he is deposing that on seeing mob, he ran away. No one from the mob had followed him even his conduct of not

taking his family members with him is doubtful. This witness is giving certain names before the Court and has deposed that he saw the house which was set on fire, the cabins which were set on fire and the pelting of stones and mob proceeded towards the house of Mahemudmiya but he is not saying who played overt act in commission of crime. Over and above, in his statement dated 27.03.2002, from where he witnessed, is not stated by this witness. Even before the court, he is not saying from where he witnessed the incident. As per his deposition, when the mob proceeded towards the Mahemudmiya's house, he slipped into the Rawalvas. Thus, this witness had already gone out of Shaikh Maholla then how he can see jeep car in the Shaikh Maholla being set on fire by the mob. In this regard when we consider the evidence of this witness on seeing the mob, if this witness ran away without taking his family members alongwith him, that can be considered as natural conduct every person reacts in his own manner in a particular circumstances. There cannot be mathematical calculations with regard to natural conduct. If on seeing the mob in such a tense circumstances this witness ran away without taking his own family members we cannot infer about the fact that, he was not present in the Shaikh

Maholla. Till he ran away, on seeing the mob he was having ample opportunities to see the mob. It is only the mob was proceeding towards Mahemudmiya's house at that time he went towards Rawalvas. Thus, we cannot conclude that, he has not seen the mob at the time of incident and the fact that, he is the resident of Shaikh Maholla, his presence in the Shaikh Maholla cannot be doubted. True that, this witness has not specified from where he has seen the mob but from overall deposition of this witness it transpires that, when the mob came he was in Shaikh Maholla and it was quite possible for him to see the mob. It is only on seeing the mob in Shaikh Maholla he went towards Rawalvas. Further, it is submitted on behalf of the accused that, this witness is not saying about the jeep car which was set on fire by the mob which suggests that he was not present in the Shaikh Maholla otherwise, he would have certainly deposed the incident of jeep car which was set on fire by the mob. As per the evidence of complainant and Rawal witnesses, there was also mob on the backside of the house of Mahemudmiya. When a person wants to go to Rawalvas, he has to pass from the backside of Mahemudmiya's house therefore, the say of this witness that he went towards Rawalvas when mob proceeded

towards the house of Mahemudmiya, is not acceptable. There is no possibility for him to go to Rawalvas from the backside of Mahemudmiya's house. So far as these arguments are concerned, when we peruse the evidence of this witness, incident of Jeep Car is not narrated by this witness. As per his deposition on seeing the mob he ran away. Jeep car might have been burnt subsequently in that circumstances if he has not seen burning of Jeep car and in that circumstances he is not stating that, he has seen burning of Jeep Car. In the above circumstances, that possibility cannot be ruled out. On the contrary it suggest more natural and trustworthiness of the witness as he is not narrating the fact which he has not seen. Thus, the version of this witness regarding seeing the mob by him is reliable. His presence in Shaikh Maholla, prior proceeding of mob towards Mahemudmiya's house has got some force in his version. So far as arguments advanced by Shri Dhruv on behalf of accused that, it was not possible for this witness to go to Rawalvas from the backside of Mahemudmiya's house and this witness has not seen the incident is concerned, from the evidence of this witness it transpires that, this witness went to Rawalvas when the mob proceeded towards Mahemudmiya's house. It is quite

possible that, prior to reaching of mob and surrounding the house of Mahemudmiya he went to Rawalvas therefore, it cannot be accepted that, there was no possibilities for this witness to go to Rawalvas from the backside of Mahemudmiya's house. Considering whole evidence it transpires that, he has seen the mob and on seeing the mob he went to Rawalvas therefore, arguments advanced on behalf of accused that, this witness is got up witness and he has not seen the mob and incident is not accepted.

P.W.65 - Shaikh Akbarmiya Nathumiya has deposed that, on 01.03.2002 there was Bharat Bandh, he was inside the house alongwith his family members. At about 9.30 P.M., mob of Patels came from Mahadev Temple side shouting slogans to cut, beat and burn the Muslims and burnt three cabins at the entrance of Shaikh Maholla. Therefore, the witness alongwith his wife and children went to the house of Bachumiya. By leaving them there, he came back to his house and when he was standing at the entrance of Maholla, again mob of Hindus came shouting the slogans to cut, beat and burn the Muslims and they damaged and burnt the house of Manubhai painter. Thereafter, he took his wife from the house of Bachumiya Nathumiya and went to Ravaliyavas from the back side of

house of Mahemudmiya and then, he went to Ravaliyavas then he went to the field and thereafter, he went to the house of Thakor Bhikhuji Somaji. He heard the voices of persons shouting for help who were inside the house of Mahemudmiya. After some time, there was silence. He came back to the entrance of Shaikh Maholla via Kapoor Maholla. As police came, he alongwith his wife and son, came to the entrance of the Shaikh Maholla and by leaving his wife and son at the entrance of Shaikh Maholla, he went inside the Shaikh Maholla wherein some one forcibly gave acid to Bismillabanu Bhikhumiya. He alongwith Sabbirmiya Kadarmiya, Bhikhumiya Kalumiya and Mahemudmiya Latifmiya Pathan, took her to the ottla of Ishwarbhai and again came to Shaikh Maholla. 28 persons were burnt alive in the house of Mahemudmiya and thereafter, rescue operation took place. The dead bodies sent to the Civil Hospital. In the incident damage worth Rs.1,00,000/- was caused to his house.

It is submitted on behalf of the accused that, evidence given by this witness naming certain accused before the Court is for the first time. Names were not given in his first statements. As per his statement, on 10.03.2002 at about, 9.00 - 9.30 P.M., near bus stand, cabins were set

on fire and on arrival of police, tear gas cells were lobbed and firing was done by the police to disburse the mob. This is not mentioned in his statement. This is an improvement. Further, in his deposition, he has stated that at about 9.00 – 9.30 P.M., 3 cabins outside the Shaikh Maholla were set on fire while in his statement, cabins near panchayat office is mentioned. Further, the story of mob coming again at the entrance of Shaikh Maholla and started attacking is not stated in any of the statement nor in his application made to S.I.T. In his statement dated 10.03.2002, it is stated that again at about 12.00 to 12.30 P.M. from all four sides mob started gathering in the village and on hearing voices, the persons in the Maholla gathered. The mob had started pelting stones. So far as these arguments are concerned, when we go through the evidence of this witness in the Market on 28.02.2002 cabins near Bus stand were burnt. From the evidence of this witness it transpires that, he intended to say incident of burning of cabins near Bus Station occurred on 28.02.2002 while incident at about 9.30 P.M., three cabins out side Shaikh Maholla were set on fire and said incident was occurred on 01.03.2002. Thus, the fact remains as it is that mob was gathered and incident of pelting stones occurred therefore, if this witness

is not stating about the attack in any of his statement, it is not of much importance. Further, it is submitted by Mr.Dhruv that, this witness has given certain names of the accused having articles, weapons in their hands but in the statement dated 10.03.2002, names alongwith weapons are not stated. Further as per the deposition of this witness, on hearing shouting of mob, due to fear, this witness alongwith his wife from the house of Bachumiya Nathumiya, went to Rawalvas from the back side of the house of Mahemudmiya. Thereafter, again due to fear, he went to the field and took shelter in the house of Thakor Bhikhabhai. This fact is also not stated in his statement dated 10.03.2002. For these Baddrunnisha Akbarmiya Shaikh, who is the wife of present witness has not stated about the fact that they went to Rawalvas and took shelter in the house of Bhikumiya Somabhai. So far as this contradiction is concerned, it is not stated in the statement dated 10.03.2002 and his wife is not telling that, they went to Rawalvas. Under above circumstances, much reliance on the deposition of this witness on this point cannot be placed. Further, it is submitted by Mr.Dhruv that, the deposition of this witness, after the incident was over, police came and he came back to Shaikh Maholla after

dropping his wife and son at the entrance of Shaikh Maholla while Baddrunnisha Akbarmiya Shaikh deposed that after atmosphere calmed down, they proceeded towards Maholla and saw dead bodies brought from the house of Mahemudmiya. This witness has also deposed that from the house of Mahemudmiya, 28 dead bodies were brought out with the help of police but he has not said that Baddrunnisha was with him at that time. So far as these arguments are concerned this fact is much supported by other cogent and reliable evidence and therefore, if there is some discrepancy in narrating said facts that is not going to prejudice the accused side. It is not much in dispute that, 28 bodies from the Mahemudmiya's house were brought out with the help of Police. Simply, this witness is not saying that, his wife was not with him, omission of this fact on the part of this witness will not effect the main fact. Further, it is submitted by Shri Dhruv on behalf of accused referring to the cross examination that, either this witness was not present in Shaikh Maholla or he had not taken his wife from Shaikh Maholla. Presence of this witness and his wife at the time of incident is doubtful. On one hand this witness is saying that they are informed by the police to go to their relatives at Ilol while as per the say of his wife and

son, they went to Savala. Further, he had not noticed that his wife went to Savala for one week. He has not even inquired his wife for a week. This witness is deposing about the fact that Bismillabanu had administered acid but who had administered acid is not stated by this witness while Sarifmiya Bhikumiya Shaikh, Bhikumiya Kalumiya Shaikh and Sabbirhusen Rasulmiya Shaikh are not supporting this fact. Further, doctor who performed the autopsy of dead body of Bismillabanu is also not stating the fact of administering acid to Bismillabanu.

So far as these arguments are concerned, when we peruse the evidence of this witness regarding administering of acid to Bismillabanu, other witnesses are also stating about lying of Bismillabanu in the heap of dung behind Mahemudmiya's house and it is also supported by some of the witnesses that, she was taken to the Opla of Ishvarbhai but medical evidence is contrary to this evidence and as per medical evidence Bismillabanu died due to burn injuries, how and where she sustained burn injuries is not explained by this witness or by other witnesses. Further, other witnesses are not supporting the fact regarding the administering the acid to Bismillabanu therefore, no reliance can be placed on the version of this witness on this

point. Even this witness is deposing confusing version where he went after incident, either Ilol or Savala. Surprisingly, he is not taking care about his wife for about a week. Thus, this is somewhat unnatural. Further it is submitted on behalf of the accused that, as per the say of this witness when the mob entered in Shaikh Maholla and started ransacking the houses, due to fear, he alongwith his wife went to the house of Bachumiya Nathumiya and by the side of Mahemudmiya's house, he went to Rawalvas. When we consider the evidence in this regard, when the mob entered in the Shaikh Maholla this witness was having opportunities to see the mob as he was nearby to Akbarmiya Nathumiya's house, which is in the row of Graveyard side and leaving two to three houses from the entrance of Shaikh Maholla. If on seeing mob this witness went inside the house of Akbarmiya Nathumiya and his family members were with him and thereafter, on seeing mob coming near and near by causing the damage to the properties in Shaikh Maholla and by burning the houses in Shaikh Maholla, if he alongwith his family members when gone towards Rawalvas by the side of Mahemudmiya's house, that conduct can be considered as natural conduct. In above set of circumstances it cannot be inferred that,

this witness has not at all seen the mob and he is a stranger. So far as arguments advanced on behalf of accused that, this witness is not saying anything about the burning of jeep which has been set on fire in Shaikh Maholla. When mob entered in Shaikh Maholla, this witness ran away, he has not seen any event while Baddrunnisha is saying that he saw the jeep of Baddrunnisha having been set on fire and in that light, she had seen the accused therefore, she went up to Rawalvas with her husband. If Baddrunnisha is telling truth then this witness is false and if this witness is telling truth then Baddrunnisha is false. In this regard when we appreciate the evidence on record, omission of an incident of setting on fire of Jeep in Shaikh Maholla by this witness does not amount that, witness has not seen the incident. It is quite possible that, he might have witnessed the incident till he went Rawalvas. As he was having opportunities to see the mob when the mob entered in the Shaikh Maholla till he went to Rawalvas. Further, his wife is telling about the incident of setting of fire of Jeep and also telling that, after that, they went to Rawalvas and at that time. her husband was with her. Every witness describes incident in his/her own manner, there cannot be straight jacket formula for

narrating the incident. Both the witnesses are saying that, they went to Rawalvas. The only fact of setting on fire on Jeep is not narrated by this witness, which is narrated by his wife and much supported by Panchnama and other evidence does not mean that, he is totally false. Omission of this fact in his deposition is not going to prejudice the accused and this discrepancy is not such which effects the main incident. Thus, from his evident it transpires that, on seeing the mob setting on fire on houses, cabins and causing damaging the properties, they went to Rawalvas and therefore, they had ample opportunities to see the mob and thereafter on seeing the mob, this witness alongwith his wife went to Rawalvas and therefore, the arguments in this regard of Shri Dhruv is not accepted on this point that this witness has not seen the incident. So far as the arguments advanced by Shri Dhruv that, on this point, when Ibrahimmiya Rasulmiya states that when the jeep was burnt, mob was spread up to Mahemudmiya's house then there may not have been any opportunity to persons to go to Rawalvas by the side of Mahemudmiya's house without sustaining damage or injury to life. If the witness by avoiding the mob to save his life went to Rawalvas from the backside of Mahemudmiya's house and he went safely

i.e. not impossible. Simply no injury was caused to him it does not mean that, by avoiding the mob and a person cannot go to Rawalvas from the back side of Mahemudmiya's house. Further the arguments advanced by Shri Dhruv on behalf of accused that, Baddrunnisha in her statement has stated that she, her husband and son, after having locked their house and to save their lives went to the field and from there they have seen the incident. It is submitted by the accused that from the field what is happening in the Shaikh Maholla cannot be seen. Referring to the statement dated 06.03.2002 of Baddrunnisha, it is submitted by this witness that they are not the witness of incident of Shaikh Maholla. The witness in his deposition has not dropped his son and wife at the house of Bachumiya Nathumiya and went at the entrance of Shaikh Maholla before the mob entered into Shaikh Maholla while Baddrunnisha says that her husband dropped her at the house of Bachumiya Nathumiya but she is not telling about taking her son with her. Further, she is not telling when they ran away from the house of Bachumiya Nathumiya towards the field, their son was with them. When we consider the evidence of this witness in this regard the fact that, they after locking their house went to Shaikh Maholla.

Thereafter, they went to Rawalvas remains as it is. Simply not mentioning of son taking with them does not amount the discarding the whole version of this witness on this point. The discrepancies are not such which can create the doubt about the presence of witness in Shaikh Maholla or nearby to Shaikh Maholla and thereafter gone to Rawalvas. In above set of circumstances if the witness is saying that he saw the incident of Shaikh Maholla from Rawalvas, he means to say that, he heard the voices from Shaikh Maholla and seen the flame of light of burning. While appreciating the evidence of a witness we have to consider the sense and intention of the witness, what he wants to say. Intention is material, not the words which are used by the witness. Further, omission on the part of the witness that, they had taken son with them while going to Rawalvas is concerned, this omission is not going to adversely effect or prejudice the accused side. Therefore, this omission on the part of witness is of no importance. It is argued by Shri Dhruv that, this witness has made false application before S.I.T. In application he has not stated certain points. The witness is not telling whether the application was given by hand or sent by Registered Post, to him. He is saying that before the application was made, Himmatnagar police has

not recorded his statement. In the application, he has stated that no statement was recorded by the police. So far as these arguments are concerned, the discrepancies which are pointed out by the accused side are concerned, the statement of this witness was recorded on 10.03.2002. Witness is a labour class person. If he is saying that, his statement was not recorded by the Police before application is made, it is contradictory but it does not effect the presence of witness in Shaikh Maholla and on seeing mob he went to Rawalvas. No prejudice is going to be caused to accused due to such contractions. Further, we cannot forgot that witness is deposing after span of 7 to 8 years and therefore, such omissions and contradictions are bound to be but that does not lead to reject the testimony of witness on the facts which is reliable one. Further, it is submitted by Shri Dhruv that, as per the say of this witness, he has seen them setting on fire the cabins outside the Shaikh Maholla from a distance of 10-12 ft. Further, as per the deposition, house of Manubhai which is situated near his own house being ransacked and set on fire but who set on fire the cabins, is not deposed by him. If he had really witnessed the act of the accused, he would have certainly identified the persons who played what role in

setting on fire the cabins and house of Manubhai. In this regard when we consider the evidence of this witness, this witness is saying that, mob had set on fire the house of Manubhai. No specific role is attributed by this witness to any accused. It does not mean that, the witness has not at all seen the incident.

P.W.66 - Shaikh Akbarmiya Rasulmiya has deposed on oath that mob came at about 9.30 P.M. setting on fire the cabins at the entrance of Shaikh Maholla. As per the say of this witness, the incident of setting on fire the cabins at the entrance of Shaikh Maholla, was done by the mob of Patels of their village, came from Mahadev Temple side and the said incident occurred on 28.02.2002 while as per the say of other witnesses this incident occurred on 01.03.2002. On 01.03.2002 there was Bharat Bandh. All of them were inside the house. At about 9.30 P.M., Patels of their village came from Mahadev Temple side shouting slogans. As police came, mob disbursed and at about 11.30 P.M., same mob again came shouting slogans to cut, beat and burn the miyas and his house was burnt. The witness also pelted stones to save himself. He sustained injuries on left hand. He had hidden himself by the side of the vehicle of

Bachumiya. At that time, Patels of their village were coming after burning the houses of Shaikh Maholla and they were proceeding towards the house of Mahemudmiya. As the mob came nearer to him he went to Veranda of graveyard. Mob had surrounded the house of Mahemudmiya and were hammering at the terrace. Then, they poured petrol and kerosene. At that time one of the Patel saw him and therefore, this witness went inside the cover of graveyard and covered him with thorns. Thereafter, the Patels had thrown the burning rags in the graveyard. The grass was burnt and thereafter, they went towards the Mahadev temple and after some time, police came and asked the persons to come out those who are alive. This witness came out and went towards the house of Mahemudmiya wherein he saw 28 dead bodies lying and other persons were injured. They took the dead bodies and other injured persons to Mahesana Civil Hospital.

It is argued by Shri Dhruv that, as per the deposition of this witness, Patels of Sardarpur set on fire three cabins out side the Shaikh Maholla but this fact is not stated in his statement dated 10.03.2002, application dated 09.05.2008 and statement before the S.I.T. dated

09.05.2008. For the first time he is deposing said fact before this court after eight years. So far as this argument is concerned it is supported from the deposition of Investigating Officer that, this fact is not stated in the statements dated 10.03.2002 and 09.05.2008 and application dated 09.05.2008 and it transpires from the evidence on record that, for the first time in the Court this fact is stated but the fact that, three cabins out side the Shaikh Maholla were burnt by the mob is proved by the prosecution by producing and adducing cogent, reliable and trustworthy evidence and in such circumstances if this fact is not stated in any of his statement, by this witness it becomes insignificant. So far as fact regarding Patels of Sardarpur set on fire the cabins is concerned, this fact will be decided at the relevant stage in the Judgement.

Further, it is argued by Shri Dhruv that, this witness has stated that it had not happened on 01.03.2002, at about 9.30 P.M., mob had come and someone might have informed the police on the very next moment. He is saying that he does not remember as to whether on 01.03.2002, at about 9.30 P.M., any mob had come or not while in his

statement dated 10.03.2002, he has stated that at about 9.30 P.M., mob had come and they hide themselves into the house. Thus, presence of this witness in Shaikh Maholla at the time of incident, is doubtful. For these arguments when we appreciate the deposition of this witness, in his deposition the witness has stated that mob came on 01.03.2002 at about 09.30 P.M. In his statement dated 10.03.2002 he has stated that, mob came on 01.03.2002 at about 09.30 P.M. but in his deposition he has shown his ignorance whether mob came or not. We have to consider this evidence in the light of status of the witness. This witness is of labour class and illiterate person. In his statement and deposition, he has deposed, which is supported by other cogent and reliable evidence and therefore, simply on the strength of this statement the fact which is getting support from other evidence cannot be discarded and this version is not getting support from other evidence and therefore, it is required to be ignored and on this basis we cannot conclude that, presence of this witness at the time and place of the incident in Shaikh Maholla is doubtful. Further, it is submitted by the accused that whether this witness has hidden himself or took shelter, for this, the witness has stated that he has hidden himself by

the side of the jeep of Bachumiya and from there, he saw the accused. This fact is stated after eight years for the first time before the Court. As per the deposition of this witness, when the mob came, he was standing near the house of Akbarmiya Nathumiya near electric pole in Shaikh Maholla. He saw the mob from about 20 Ft. in distance but he has shown his ignorance about the fact that when he saw the mob, at that time, whether mob chased him or not or attacked him or not. If he was on the road of Shaikh Maholla and he saw the mob from the distance of 20 Ft. armed with weapons, mob would not have spared him. In this regard when we evaluate the evidence of this witness alongwith the Panchnama and Map with other evidence on record, house of Akbarmiya Nathumiya is situated in Shaikh Maholla in left side of the road, leaving two to three houses, from the entrance of Shaikh Maholla while Jeep of Bachumiya Imammiya is standing near the house of Bachumiya Imammiya, which is just to opposite of Akbarmiya Nathumiya's house. As per Memorandum prepared during the Inspection Visit by the Court, electric pole was found near Bachumiya Nathumiya's house, near to which Scooter was burnt, which supporting the say of this witness that, electric pole is near to the house of

Akbarmiya Nathumiya and the say of this witness that, when he saw the mob he was standing near the electric pole, situated near the Akbarmiya Nathumiya's house and the distance which is shown by this witness in his deposition gets support from the Map and Panchnama and Memorandum of Inspection Visit and looking to the situation if witness was standing near electric pole and on seeing mob he hide himself by the side of the Jeep of Bachumiya Imammiya that is quite possible and natural. Every person will try to hide to save him in such circumstances and he will hide wherever he felt safe. Here, in the present facts and circumstances Jeep was in the nearest situation to hide himself, witness might have thought it safer and hence he himself has hidden by the side of the Jeep and his this say is quite reliable and probable. Considering the situations of Jeep, if a person hides himself by the side of the Jeep, he can easily see the mob which was proceeding towards Mahemudmiya's house. As this witness had hidden himself he was not chased by the mob, nor attacked and he was safe, from this fact we cannot say that in above circumstances mob would not have spared him. Further, here it is not so that this witness has not sustained any injury. This witness has sustained injury in

pelting stones and in that circumstances the arguments advanced by Shri Dhruv in this regard are not sustainable.

It is further argued by Shri Dhruv that, as per the deposition of this witness, he had hidden himself behind the Jeep of Bachumiya. Mob proceeded towards the house of Mahemudmiya. After setting on fire the houses in Shaikh Maholla, mob surrounded the house of Mahemudmiya, climbing on the terrace of the house and picked the hammer to broke the terrace. He is not saying about the setting on fire of jeep. If he had hidden himself behind the jeep when the jeep was burnt, he would have run away from that place. He has deliberately not stated that he has witnessed the attack of house of Mahemudmiya. If the house of Mahemudmiya was surrounded and house in Shaikh Maholla were burnt including the jeep then no one would have dared to remain present in the Shaikh Maholla. For this argument when we appreciate the evidence of this witness, this witness has not stated about setting on fire the Jeep but setting on fire Jeep is supported and established by the prosecution by cogent and convincing evidence and therefore, the omission of this witness on this part is of no importance. Further, from the cross-

examination of this witness, it has come out that when the mob was setting on fire the houses in Shaikh Maholla, he hide himself by the side of the Jeep but when the mob proceeded towards Mahemudmiya's house, he was standing near the Mahemudmiya's house and soon as the mob came and surrounded the Mahemudmiya's house, he went to the Graveyard. Therefore, the arguments advanced by learned advocate Shri Dhruv in this regard is not acceptable. So far as evidence regarding climbing on terrace of Mahemudmiya's house and pit the hammer to break the terrace is concerned, it has come out from the cross-examination that, this witness has show the persons having hammer in their hands, he could see the persons but could not identify them who were those persons on terrace with hammer. At that time he was near to boundary of Graveyard. Looking to Map, Inspection Visit by the Court, Panchnama of Scene of Offence, boundary of Graveyard shown behind Mahemudmiya's house and distance of 3 Ft. between the two is stated by this witness, which gets support from documentary evidence as well as personal visit by the Court. And on considering the situation of the house and boundary of Graveyard, the say of this witness that, he saw the persons from the distance of 10 Ft. is

corroborated with the Panchnama of scene of offence etc. Therefore, the arguments, in this regard advanced by learned advocate Shri Dhruv are not sustainable. Further, it is argued by Shri Dhruv that, it is deposed by the witness that, he was running towards the graveyard, mob going towards house of Mahemudmiya, mob surrounded the house of Mahemudmiya, breaking the terrace with iron hammer, climbing the terrace of the house Mahemudmiya, pouring petrol and kerosene, throwing burning rag in the graveyard and gathering of the mob at Mahadev temple, are the improvements in the deposition of this witness which suggests that he has not seen the incident and he was not present in the Shaikh Maholla. Simply because he sustained stone injuries, it cannot be presumed that he had witnessed the incident. Evidence with regard to the house of Mahemudmiya surrounded by the mob / terrace of the house was hammered by big hammer, pouring of petrol or kerosene, are the vague evidence given by this witness. How it was poured and who poured, nothing is stated by this witness in his statement. So far as this arguments is concerned, climbing, breaking of terrace as stated by this witness is supported by Panchnama of scene of offence, which is produced vide Exh.424, wherein it is

mentioned that, eastern side wall of the house of Mahemudmiya has been tried to break by climbing on the compound wall of the properties of Patel Dineshbhai Joitaram and Patel Amratbhai Shankarbhai and recent marks has been noted by the panchas during the course of panchnama of place of incident. As per deposition of this witness, this witness went to Graveyard. This witness is stating that, mob had caused damage to the graveyard. Grass in the graveyard was burnt by throwing burning rag. For this purpose when we peruse the Panchnama of Scene of offence, damage caused to the Graveyard is shown in the Panchnama however, panchnama is silent about burning of grass in Graveyard. But the fact that, damage was caused to the graveyard is deposed by this witness as well as by other witness and this fact is supported from the deposition of Investigating Officer Shri G.V.Barot, who on the strength of damage caused to Graveyard, written letter to Secretary, Government of Gujarat, for seeking permission under Section 196(1) of Cr.P.C. which is granted by the Government of Gujarat for prosecution under Section 153-A . Thus, the say of this witness regarding damage to graveyard is corroborated by the other evidence only burning of grass by throwing burning rag is not getting

support from other evidence. But once damage to graveyard is proved, it suggest that the say of this witness that he went to graveyard and hide himself in one of the cover of grave. Therefore, under above circumstances the discrepancies regarding burning of grass becomes insignificant though it can be considered as an improvement. So far as gathering of mob in Mahadev temple is concerned, it is supported by other evidence. Therefore, non stating of all these facts in his statements though may be considered as improvement in his deposition but in the circumstances as discussed above and in view of the other evidence on record, this improvement are required to be ignored and the presence of this witness cannot be doubted on this count. So far as arguments advanced with regard to how, who poured kerosene, petrol, not specified in any of his statement is concerned, if the witness is not specifically stating such facts in his statements under such a tense and grave atmosphere, we cannot discard the evidence as a whole, which is satisfactorily established by the prosecution. Further, it is argued by Shri Dhruv that, for the deposition with regard to one Patel had seen him and Patel chased him and he had hidden himself, if that is true, in that

circumstances, if mob came with weapons to kill particular community, the mob would not have spared this witness therefore, this fact is doubtful. So far as this argument is concerned, he was injured, it cannot be said that, this witness was spared by the mob but he hide himself thereby he was safe. On the strength of this fact, it cannot be said that, this witness was not present if at all he was present, mob would not have spared him. Further, it is argued by Shri Dhruv that, this witness had given computerized type application dated 09.05.2008. Date was written by hand. He is uneducated, unable to read the time. That application was typed by typist as per his dictation. Date fixed on computerized type copy is hand written. As per his admission, he has not got it typed in computer. Incident occurred in the year 2002. No one had asked him to give such application on 09.05.2008 but he himself got it prepared the application. His statement was recorded on 10.03.2002. This shows his ignorance about that statement. This witness had not given any application prior to application dated 09.05.2008. Copy of that application is not kept by him. On this point, it is the say of defence that such application were prepared and tendered at the instance Citizen for Peace and Justice, NGO headed by

Teesta Setalvad. Looking to the admission given by this witness, in his cross-examination, it is specified that except signing the application, witness has done nothing. It is the creation of Teesta Setalvad of Citizen for Peace and Justice. Application was prepared after the constitution of S.I.T. All the applications were prepared at only one place and except family details other details are same. Therefore, these facts are also not believable. So far as these arguments are concerned, witness is an illiterate person, we cannot forget that, the NGOs have taken active part up to Hon'ble Supreme Court of India in the matter and witnesses are guided by the NGOs. Keeping in mind the fact, if witness is guided by NGOs, we have to consider the evidence by following the policy of grain and chaff. When we consider the application preferred before S.I.T. much has been asked about this application in the cross-examination. From the cross-examination itself it transpires that, application was preferred after constitution of S.I.T. and if witness has taken some help of NGOs and Teesta Setalvad of Citizen for Peace and Justice, who have helped the witness for getting justice, no prejudice is going to be caused to accused therefore, the irregularities which are pointed out in cross-examination of this witness are required to be ignored and

much weightage cannot be given to those irregularities and the arguments advanced by Shri Dhruv that, this application is creation of Tista Setalvad, Citizen for Peace and Justice will not be helpful to the accused under such a circumstances. Further, it is submitted by Shri Dhruv that, this witness was in Maholla, he went to Civil Hospital, Mahesana in the company of police even though he is not disclosing any fact nor giving any names of the accused either before the Doctor or before the police. Even, he went to village : Ilol but he had not disclosed the incident to the police. For the first time, he is disclosing the incident before the police after six years. So far as silence about six years as argued on behalf of accused is concerned, this witness is an injured witness, if he was silent for about six years and has not narrated the incident to Police or Doctor though Police was with him up to Ilol, true that, this witness is silent up to six years but a person under such a grave and tense atmosphere, whose nearest relatives were burnt alive in the incident, further having no roof for shelter, naturally he will try to choose a shelter for him or his family members rather than rushing for lodging complaint, in that circumstances if the witness was silent but the incident is otherwise proved by the prosecution by cogent

and reliable and convincing evidence, much importance cannot be given to such silence and on this count whole deposition of this witness cannot be discarded. Further, it is argued by Shri Dhruv that, there is no other driver having name Akbarmiya. Still, this witness is saying that he hide himself by the side of house of Akbarmiya driver. It is not his say that he hid himself by the side of the house of Akbarmiya. So far as this version is concerned, this witness has added Akbarmiya driver in his deposition, it does not mean that, his say about hiding by the house of Akbarmiya is false. Akbarmiya may be a driver though not came on record but whether he is a driver or not, it is not going to effect the case of prosecution nor going to prejudice the accused side hence no importance can be given to this fact.

Considering above all, the presence of this witness in Shaikh Maholla, at the time of incident, is reliable as he is the resident of Shaikh Maholla. He is injured eye-witness. Further, considering the time and place of occurrence his presence in Shaikh Maholla cannot be doubted. Further, where he was standing (near electric pole) from where he saw the mob first, thereafter the mob started setting on fire houses in Shaikh Maholla and proceeded towards

Mahemudmiya's house, he hide himself by the side of Jeep, from those places a person can easily see the mob and from the jeep side where he was hidden also a person can see what is happening in Mahemudmiya's house. During Inspection Visit by the Court, it is noticed that, a person could see from the place where Jeep was standing, in that circumstances, if the witness is saying that, he saw the mob, he was having ample opportunities to see the mob. This witness is the brother of the complainant, his nearest relatives died in the incident, this witness had hidden himself in the vacant grave in the graveyard, the mob was searching him but could not find him, thereafter, the mob of Patels had thrown burning rag, the grass were burnt. This facts supports the damage to the religious place of Muslims. Whether the mob of Patels was of Village Sardarpur or not will be decided at the relevant time in this Judgement but this witness incurred damages towards loss of his two houses, which is supported from the Panchnama.

P.W.67 - Shaikh Imtiyazbhai Mahmadsen has deposed that his brother Rafikmiya was carrying the business of pan bidi in the cabin. On 01.03.2002, he was in his house. At about 9.30 P.M. mob of Hindus alongwith

weapons came from the side of Mahadev temple and they came towards the Shaikh Maholla and burnt three cabins at the entrance of Shaikh Maholla. As the police came, mob disbursed. Again, the same mob came and started pelting stones. Mob had burnt the house of Manubhai Bhaimiya and Akbarmiya Nathumiya. At that time, this witness was standing towards the house of Ayubmiya Rasulmiya and at that time, he saw the persons in the mob and he went inside the house of Sherumiya Rasulmiya to save his life. The mob of Patel's burnt the house of Mahemudmiya and then went. At about 2.30 A.M., police came and took them to Civil Hospital, Mahesana. three persons were serious and they were shifted to Ahmedabad Civil Hospital. Firozmiya Makbulmiya and Rafikmiya Manubhai have died while Abedabibi died after two days. Post-Mortem was performed at Ahmedabad Civil Hospital and thereafter, they took the dead bodies to the graveyard. Thereafter, they went to the camp of Juhapura where they stayed for 4 to 5 days and again they came to Himmatnagar.

On behalf of the accused, it is submitted that, he is the resident of Sardarpur. He is residing with the Rafikmiya Mahemudmiya. His brother is having Pan-Bidi cabin at the

entrance of the Shaikh Maholla. He is the injured eye-witness. It is further submitted on behalf of the accused that his statement was recorded after 46 days. This witness went to Civil Hospital, Mahesana in the company of police and then went to Civil Hospital, Ahmedabad. Thereafter, he went to Juhapura camp where he stayed for 3 to 5 days and then to Panpur-relief camp but in spite of having ample opportunities, he has not narrated the incident to the police. He was silent for 46 days. It is only at Panpur camp, on 10.03.2002, his statement was recorded. As per the deposition of this witness, he took shelter in the house of Sherumiya. The whole part of this evidence is not narrated in his first statement dated 17.04.2002 even after 6 years, before S.I.T. on 22.05.2008, he has not stated his part of evidence. Thus, his deposition of this part is improved version. As per the deposition of this witness, Patels have set on fire the house of Mahemudmiya and after shouting Bharat Mata Ki Jay, they went away. When he had hidden himself in the house of Sherumiya Rasulmiya, how had he witnessed the incident of setting on fire the house of Mahemudmiya. Thus, this is an improvement.

For these arguments when we peruse the evidence of this witness, it transpires that, he was silent about 46

days. Considering the brevity of offence and tense atmosphere and the circumstances under which the incident occurred and also the mental agony of the witness and that, witness was busy in the medical aid either at Civil Hospital, Mahesana or at Civil Hospital, Ahmedabad. Thereafter, he went to Panpur Patiya. It is also to be kept in mind while appreciating the evidence of this witness, that a person having no roof to stay and he was in camp, in all these circumstances if the witness is silent for about 46 days and it is only on 17.04.2002 his statement was recorded, we cannot expect from a person to be so prompt in narrating the incident before Police or before any other authority and non-disclosing of incident for 46 days would not be fatal of his evidence. Whether this witness took shelter in Sherumiya's house or not, it becomes insignificant. The fact that, he was very much present in Shaikh Maholla and to save himself a person will try to hide himself hither and thither and in that atmosphere if this witness hide himself in Sherumiya's house or for some time he hide himself at other place, that is quite probable. It is not say of this witness that, he was in the house of Sherumiya during whole incident. Thus, his presence in Shaikh Maholla during the incident cannot be doubted. He

is the resident of that Maholla. He is specifically stating when the mob came and burnt the House of Manubhai and Akbarmiya Nathumiya, he was standing towards the house of Ayubmiya Rasulmiya. Looking to the situation of House of Ayubmiya Rasulmiya, it is in Maholla towards right side row, leaving six houses, witness was standing near to that house when the mob burnt the house of Manubhai and Akbarmiya Nathumiya. Thus, considering the distance of two houses and the fact that, house of Ayubmiya Rasulmiya is situated after leaving six houses from the house of Manubhai. Therefore, there was ample opportunities for this witness to see the mob. Considering the distance of two houses, a person can easily see the mob by standing near the house of Ayubmiya Rasulmiya. Therefore, the arguments advanced by Shri Dhruv on behalf of accused that, witness has not seen the incident and there is an improvement is not acceptable. So far as omission of this incident in his first statement dated 17.04.2002 and then his statement before S.I.T. On 22.05.2008 becomes insignificant. Under the circumstances as stated above and considering the fact that, he is resident of Village Sardarpur, having his Pan-Bidi cabin at the entrance of Sardarpur, he is the injured

eye-witness.

P.W.68 - Shaikh Gulamali Akbarmiya has stated that on the day of Godhra Train incident, he was doing colour work in Jain Derasar of Sardarpur. At about 4.00 P.M., Becharbhai Odhavbhai and Ambalal Maganbhai were passing and discussing with each other to cut the Muslims. Thereafter, on 28.02.2002, there was Gujarat Bandh and on 01.03.2002, there was Bharat Bandh. They were in their home. The atmosphere in the village was tensed. Cabins were burnt in the village and witness went to see the same. At about 2.30 P.M. Patels of their village gathered and were instigating others to cut, beat and burn the Bandiyas. Thereafter, he came back to his house. On 01.03.2002, at about 9.30 P.M., a mob of Patels came from Mahadev temple side towards Shaikh Maholla and burnt the cabins of Ibrahimmiya Rasulmiya, Rafikmiya Mahmadiya and Iqbalmiya Rasulmiya. As the police came, mob disbursed. Police went back and again, the mob of Patels came back to their Maholla and burnt the house of Manubhai and started pelting stones. They also burnt the house of Akbarmiya Nathumiya and again started pelting stones. As against that, the witness also started pelting stones to save

themselves from the mob. As the mob was big, members of Shaikh Maholla could not save themselves from that mob and hence, they went inside and mob of Patels had continued to burn the houses and pelting of stones. As the mob came much near, witness went in Naveli of Bachumiya Imammiya. He went inside the Naveli to hide himself. Mob came towards the house of Mahemudmiya and surrounded the house of Mahemudmiya. They tried to break the door of the house of Mahemudmiya. Persons of Shaikh Maholla were inside the house of Mahemudmiya. Mob had broken the window and had tried to break the doors of the house of Mahemudmiya and started pouring kerosene and petrol from the window. They had burnt the house and the persons who were inside the room were screaming for help. Though the witness was there but he could not save them as mob of Patels were shouting to cut and burn them. Thereafter, some one told that police came therefore, mob went and the persons who were hidden, came out on the say of police. Initially, due to fear they did not come out but after hearing his father's voice, he came out. The witness alongwith police went to the house of Mahemudmiya and after opening the door, they saw burnt dead bodies and some injured persons. Rescue operation took place and

injured persons were shifted to Mahesana Civil Hospital. Thereafter, they went to Ilol.

It is argued by Shri Dhruv that, witness has deliberately omitted certain facts which were stated in his statements, with a view to deprive accused of their legitimate defence. His whole deposition before the Hon'ble Court, on core issue, is altogether a different version placed before the Hon'ble court and a new case has been made out by him in his deposition. Therefore, Hon'ble court may kindly consider his deposition very cautiously for finding out truth in to the case. This witness in his para-2 of his deposition stating that "cut them" is not stated anywhere in his statements dated 10.03.2002, 10.05.2008 and any of his applications dated 11.04.2008 and 09.05.2008. Further, it is argued by Learned advocate Shri Dhruv that, this witness has deposed before the Hon'ble Court that, on 27.02.2002 Godhra Train incident occurred, on that day he was doing colour work in Sardarpur Jain Derasar and at that time at about 4.00 P.M. Ambalal Maganlal Kapoor and Becharbhai Odhavbhai were passing through that Derasar and were talking to cut, beat the Bandiyas and on that next day i.e. on 28.02.2002 cabins in the market were burnt.

This fact is not stated in any of his statement. It is true that, from the evidence of Investigating Officer it transpires that, this fact is not stated by this witness in any of his statement and this fact is not stated or deposed by any other witness. Thus, this fact is not supported by any other evidence. Therefore, on this version of this witness, no reliance can be placed. Further, it is argued by Shri Dhruv that, deposition regarding setting on fire cabins in the market in the evening on 28.02.2002 is also not stated by him in his statement dated 10.03.2002 which is first in point of time. So far as his version regarding setting on fire of cabins on 28.02.2002 in the evening is concerned, this fact is not stated in his first statement dated 10.03.2002 but in subsequent statements, he has stated this fact and this fact is supported by other cogent and reliable evidence such as Police witnesses, other eye-witnesses therefore, this version of this witness on this point cannot be discarded simply on the strength of the fact that, he has not stated this fact in his statement dated 10.03.2002. Further, it is submitted by Shri Dhruv that, deposition of the witness on aforesaid two issues is very vital improvement in his deposition and stated before the Hon'ble Court for the very first time and not stated in his earlier statements recorded

by police as well as by S.I.T., no reliance on the deposition of this witness can be placed in determining guilt or otherwise of the accused. It is proved that the witness has come before the Hon'ble court to rope the accused falsely into the case. So far as his version regarding incident dated 01.03.2002 at about 5.00 P.M. is concerned as per say of this witness at about 5.00 to 5.30 P.M. he was sitting at the entrance of Shaikh Maholla. Mustufamiya Rasulmiya went to the shop of Dahyabhai Vanabhai, thereafter he came back and told that, son of Dahyabhai - Mukeshbhai Dahyabhai was telling whatever you want to eat, eat to-day, on asking Mustufamiya about this fact, he had shown his ignorance. It is say of Shri Dhruv that, this fact is not stated in his statement dated 10.03.2002 and 10.05.2008. Further no other witness is supporting this version. Therefore, this version can be considered as an improvement and no reliance can be placed on this version. Therefore, the arguments advanced by Shri Dhruv in this regard is acceptable that, the version of this witness on this issue is an improvement, in his deposition and stated before the court for the first time and has not stated in earlier statement. Further, it is submitted by Shri Dhruv that, over and above that what is deposed to by the witness

in his deposition that, on 01.03.2002 at about 09.30 P.M. a mob of Patels came from Mahadev Temple side and went towards Shaikh Maholla and at the entrance of Shaikh Maholla, three cabins viz. Cabin of Ibrahimmiya Rasulmiya, Rafikmiya Mahemudmiya and Iqbalmiya Rasulmiya were burnt, as the Police came, mob disbursed, soon as police went back, mob of Patels again came and burnt the cabins and thereafter, they entered in the Maholla, burnt the house of Manubhai Painter and pelted stones and they proceeded inside the Maholla by burning the houses. They burnt the houses of Akbarmiya Nathumiya, pelted the stones, mob was consisting of 1000 to 1500 persons, therefore, it was not possible for them to face the mob. Mob of Patels came in and burnt the houses and he sustained injuries. Thereafter, he went in the Naveli of Bachumiya Imammiya when the mob of Patels came in the Maholla and at that time he saw the mob. And as the mob proceeded towards Mahemudmiya's house, this witness went inside the Naveli and he was standing just adjacent to wall of hose of Bachumiya. The mob had surrounded the house of Mahemudmiya. This witness has seen the mob by coming out from Naveli and he saw that, mob had tried to break the door of house of Mahemudmiya

is not stated in his statement. From the evidence of Investigating Officer it transpires that, it is true that, this fact is not stated by this witness in any of his statements but the fact that, on 01.03.2002 at about 09.30 P.M. a mob came towards Shaikh Maholla and three cabins were burnt by the mob is supported by Panchnama, Map and other evidence of Police witnesses and other witnesses. This fact is supported and that this witness is narrating the names of owners of cabins, which were burnt. Thus, the version of this witness on this point is reliable, trustworthy. Further, he deposed that, soon as police came mob was disbursed and soon as police went back again the mob came and set on fire the house of Manubhai Painter and by pelting stone and setting on fire the houses, mob proceeded. House of Akbarmiya Nathumiya was also burnt. Pelting stones were continued, witness have also pelted stones, just to save them but the mob was so big they could not protect them and they went inside. As the mob came inner side he hide himself in the Naveli of Bachumiya Imammiya as the mob came more inside, he went in deep inside of Naveli and mob proceeded towards the house of Mahemudmiya and have tried to break the door of house of Mahemudmiya. This part of the version of this witness is getting support from the

evidence of the other witnesses and the documentary evidence, Panchnama and Map. Evidence of Police witnesses also supports the burning of houses in Shaikh Maholla in that circumstances when we consider the evidence of this witness on this point, he is the resident of Shaikh Maholla, he is injured in the incident, Injury Certificate supports his injury that, he sustained injuries in pelting stones, in the column of history also it is mentioned that, he sustained injury in pelting stones. Under above circumstances, his presence in Shaikh Maholla, cannot be doubted. Further, he had seen the incident when the mob entered and proceeded in the Maholla by burning the houses. He was having sufficient opportunities to see the mob, he hide himself in the Naveli. Looking to the map there are five houses between Naveli and entrance of Shaikh Maholla. The fact that, the witness was present in Shaikh Maholla is well established by the prosecution and cannot be discarded. Further it is submitted by Shri Dhruv that, more said part of his evidence touches the main core of the case, has not been mentioned by this witness in his applications dated 11.04.2008 and 09.05.2008. Therefore, it is clear that before the Hon'ble court he has come out with a very new

story which is not stated in his any of his earlier versions, it may be in the form of statements or in the form of applications. Such is the quality of the witness and his deposition which would certainly lead one and all to safely conclude that his deposition is required to be kept out of consideration for determining the case. Even this witness has gone to an extent that mob of Patels were in the front and even on the back side of the house of Mahemudmiya. This has been projected with a view to rob the defence of the accused as earlier witnesses who have been cross-examined extensively on the line that house of Mahemudmiya was attacked from the back side of his house by mob of village Sundarpur. Still however, since it is not stated in his any of the versions, no importance can be attached to it. But his deposition is a glaring example of how witness can decorate his evidence before the Hon'ble court totally different from what he had stated earlier. Not only that there is an improvement in his deposition, he has deliberately omitted vital facts which have been brought to the notice of the witness and confronted with it. In his statement dated 10.03.2002, he has stated that on 01.03.2002 at about 9.30 – 10.00 P.M. mob of nearly 1000 Patels of his village assembled shouting slogans near his

Maholla and at that time, on arrival and on resorting to firing by police, the mob disbursed. The said omission is also proved on record, whereas the witness has deposed that on 01.03.2002 at about 9.30 P.M., the mob had set on fire three cabins of named Muslims outside the entrance of their Maholla. Thus, it is not only the case of an improvement in the deposition but deliberate omission to state before the Hon'ble Court, it had been stated in his earlier versions.

Even looking to his statement dated 10.03.2002 as per his claim, on mob entering Shaikh Maholla and started ransacking, the women folks and children, immediately taken shelter in the house of Nazirmohmad which is interior in the Maholla from the entrance. Even at that time, the witness had also took shelter in the house of Muslims which shared the hinder wall of the house of Patels so that mob may not set on fire those Muslim's houses. He has also gone to an extent that he also feared the death and, therefore, he had not come out. The said material omission has been proved on record by the defence. If it is to be believed on entering the mob in Shaikh Maholla, he himself was hiding in a house and did not

come out, therefore, there is no question of he is witnessing any act of the mob apart from seeing and recognizing any of the accused and naming them before the Hon'ble court.

Though this witness claimed that he was standing near the water-course of the house of Bachumiya in spite of that he is not deposing before the Hon'ble court with regard to setting on fire the jeep of Bachumiya in front of his house, even his claim is proved to be contradictory. Even he has not deposed with regard to jeep having been set on fire, even his presence as claimed by him in his deposition is unbelievable. Thus, it is proved that he has not witnessed the incident apart from being an eye-witness to the incident, though he claimed to be an eye-witness.

This witness claims to have received injuries while mob started pelting stones. He was also taken to Civil Hospital, Mahesana and there he took treatment also. Even before the doctor, this witness has not stated anything with regard to involvement of any person in the incident in which even he received injury because of the stone throwing, in spite of that he has not given names of any accused but he has not stated that it was by Patels of his

village.

This witness in his cross-examination has stated that “I do not know when my statement dated 10.03.2002 was recorded, at that time my uncle had already given first information Report”. This witness was then confronted with his statement dated 10.03.2002 wherein he has stated that “pursuant to the incident, my uncle Ibrahimmiya has given detailed First Information Report to you which is true and correct.” Tenor of his statement proves that he was even shown the F.I.R. given by Ibrahimmiya was shown to him. As against that this witness bluntly disowns that before the Hon’ble Court in his cross-examination. Therefore, even conduct of the witness is also doubtful. Therefore, no reliance can be placed on the testimony of this witness.

This witness in his deposition deposed that in 2008 before S.I.T., he has made an application. Looking to his cross-examination, it is crystal clear that he is not the author of the said application but it has been got up with the help of some external agency with a view to create evidence into the case. Therefore, merely after six years to the incident such frivolous application has been made. He

has admitted that the house of Nazirmohmad was ransacked and set on fire after pouring kerosene. He has further stated in his statement that screams for help were imminent from the house of Nazirmohmad and house of Nazirmohmad was ransacked and set on fire by pouring kerosene by the mob. Since persons of his Maholla were inside the house, they brought them out. This omission is proved on record. This fact is not deposed before the Hon'ble Court by this witness and thereby suppressed true and correct facts from the Hon'ble Court. Thus, witness who have received burn injuries, they might have received it while they were inside the house of Nazirmohmad or while running away from there when house was set on fire. Considering the evidence of P.W.105 - Gehlot Anupamsinh Shreejaysinh, it is clear that he had inquired from all the houses which were set on fire and by breaking open doors of those houses, set on fire, merely 40 persons were rescued. It assumes importance when certain witnesses have injuries of burns which might have been caused in different houses which were set on fire other than the house of Mahemudmiya. More particularly, when looking to the position of house of Mahemudmiya and the size of his house, presence of more than 53 persons inside it, is

impossible. This issue is also specifically dealt with in this memorandum and, therefore, it needs no further discussion.

It has been brought out in evidence of this witness that while S.I.T. recorded his statement, he was read over a statement dated 10.03.2002. In connection with statement dated 10.03.2002, he has clarified the statement dated 10.03.2002 on three issues which have been narrated in his deposition. Still however, the witness himself disowns that he had not explained or clarified anything in his statement dated 10.03.2002 before the S.I.T. Thus, this witness is known for giving contradictory evidence before this Hon'ble Court and omitting very vital and important true and correct facts.

This witness in his deposition, though it is proved to be an improvement in his version and contradiction, stated that the mob had attempted to break open the door of the house of Mahemudmiya; mob had gone towards the house of Mahemudmiya and broke the window and poured kerosene-petrol and threw burning rags. Looking to the evidence brought on record of this case, it can safely be

concluded that the witness has given false evidence before this Hon'ble Court. F.S.L. expert who was called at the spot after due verification not stated that the window of the house of Mahemudmiya was broken. Even in the Panchnama drawn, of the house of Mahemudmiya, and the deposition of panch witness, it is mentioned that the window of the house of Mahemudmiya was not broken. Over and above looking to the map also, it is clear that from the water-course of the house of Bachumiya unless someone comes out in the Maholla, he is not able to see the house of Mahemudmiya. Thus, it is clear that the claim made by this witness before the Hon'ble court as if he is eye-witness falls to the ground. Therefore, deposition of this witness is thoroughly useless, unbelievable, unreliable and requires to be thrown overboard.

Considering the arguments of Shri Dhruv in the light of deposition of the witness, when we consider the deposition of this witness in respect of omission and contradiction regarding Police firing is concerned, it is true that this witness has omitted the fact about Police resorted firing at about 09.30 P.M. to 10.00 P.M. when the mob came first time but soon as police came mob disbursed, this fact is stated by this witness therefore, omission of

firing by the police will not cause prejudice to the accused on other issues, which are otherwise proved by the prosecution and on this ground, whole deposition of the witness, which is otherwise trustworthy and reliable, cannot be discarded. Further, this witness is deposing after a span of eight years. Some contradictions are bound to be but he has stated that, the persons from Maholla went inside the house of Mahemudmiya. If in his statement dated 10.03.2002, he has stated that, they took shelter in Nazirmahmad's house but the fact that woman, children and other persons from Maholla, took shelter in Mahemudmiya's house is proved by the prosecution from other cogent and reliable evidence. In that circumstances if this witness is also stating the same fact in his deposition is to be relied upon and the fact stated in the statement dated 10.03.2002 regarding hiding of children, woman, other persons in Nazirmohmad house is not getting support from any evidence. Further, arguments of Shri Dhruv that, this witness had hide himself and has not come out therefore, it cannot be said that, he had seen the incident but on perusing the evidence as a whole, it transpires from the evidence of this witness that, on seeing the mob coming in and in, in the Maholla and proceeding towards

Mahemudmiya's house, he went in Naveli. From this evidence we cannot infer that he was not having opportunities to see the mob. We can infer that, his presence in the Maholla at the time of incident is natural one. Till he went inside the Naveli of Bachumiya Imammiya he was having ample opportunities to see the mob. Therefore, the arguments advanced by Shri Dhruv in this regard is not acceptable. Further, it is true that, this witness is not stating about setting on fire the Jeep car of Bachumiya Imammiya but omission of this fact by this witness does not amount the discarding of other facts, which are proved in the deposition of this witness, as discussed above. In that circumstances omission of setting on fire Jeep car of Bachumiya Imammiya in his deposition is required to be ignored. Further, it is true that he has not stated before Medical Officer in the history about the involvement of any person in the incident. No names were given by the witness in the history before Doctor. Further, it is not mentioned in the history that, Patels of Village were involved in the mob. The question of involvement of accused in the incident will be decided at the relevant time in the Judgement. But the fact that, the witness sustained injuries in pelting stones in the incident in issue is proved

by the prosecution and the testimony of this witness on that point cannot be discarded. So far as version of this witness regarding no knowledge about F.I.R. given by his uncle when his statement dated 10.03.2002 was recorded is concerned, this witness is deposing before the Court after a span of eight years. If this discrepancies arises in his deposition that, that is natural one whether at the time of recording of his statement dated 10.03.2002, F.I.R. of Ibrahimmiya Rasulmiya was shown to him or not. If there is any discrepancy on this point, it is not otherwise going to prejudice the accused hence this discrepancies is of no importance. And on that ground conduct of the witness cannot be said doubtful and the say of Shri Dhruv that, no reliance can be placed on the testimony of this witness is not acceptable. So far as the arguments of Shri Dhruv regarding application before S.I.T. is concerned, in the cross-examination of this witness it is tried by the accused side to bring on record that, he is not the author of those applications for which there is total denial on the part of witness but from his cross-examination it transpires that, he is unable to understand to whom it should be addressed or he is unable to address the heading in the application. From over all examination of this witness on this point, it

transpires that, he might have taken help from someone though he is denying this fact. Here the witness is coming from labour class. In the circumstances where the incident occurred in which 33 persons died and 28 injured, we cannot forget that NGOs. have taken active part up to Hon'ble Supreme Court in the matter and the witnesses are guided by NGOs. Simply because the witnesses are guided by NGOs, we cannot discard the whole evidence of the witness. We have to find out the truth by adopting grain and chaff policy. In above circumstances due to some guidance by NGOs we cannot infer that, application is false and frivolous.

From the cross-examination of this witness it transpires that, during his tenure in Panpur Camp and Ilol he was meeting with the persons of Shaikh Maholla and other relatives but there was no talk about the incident between them. Casually they were meeting with each other. He was residing in Panpur Camp alongwith his father, mother and brother. Sometimes he was going to his relatives. He has no knowledge about the affidavit submitted by Nazirmahmad. He has also no knowledge, whether any other person from Shaikh Maholla has

preferred affidavit before the Hon'ble Supreme Court or not. At the time of incident, he was not having Mobile phone. Further, he has shown his ignorance about the firing resorted by the Police on 01.03.2002. He has also shown his ignorance about the firing resorted towards the mob coming from Sundarpur side. No firing was resorted at the entrance of Shaikh Maholla. He has denied that, House of Nazirmahmad was burnt by the mob and the persons who were inside the house of Nazir Mahmud were brought out by them. And he has no knowledge whether he has stated this fact in the statement dated 10.03.2002 or not. From this cross-examination it transpires that, in Panpur Camp sometimes he was meeting with relatives and persons from Shaikh Maholla. Munsufkhan Pathan is known to him, further he was staying with his father, mother and brother Nazirmahmad in Panpur camp and sometimes he was staying with some relatives. He has shown his ignorance about affidavit filed by the Hon'ble Supreme Court of India. Relying upon this evidence, the say of Shri Dhruv that, the evidence of this witness is not reliable and trustworthy is concerned, simply because this witness is showing his ignorance about the affidavit filed before the Hon'ble Supreme Court though he was meeting with persons of

Shaikh Maholla in Panpur camp or he has no knowledge about the firing in the Market in the Village Sardarpur. From the evidence of this witness it transpires that, at the time of firing incident he was present in Shaikh Maholla, which is at the end of Village Sardarpur, while firing incident took place near the House of Fakirs, which is at the entrance of Village Sardarpur. From the deposition of Police witnesses, it transpires that, firing was resorted near Fakirs Huts, which were situated at the entrance of Village Sardarpur. Considering the distance between the two places if witness is showing ignorance about the knowledge of firing, possibility of having no knowledge about firing by the police cannot be ruled out. While this witness has specifically denied about the firing at the entrance of Shaikh Maholla, which on the contrary suggests about the presence of this witness in Shaikh Maholla. Further, in his deposition, he has deposed about the persons of Shaikh Maholla took shelter in Mahemudmiya's house, which is well established by the prosecution by cogent and convincing evidence, in that circumstances if in his statement, it is mentioned that persons were brought out from Nazirmahmad's house, that contradiction loses its effect. Therefore, the arguments advanced by Shri Dhruv

in this regard is not acceptable. Further, it is admitted by this witness that, Nazir's house was ransacked and set on fire after pouring kerosene and voices for help were coming from the house of Nazir Mohmad. From the deposition of D.S.P. it transpires that, persons from other houses were also rescued. In that circumstances possibilities of saving persons from other houses cannot be ruled out. But it does not mean that, no incident occurred in Mahemudmiya's house and main incident occurred in Nazirmiya's house. So far as the arguments regarding presence of more than 53 persons in Mahemudmiya's house is concerned, there were children, ladies, old persons gents etc. In such a tens atmosphere every one would like to go to safer place and if the room is of 16 ' x 11' and if there was one coat, utensils and some cloths and daily using household kits, not more than that in such a situation it is not impossible to have about 50 to 60 persons in the room and therefore, the arguments advanced by Shri Dhruv in this regard are also not acceptable.

So far as contradictions and omissions in the statement dated 10.03.2002 and statement before S.I.T. is concerned and contradictions regarding attempt by the mob to break open the door of Mahemudmiya's house and

breaking the door and pouring the kerosene and petrol and throwing burning rag are concerned, it is denied by the witness that, he has not stated so in his statement. As discussed above in earlier paras, the incident which occurred in the Mahemudmiya's house and not in Nazirmiya's house is proved by the prosecution by cogent and convincing evidence. Documentary evidence also supports the same. In that circumstances if the witness is also stating the same in his deposition, and if there is contradiction in the statements in this regard, which is not supported by any evidence becomes insignificant. It is true that, in Map, Panchnama and F.S.L. Report nothing is mentioned about the breaking of door, windows etc. but the fact that, Mahemudmiya's house were burnt by pouring inflammable articles and the persons who were inside the room sustained burns injuries and 33 persons have died. In that circumstances whether there is mark of breaking the door, windows etc. became immaterial. The fact stands as it is that, house was burnt by the mob. In this regard when we peruse the F.S.L. Report, produced vide Exh.675, it is mentioned in it that, it was found that force was used to break windows and door from outside. Thus, in such a circumstance if windows or door is not broken but force

was used in such a situation if the witness is saying that, mob had attempted to break open the door or to break the window, his say is getting much support from F.S.L. Report and Panchnama of scene of offence, which is produced vide Exh.424. So far as the arguments advanced by Shri Dhruv regarding seeing of incident from Naveli is concerned, it is not the say of the witness that, from the very beginning he was in Naveli. From the evidence it transpires that, he was in Shaikh Maholla, mob came, three cabins were burnt, police came, mob disbursed, again mob gathered and proceeded inside the Maholla, house of Manubhai Painter was burnt, incident of pelting stones occurred, persons from Shaikh Maholla also pelted stones but they could not protest as the mob was big and they went inside the Maholla. In the stone pelting incident he sustained injuries then only he went inside the Naveli. Therefore, till then this witness was having ample opportunities to see the mob and the arguments advanced by Shri Dhruv that, this witness was in Naveli and it is not possible for a person to see the incident from Naveli is not acceptable under above circumstances.

P.W.69 - Shaikh Mahemudmiya Husenmiya has

stated on oath that, he is the resident of Sardarpur and at the time of incident, they were staying in Shaikh Maholla. Due to the train incident in Godhra, there was Gujarat Bandh on 28.02.2002. On that day, at about 7.30 P.M., Patels of their village have burnt cabins in front of Gram Panchayat. Thereafter, on 01.03.2002, there was Bharat Bandh and on that day, he was in his home. No one from their Maholla went to do their work. At about 9.30 P.M. all of sudden, mob of Patels about 1000 to 1500 persons came shouting the slogans "burn, cut and beat the Muslims" and came towards the Shaikh Maholla and they burnt two cabins at the entrance of Shaikh Maholla. Thereafter, police came and the mob disbursed and there was silence in the atmosphere. All were sitting in their house and all of sudden, at about 11.30 P.M., some of the persons from mob started pelting stones towards the Shaikh Maholla and had burnt the houses. Police vehicle came at 11.30 P.M. and went away. Thereafter, the mob burnt the house of Manubhai and thereafter, other houses in the line were burnt. Persons in Shaikh Maholla were rushing here and there to save them. He had seen all these and the persons of Shaikh Maholla came to his house to save them. Approximately 40 persons were inside his house. These

persons from the mob had tried to break the door and were shouting to cut, beat and burn the Muslims and the persons who were inside the room were screaming for help to save them and this witnesses had hidden himself below the shade of house of Babamiya. He has seen the incident from there and thereafter, the mob of Patels climbed the terrace and had started hammering the terrace. Rajeshbhai Punjabhai was hammering the terrace and other persons from the mob had continued to burn the houses and then the police came and mob disbursed. Thereafter, police took them to Savala.

It is argued by Shri Shah that, as per the deposition of this witness he is handicapped. At the time of incident, he was having only one leg. He is the person in whose house the main incident occurred. His house is having North-South direction doors. As this witness is handicapped he cannot run therefore, he was in other persons house and no doubt can be created about his say.

It is argued by Shri Dhruv that, as per the deposition of this witness, that persons were set on fire alongwith the house. Although this witness was not inside the house. He is handicapped and disabled by his one leg. This witness

claims to be in the Shaikh Maholla at the time of incident and has seen that incident. Looking to the evidence brought on record and the conduct of this witness his presence in the Shaikh Maholla is not believable. This witness has deposed that on 01.03.2002 at about 9.30 P.M. a mob of Patels of about 1500 persons assembled shouting slogan and set on fire two cabins outside the entrance of Shaikh Maholla and they entered the Shaikh Maholla. As per the admission of this witness, he was sitting outside his house in the Shaikh Maholla. He has admitted that from the outside of his house, entrance of Shaikh Maholla cannot be seen. Therefore, he cannot even see mob setting on fire the cabins which were outside the entrance of Shaikh Maholla. Still however, he is deposing before the Hon'ble court that he had seen the mob set on fire, two cabins outside the entrance of Shaikh Maholla. Not only that he has not deposed that he heard that, on the contrary he states that mob set on fire two cabins which is unbelievable.

This witness deposed that persons of Shaikh Maholla were inside his house. Nearly about 40 persons were there in his house. His house is a pakka house built with cement

concrete and having iron window and doors. This witness claims that he was under the shade of Babamiya and from there he witnessed the incident. With due respect to this witness, place from where he said to have witnessed the incident, is not believable at all. Furthermore, this witness has not deposed that how and in what manner even his house was set on fire. At the same time, a person of mob climbed the terrace and started breaking it, more particularly, Burning rags were thrown in, setting on fire the house is also not deposed by this witness. Not only that who threw that burning rag is also not stated by this witness. As per the claim of this witness, he was just opposite his house but he hide himself in the courtyard of the house of Babamiya. He has also admitted that unless someone comes near the door of courtyard, one can see the house but if someone is in the courtyard, his house is not visible. The witness is also changing the place suitably to convince this Hon'ble court that he has seen the incident. Looking to the photography of the house of Babamiya, it is clear that a handicapped man who is not having one leg cannot move around when unruly mob has started ransacking and setting on fire the houses in the Shaikh Maholla. Even when mob is attacking his house, he cannot

dare to stay there visible to any person of mob. Thus, his claim that he had seen the incident from under the shade of Babamiya's house is highly unbelievable.

The witness has admitted that the house of Babamiya was locked from outside, the courtyard of the house of Babamiya is open. The roof below which he was hiding, on the left and right side, there is a constructed wall and in the front there is a small level plinth. Even the courtyard has no door. If he could have witnessed the incident by coming near the courtyard which has no door, it is impossible, as he would not have been even spared by the unruly mob. Even reaching to the courtyard of house of Babamiya, it is too difficult for this handicapped witness to go there and stay there till the incident concluded. He has deposed that after arrival of police vehicle, the mob had disbursed. Therefore, it is clear that as per his claim up to 2.30 A.M., the mob had ransacked and set on fire the house of Shaikh Maholla. If mob was there for about 2 hours, not a single alive person would have been spared by the mob. At the same time, no one would dare to stay in the Maholla itself when unruly mob entered Shaikh Maholla. As such, handicapped person would make his escape good

before even normal person would do that.

This witness had all the opportunities to escape when mob entered Shaikh Maholla because there is a road leading towards the open fields by the side of his house. No person would dare to take shelter in the direction from where mob is coming. Only this conduct is sufficient to establish that though he has not witnessed the incident in spite of that he is trying to make believe this court that he had seen the incident from very nearby place. Looking to the position of houses in the Shaikh Maholla while entering it on right hand side and left hand side there are houses in row on both the sides, house of Mahemudmiya is not in any row but last at the end of Maholla in the middle part. Therefore, his house is not situated either on right side of the houses in Shaikh Maholla or in the left side in the Shaikh Maholla. Since the evidence brought on record established that when mob entered the Shaikh Maholla, witness of Shaikh Maholla ran towards the open fields by the side of the house of Mahemudmiya. Then either witness would remain inside his own house who is handicapped or he would also run away by the side of his house towards the field. He must have actually done so but he is posing

himself to be an eye-witness and giving false account of the incident.

It is respectfully submitted that the house of this witness is a pakka construction with cement concrete, whereas house of Babamiya which is kachcha hut and ceiling is of tin-shades. It is natural and human conduct that a person having pakka constructed house in which nearly 40 persons took shelter for saving their lives, would not come out of that pakka house and would take shelter in a kachcha house which is also gone for the purpose of marriage of his son. As per the case of defence, Babamiya with his family was not present at the time of incident and three days prior to the incident, he went out of the village for the purpose of marriage of his son. Even as per the case of defence, this witness had also gone to attend marriage function of son of Babamiya. Even on that line, a suggestion was put to the witness but he has denied. However, looking to the improbability in his deposition with regard to his presence at the scene of offence, the defence put up by the accused sounds very plausible and probable.

Though house of this witness was most safe than any

other place either in the Maholla or outside, more particularly, when nearly 40 persons of Maholla took shelter in his own house, he would not venture to come out of his house or remain outside the house to witness the incident. Since his own house is on the ground level and the house of Babamiya having plinth, it is more difficult to climb it, more particularly, when he is handicapped by one leg. In such a situation even person would not leave his family inside his own house to roam in the Maholla in between unruly mob. Even to take shelter under tin-shed roof is also more dangerous. Therefore, his evidence is not natural to the common sense.

The police statement of this witness was recorded on 06.03.2002 that is nearly after 4 days of the incident. When four persons of his own family including wife and children died in such a ghastly incident and he has seen that very occurrence, it would not happen that he would not immediately inform the police about the same. It is proved that after police came, dead bodies were brought out of the house of Mahemudmiya. It is his own case that in a police vehicle, they were escorted to village Savala. Still however he is not informing the police about the incident and he

having witnessed the incident. Even as per his own evidence though police had brought out dead bodies from his house, he deposes that in his presence dead bodies were not taken to the hospital. Still however, this witness is not even asking the police where his dead wife and children were taken. On the contrary, he deposed that after about a week, he came to know that his dead wife and children were taken to Mahesana Civil Hospital. It is highly unnatural that he would not even try to inquire about his kith and kin. It is highly unnatural that a witness in whose presence the incident had occurred and knowing that his wife and three children had died in his own house, would not know where they were taken. As per his claim, he did not accompany the dead bodies of his kith and kin. At the same time, though he is present in the Maholla after the arrival of police he is not deposing anything about dead bodies of his wife and children were brought out from his own house. Thus, the conduct of this witness is highly unnatural and not believable. Surprisingly, this witness has deposed that he is knowing Babamiya since his childhood, in whose courtyard of the house, he took shelter. Still however, even after 8 years of the incident, he pleads ignorance about the names of the sons of Babamiya. Even he does not know

names of Babamiya's sons' wives. Thus, the witness is not knowing names of family members of his neighbour whom he is knowing since childhood. Still however, he has given full names of Patels of his village. Therefore, it is clear that he is not giving his natural version before the Hon'ble Court and he is deposing some tutored version.

It has been brought on record that statement of this witness was recorded by S.I.T. on 25.03.2002 still however, this witness has gone to an extent of saying that he has not given any statement before the S.I.T. Even this omission is proved to be false one. Therefore, there is no guarantee that he would give true and correct deposition before this Hon'ble court.

This witness in his examination-in-chief stated about mob having rushed to the Maholla, started pelting stones and setting on fire at about 11.30 P.M. In the next line, he has deposed that at about 11.30 P.M. police vehicle had come and gone away, if claim of this witness is to be believed that the position is when mob was there at that very time, police had come. If that is so even this incident could have been averted. Over and above that there is no

such claim by any of the witness. It may be possible witness is tutored not to say anything with regard to the police having done anything. Therefore, on that line, he is trying to assert the said facts before the Hon'ble court. Thus, it is proved that he is not a witness to the incident and has come before the Hon'ble court, as if he has seen the incident.

The deposition of this witness with regard to 4 to 5 cabins having set on fire at 7.00 – 7.30 P.M. on 28.02.2002 has not been stated by him in his statement dated 06.03.2002 which is proved contradiction. Even setting on fire two cabins outside entrance of Shaikh Maholla on 01.03.2002 at about 9.30 P.M. is also not stated by him in his statement dated 06.03.2002. Therefore, even mob started pelting stone and setting on fire houses; police vehicle coming at 11:30 P.M. and going back; persons of the mob first set on fire house of Manubhai and, thereafter, setting on fire in row and he witnessed it. This part of his evidence is proved to be contradiction.

Considering the arguments advanced on behalf of both the sides in respect of evidence adduced by this witness, when we appreciate the evidence of this witness

and the fact that, he is the witness, who is unable to walk at the time of incident, he was having one leg working, now his both legs are not working. Further, it is also an important aspect that, the main incident occurred in his house. As per his say at the time of incident, he was sitting outside his house, if that is so, his presence in the Shaikh Maholla cannot be doubted considering the time and place and the fact that, he is unable to walk being handicapped. So far as his admission that from his house entrance of Shaikh Maholla cannot be seen is concerned, during the inspection visit by the Court, the Court has personally verified this fact. No doubt that the houses in Shaikh Maholla are in zigzag row but a person standing near Mahemudmiya's house or at the entrance of other hand i.e. at the entrance of Shaikh Maholla can easily see what is happening on the other hand therefore, the admission of this witness in this regard is of no importance. In that circumstances, if this witness is saying that, he has seen the setting on fire incident at the entrance of Shaikh Maholla i.e. reliable. Further, in his cross-examination, it has come out that, during the incident period, he could work in Maholla but he was not able to move in the village easily. He was having difficulties in walking. In his cross-

examination much has been asked about the topography of Shaikh Maholla and it is tried to bring on record that, it was not possible for him to see the mob. In this regard from the cross-examination, it transpires that there is shade in the house where this witness hide himself. He was sitting adjoining to wall under Shade. As there was lock in the house, it was not possible for mob to see him in Osary (Veranda) where he has hidden himself but he was able to see the mob and he saw the mob from the distance of about 25 Ft. when the mob came, he was under the shade of Babamiya. Considering the topography of Shaikh Maholla, there is 7 Ft. open space just in front of his house thereafter house of Sherumiya Rasulmiya is situated. Thereafter, the house of Bhikhumiya Kalumiya is situated, then house of Babamiya is situated. Map and Panchnama also support this fact. He has stated that, he could see his house from the place where he hide himself. It is admitted by him that, houses in Shaikh Maholla are adjacent to each other. It is stated in his cross-examination that, mob was not able to see where he hide himself. The distance between his house and Babamiya's house is about 10 Ft. In above circumstances if the witness is saying that, he hide himself under the Shed of Babamiya's house from where he could

see the mob, proceeding towards his house is quite possible. He was not inside the shade. From inside the shade no one can see what is happenings at the entrance of Shaikh Maholla. But this witness is not saying from the very beginning that, he hide himself under shade of Babamiya's house, as the mob was proceeding in Shaikh Maholla, at that time he went under the shade of Babamiya. Therefore, the arguments of Shri Dhruv that, this witness was not in a position to see the mob cannot be accepted. This witness has denied that, he heard the voice of firing coming from the entrance of Shaikh Maholla. So far as the incident about 7.00 – 7.30 P.M. regarding burning of cabins near Panchayat is concerned, it is say of this witness that he heard that fact. He had not personally seen that incident. It is not stated in the statement dated 06.03.2002. It is true that, there is a contradiction in his statement in this regard but this contradiction itself suggest the genuineness of the witness. He has not saying that he has seen the incident of setting on fire of cabins near Panchayat. There is no improvement in the version of this witness on this point. On the contrary it goes to suggests more about the trustworthiness of this witness. So far as evidence of this witness regarding breaking of terrace

with the big iron Hammer is concerned, for this purpose when we peruse the Panchnama of place of incident, produced at Exh.424, it is mentioned in the said panchnama that, eastern side wall of the house of Mahemudmiya has been tried to break by climbing on the compound wall of the properties of Patel Dineshbhai Joitaram and Patel Amratbhai Shankarbhai and recent marks has been noted by the panchas during the course of panchnama of place of incident. This fact of the panchnama supports the say of witness that, a persons from mob climbed on terrace and started breaking it with the big iron Hammer, therefore, the say of Shri Dhruv that, it is totally contradictory and an improvement in his deposition, cannot be considered as much supported by Panchnama. Therefore, deposition of this witness cannot be discarded on this point. Therefore, the arguments that the place from where he said to have witnessed the incident is not believable are not acceptable. This witness is saying that, his house was burnt, how and in what manner it was burnt is not specified, it does not suggest that, he has not witnessed the incident.

So far as on arrival of police, mob disbursed is

concerned, police witnesses have also deposed that, on seeing them mob went towards other side. If this witness is safe and hid himself under the Shade of Babamiya's, that possibility cannot be ruled out and the arguments advanced in this regard by learned advocate Shri Dhruv are not acceptable. So far as the arguments advanced by Shri Dhruv in respect of fact that, the conduct of this witness is unnatural, he hide himself under the shade of Babamiya's house rather than going to his own house, which is a pakka constructed house and other persons were inside house. When we appreciate the evidence of this witness in this regard, every person behaves in his own manner in a peculiar circumstances. If this witness being handicapped went to Babamiya's shade and had not gone towards the field or inside his house, his this conduct cannot be considered as unnatural and on that strength it cannot be said that, he is posing himself as witness of incident. So far as the arguments of Shri Dhruv regarding house of Babamiya is having plinth and it is difficult for witness to climb are concerned, if this witness went under the shade of Babamiya's house by climbing plinth, he might have felt safer there. Further, looking to the condition of the witness, as was personally seen by the Court and from the evidence

it transpires that, he can move from one place to another place. It is not so that, he cannot move at all. If this witness climbed up to plinth level, that was quite possible for him and in that circumstance if the witness is saying that, he went under the shade of Babamiya's house is quite probable. In his cross-examination it was not brought on record that, he was not in a position to climb the plinth level of Babamiya's house. Therefore, on the strength of this point, the version of this witness that, he hide himself under the shade of Babamiya's house cannot be discarded. Further, in the incident his family members like wife, children were killed, why this witness will try to leave real culprit and involve false persons in such a heinous crime. Every such person will try to see that real culprit be punished. Complaint was filed by Ibrahimmiya Rasulmiya Shaikh. He was accompanied by Police up to Village Savala. It is true that, he has not informed the Police about the incident, it does not amount that, he is telling lie. Complaint was already lodged. Police was doing his work and due to exigency if his statement is recorded, after four days that does not mean he is a got up witness. Every fact was before him. Even though he has not asked about the dead bodies of his wife and children and this is also

somewhat unnatural. It is also unnatural that, he had not inquired about his wife and children about a week. But this does not amount that, the other facts, which are otherwise proved by the prosecution supporting his version cannot be discarded as no prejudice is going to be caused to the accused. Further, this witness has shown his ignorance about the knowledge of names of sons of Babamiya, it does not compel a person to believe that, the say of this witness that he know Babamiya since childhood is false. A person may or may not be knowing the names of a person, that is quite possible and therefore, on this count, it cannot be said that, his conduct is unnatural and he is a tutor witness.

P.W.76 - Shaikh Hamidabibi Akbarmiya has deposed that she is the resident of Sardarpur. On the next day of incident of Godhra train, cabins were burnt in the village and on the third day, mob of Patels of their village came from Mahadev temple side at about 9.00 P.M. and they had burnt the cabins at the entrance of Shaikh Maholla. As the police came, mob disbursed. Soon as the police went away, again the mob came and have started pelting stones. Due to fear, they went in the house of Ibrahimmiya Rasulmiya

Shaikh and from there they saw the mob. Thereafter, mob went towards the house of Mahemudmiya and in the house of Mahemudmiya persons who were inside were burnt. The mob of Patels were shouting to cut, beat and burn the Muslims. Thereafter, police came and rescue operation had taken place and injured as well as the deceased were sent to the Mahesana Civil Hospital.

It is argued on behalf of the accused that, this witness had gone to Civil Hospital, then to village : Ilol and also to Panpur relief camp in the company of police but has not narrated the incident before the police. For the first time, her statement was recorded on 21.06.2002 but as per her say, no statement was recorded. Whatever she has stated in chief-examination, is not stated in her statement dated 21.06.2002 and 22.05.2008. She has admitted in her cross-examination that for the first time she has stated in examination in chief. She has further admitted that she has not informed anyone in time except her deposition. In her statement dated 21.06.2002, she has stated that for the incident dated 01.03.2002, with regard to 9.30 P.M., in the evening mob came and someone informed the police and on arrival of police, they resorted firing and mob disbursed. In her statement, she has stated that they hide themselves in

the house of complainant. She saw the mob from the house of Ibrahimmiya and mob proceeded towards the house of Mahemudmiya. As per deposition of Ibrahimmiya Rasulmiya Shaikh, door of his house was broken. Persons from his house came out. This witness is deposing that due to fear, she went to Harijanvas.

While appreciating the evidence of this witness in the light of arguments advanced on behalf of accused mainly consider the evidence of this witness, it transpires that no doubt she was having an ample opportunity to narrate the incident before Police or other authorities but she was silent up to 21.06.2002. She has deposed contradictory versions in Chief-examination as well as in cross-examinations about recording her statement. She is an uneducated labour class lady, we cannot expect from her prompt action of narrating the incident to the Police or any other authorities. The contradictions which are brought on record about her recording of statement are also such which are required to be considered looking to her status, surrounding circumstances and keeping in mind the tense atmosphere and the situation and the mental agony of the witness. These contradictions on the contrary compel us to

rely upon the version of this witness more in the absence of those contradictions, a person can feel it as tutored one. Thus contradictions, which are brought in the knowledge of the Court by the accused are such, which can be considered as natural and no prejudice will be caused to the accused side due to those contradictions. Further, the incident as narrated by her in chief-examination is supported by other evidence such as burnings of cabins, houses, coming of Police, on coming Police mob disbursed, soon as police went mob again came and started pelting stones etc. Medical evidence, Panchnama of scene of offence and other evidence support her this evidence therefore, the version on this fact as narrated by the witness in her examination is well supported and therefore, silence in recording her statement for about 20 to 21 days is not going to effect the facts, which are already proved. So far as resorting of firing by Police in the evening is concerned, it is true that, she has not narrated this fact in her deposition. It is true that, witness is not disclosing firing incident but from the evidence of police witnesses, incident of firing is disclosed and proved and they have no reason to tell lie and that too, when supported by documentary evidence but considering the fact that, incident of firing took place near

Panchayat and Fakirvas, which is at the entrance of Village Sardarpur while Shaikh Maholla is at the end of Sardarpur. Considering the distance between the two places there is possibilities that, witness may have no knowledge of firing. Even other wise from non-disclosing of firing incident, the evidence, which is other wise proved and well supported cannot be discarded and on that strength we cannot conclude that, the version of this witness is not trustworthy, unreliable on this count. Therefore, the arguments, advanced by learned advocate Mr.Dhruv on behalf of accused, on this point has no force. She is an injured eye-witness, she is resident of Shaikh Maholla, her presence in Shaikh Maholla at the time of incident cannot be discarded. Looking to her evidence, she was having ample opportunities to see the mob and on seeing the mob she went inside the house of Ibrahimmiya Rasulmiya and thereafter, she went in to Harijanvas as per her say. She had seen the mob from the house of Ibrahimmiya Rasulmiya. Thus, she was having opportunities to see the mob till she was in Shaikh Maholla.

P.W.77 - Shaikh Badrunnisha Akbarmiya has deposed that on 28.02.2002, mob of Patels had burnt the

cabins in the market and on 01.03.2002, there was tense atmosphere in the village. She was present in her house alongwith her family members. At about 9.30 P.M., mob of Patels of their village came from Mahadev side shouting slogans to cut, beat and burn the Muslims. They came at the entrance of Shaikh Maholla and burnt three cabins. As police came, mob disbursed. Thereafter again, after some time, same mob came from Mahadev temple, shouting slogans to cut, beat and burn the Muslims and they started pelting stones. Her husband took her to the house of Bachumiya Nathumiya. Thereafter, mob of Patels came towards the house and burnt their house and by burning the house, they came towards the jeep of Bachumiya and they burnt the jeep. Thereafter, her husband took her away to the field, situated back side of the house of Mahemudmiya where she heard the voices of persons screaming for help and she also saw the flame of fire. After some time as the atmosphere turned silent, they came towards the Maholla wherein they saw 29 dead bodies in the house of Mahemudmiya. It is also deposed by her that her house was also burnt. Whole materials of the house was burnt. Mob had looted the ornaments and damage worth Rs.1,00,000/- was caused to her house. Thereafter,

they went to Savala.

It is argued by Shri Dhruv that, as per the deposition of this witness, when mob came and started pelting stones, her husband dropped her at the house of Bachumiya Nathumiya which is inside Shaikh Maholla. Further, when jeep of Bachumiya was burnt, she saw the accused and thereafter, her husband took her from the house of Bachumiya and by the side of Mahemudmiya's house, they went towards the field of Akbarmiya Nathumiya. Thus, she had no opportunity to see any of the accused when the jeep was burnt. As per the deposition of Akbarmiya Nathumiya, when mob started pelting stones, he took his wife from the house of Bachumiya and went to the field. Akbarmiya is not saying with regard to setting on fire the jeep and when the stone pelting started, he took his wife to the field. As per the deposition of this witness, she heard that on 28.02.2002, Patels of their village set on fire the cabins in the market. Further, on the day of incident, i.e. on 01.03.2002 at about 9.30 P.M., mob of Patels from Mahadev side came and set on fire three cabins outside the Shaikh Maholla, is not stated in her statement dated 06.03.2002. After, hearing the voices, her husband dropped her at

Bachumiya's house. There was no opportunity for her of even seeing the setting on fire the three cabins. The witness in her deposition has omitted that at about 9.30 P.M., mob came and on arrival of police, they resorted to firing. She has stated in her statement dated 06.03.2002 that, all the women were sent inside their respective houses and husband guarded their respective houses by standing outside. As soon as police, resorted to firing, mob disbursed. Further, as per her deposition, she saw the accused setting on fire the jeep of Bachumiya but this fact is not stated in her statement dated 06.03.2002 and 22.05.2008. For the first time, she is stating the names of the accused before the Court. From the cross-examination of this witness, it comes out that there is Dung Hill and from there one can enter into Rawalvas, which is situated 20 to 22 Ft. away from backside of Mahemudmiya's house. From the evidence of this witness, it comes out that there was mob of 500 to 700 persons on the backside of the house of Mahemudmiya therefore, no one can dare to go from the backside of Mahemudmiya's house. Therefore, her say that she went towards the field of Rawalvas by the side of Mahemudmiya's house is not true. In her statement dated 06.03.2002, he has stated that at about 12 - 12.30

A.M., when they heard the voices of mob shouting to kill the Muslims, they felt unsafe and by locking their houses, they went towards the field and from there they saw the incident. This fact suggests that it is not possible for a person to see the incident from Rawalvas. She as well as her husband, has improved the version. As per the say of this witness, she saw the jeep burning at the distance of 2 to 3 Ft. and her husband was at the distance of 2 to 3 feet from the burning of jeep. As soon as the mob spread over up to the house of Mahemudmiya, the witness cannot dare to stay there or else the mob would not have spared them. Therefore, the deposition of this witness that she saw the jeep burning at the distance of 2 to 3 Ft. and recognized the accused is not acceptable. Assuming that she saw the accused at the distance of 2 to 3 Ft., then what role has been played by which accused is not narrated by this witness. Further, as per the say of this witness, after the incident was over, she came to Shaikh Maholla. Her house including the furniture and fixtures were burnt. In spite of that, she is telling that ornaments worth Rs.10,000/-, gold earrings (Jummar) and cash were taken by the mob.

This witness is the resident of Shaikh Maholla, her

house is situated at the entrance of Shaikh Maholla, in the row falling towards graveyard, there is open space about 2 Ft. in between wall of graveyard and her house, any one can go backside portion of her house, as there is door in the backside of her house, house of Bachumiya Nathumiya is adjacent to her house, as per her say when the jeep was burnt she saw the mob then after she went to field, meaning thereby that, she was very much present in the Shaikh Maholla, it is only after jeep burnt she went to field, till then she was having opportunity to see the mob. Simply because Akbarmiya Nathumiya is not stating about setting on fire Jeep, it does not mean that, this witness is adding said fact. So far as incident regarding setting on fire cabins in the market on 28.02.2002 is concerned, she has no personal knowledge about the incident, she has only heard about the said incident. On 01.03.2002 at about 09.30 P.M. three cabins outside Shaikh Maholla were burnt. This fact is established by cogent and reliable evidence and if that fact is not stated by this witness in her statement, it is not going to prejudice to the accused. Hence, this contradiction becomes insignificant. Simply, her husband dropped her in Bachumiya Nathumiya's house, it does not amount that she had not seen the mob. Considering the situation of

houses, the houses in Shaikh Maholla are not big houses, they are row houses of small rooms, a person can easily see what is happening outside. During Inspection Visit by the Court, it was found that it is possible to see what is happening in the Maholla. Further, one can see from the entrance or from the front side of all the houses, what is happening in the Mahemudmiya's house though houses are in zigzag position. It is not say of the witness that, they were booked inside the house of Bachumiya, if door or windows were open or person is in front portion of the house, he can easily see what is happening in Shaikh Maholla or towards Mahemudmiya's house. Thus, the say of Shri Dhruv that, she was not having opportunities to see the mob is not sustainable. Probabilities of seeing mob setting on fire three cabins at the entrance of Shaikh Maholla cannot be ruled out. So far as omission regarding incident of firing is concerned, in her statement dated 06.03.2002 she has stated about firing while in deposition she has not stated incident regarding firing. But she has stated that, soon as police came, mob disbursed. The resorting of firing is an omission in the deposition. But the omission such, which is not going to prejudice to accused or any person hence this contradiction is not of much

importance. So far as setting on fire the Jeep is concerned, in her deposition she is saying about setting on fire the Jeep but she has not stated this fact in her statement but the fact that, Jeep was set on fire by the mob is established by the prosecution by cogent and reliable evidence and therefore, this contradiction became insignificant. So far as Dung Hill behind the house of Mahemudmiya is concerned, looking to the evidence, one can enter from that side to Mahemudmiya's house and the house of Mahemudmiya's was surrounded by 500 to 600 persons and that is possible. Further, in her statement dated 06.03.2002, it is stated that, at about 12.30 P.M. she went to field, alongwith her husband and son, while this fact is denied by her in cross-examination that it had not happened. That, after locking the door they went to Field while it is not stated before S.I.T. that they went to field after locking the door. By accepting this contradiction as it is when we consider the evidence of this witness on this point while going towards field she has seen the mob. Her house in Shaikh Maholla is situated just at the entrance of Shaikh Maholla. If she went to the field alongwith her husband from the back side of Mahemudmiya's house while going to field she was having an opportunity to see the mob. So far as

arguments regarding Mahemudmiya's house surrounded by 500 to 600 persons is concerned, if on seeing mob she alongwith her husband and son went to field, possibilities cannot be ruled out that, mob has surrounded the house of Mahemudmiya after this witness went to the Field. The fact that, when the mob came in Shaikh Maholla, she was in Shaikh Maholla and due to fear she alongwith her husband and son went to field cannot be discarded. So far as her say that, she saw the incident from the field is concerned it is not possible to see the incident of Shaikh Maholla from the field but the flames of burnings of Shaikh Maholla can easily be seen from the Field. There are possibilities, she might have heard the voices from Shaikh Maholla and too that she is saying that, she saw the incident from the field instead of seeing from the field she might have heard the voices. She is an uneducated lady, her intention is to be gathered from her deposition rather than accepting the words used by her. In her cross-examination, she was asked question and in that response, she told that she has seen the mob from the entrance of Shaikh Maholla while the Jeep of Bachumiya Imammiya was burnt, at that time she alongwith other members of Shaikh Maholla was in Shaikh Maholla when her husband came to take her, she

was in the house of Bachumiya Nathumiya. As per her say, she saw Jeep burning from the distance of 2 Ft. We can infer from her say that, she intended to say that, she saw jeep burning from very near. This fact has come out from the cross-examination of this witness and no doubt can be created that she has not seen the incident of burning of jeep, it can be inferred that, she alongwith her husband and son went to field and thereafter, when they came back and saw her house burnt, damaged, looted. Panchnama of scene of offence shows about burning of her house but there is no evidence about loot from her house. Her presence of Shaikh Maholla at the time of incident cannot be doubted and before going to field she was having ample opportunities to see the mob and she has seen the mob before going to field that is reliable, trustworthy, which cannot be discarded.

39. **P.W.56 - Shaikh Ayubmiya Rasulmiya** has deposed that he alongwith his wife and daughter were inside the house when the alleged incident occurred and they were rescued by the police. He has deposed on oath that he is the resident of Sardarpur. He was in the house alongwith his family members. At about 5.00 P.M., he went towards

Munsufkhan's house where a meeting was organized by Munusfkhan and Kanubhai Sarpanch was present who told to forget the incident of burning of cabins. Now, nothing will happen. Thereafter, after sometime, he told that nothing is in his hands, you save yourself. Thereafter, the witness came back to his house. At about 9.30 P.M., a mob of Hindus came shouting, to cut, beat and burn the Muslims, towards Shaikh Maholla and had burnt three cabins. Thereafter, police came and the mob disbursed. Thereafter, again same mob came shouting slogans to cut and burn the Muslims and they had started pelting stones towards the Shaikh Maholla and started burning and looting the houses. By seeing the mob, he went inside the house of Ibrahimmiya Rasulmiya and thereafter, he went towards the house of Mahemudmiya. A mob came, they requested the mob to leave them but the mob had burnt them and the persons who were inside the Mahemudmiya's house were screaming for help. One of the chemical was such that if it gets touched by water, then fire takes place. After some time, police came and had drawn them out from the house of Mahemudmiya. He was also burnt, his wife was also burnt and they were shifted to Mahesana Civil Hospital.

It is submitted by Shri Dhruv that, the presence of

this witness in the house of Mahemudmiya at the time of occurrence is doubtful and not believable. As per deposition of F.S.L. Officer, it becomes clear that in the house admeasuring 16' x 11', it is highly improbable that in room about 176 Sq.Ft., 33 + 3 persons, 14 injured persons were alive inside the house. Looking to the panchnama, there were furniture and fixtures and other normal household things in the room, kitchen, coat etc. therefore, the say of the witness that they were inside the house of Mahemudmiya, is not proper. The complainant who is resident of Shaikh Maholla was present at the time when the dead bodies were brought out from the house. He has stated that three persons were rescued alive from the house but he has not referred the name of the present witness rescued from the house of Mahemudmiya. Looking to the Post-Mortem note of the deceased, lungs of the deceased were congested and carbon particles were present in trachea. Dr.Dineshkumar Soni has admitted that if a living person is inside the burning house while respiration, he would have consumed carbon particles in his trachea. It is also admitted by him that in room about 16' x 11', if there are more than 33 persons and there is any flame, it would affect all the persons and if any person inside the room

receives flame injury, it would not go away within two and half hours. Looking to the Panchnama, after the incident, all the furniture and household were burnt. Electric wires were also burnt over the ceiling and they were hanging. Electric fan was also charred. Flooring and ceiling were also dark black in colour and four sides of walls and ceiling were worse affected. In such a situation, there is no possibility of anyone to survive if he is inside the house. There was no scope for insiders to come out when the incident took place. Even presuming that no one would survive, he can be rescued but he would not remain without any flame burn injuries while here the witness is claiming that he was inside the house but he has not received flame burn injuries. As per the say of this witness, he alongwith his wife and daughter was inside the house. As per the say of this witness, he received injuries on his shoulder and on back with burns but there is no evidence on record to show that he took treatment in the hospital. No injury certificate is produced by the prosecution. Prosecution has produced the injury certificate even of the witnesses who sustained stone injury then why he cannot submit the injury certificate of this witness. There is no explanation about the non production of certificate. Looking to the injury

certificate Exh.187, it appears that she had only back ache. No injury certificate of Mehmudnisha – daughter of this witness is produced. This witness suggests that neither this witness nor his wife and daughter were inside the house. Ibrahimmiya Rasulmiya is saying that only three persons were rescued from the house of Mahemudmiya – Rafikmiya Manumiya Shaikh, Firozmiya Manumiya Shaikh and Ashiyanabanu and their names are mentioned in the F.I.R. and they were extensively burnt. Thus, all those who were inside the house have died. There is no scope for any injured to survive. Police officers have admitted that they have not prepared any Yadi of persons who were rescued alive from the house of Mahemudmiya. In the affidavit before the Hon'ble Supreme Court, it is not stated by this witness that he received burns over his shoulder or over his back. As per the deposition of police witnesses, they had brought different dead bodies from the house. They are not deposing that they have brought the witness, his wife and daughter from the house of Mahemudmiya. This witness has not stated about the incident to the police at that time when he was taken to the Civil Hospital by the police but he is not saying anything before the Doctor. Thereafter, this witness was shifted to Ilol in the company of police and

thereafter, to Himmatnagar relief camp. Prior to 10.03.2002, this witness has not stated anywhere that he was inside the house of Mahemudmiya. His brother P.W.57 - Shaikh Mustufamiya Rasulmiya has deposed that 28 persons have died inside the room and different dead bodies were brought out and his own son has died but he is not saying that the present witness alongwith his wife and daughter were inside the house of Mahemudmiya. In the affidavit before the Hon'ble Supreme Court, this witness has stated that complainant is his father while in cross-examination, it is admitted that first informant is not his father but his maternal uncle. In his statement dated 19.05.2008, recorded by the S.I.T., he has stated that who is the accused at Sr.No.45 stated to the police, to which, he has replied in negative and with regard to separate offence, he has denied the note. He had no knowledge about Dilip Trivedi. Thus, in this affidavit, he has stated false facts. In his statement dated 19.05.2008, he has stated that they were taken to Civil Hospital, Mahesana in police van as well as Matador (407) alongwith the other dead bodies. They were not taken in bullock cart. He has no knowledge whether Collector or D.S.P. came there. He has admitted in his statement that dead bodies of the deceased were not

taken in bullock cart as stated in the affidavit. Before recording his statement dated 19.05.2008, affidavit was read over to him which was filed in English and it was explained to him in Gujarati while at the time of recording of statement dated 19.05.2008, the affidavit dated 06.11.2003 and signature was also shown to him. There was thumb impression as the witness was uneducated and therefore, he marked the thumb impression. As per the say of this witness, Sarpanch called meeting at the say of Muslims. In the meeting, Kanubhai Sarpanch told to forget what happened last night while cabins were being burnt of 28th Feb, 2002. P.S.I. Parmar had arranged a meeting and appealed to the Sarpanch for protection of witnesses but the leaders from the Bajrangdal went near the Mahadev Temple from where the attack took place. In his statement dated 19.05.2008 before S.I.T. he has shown his ignorance about the said meeting. He has shown his ignorance about the presence of P.S.I. Parmar in that meeting. On 19.05.2008, the statement by S.I.T. was recorded in which he has replied that at the time of incident, he was inside the house of Mahemudmiya and whether there were some chemical or not, he was unable to say. When water is touched to that chemical, it flamed and there was heavy

smoke and suffocation. Thereafter, they went towards the house of Mahemudmiya and he saw the mob in which Ramanbhai Ganeshbhai, Mathurbhai Trikambhai, Rajeshbhai Kanabhai, Prahaladbhai Mohanbhai, Ashwinbhai Baldevbhai, Dahyabhai Kachrabhai, Kanubhai Sarpanch, Prahladbhai Jagabhai and Kacharabhai Tribhovandas were there. It is submitted by Shri Dhruv that version of this witness is nothing but improved version as these facts are not stated in statement dated 10.03.2002 and 10.05.2008 and in affidavit dated 06.11.2003, for the first time, he has stated these facts in the court. He admits that he has stated before the Court that he has seen known persons in the mob but the same is not stated in the affidavit. This witness has admitted to show the possibility of recognizing and identify the accused by improving his versions. He has further improved that they have requested with folded hands to let them go but they were not left out. Incident occurred in dark and there was no possibility of identifying any one. In the cross-examination, he has admitted that he has not stated these facts in his statement dated 10.03.2002, 19.05.2008 and affidavit dated 06.11.2003. The evidence of this witness regarding begging their lives with folded hands is concerned, it is deliberately

just to prejudice the Court. When this witness was inside the house of Mahemudmiya, at the time of incident, how he can identified the accused and how with folded hands he begged for his life, is doubtful. Presence of this witness inside the house of Mahemudmiya is doubtful. This witness has assigned weapon in the hands of the accused. He could have mentioned about the specific role played by the accused. As per the say of this witness, burning rags were thrown inside the house and chemical was poured inside the house. As per the say of this witness, this witness has stated about the light but as incident occurred in night, he is saying the story about the halogen light. Further, at the time, when he was going towards the house, he saw halogen light being directed towards the Shaikh Maholla and he had asked Kanubhai Sarpanch as to whether the bill of the street light has been paid or not. Against which, he replied that the bill of street light has already been paid and they would enjoy beating Muslims. As per the say of this witness, Mathurbhai Trikambhai climbed the pole and the lights were on. It is material improvement in his deposition as at the first available opportunity, to the police or any other witness, he has not stated so. Thus, the say of this witness about the incident is not believable.

On the strength of this evidence Shri Shah has argued that, he is the resident of Village Sardarpur, his brother Iqbalmiya was having cabin at the entrance of Village Sardarpur and this witness was doing labour work. It is argued by Shri Shah that, from his deposition it has come out that, when the house towards graveyard side was burning and house was ransacked, he saw the burning of houses and at that time he was standing just in front of house of Ibrahimmiya. As per his say he was inside the house of Mahemudmiya. He felt suffocation and remained in the house for about 45 minutes. He was conscious during that period.

Considering the arguments advanced on behalf of both the sides, as well as on perusing the evidence on record, it transpires that, this witness was resident of Village Sardarpur, doing labour work, complainant of this incident is the maternal uncle of this witness. At the time of first mob he was in Shaikh Maholla. As per his say on seeing mob he went towards complainant's house. Soon as complainant received stone injury, this witness went to Mahemudmiya's house. Looking to the position of the house of the complainant, it is inside the Maholla, approximately leaving ten houses from the entrance of

Shaikh Maholla. Thus, still this witness towards Mahemudmiya's house, he was having opportunity to see the mob. Considering the time of occurrence, presence of this witness in Shaikh Maholla cannot be doubted and to that extent his deposition is reliable. He has seen the mob prior going towards Mahemudmiya's house. Thus, whether this witness was in side the Mahemudmiya's house or not, this fact is not going to effect the fact that, he had seen the mob. As per say of this witness that, they folded their hands and the mob had asked them if they pray by folded hands they will let them survive. In spite of that, they did not spare them and set on fire. This is an improved version of this witness. It is not stated in his statement dated 10.03.2002 and 19.05.2008 and also in affidavit dated 06.11.2003, filed before the Hon'ble Supreme Court of India. Thus, this fact is stated before this Court for the first time. In his affidavit he has stated that, he had seen the mob. It is argued by Shri Dhruv in this regard that, this witness has tried to show the possibilities of recognizing and identifying the accused by improving the story if they requested with folded hands to let them go. There were no possibilities of anyone to be recognized. It is admitted by him in his cross-examination that, he has not so stated in

his statement dated 10.03.2002, 19.05.2008 and also in affidavit dated 06.11.2003. So far as the fact that, he requested the accused to leave them instead of that, they were burnt is concerned, it appears to be an improvement. So far as arguments advanced regarding impossibilities of 56 persons inside the room admeasuring 16 x 11 Ft. is concerned, it is already discussed and decided in earlier paragraph and therefore, there is no necessity to repeat the same and the claim of prosecution about 56 persons inside the room is proved by prosecution. Now the question is whether this witness was inside the room or not. Complainant is not stating about this witness was inside the room or not. Looking to the deposition of Dr.Dhirajkumar Jivanlal Soni has admitted that, if a living person is inside the burning house while respiration he would consume carbon particles in Trachea. It is also admitted that, if in a room of 16 x 11 Ft. if more than 33 person and if there is any flame, it would effect all the persons. He has also admitted in his deposition that, if any persons inside the room, receives flame injuries, he would not go away within two and half hours. This witness has not sustained any burn injury, he was not treated in Civil Hospital, no Injury Certificate of this witness is produced

by the prosecution. As per say of this witness, his wife sustained injury, her Injury Certificate is produced vide Exh.187. The Certificates, suggests that she had back ache. This witness is not saying that his daughter was inside the house of Mahemudmiya. As per say of witness, he sustained burn injury on his Shoulder and Neck. His wife was burnt but there is no Medical evidence, supporting this injury. Further, his brother Mustufamiya Rasulmiya Shaikh is not saying that, this witness was inside the house of Mahemudmiya. Thus, the say of this witness that, he and his wife were inside the house of Mahemudmiya is not supported by other evidence but as discussed above he was having opportunity to see the mob. So far as his silence about narrating the incident is concerned Police was with him up to Ilol but he has not narrated the incident to the Police, we cannot expect from a witness who was under such grave and tense atmosphere, having no roof and that too in such a circumstances if the witness is silent that is natural. First a person will try to find out a suitable shelter instead of rushing for narrating the incident to the competent authorities. His statement was recorded on 10.03.2002 but in that statement, it is not stated by him that, he was inside the Mahemudmiya's house. So far as

the facts stated in the affidavit are concerned, there are discrepancies regarding whether complainant is his father or maternal uncle. As per say of this witness, complainant is his maternal uncle but not the father. But in affidavit it is mentioned that, complainant is his father. This discrepancies can be considered as slip of mistake. Whether complainant is father or maternal uncle is not going to prejudice the accused. So far as the fact regarding the fact that, he is not knowing D.R.Trivedi is concerned, this fact is not much related with the present offence. Further, the discrepancies in dated 19.05.2008 that, they were taken to Civil Hospital, Mahesana, in Matador (TATA-407) alongwith dead bodies, they were taken in Bullock-carts is concerned, it is not of much importance. Looking to the situation of Shaikh Maholla, dead bodies might have been brought out in Bullock-carts from the Shaikh Maholla that is quite possible but that does not mean that, he meant to say that dead bodies were brought to Civil Hospital, Mahesana, in bullock-carts. Even that is not the case of prosecution and therefore, this discrepancies has no importance at all. So far as sign in affidavit dated 06.11.2003 is concerned, said affidavit and signature was shown and explained to him before statement recorded by S.I.T. on 19.05.2008. There is

contradiction regarding thumb impression and signature, there is signature in affidavit while this witness is illiterate person. So far as submission regarding meeting by Sarpanch was called at the say of Muslims and in that Meeting, Sarpanch told them to forget what happened last time. Further, he has also said that, it is not between him and witness and witness should make his own arrangement. P.S.I. Shri Parmar has given information to Vijapur Police Station regarding this Meeting. In the meeting witnesses have appealed the Sarpanch for their protection. But they went to Mahadev Temple, from where the attack started. So far as this fact is concerned, this fact of affidavit was read over to him before statement dated 19.05.2008 but he has shown his ignorance about such meeting. Presence of P.S.I. Shri Parmar is also not known to him but such discrepancy are not going to effect the main incident. So far as discrepancies about putting the women and children in Mahemudmiya's house thinking that, there they will be safer at about mid night the attack was done on the house with single minded precision and planning. The iron rods of the windows were broken and a Chemical in Tins were thrown, liquid chemical that set everything into a terrible fire, if water touched it inflamed further. On

this point, S.I.T. had asked question to the witness before recording statement dated 19.05.2008. He has shown his ignorance and had stated that, he cannot say if water touches, it inflames further and had stated since there was heavy smoke, there was suffocation, the water was not inside therefore, he cannot say anything. There is omission of this fact in his statement before S.I.T. This omission in his statement before S.I.T. has been proved to be contradiction. Thus, considering above all whether this witness was inside the Mahemudmiya's house is not established beyond doubt. There are two possibilities, he may or may not be inside the Mahemudmiya's house but the fact that, he was having opportunities to see the mob, prior to he went to Mahemudmiya's house cannot be doubted. Further, his presence in the Shaikh Maholla at the time of incident cannot be doubted therefore, we have to accept the evidence of this witness, which is trustworthy and reliable and we have to disregard the exaggeration made by this witness in his deposition. From the evidence of this witness, it is proved that when the houses in Shaikh Maholla falling towards graveyard were burnt, at that time this witness was standing just in front of house of Ibrahimmiya. Looking to the Map and Panchnama of scene

of offence house of Ibrahimmiya Rasulmiya Shaikh is inside the Shaikh Maholla, leaving 10 to 12 houses from the entrance of Shaikh Maholla and thereafter, after leaving 3 to 4 houses there is some space and thereafter, Mahemudmiya's house is situated. Thus, he was having sufficient opportunity to see the mob and therefore, to that extent his evidence is reliable and trustworthy.

P.W.73 - Shaikh Faridabibi Aashikhusen has deposed on oath that on the 3rd day of Godhra train incident, at about 9.30 P.M., Patels of their village came from Mahadev temple side shouting slogans to burn their cabins at the entrance of Shaikh Maholla. As police came, mob disbursed. Again, after some time, at about 11.30 to 12.00 P.M., same mob came shouting to cut, beat and burn the Bandiyas. They had burnt 3 houses in Shaikh Maholla and thereafter, by burning the houses, they proceeded further. At that time, his father-in-law told them that their house is row house and hence, they should go to the Mahemudmiya's house as it is a pakka constructed house therefore, she alongwith her sister-in-law Firozabanu Bachumiya Shaikh, Farzanabibi Bachumiya Shaikh and daughter - Ashiyanabanu Shaikh and son Aftab went

towards the house of Mahemudmiya. Other persons were there. She saw the pouring of kerosene and they sought help but no one had turned. They requested the Patel people to leave them but they told that they want to burn them. After police came, they were taken out of the room and were sent to Mahesana Civil Hospital.

It is submitted by Shri Dhruv that, evidence of this witness on the point that at about 9.30 P.M., mob of Patels of village came from the Mahadev temple and set on fire the three cabins of Shaikh Maholla and soon as the police came, mob disbursed, is not stated in the statement dated 02.03.2002 and 11.06.2008. Further, it is not stated in her statement dated 02.03.2002 that her father-in-law told them that their house is kachcha house and they should move to pakka house of Mahemudmiya. On the contrary, in her statement dated 02.03.2002, she has stated that her father-in-law, husband, brother-in-law, her mother-in-law alongwith other family members were in their own house. Thus, there is material contradiction on this point as to whether she was inside the house of Mahemudmiya or in her own house. As per the deposition of this witness, at about 11.30 P.M. same mob again came but she has not

stated these facts in her both statements before the Police and S.I.T. Further, this witness has not stated that she alongwith her sister-in-law Firozabanu and Farzanabanu and her daughter- Ashiyanabanu and son – Aftab went into the house of Mahemudmiya. Her mother-in-law was not with her in the Mahemudmiya's house and on this point, Ashikhusen, the husband of this witness has deposed that he dropped his family members to the house of Mahemudmiya. In her statement dated 02.03.2002. she has stated that her mother-in-law and three sisters-in-law, took shelter in the house of Mahemudmiya. Thus, on this point, she has changed her version. Ashikhusen is saying that he dropped his wife, children and other family members to the house of Mahemudmiya while as per the say of this witness, she alongwith Firoza and Aftab, went to the house of Mahemudmiya. Thus, there is contradictory version of both these witnesses on this point. As per the deposition of this witness, Ashiyana and Aftab, were alongwith her in the house of Mahemudmiya but she is not saying about her daughter Suhanabanu while Aashikhusen is saying that he dropped his wife, children and other family members at the house of Mahemudmiya. Neither Aashikhusen nor this witness is claiming specifically about

their daughter Sainabanu. As per the deposition of this witness, she, her son and daughter received burn injuries. No injury certificate or treatment certificate of Aashikhusen is produced by the prosecution. She is not saying that Sainabanu was in the house of Mahemudmiya but her injury certificate is produced vide Exh.193 while looking to the injury certificate there is no burn injury to her. Thus, whether daughter Sainabanu and son – Aftab, were there with this witness or both have no burn injuries, is not specifically stated by this witness. It is not the position that anyone would have survived in Mahemudmiya's house. Aashiyanabanu who was inside the house has died. Thus, this witness alongwith her daughter Sainabanu and son Aftab was inside the room but Aashiyanabanu was not there with them. Aashiyanabanu has died due to burn injury sustained inside the house of Mahemudmiya. This witness was not present in the house of Mahemudmiya at the time of incident. As per the deposition of this witness, her sister in law, Firozabanu and Farzanabanu were inside the house of Mahemudmiya alongwith this witness. They have received no burns or other injuries. Thus, the say of this witness that he was inside the house of Mahemudmiya is doubtful. In her deposition, she has stated that she saw

persons moving and pouring petrol, kerosene and throwing burning rags. She saw all the persons pouring petrol, kerosene and throwing burning rags, but no one had helped her. They had requested the Patels to let them go but they were burnt. Thus, she had seen the persons pouring Kerosene and petrol but this fact is not stated in the statement dated 02.03.2002 and 11.06.2008 and thus, there is an improvement in vital part of the evidence. This witness has not stated in any of her statement that she had called or seen anyone. In her statement dated 02.03.2002, she has narrated that the Patels of their village and other Hindu persons shouted loudly to kill Muslims and set on fire and she had recognized their voices but it is just projected part, to show that she was inside the house of Mahemudmiya. Further, Ayubmiya Rasulmiya Shaikh, in his cross-examination, has stated that doors and windows of Mahemudmiya's house were closed from inside. Her presence in the house of Mahemudmiya is doubtful. Her identification has no value. In her cross-examination, she has stated that she was there for about 2 hours. Looking to the position of the house, it was not possible for person to be inside the house for about two hours. As per Injury Certificate, no complaint about the suffocation was made

and thus, it can be said that she was not inside the house of Mahemudmiya.

On perusing the deposition of this witness as well as considering the arguments advanced on behalf of both the sides it transpires that, this witness is the injured eye-witness, her Medical Certificate is produced vide Exh.189 while case papers are produced vide Exh.190 and deposition of the Medical Officer – Dr.Dhiraj Jivanlal Soni has supported the injuries sustained by this witness. She was having 15% burn injuries. As per her say, she has sustained burns injuries on hands and legs, she is an illiterate lady, her daughter had died on the way to Civil Hospital, Mahesana, her daughter died due to burns injuries. It is not the case of prosecution that, this witness was inside her house and there she sustained burns injuries. It is challenged by the accused side that, she sustained burns injuries in Mahemudmiya's house. Her husband P.W.55 – Aashikhusen Bachumiya Shaikh has supported the say of this witness that, he dropped his family members to the house of Mahemudmiya. There is contradiction in the statement dated 02.03.2002 and deposition about who was with her in Mahemudmiya's

house. If she has narrated that, her mother-in-law and three sisters-in-law were with her and also about her Daughter Aashiyanabanu and son Aaftab were with her and she has not stated about Sainabanu – her daughter with her. On that count, it cannot be inferred that, this witness was in Mahemudmiya's house. On the strength of those contradictions and omissions her say that, she was inside Mahemudmiya's house and she sustained burns injuries in the Mahemudmiya's house cannot be discarded. Her husband is telling about family members with her. Thus, this contradiction will not prejudice to the accused on this point. Further, Injury Certificate of Aaftab is not produced. There is no medical evidence to support the injuries sustained to Aaftab. Injury Certificate of Sainabanu is produced vide Exh.193, in which no burns injuries shown while Aashiyanabanu was with her, who died due to burns injuries, which itself supports the say of this witness about her presence in Mahemudmiya's house. This witness was having 15% burns injuries, if she survived we cannot infer that, she was not inside the Mahemudmiya's house and her presence inside the Mahemudmiya's house at the time of incident cannot be discarded. So far as her say that, she saw the mob pouring

kerosene, petrol, burning rag etc. and screaming for help but no one tried to save them is concerned, this fact is not stated by her in her statement dated 02.03.2002, how and from where she has seen pouring kerosene, petrol, burning rag are not specified in her deposition. Simply, she is saying that, she saw the incident. Further, she is claiming that they requested Patels let them go but they said that, they were to be burnt. This fact is not stated in her statement and not supported by cogent and reliable evidence. It seems to be an improvement in her version and this part of her version is required to be discarded but such improvement is not such which may disprove the other part of evidence, which is proved by prosecution from cogent and reliable evidence. Her version regarding the fact that, she had seen the persons of her village, pouring kerosene, petrol is concerned it is an improvement in her version on this point. Thus, her say that she alongwith family members was in Mahemudmiya's house and has sustained burns injuries is much supported by cogent and reliable evidence. Aashiyanabanu who was with her, who also sustained burns injuries, subsequently on the way of Civil Hospital, Mahesana she died. All these evidence supports the say of this witness that, she was inside Mahemudmiya's house

but the evidence regarding seeing the mob of Patels of their village pouring kerosene, petrol, setting on fire is to be considered as an improvement. No reliance can be placed on this evidence but on the strength of this part of her version the other testimony which is otherwise proved and established by the prosecution cannot be discarded on that count. Presence of this witness at the time of incident in Shaikh Maholla is natural and considering the fact that, this witness is injured eye-witness, any person who was injured in the incident will not try to implicate false persons in such a grave incident by giving go bye to the real culprit.

P.W.75 - Shaikh Firozabanu Bachumiya has deposed on oath that she is resident of village Sardarpur and at the time of incident, she was sitting with her father and mother. On the next day of Godhra train incident, cabins were burnt in the village and on the 3rd day, at about 9.30 P.M., cabins in the corner of Shaikh Maholla were burnt by the Patels of their village. Soon as the police came, mob disbursed and thereafter, at about 11.30 P.M., again the mob of Hindus came. There were 1000 to 1500 persons, first they burnt the houses, then started causing damages to the properties and then pelted stones. Her father had

told them to go to the house of Mahemudmiya. Therefore, all ladies went to that house. She alongwith Farzana, Farida, Ashiyana and Saina and son Aftab, went to the house of Mahemudmiya. They were inside the room and mob of Hindus broke the iron rod of the window and poured kerosene and petrol from that window and burnt them. They started burning in the room for which they shouted. Thereafter, at about 2.00 A.M., police came and took them out. 28 persons were dead and others were injured and rescue operation had taken place and they were sent to Mahesana Civil Hospital.

It is submitted by Shri Dhruv that, this witness was inside the house of Mahemudmiya for about one and half hours. She has not taken any treatment nor she sustained injuries. Considering the position of Mahemudmiya's house and all the circumstances on record and evidence brought on record, presence of this witness in the house of Mahemudmiya is doubtful. Looking to the deposition of F.S.L. Officer, deposition of complainant and other witnesses and Panchnama, some witnesses who have received injuries, also claim that they were inside the house which brings the total figure of 33 dead persons and 20

alive persons which is highly improbable in a situation where room is about 176 Sq. Ft. having kitchen articles, coat, furniture and fixtures etc. Further, complainant is not referring the names of present witness inside the house of Mahemudmiya. Further, for the first time, before the Court, occurrence is stated to be 11 P.M. or 11.30 P.M. but looking to her statement dated 22.05.2008 she has not dictated the time of incident as 11.30 P.M. Further, in her statement before police dated 02.03.2002, she has stated that mob entered in the Maholla and started pelting stones and to save their lives, they went inside the house and closed it from inside and other persons from Maholla also went inside their house and had informed the police. Police came and then the atmosphere calmed down. Looking to the conduct of the witness, from her cross-examination, her deposition is doubtful in nature. Further, though this witness was 10 to 15 Ft. away from the jeep which was set on fire and which was witnessed by, not a single person from the mob had tried to assault her. The house of this witness is just adjacent to the jeep. On seeing the jeep being set on fire, in spite of going inside the house, she went towards the house of Mahemudmiya. She is claiming that she had seen certain persons when the jeep was set on

fire but she is not saying who set on fire the jeep. As per the say of the complainant, when the jeep was set on fire, mob was spread over up to the house of Mahemudmiya and when the mob was spread over up to the house of Mahemudmiya, no one can dare to go to the house of Mahemudmiya thus, it is the say of Shri Dhruv that witness has not seen the incident and say of this witness that she was inside the house of Mahemudmiya is also doubtful. She seen the persons when the jeep was set on fire but she has not given the names of those persons in her statement dated 02.03.2002 and 22.05.2008. For the first time before the Court she is saying that when she came out from the house, she saw the jeep was set on fire and at that time, she saw the persons. Further, this witness is claiming that she had seen the cabins and houses were set on fire, houses were ransacked, stones were pelted and jeep was set on fire but which accused played what role in those incident, is not stated by her. If she had witnessed the incident, she would have certainly stated about the overt act committed by the accused. Thus, the say of this witness creates doubt. Further, the say of this witness that at the time of jeep being set on fire, she saw the persons, is not stated in any of the statement. She

is deposing this fact after eight years of incident therefore, no reliable at all.

For these arguments when we consider the evidence of this witness on record it transpires that, at the time of incident, she was staying in Sardarpur. At the say of her father, she alongwith her sister-in-law Faridabanu and her two daughters namely Aashiyanabanu and Sainabanu, Son Aaftab went to the house of Mahemudmiya. When she was going to the Mahemudmiya's house at that time she had saw the mob. Considering the situation of Ibrahimmiya Rasulmiya Shaikh and Mahemudmiya's house, it is quite possible for a person while going from Ibrahimmiya Rasulmiya's house to Mahemudmiya's house to see the persons in Shaikh Maholla. If this witness is saying that, while going to Mahemudmiya's house she saw the mob that is quite possible. She has specifically stated that, when she came out from her house, she saw setting on fire the jeep. For this purpose when we peruse the situation of Ibrahimmiya Rasulmiya's house, as shown in the Map, it is shown in side the Shaikh Maholla, leaving 10 to 12 houses and it is falling towards the row which is falling towards graveyard. While, the Jeep which is shown standing on

opposite side row, just in front of Bachumiya Imammiya's house, if a person comes out from the house of Ibrahimmiya Rasulmiya, he can easily see the Jeep. In that circumstances, if this witness is saying that, when she came out from her house she saw setting on fire the jeep, that is quite probable and it is also supported by other cogent and reliable evidence that Jeep of Bachumiya Imammiya was set on fire. Simply this witness has sustained no injury, we cannot discard the evidence of this witness on that count. So far as contradictions regarding electric current is concerned, it is argued by Shri Dhruv that, as per deposition of P.W.46 – Pathan Sabirmiya Akumiya, D.S.P. received electric shock when he went towards window of Mahemudmiya's house and that wire was connected from the pole near the house of Natvarbhai Prabhabhai and rod was thrown from the window. While P.W.48 – Sabirhusen Kadarmiya Shaikh there was one iron rod to which current was joined and placed in the room. Even D.S.P. also received electric shock, while this witness is not stating about any current, received by anybody. D.S.P. Gehlot is not deposing that, he received electric shock. As per D.S.P. in the Maholla the wires were scattered and the persons residing in the area, who have obtained

electric connection and by burning of house, it might be scattered. While this witness is claiming that, she was inside the room, she did not receive any electric shock, at the same time she is claiming that, 2 to 3 persons received electric shock. As per scene of Panchnama there was electric fan in the house, which was charred. Even electric wires in P.V.C. pipes were also burnt and hanging over the ceiling. No Police Officer is saying that, he had broken wire with Rifle. In Panchnama also it is not stated that, wire was coming from the house of Natubhai Pavar or from any other house. No police officer is saying about electric shock. While this witness has stated that, soon as the police touched the door, there was electric current on it and Police had broken wire with the Rifle and wire was coming from the house of Natubhai Pavar and this fact is not stated by her in statement dated 22.05.2008. Thus, on the strength of this evidence, it is submitted by Shri Dhruv that, there is an improvement by this witness in this regard when we peruse the evidence of D.S.P. and other witnesses as well as medical evidence on record it transpires that, electric wires were scattered in the Maholla but the say of the witnesses that, D.S.P. received electric shock is not supported by the D.S.P. Looking to the position of the room,

electric wires in P.V.C. Pipes were burnt and hanging over the ceiling. But there was electric connection either it may be legal or illegal connection and medical evidence suggests that, Abedabanu Manubhai Shaikh has sustained electric current injury. Medical papers, Medical Certificate produced vide Exh.212 and 213 supports this fact. No doubt there are some discrepancies about electric connection or live wires in Shaikh Maholla but the fact that, there was electric connection in the room and the wire was live and due to that live wire the injured received the injury. Whether said live wire was taken from Natubhai Pavar's house or from somewhere else but the fact that, the electric connection was taken is established by the prosecution. So far as breaking of door by Rifle is concerned, as per say of this witness Police had broken the wire with the Rifle while the other witnesses telling that, door was broken from outside. There are different versions about breaking of door. From the police officers depositions, door was opened by using force from the outside. F.S.L. Report also suggests that, force was used for opening the door of the house. Thus, the theory of electric connection is not totally false. During Inspection Visit by the Court, it was found that it is quite possible to have electric

connection from the house of Natubhai Pavar to the Mahemudmiya's house or from the pole, just adjacent to the house of Natubhai Prabhahai and one can take electric connection from that pole to the house of Mahemudmiya and it is quite possible as there is open space, surrounded by the Compound wall and gate. There is no building in between the pole and Mahemudmiya's house. Thus, the possibilities of taking wire from that pole to Mahemudmiya's house cannot be ruled out. Therefore, the say of this witness that when the police came and opened the door there was electric shock in the door and the wire was coming from the house of Natubhai Prabhahai get support from the evidence and simply there is contradiction in her statement dated 02.03.2002 we cannot infer that, this is false story created by the witness as the fact regarding electric current is proved from other reliable cogent evidence also much supported the version of this witness on this point therefore, this version is trustworthy and reliable. Simply omission in her statement does not amount discard her say on the issue. Therefore, say of Shri Dhruv that, story of current is material improvement by this witness for the first time in the year 2008 is not sufficient create doubt about the version of this

witness on this point. So far as the say of this witness that, she saw the Jeep setting on fire at the distance of 10 to 15 Ft. is concerned, it is argued by Shri Dhruv that, not a single person from the mob had tried to assault her. House of this witness is situated just adjacent to Jeep, as per her say on seeing Jeep set on fire instead of going inside her house, she went towards the house of Mahemudmiya. She has claimed that, when the jeep was set on fire, she saw certain persons. Still however, she is not stating who has set on fire the Jeep. Looking to the complainant's deposition when the Jeep was set on fire the mob was spread over up to the house of Mahemudmiya, if that is so no one dare to go to the house of Mahemudmiya therefore, it is say of Shri Dhruv that this witness has not seen the incident and claims to be an eye-witness and inside the house of Mahemudmiya. So far as this argument is concerned when we peruse the evidence of this witness when she came out from her house at that time she saw the jeep set on fire by the mob. Jeep was set on fire by pouring the kerosene. Looking to the situation of the house of this witness, if a person comes out from her house he can easily see the Jeep. Therefore, the say of this witness that, she saw the jeep set on fire is quite possible and

thereafter, she went to Mahemudmiya's house. No doubt complainant has deposed that mob was spread over to the Maholla but the house of Mahemudmiya was Pakka constructed house and it was safe therefore, if witness alongwith other persons went to the house of Mahemudmiya by avoiding the mob and no injuries were caused to her while going inside the Mahemudmiya's house, we cannot infer that this fact is false and created one and she was not having opportunity to see the mob. Before going inside the Mahemudmiya's house, she was having sufficient opportunity to see the mob and therefore, the say of this witness that, she saw the Jeep set on fire is trustworthy and reliable.

P.W.78 - Shaikh Basirabibi Bachumiya has deposed on oath that at about 9.30 P.M., a mob of Patels came from Mahadev temple side shouting slogans to cut, beat and burn the Bandiyas, no one should be left alive. Three cabins at the entrance of Shaikh Maholla, were burnt. Thereafter, police came and the mob disbursed. Thereafter, after some time, again the same mob came and had started pelting stones burning the house and also looted the house. First house of Manubhai painter was burnt, then, the house of Akbarmiya Bachubhai was burnt and third house

was of Iqbalmiya Rasulmiya and by burning the houses, they came inside and pelted stones. In order to save their lives, they went to the house of Mahemudmiya. Mob surrounded the house of Mahemudmiya. Window was broken and from that window, Kerosene and petrol was poured and then the house was set on fire. Persons who were inside the house were requesting the mob to leave them but mob had not left them.

It is argued by Shri Shah that, her nearest relatives have died in the incident, she is the resident of Shaikh Maholla, Sardarpur, she was very much present in the Maholla at the time of incident. She is an injured witness. In the history, she has stated that she sustained 20% burns injuries during the attack. Her statements were recorded late on 27.04.2002 as she was in Iddat period due to the death of her husband. Thus, it is the say of Shri Shah that, she is natural witness, there is no exaggeration in her deposition, everything stated by her is natural one.

It is submitted by Shri Dhruv that, as per say of this witness she alongwith her husband Bachumiya and three sons were inside the house of Mahemudmiya. Looking to the situation of the house Mahemudmiya, it seems that

anyone who claims to be inside the house would survive or survive without having any burn injury. House is occupied by 53 persons is highly improbable. As per the say of this witness, her husband who was inside the house has died and survival of this witness alongwith three sons is doubtful. Further, their house in Shaikh Maholla were set on fire. As per the deposition of Shri Gehlot, D.S.P. after breaking open the doors of burnt houses rescued 40 persons while P.W.76 - Shaikh Hamidabibi Akbarmiya and P.W.68 - Shaikh Gulamali Akbarmiya have deposed that their houses were also ransacked and were also set on fire. As per their say, persons who were trapped inside the burnt houses were brought out by the persons who were outside the houses. The statement dated 10.03.2002 of P.W.80 - Shaikh Ruksanabanu Ibrahimmiya disclose that person in Maholla were inside the house of Nazir Mohamed. In spite of Nazir Mohamed, name of Mahemudmiya is mentioned in two places in her statement. Thus, it is submitted by Shri Dhruv that it can reasonably be presumed that the witness might have seen the mob coming from the entrance of Shaikh Maholla and they might have witnessed the set of fire the house of Nazir Mohamed. They were not knowing that Mahemudmiya's house was set on fire as this house

was set on fire from the backside of the house and that too by mob of Sundarpur. Thus, it is submitted by Shri Dhruv that prosecution is suppressing true and correct facts from the beginning. Further, the witness who claims injury inside the house of Mahemudmiya might have received injury in Nazirmohmad house or at another places but not in house of Mahemudmiya. Further, as per the say of this witness, in the mid night, police came and had called that those who are alive may come out, they are police. Soon as she came out she saw her elder brother Abbasmiya Kesarmiya and her sister-in-law Ruksanabibi Abbasmiya and Mumtajibibi Maqbulmiya, niece Saherabibi Abbasmiya and her husband were found dead. If this witness was inside the house, then there is no question of knowing it after coming out of the house. Further, looking to the evidence, not a single person came out from the house of Mahemudmiya even on the call of police. On the contrary, witness have deposed that police had to break the door and bring out dead bodies from the house and no one has claimed that anyone was inside the house and came out from the house of Mahemudmiya by his own. Even three persons who were brought out alive by the police, they had sustained injury therefore, claiming of this witness that on

arrival of police, she came out of the house is not believable. Further, looking to the deposition of Ibrahimmiya Rasulmiya, police had forcibly opened the door of the house of the Mahemudmiya, is directly in contradiction as claimed by this witness. Thus, witnesses who were claiming to be inside the house of Mahemudmiya are also inter-se giving different version about the opening of the door. While as per the deposition of P.W.90 - Parmar Galbabhai Khemabhai, two injured persons in the Shaikh Maholla have informed them that Mahemudmiya's house is just ahead and said witness alongwith other person have opened the door of Mahemudmiya's house. P.W.91 - Rathod Mahendrasinh Lalsinh also deposed that after opening the door through handle, persons were brought out from the house of Mahemudmiya. Not a single witness is saying that from the house of Mahemudmiya, they themselves have come out without intervention of anyone. Further, this witness is giving account about the persons as to what they have done outside the room but she is not giving any account about the position inside the house. Not only she is not stating in her deposition as to who were inside the house which creates doubt about her claim that she was inside the house. Further, as per the claim of this witness,

her younger son – Iliyas received burn injuries on left ear and leg but no injury certificate is produced on record. This witness herself took treatment which is highly impossible that though her son was injured and he was with her, he may not have been treated. Even this witness is not telling about the injury to his other two sons. Say of this witness that her two sons had not received injury is highly impossible. Her statement was recorded on 17.04.2002. If she had received burn injury she might have taken treatment and injury certificate might have been produced but injury was not received inside the house of Mahemudmiya. She was silent for about one to one and half months. On this ground only, the whole deposition of this witness can be discarded. She was brought to the hospital and thereafter, to Ilol in the company of police and other persons from Shaikh Maholla but she was silent about the incident. Further, as per her say, she was observing Iddat at Ilol. She could have told the real facts to her near relatives where she was residing and therefore, it is submitted that even the explanation given by her is not genuine and this explanation is not given in any of her statement dated 17.04.2002, 22.05.2008 and 11.06.2008. Further, the story of setting on fire, three cabins at the

outside of Shaikh Maholla and inside the Shaikh Maholla and that she had seen the incident, are not stated by her in any of her statements dated 17.04.2002, 22.05.2008 and 11.06.2008. Over and above, this witness has also not stated about her husband who received injury by stones. In any of this statement, she has not stated that window of the house of Mahemudmiya was broken. In deposition, she has stated that she requested the mob to let them go. In spite of that, mob did what they wanted to do and this fact is an improvement and the same is not stated in her statement. Looking to the deposition of Akbarmiya Rasulmiya Shaikh and considering the number of omission of this witness, it becomes clear that from the door of the house adjoining Shaikh Maholla, Mangalbai Mathurbhai and Nathubhai Kachrabhai and other Patels have thrown bricks which hit Bachumiya Nathumiya on his head. It suggests she was with her husband even at the time of incident. As per the say of this witness, while going to the house of Mahemudmiya, she was with her own children and has seen the mob. This fact is not stated in her statement. Further, as per the say of this witness, rear side window of Mahemudmiya's house was broken by the mob. Photographs and evidence of F.S.L. makes it clear, that no

rear window of Mahemudmiya's house was broken. Further, this witness is saying that from the window, she saw the mob pouring kerosene and petrol but from which window mob poured the kerosene is not specified by this witness. While Ayubmiya Rasulmiya in his cross-examination has admitted that doors and windows of house of Mahemudmiya were closed from inside while Firozabanu Bachumiya Shaikh had closed the window and doors from inside. P.W.56 – Ayubmiya Rasulmiya Shaikh and Firoz Bachumiya were inside the house of Mahemudmiya. When they are saying that the doors and windows were closed by them, then there is no possibility of either pouring or throwing of petrol and kerosene inside the house from window. Further, as per the say of this witness, she had seen the persons in the mob. She has also named the persons and also deposed that window of the house was broken. It is the say of the witness that kerosene and petrol was poured and burning rags were thrown still she is not saying who played what kind of role which is most material which suggest that she has not witnessed the incident. Further, she is claiming that she went inside the house of Mahemudmiya and mob had surrounded the house of Mahemudmiya from four sides. If she was inside the house

then how she can say mob had covered the house from all the four sides. Since, the doors and windows were closed from inside and on other two sides there is wall, no one can see what is happening outside the house. Therefore, her claim that house was cornered from all sides is not acceptable. Further, it is submitted that she does not remember what household goods were there in Mahemudmiya's house. She does not know about the electric wires inside the house. As per her say there was kerosene lamp and electricity was not there in the house. Doors and windows of the house were open. What part of window was broken she does not remember. Considering the cross-examination and chief-examination of this witness, it comes that the witness was not inside the house when the window was opened. There was no question of breaking it. Even looking to the evidence brought on record, window is not damaged. There was electricity in the house, electric wires were also there in the house. This witness is not telling the correct position on this point which suggests that she was not inside the house.

Considering the submissions of both the sides and on perusing the evidence of this witness it transpires that, she is the resident of Village Sardarpur. At the time of

occurrence she was present in the Shaikh Maholla. She is an injured eye-witness. Her injury Certificate is produced vide Exh.170. Case papers are produced vide Exh.171. She sustained 20% burns injuries and in history before Doctor she has stated that she sustained burns during riots. She was conscious at the relevant time. So far as submissions on behalf of the accused that, looking to the situation of the house of Mahemudmiya if anyone who claims to be inside the house could not survive without any burns injury is concerned, here present witness is claiming that she was inside the house of Mahemudmiya, she has sustained burns injuries. So far as her say that, her three sons were with her and two sons were not injured, only one son was injured. Her husband was also inside the house of Mahemudmiya, who has died due to burns injuries. Post-Mortem Report of her husband – Bachumiya Nathumiya Shaikh is produced on record at Exh.323. His Post-Mortem was performed by Dr.Vijaykumar Vitthalbhai Oza, who has been examined at Exh.322, which supports the say of this witness that, her husband died due to burns injuries. Medical Certificate of this witness is produced during the deposition of Dr.Dhirajkumar Jivanlal Soni, which also supports the say of this witness that, she has sustained

burns injuries. She sustained injuries in both legs and on her face and she was treated in Mahesana Civil Hospital. Simply because this witness survives, we cannot conclude that, because she survives, it creates doubts about her claim to be inside the house of Mahemudmiya. If her two sons had not sustained injuries that is also quite possible and on that count also, we cannot say that, she was not inside the house. So far as house of Mahemudmiya occupied by 53 persons highly improbable is concerned, this point is already discussed earlier and therefore, there is no necessity to discuss this point again. Further, submission that persons from other houses of Shaikh Maholla were also brought out from the burnt houses is concerned, no doubt D.S.P. Gehlot supports this fact. P.W.76 - Shaikh Hamidabibi Akbarmiya and P.W.68 - Shaikh Gulamali Akbarmiya supports the fact that, their houses were ransacked and set on fire and the persons were trapped inside the burnt houses were brought out during the rescue operation. Assuming other injured persons were brought out from the other burnt houses of Shaikh Maholla that does not mean that, there was no person inside the Mahemudmiya's house or this witness alongwith her family members were not in Mahemudmiya's

house and her claim to be inside the Mahemudmiya's house is false and no doubt can be created about this witness that, she was inside Mahemudmiya's house. So far as arguments regarding P.W.80 - Shaikh Ruksanabanu Ibrahimmiya has stated that, instead of Mahemudmiya's house, persons were inside the house of Nazirmiya is concerned from the cogent, reliable and concrete evidence it is proved by the prosecution that, main incident occurred in Mahemudmiya's house, from where 28 dead bodies were brought and other injured persons were also brought out. Thus, simply because Ruksanabanu Ibrahimmiya has stated that, the incident was occurred in Nazirmiya's house and persons were inside the Nazirmiya's house there is discrepancies in the statement of Ruksanabanu and her version but the fact which is already established, that cannot be discarded on the say of Ruksanabanu that, incident occurred in Nazirmiya's house instead of Mahemudmiya's house and persons of Shaikh Maholla were inside the house of Nazirmiya. Therefore, the arguments advanced by Shri Dhruv that, this witness might have seen the setting on fire the house of Nazirmahmad and not the Mahemudmiya's house, which was setting on fire from the backside of the house and that too by the mob of persons of

Village Sundarpur is not acceptable. In the deposition, this witness has specifically stated that, they went inside the house of Mahemudmiya, prior to that, the mob came from the entrance of Shaikh Maholla by burning the houses of Shaikh Maholla. When the mob was coming inside the Shaikh Maholla, she herself has seen the mob and due to fear she alongwith family members went inside the house of Mahemudmiya. Therefore, the say of Shri Dhruv in this regard that, she might have seen setting on fire the house of Nazirmahmad is not acceptable. From her deposition and from other cogent and reliable evidence on record, it is established by the prosecution that, this witness was inside the Mahemudmiya's house and she sustained burns injuries and therefore, say of Shri Dhruv that, she might have received injuries in Nazirmahmad house or at another place but not in the house of Mahemudmiya is not acceptable. Further, when in the midnight police came and this witness brought out, she came to know about the death of her husband, brother, sister-in-laws and niece. If this witness alongwith her family members was inside the Mahemudmiya's house and she only came to know about the death of her relatives after coming out the house, that is possible. There were more than 50 to 55 persons inside

the room and in that circumstances, she may not have knowledge of her relatives though they were inside the room. On that count, it cannot be said that she alongwith her family members were not inside the Mahemudmiya's house. So far as her say that, she came out from Mahemudmiya's house is concerned, it is true that there is evidence that, door of Mahemudmiya's house was broken and dead bodies and injured persons were taken out. In that circumstances if this witness is saying that, she came out such discrepancies is not such from which we can gather that, she is suppressing something. She may be brought out by police or some other persons or she by herself came out, it makes no difference. As per say of complainant three persons were brought alive from Mahemudmiya's house, subsequently those three persons died. On the strength of this evidence the say of Shri Dhruv that, complainant is not telling about this witness brought out alive from the Mahemudmiya's house is of no importance as the the fact that, this witness was inside the house of Mahemudmiya, she sustained burns injuries cannot be discarded. Simply because complainant is not telling about her. It is true that as per say of complainant, door of Mahemudmiya's house was forcibly opened, in that

circumstances if this witness is saying that, this witness came out, we can infer that, after opening the door she may come out but on that strength her testimony on that count cannot be doubted. So far as inter-se different versions of the witnesses about the opening of the door of Mahemudmiya's house is concerned, witnesses have described in their own manner how the door was opened but the difference is not such from which we can infer that, door was not opened. Over all depositions of all the witnesses suggest that, door of the Mahemudmiya's house was opened from the outside. Further, simply this witness is saying that, she came out from Mahemudmiya's house and the evidence on record is that, all the injured were brought out from Mahemudmiya's house is concerned it is not of much importance. She might have brought out from the house and she is telling that, she came out. This discrepancies is not such which can create doubt about her having inside the room. As per her say, her younger son Iliyas has sustained burns injury on left ear and leg but there is no injury certificate. There is no evidence on record showing that, her son Iliyas was treated and therefore, much reliance cannot be placed on that fact. But the fact that, this witness sustained burns injuries and she was

treated at Civil Hospital, Mahesana, cannot be discarded on that strength. So far as her silence about one and half months is concerned, this witness was observing Iddat period, prior to that she was brought to the Hospital and thereafter, she was sent to Ilol. Considering the fact that, her relatives including her husband died in the incident and she was having no roof for shelter in that circumstances, if she was silent about one and half months and after Iddat period her statement was recorded and she has narrated all the facts, we cannot infer her silence to discard her say. So far as the incident regarding setting on fire three cabins at the entrance of Shaikh Maholla is concerned, no doubt this fact is not stated by her in her statement dated 17.04.2002, 22.02.2008 and 11.04.2008. She had also not stated about her husband sustained injuries by stones and she has not stated about windows of the house of Mahemudmiya's were broken is concerned, omission of all these facts on the part of this witness does not amount to discard the version of this witness which are otherwise established and proved by the prosecution and the omissions in this regard becomes insignificant. So far as her deposition regarding requesting the mob to let them go, in spite of that, mob did what they wanted to do is

concerned, this fact is an improvement in her version, this fact is not supported from any other cogent and reliable evidence. At the time of incident her husband Bachumiya Nathumiya was hit by a brick, she was with him. Further, considering the situation of her house and Mahemudmiya's house when she alongwith her husband and children went to the Mahemudmiya's house she was having opportunity to see the mob. It is only when she went inside the Mahemudmiya's house, thereafter she could not see what is happening out side the house. Simply because she has not stated in her statement that, while going to Mahemudmiya's house, she has seen the mob, we cannot infer that, she was not having opportunity to see the mob. A person while going from Bachumiya Nathumiya's house to Mahemudmiya's house can see what is happening at the entrance of Shaikh Maholla up to the place of happenings. F.S.L. Report suggests that, no rear door or window of Mahemudmiya's house was broken. Photographs are also silent about it and in that circumstances if this witness is saying that, rear side window of the Mahemudmiya's house was broken by the mob is not supported by the corroborative piece of evidence. In that circumstances, if this witness was inside the room then how can she see mob

pouring kerosene and petrol. It is not specified by this witness from this evidence we can infer that, it was not possible for the witness to see from inside the house the pouring of kerosene and petrol by the mob. Therefore, this part of her deposition can be considered as exaggeration and improvement. Further, Firozabanu Bachumiya Shaikh and Ayubmiya Rasulmiya Shaikh were inside the house of Mahemudmiya, as per their say they have closed the doors and windows and in that circumstances also, there were no possibilities for this witness to see from inside who poured kerosene and petrol and therefore, also her version on this part is not reliable. Further, as per say of this witness, house of Mahemudmiya was surrounded by the mob when she was inside the house and doors and windows were closed and considering the situation of the room windows and doors it is highly impossible for a person to see from that room what is happening outside. Therefore, her claim that, she had seen the mob surrounded the house of Mahemudmiya from four sides is an exaggeration and we cannot accept it as an evidence against the accused. So far as her ignorance about electricity in the house is concerned, it has come out on record that, there was electricity in the house, electric wires were hanging in the

room, while this witness is showing ignorance about this fact, possibility of this witness not knowing about the electric wires in the room cannot be ruled out as at the relevant time electric supply may not be on therefore, on this strength of this evidence accused have tried to argue that, this witness was not inside the house of Mahemudmiya, which cannot be accepted as it is otherwise proved by the prosecution from cogent and reliable evidence that, this witness was inside the house of Mahemudmiya but the fact that, before going to the house of Mahemudmiya this witness had seen the mob that cannot be discarded.

P.W.79 - Shaikh Samimbanu Mahemudmiya has deposed on oath that on 3rd day after Godhra incident, at about 9.30 P.M., mob of Patels came shouting the slogans to cut, beat and burn the Muslims. They had burnt three cabins. The police came at the spot. Soon as the police came, mob disbursed and after they went, again the mob came and started pelting stones. The said mob came at 12.00 O' Clock. They burnt the house of Manubhai Painter, Akbarmiya Nathumiya and other persons. She was inside the house of Abhumama who came and told that mob is coming towards their house by burning other houses. He

opened the door and instructed the persons who were inside the house to make attempts to save themselves. Thereafter, her maternal uncle opened the door and all the ladies went inside the pakka house. Mob of Patels had surrounded the house and after pouring kerosene and petrol, they burnt the house and thereafter, mob had tried to hammer the terrace. She herself has seen the incident. She saw the pouring of kerosene and petrol and also saw her mother, two brothers and sisters, burning. Thereafter, 4.00 A.M., police came and took them out from the houses and rescue operation took place and then they were sent to Mahesana Civil Hospital.

It is submitted by Shri Dhruv that, she is the daughter of Mahemudmiya in whose house the main incident occurred. She claims that she was inside the house. At the time of entering Shaikh Maholla, she was not inside her house but subsequently she went inside her house. Looking to the F.S.L. Report administered by F.S.L. Officer, Panchnama and other evidence on record, it is highly improbable that one can remain inside the house without any burns, if he or she was inside the house of Mahemudmiya. No injury certificate of this witness is produced. She has not taken any treatment anywhere and

hence, the presence of this witness inside the house is highly doubtful. This witness has stated that police came at about 4.00 A.M. but she is not telling anything to police even though she went to Savala in the company of police at that time also she is not telling anything about the incident to the police. Her statement was recorded on 06.03.2002 but she has not stated about the incident. This witness has improved the version and deliberately omitted certain material facts from the Court. Further, it is submitted by Shri Dhruv that as per her say, Patels came from Mahadev temple side at about 9.30 P.M. on 01.03.2002 and set on fire three cabins but this fact is not stated in the statement dated 06.03.2002. There is material omission before the Court to the fact that when police came and resorted to firing, mob was disbursed which is done with definite purpose. The story has been put forth by her for the first time before the Court. Even she has claimed that she had seen some persons whose names she does not know. Thus, how can she name them which suggests that she might have been tutored one. Further, it is submitted that this witness has improved her version before the Court in respect of place and her hiding first time in the house of Abhumama. When almost all persons of Maholla took

shelter in her own house which is a pakka constructed house then why she took shelter in the house of Abhumama. It is nothing but with a view to give her an opportunity to implicate certain accused. No other witness is claiming that this witness was in the house of Abhumama and from there she went inside her house. Further, it is submitted by the accused that from which place she had seen the mob pouring kerosene, throwing burning rags etc. Door and windows of the house were closed then how she can see all these happenings. Incident occurred in the mid night, there was darkness outside and hence, it is highly impossible to see anyone even if window is opened. Further it is submitted by Shri Dhruv that as per this witness, terrace was broken but this fact is not supported from the deposition of panch witness of Panchnama and from police witnesses. Further, it is submitted on behalf of the accused that there were 50 persons in the mob which came at about 12.00 mid night while other witnesses are deposing about 1000 to 1500 persons in the mob. There are more than 50 persons who are Charge-sheeted therefore, the say of this witness is unbelievable.

This witness is the daughter of Mahemudmiya, in whose house main incident occurred. On perusing her deposition, it transpires that she is not stating that as to how and who had poured kerosene, petrol, burning rags in the said house and who set on fire the cabins. At the time of occurrence she was staying in Shaikh Maholla. From her deposition case of prosecution that at about 09.30 P.M. mob came, shouting slogans to cut, beat and burn the Muslims and three cabins were burnt. Soon as police came, mob disbursed. After the Police went away again mob came and started pelting stones. At about 12.00 O' Clock mob again came and they burned the houses of Manumiya, Akbarmiya Nathumiya and other persons. This fact is supported by the version of this witness at that time she was inside the house of Abhumama and as they were told by Abhumama that mob is coming and he opened the door and thereafter, they all went inside the house of Mahemudmiya. Thus, from where she has seen the burning of cabins and burning of houses by the mob is not specified by her in her deposition. Simple general allegations are there in her version. Therefore, from her deposition burning of houses in Shaikh Maholla and burning of house of Mahemudmiya is supported but from her deposition we

cannot conclude that, she has seen pouring of kerosene, petrol and burning the house of Mahemudmiya. If she was inside the house of Mahemudmiya, how she could see hammering the terrace and burning of house and therefore, much reliance cannot be placed on this version of this witness about the role played by the accused in the incident in this regard. Simply, incident occurred, houses were burnt and the persons in the house of Mahemudmiya were also burnt and they were shifted to Civil Hospital Mahesana, is supported from her version. So far as the arguments advanced by Shri Dhruv that, it is highly improbable that one can remain inside the house without any burn is concerned this witness has not sustained any injury. If she was inside the house and she has not sustained any injury that is possible. Simply because on the strength of F.S.L. Report, it cannot be said improbable that one can not remain inside the house without any burn injury. There are other witnesses also, who were brought out side from the Mahemudmiya's house, having no injury. That was her own house, a pakka constructed house, which was more safer in the Maholla and if she is claiming that, she went into her house that is more probable. Therefore, her presence inside her house cannot be

doubted. Further, when the Police came she had not told the incident police was with her up to Savala but she was silent. Under such a tense and grave atmosphere if she was silent on that count, it cannot be said that she is telling lie. In her statement dated 06.03.2002, she has not narrated the incident. Further, she has not narrated in her statement that, Patels from Mahadev side came at about 09.30 P.M. on 01.03.2002 and set on fire three cabins but this fact is not stated in her statement dated 06.03.2002. Further, she has omitted the resorting of fire by Police. Thus, there is omission and improvement in her deposition in this regard. Accepting omission and improvements as it is, even then her version in deposition supports the burning of fire of three cabins as well as burning of houses in Shaikh Maholla. So far as breaking of terrace of her house is concerned, from her deposition it transpires that, she has not seen herself. Further, doors and windows of her house were closed, there was no possibility for her to see what is happening outside and therefore, her say that she saw the pouring of kerosene and petrol and burning of houses is not believable. Thus, the evidence of this witness supports only burning of houses and cabins and about the persons burnt inside the house of Mahemudmiya, who were

shifted to Civil Hospital, Mahesana. No specific role were attributed to any accused in her deposition. Nothing more comes out from her deposition.

P.W.80 - Shaikh Ruksanabanu Ibrahimmiya has deposed that at the time of incident, she was in Sardarpur. On 01.03.2002 mob of their village came at the entrance of their Maholla and had burnt the cabins of Ibrahimmiya Rasulmiya, Iqbalbhai and Rafikbhai. At that time, they were shouting to cut and burn the Muslims. Thereafter, police came and mob disbursed. After one and half hour, same mob came and entered in Shaikh Maholla shouting to cut, beat and burn the Muslims and they looted the house. Due to fear they went into the house of Mahemudmiya to save their lives. House of Mahemudmiya was surrounded by the mob and they had poured kerosene, petrol and then burnt them. The people inside the room were screaming for help but no one came to save them. After some time, police came and took them out and rescue operation took place and they were sent to Mahesana Civil Hospital for treatment.

It is submitted by Shri Dhruv that she is not saying at what place she was when she saw the mob. She has not

named persons who were brought out alive from the house of Mahemudmiya. If other persons alongwith her were brought out side the house of Mahemudmiya, she would have certainly deposed about it. Further, she gave false names of their family members. Thus, she can certainly give names of persons who were brought alive outside the house of Mahemudmiya which suggests that no one is there except three persons as mentioned in F.I.R. rescued alive from the house of Mahemudmiya and those three persons have died. Not a single witness is stating about the reaction of the persons inside the Mahemudmiya's house nor they are stating as to what attempt they have made to save themselves. In cross-examination, she has deposed that she received burns in her neck side since there was no water inside there is no question of any steam. If house was set on fire also, there may be flame or fire itself. How she received burns by steam. From the injury certificate it is crystal clear that she received burns injury only on her face. On her face there was 1% burn injury in 8% area of face. It is nobody's case that no one inside the house have received any injury except burns. She has intentionally not stated about her injury. Even looking to the history given by doctor, it is mentioned about the injury by stone and lathi

and burns during riots and as per the doctor, the history was given by the patient herself. She would have stated before the doctor that on her back, she received steam burns only. Above stated facts make it clear that she was not inside the house of Mahemudmiya as claimed by her. She might have received such injuries at any other place outside the house of Mahemudmiya.

Further, it is submitted that the mob of village persons at about 9.00 to 9.30 P.M. on 01.03.2002 set on fire three cabins outside the Shaikh Maholla. Those cabins were of Ibrahimmiya Rasulmiya and Iqbalmiya Rafikmiya and this fact is not stated in her statement dated 10.03.2002. As per the say of this witness, after one and half hour, again same mob came and entered in Shaikh Maholla. This fact is also not stated in her statement dated 10.03.2002. Further, it is submitted that this witness has not properly replied that as to how many persons have received injury, who were inside the house etc. In her cross-examination she has admitted that as a part of her daily routine, she was moving all around the village and she was going for labour work in the fields of Patel's still however, after naming these persons, not deposing the names before the Court, she has tried to identify the persons in the Court

by face only.

This witness is the daughter of the complainant, at the time, incident she was residing with complainant in Shaikh Maholla. Her original mother was Sharifabibi, who died before 13 years from the incident. At the time of incident, she was having second mother Jayedabanu, who died in the incident. She has narrated the incident, supporting the case of prosecution. Medical Officer has supported her injury. Injury Certificate is produced vide Exh.195. As per Medical Certificate she was conscious. She herself has narrated the history before the Doctor. As per her say, she sustained injuries due to pelting stones. She sustained 8% burns injuries. As per her say, mob came at the entrance of Shaikh Maholla and burnt three cabins. Thereafter, Police came, mob disbursed and thereafter again mob came. Houses in Shaikh Maholla were burnt and in pelting stones she had sustained injuries on her upper side of right eye. To save herself she went inside the house of Mahemudmiya and the said house was burnt by the mob, meaning thereby she has an opportunity to see the mob till she went inside the house of Mahemudmiya. In that circumstances if she is narrating about burning of

houses and three cabins at the entrance of Shaikh Maholla, pelting stones that is reliable. Her presence in Shaikh Maholla at the time of incident is natural one. In that circumstances, if she had not given the names of persons who brought her alive outside the house of Mahemudmiya, we cannot conclude that she is telling lie. So far as arguments advanced by Shri Dhruv regarding reactions of the persons inside the Mahemudmiya's house is concerned, it is true that the present witness as well as other witnesses who were inside the house of Mahemudmiya are not telling what attempt they have made to save themselves inside the Mahemudmiya's house. Omission on this part does not amount that she was not present in Mahemudmiya's house. In her cross-examination it has come out that, she receive burns injuries. Injury Certificate is produced on record vide Exh.195, which supports the burns as well as other injuries, sustained by her. No doubt she has stated about her injuries in her cross-examination but omission of her injury in her chief-examination does not amount that, her presence in Shaikh Maholla is doubtful. On the contrary truth has come out in cross-examination that, she has sustained injuries in occurrence of incident. This supports more version of this witness therefore, also her

narration about the incident cannot be discarded and the say of Shri Dhruv that, she has not intentionally stated about her injuries cannot be accepted. So far as her narration about incident of burning of three cabins out side the Shaikh Maholla is concerned, no doubt she has not stated this fact in her statement dated 10.03.2002 but burning of three cabins at the entrance of Shaikh Maholla is well supported by the evidence of prosecution. Therefore, omission of this fact in her statement dated 10.03.2002 becomes insignificant. Further, omission in her statement about second time mob came is concerned it is also well established by the prosecution that, second time mob came therefore, her omission in her statement on this part also becomes insignificant. Further, she has not properly replied in her deposition that, how many persons have received injuries, who were inside the house of Mahemudmiya are concerned, this discrepancies are not such which can otherwise effect the case of prosecution or prejudice the rights of accused and therefore, no importance can be given to this discrepancies. Further, say of the accused side that, there was normalcy in the village. She was doing her daily routine work. She was going to the field of Patel etc. for labour work, it is admitted by this witness but from this

evidence it transpires that prior to incident there was normalcy but from this fact we cannot infer that, no incident occurred at the time of incident. Thus, evidence of this witness is reliable, trustworthy and her evidence cannot be discarded on any grounds.

P.W.81 - Shaikh Dilavarkhan Abbasmiya has stated on oath that on 01.03.2002, at about 10.30 P.M., mob of Patels of their village attacked Shaikh Maholla. Approximately 50 persons of the Shaikh Maholla went inside the house of Mahemudmiya to save their lives. Mob of Patels came and closed the door of the house and by breaking the window, they poured kerosene, petrol and chemicals in the house of Mahemudmiya. House of Mahemudmiya was burnt. After three hours, police came and took them to the Civil Hospital for treatment.

It is submitted by Shri Dhruv that, at the time of incident, he was aged about 12 years. This witness was not interrogated at Civil Hospital. He does not remember whether the police has recorded his statement or not. As per his say, his statement was recorded by S.I.T. on 22.05.2008 in which it is written as additional statement

which suggests that before S.I.T. has recorded, his previous statement was recorded by someone. Earlier statement of this witness is not supplied to the accused. Possibility cannot be ruled out that even that statement would also be at the instance of some person. This witness is not stating whether he was inside the house or was in Shaikh Maholla. Still however, he has given account of the incident as if he has seen the incident. Thus, his evidence is nothing but hearsay evidence. This witness was taken to Civil Hospital but this witness has not told anything. As per his deposition, his father, mother and elder sister have died due to burns in the house of Mahemudmiya and he and his younger sister have survived. They were brought out of the house after three hours of the incident. Looking to the Panchnama, F.S.L. and other evidence, it was not possible for anyone who were inside the house to be survived. Looking to his conduct it is clear that he was not inside the house and he has not seen the persons breaking the window. He is claiming that window was away and from side window of the house of Mahemudmiya was attempted to be broken. No one has deposed that anyone has attempted to break open front side of window of the house of Mahemudmiya. Basirabibi claimed that backside window

of the house was attempted to be broken. Further, it is submitted that kerosene, petrol or inflammable chemical was poured inside the house and found from the clothes of the deceased. Even then on the clothes, there are no stains either of the kerosene, petrol or even chemical are found.

It is submitted by Shri Shah that, this witness was minor at the time of incident and was staying at Sardarpur, in Shaikh Maholla. In the incident, his mother, father and sister have died. His younger sister was burnt on both the legs. They were taken out from the houses after two to three hours, by the police. He was inside the house of Mahemudmiya just to save themselves. Persons from the mob had closed the door from outside and after breaking the window, petrol, kerosene and chemicals were poured.

From the evidence of this witness, it transpires that, he was minor at the time of incident and he was residing in Shaikh Maholla. In the incident his father, mother, elder sister, younger sister died. As per his deposition at the time of incident, a mob of Hindu Patels attacked Shaikh Maholla, just to save their lives they went to house of Mahemudmiya. He alongwith his younger sister survived, his younger sister sustained burns injury on her both legs.

After three hours of incident, they were taken out from the house of Mahemudmiya and shifted to Civil Hospital, Mahesana for treatment. A minor boy, who lost his parents, brother, sister, only one sister survived, who had also sustained burns injuries, why he will tell lie. In natural course he will narrate the true incident and they were taken out from the house of Mahemudmiya. Simply this witness has not sustained injury from that we cannot infer that, he was not inside the Mahemudmiya's house. His presence at the time of incident in the Shaikh Maholla cannot be doubted. So far as his say that, he went inside the house of Mahemudmiya is concerned when the mob had attacked the Shaikh Maholla, in that circumstances if he alongwith his family members and other members of Shaikh Maholla went into Mahemudmiya's house, which is pakka constructed house, that is natural conduct, any one will try to save himself wherever he feels safe he will go there and therefore, he went to the house of Mahemudmiya, which is much safer in Shaikh Maholla and therefore, it is a natural conduct and his say that, he was inside the Shaikh Maholla is reliable. His evidence cannot be said a hear say evidence. Simply because he has not narrated the incident before anyone in the Civil Hospital, we cannot infer that he

is telling lie. His father, mother, sister, brother have died in that circumstances we cannot expect that a minor boy, aged about 12 years to be so prompt to narrate a detailed incident before the Police or other authority and therefore, silence on his part about the incident cannot discard his testimony. As per his say, he was brought out after three hours from the house of Mahemudmiya. Looking to the inside position of Mahemudmiya's house, it was highly impossible to survive in such a circumstances but if the witness is brought out survived we cannot infer that, he was not inside the house. So far as his say that, front side window of the house was attempted to be opened. This fact is not supported by any other cogent and reliable evidence and therefore, no reliance can be placed on this part of his version. While Basirabibi is saying that back side window of the house was attempted to be broken. Thus there is discrepancies about to break the window of the house of Mahemudmiya but the discrepancies is not such which is going to effect the main incident of burning and injury to the injured and deceased. So far as pouring of kerosene and petrol and other inflammable chemicals inside the house of Mahemudmiya is concerned, from the cloths no stains either of kerosene, petrol etc. were found but the fact

that, kerosene and petrol were poured inside the house of Mahemudmiya and thereafter it was burnt is supported from the cogent and reliable evidence and it is well established by the prosecution and therefore, if no stains of kerosene, petrol or chemical were found as defended by the accused we cannot infer that, this witness is not telling the truth about pouring of kerosene and petrol inside the Mahemudmiya's house. Thus, from above all this witness was inside the Mahemudmiya's house, in presence in Shaikh Maholla or inside the Mahemudmiya's house cannot be doubted as his testimony is trustworthy, reliable and well supported by cogent and reliable evidence of the prosecution.

40. **P.W.47 - Shaikh Ibrahimhai Rasulbhai**, has deposed that, he is the resident of Sardarpur village. He was residing in Sardarpur which is just adjacent to Dharoi Colony. From 01.03.2002 there was Bharat Bandh. He was in his house for whole day. At about, 8.30 P.M. he was in his house. He heard the voice of shouting and when he came out, he saw the mob of Patels of their village shouting slogans to cut, beat and burn the Muslims. They were having Dhariya, sticks, pipe, swords etc. in their hands.

They came towards his house. Thereafter, he went to the field adjacent to his house and mob had caused damage to his house and also burnt his house. Thereafter, due to fear he alongwith his family members by way of passing through the field went to Harijanvas and took shelter in the house of Pravinbhai Khemabhai and on the next day, at about 10.00 O'clock, also took them to Sankhpur. He incurred damage worth Rs.60,000/- towards damages to his house.

It is argued by Shri Dhruv that, this witness has claimed that incident occurred at about 8.30 P.M. He had seen the mob but in his previous statement, he has not stated the time of incident as 8.30 P.M. This witness has not stated at any of the earlier statement that he can recognize the persons in the flame of burning houses. There was pitch dark. No one can be recognized, therefore, this witness is improving story of recognizing the person in the flame of burning houses. So far as this arguments are concerned, the house of this witness is situated at the entrance of Village Sardarpur while Shaikh Maholla is situated at the end of Village Sardarpur and in that circumstances, if this witness is claiming that incident has occurred at about 08.30 P.M. while witnesses of Shaikh

Maholla are stating about the incident at about 09.30 P.M. Considering the distance between Fakirvas and Shaikh Maholla, the discrepancies regarding timing is natural. If the mob was near Fakir Maholla, at about 08.30 P.M. and at about 09.30 P.M. mob was near to Shaikh Maholla, that is quite possible. Simply this witness has not stated in his previous statements that he had seen the mob, it cannot discard the fact that, the mob came and he saw the persons in the mob. No doubt this witness has not stated that, he could see the mob in the light of burning houses. From the Panchnama, it is supported that house of Fakirs were burnt. As discussed earlier there was sufficient light of burning flames as well as it was a second day after full moon day therefore, also there was light and in that circumstances if this witness is saying that, he saw the mob and he had recognized the mob that is quite probable and the say of Shri Dhruv that, it was pitch dark and no one could recognize the person is not acceptable and the say of Shri Dhruv that witness is improving the story of recognizing the persons in the flame of burning houses is not acceptable. Further, it is argued by Shri Dhruv that, as per say of this witness, he took shelter in the house of Pravinbhai in Harijanvas, but this fact is not stated in his

statement dated 03.03.2002. In his statement dated 03.03.2002, he has stated that he reached his house of his brother at Sankhpur, through fields by walk. At the same time he is claiming to have gone to the house of Pravinbhai. Pravinbhai is also a witness in this case but he has not supported this fact. Further, this witness has not stated any thing to Pravinbhai with regards to the incident. P.W.90 - Parmar Galbabhai Khemabhai has deposed that house of Fakir was set on fire by mob which came from Sundarpur side. There is overwriting in this statement dated 03.03.2002. Earlier it was written Sundarpur, subsequently it is corrected as Sardarpur. During the course of deposition this witness has stated about the mob of Patels from their village came whereas in his statement before the Police he has stated that, mob from village Sundarpur side came and thus, it is submitted by accused that this witness is not reliable at all. So far as discrepancies regarding in his statement dated 03.03.2002 and his deposition regarding he took shelter in Pravinbhai's house in Harijanvas or he reached at Sankhpur, to the house of his brother through field by walk is concerned, Pravinbhai has not supported this fact. Thus, there is contradiction whether this witness went to the Pravinbhai's house or not. So far as arguments

advanced on behalf of the accused that, this witness has not narrated the incident to Pravinbhai is concerned, a person whose house is burnt and due to fear he went to field, just to save his life under such a tense atmosphere no one can expect from that person to narrate the incident before the Police or any other person immediately. If this witness under such a tense atmosphere not telling about the incident to Pravinbhai it does not lose its credibility. So far as arguments advanced in respect of mob from Sundarpur Village is concerned, it is true that, it is deposed by P.S.I. Shri Galbabbhai Khemabbhai Parmar that, a mob which came from Sundarpur side has burnt the houses of Fakir. On perusing the deposition of Galbabbhai Khemabbhai Parmar, it transpires that he intended to say that, a mob of about 1000 persons came from the side of Sundarpur while mob of about 500 persons came from Sardarpur side. He meant to say that, there was a mob from Sundarpur side, it does not mean that persons from Sundarpur village were in the mob. So far as overwriting in his statement dated 03.03.2002 is concerned, earlier it was written as "Sundarpur", subsequently it is corrected as "Sardarpur". This witness is the resident of Sardarpur Dharoi Colony. As per the evidence of this witness, at the time of first incident

P.S.I. Parmar and Rathod were in the Market, before firing he saw the mob, having weapons in their hands, thereafter, he went to field, his house was ransacked and burnt and thereafter, due to fear he went to Harijanvas. At the time of occurrence his presence in the house and on seeing the mob, he went to field is reliable, trustworthy and cannot be doubted. His say is supported from other evidence such as deposition of P.S.I. Shri Parmar, Panchnama etc.

P.W.82 - Fakir Sabirabibi Sabirhusen has deposed on oath that, she is residing at Sardarpur adjacent to Dharoi colony. On next day of Godhra incident, there was Gujarat Bandh and on the 3rd day, there was Bharat Bandh. On the day of Gujarat Bandh, Patels of Sardarpur had burnt the cabins in the market and on the same 3rd day, Patels of Sardarpur came shouting to beat, cut and burn the Muslims. They were having weapons like sticks, pipe, spear, sword etc. At about 8.00 P.M., they came and therefore, the witness went to the field. Mob had burnt their houses. Thereafter, to save their lives, they went to the house of Pravinbhai Khemabhai and on the next day, went to Sankhpur.

It is argued by Shri Dhruv that, she is the wife of P.W.58 - Fakir Sabirhusen Imamsha whose house was burnt by the mob. As per the deposition, in the flame of her burning house she has recognized the person but she has not stated this fact in any of her statements. In her statement dated 03.03.2002, she has stated that in the moon light and by voice she recognized the persons. It is not brought on record by the prosecution that on that day there was full moon light and any one can recognize the person. There was no identification of the accused named by her, either before Police or before court. It is further argued by Shri Dhruv that, looking to her husband's deposition, her house was set on fire by the mob of village Sundarpur. No one was involved from Sardarpur. Her house was attacked, they went to the fields and hence, there is no question of any one being recognized or seen in the mob. In her statement dated 22.05.2008, recorded by the S.I.T. other names which have been given in her statement, known by her through village persons. If we go through her deposition in conjunction with that deposition of her husband, it gives difference about the conversation that they left their house and went to Sankhpur at her brother in law's house. In her statement dated 03.03.2002,

she has given time of incident at about 2.30 A.M., while before the court she is referring time as 8.00 P.M. So far as her evidence in this regard is concerned, it is true that she has not stated in her statement dated 03.03.2002 that, she has recognized the persons in the flame of her burning house. She has stated that, she had seen the persons in moon light and by voice she has recognized the persons. As discussed earlier it was a second day after full moon night. It is also evident on record that, house of Fakirs' were burnt therefore, if this witness is saying that, she could recognize the persons in the light of flame or in moon light, that is acceptable and there was sufficient light in which a person can see the mob. Simply because, it is not stated in the statement dated 03.03.2002 that, she has recognized the persons in the light of flame of burning, we cannot discard this evidence of the witness, which is otherwise proved by the prosecution and no prejudice is going to be caused to the accused from non stating this fact in statement dated 03.03.2002. It is true that, there is contradiction in her statement and deposition about the fact, whether she went to the field or she went straightway to Sankhpur to her in-laws house. She has also changed the time of incident as 02.30 A.M. while before the Court,

she is stating about 8.00 P.M. It is true that there are changes in timings in her deposition and contradiction. Therefore, those cannot be taken into consideration but she is the resident of Village Sardarpur at the time of incident, she was in Fakirvas and as the mob came and incident occurred due to fear she alongwith her husband and other family members went to Sankhpur that is proved by the prosecution and to that extent, her version is to be relied upon. Her presence in Fakirvas at the time of incident cannot be discarded. And the fact which are established and supported by other witnesses are required to be taken into consideration.

P.W.83 - Fakir Sharifabanu Sabirhusen has deposed on oath that she is residing at Sardarpur, at the time of incident, she was sitting alongwith her family members just in front of Dharoi Colony, Sardarpur. At the time of incident, she was doing labour work. She has deposed that on the next day of Godhra train incident, Patels of Sardarpur had burnt the cabins in the market. The market was closed on that day. In the night Patels were standing just in front of Dharoi Colony and at about 8.00 P.M., they were shouting slogans to cut, beat and burn the Muslims. They came to their house. Her father came out and saw the

mob therefore, they went backside the field thereafter, they went to Harijanvas passing through the fields and they stayed in the house of Pravinbhai. In the morning, police came and they went to Sankhpur and then they came to Vijapur.

It is argued by Shri Dhruv that, she is the daughter of P.W.58 - Fakir Sabirhusen Imamsha. She has also given same version as per her mother. The accused who are named by her in her deposition were not named by her in any of her statements except accused Kacharabhai Tribhovandas. Thus, this witness has tried to involve false persons at the instance of interested persons. From the deposition of father and mother, it has come out that they had gone to the house of her uncle at Sankhpur, but she is denying this fact. Names of the accused, which are given in the deposition as were recognized by her in the flame of burning house, but not stated in her statement dated 03.03.2002 and 24.06.2008. Thus, there is an improvement upon the version. If she had recognized the persons from the voice there was no question of identifying them before the court by face. The accused are not identified by her. In the statement dated 03.03.2002, she has mentioned the time of incident of setting on fire as 2.30 A.M., while before

the court the time has been stated as 8.30 P.M. On 01.03.2002, the time of 2.30 A.M. supports the theory of defense that the mob of village Sardarpur came. The deposition of this witness that on the first day they went to Harijanvas at the house of Pravinbhai and stayed there for a night and on the next day, in Police vehicle, they went to Sankhpur at her uncle's house is an improved version. She has not stated this facts in any of her statement dated 03.03.2002. She has not stated incident of setting on fire the cabins or house in Shaikh Maholla. Considering her deposition, she has deposed similar to her mother's deposition. No doubt this witness has denied the fact that, they went to Sankhpur accepting this fact as it is the fact that, mob came, burnt their house and they went towards the field or Harijanvas is much supported by other evidence and it is also supported from other cogent, reliable evidence that, she saw the mob in the flame of burning light or moon light. There was sufficient light, in which a person could see the mob. Simply because this fact is not stated in her statement dated 24.06.2008 we cannot discard her this say. So far as her version that, she recognized the person from the voice is concerned, she has identified the accused in the Court by face. In that circumstances much reliance

cannot be placed on that identification. So far as contradiction, discrepancies with regard to timings of incident is concerned, there is contradiction at one point of time, she is stating the time at about 8.30 P.M. while on very next time she is telling time at about 2.30 A.M. Therefore, no reliance can be placed on her this version. So far as her say that, on first day they went to Harijanvas in the house of Pravinbhai, stayed for a night and on next day in Police vehicle they went to Sankhpur at her uncle's house is concerned, no doubt this fact is not stated by her in her statement dated 03.03.2002 but this fact is supported from the evidence of her father and mother i.e. P.W.58 - Fakir Sabirhusen Imamsha and P.W.82 - Fakir Sabirabibi Sabirhusen respectively. Therefore, her this say cannot be discarded and on that count that, it cannot be said that this witness is tutored one. Her presence in her house at the time of incident cannot be doubted. She is the resident of Village Sardarpur, residing in Fakirvas, She was residing with her parents, therefore, her say that, mob came and set on fire the house and they went to Harijanvas and then to Sankhpur cannot be discarded and her deposition to that extent is trustworthy and reliable.

It is argued by Shri Dhruv that, one tractor was

parked near to his house having 2,3,4 barrels of Kerosene and petrol. Nathu Kachra and Bhikha Joita were passing through the road and went towards the house of Kantibhai Prabhudas. They were carrying Kerosene gallons with them and on that day at late night mob of Patels were seen fixing light. Thereafter, witness saw the flames in the Shaikh Maholla and thereby from the house of Mahemudmiya. Persons from Shaikh Maholla were shouting for help, mob was very large and he could not go. Rasulmiya Nanumiya came shouting for help. Mob of Patels, threaten him that if he will try to save Muslim, then he will be set on fire and on the next day morning through papers he came to know that any one can give the deposition therefore, he alongwith Prahladbhai Nathumiya went to Vijapur and give a computerized typed copy of an application and after preparing it was sent to SIT. It is the say of the accused that after 6 years for the first time this witness has sent an application to the SIT and prior to that he is silent either before Police officers or before any one. His statement was recorded on 20/05/2008, by SIT for the first time. It is highly impossible that any one who is knowing such vital would not disclose these facts about 6 years in a case when his cabin was also set on fire. He is knowing Munsufkhan,

he was present at the meeting arranged at the house of Munsufkhan, even he is not stating this fact to him also. This witness is a member of Gram Panchayat, Sardarpur since the year 2007. It is unbelievable that he would not inform any one about this fact. It is not the say of the witness that he had gone to the Police and Police has not recorded his statement. He is an uneducated person, and the application dated 07/5/2008 bears only signature. Application is computerized, he was not having opportunity to make such application or inform about this fact. But he has not disclosed before any one, his version is contrary to the statement dated 20/05/2008. He has not stated about focus light in his statement. Names of the accused, which he has deposed before the court are not stated in his statement dated 20/05/2008, carrying Kerosene barrels by certain person has not been stated by him in his application as well as in his statement. Story of parking of Tractor containing barrel of Kerosene is created after 6 years. Ramabhai Mohanbhai is named before S.I.T., but after investigation it was found that he is not an accused only Kantibhai Prabhudas is named in his statement but he is not identified before the court. He has named Jitendra Kantibhai before the court. He is not an accused in the

Court. Bhikha is also named by this witness in the court but he is not identified by him in the court. As per say of this witness Shaikh Maholla is visible from Rawalvas and incident was witnessed by him from a distance of 25 ft. and he saw Patels who had threatened him at distance of 20 feet who had come to see Rasulmiya. This witness is not saying that Patels of his village are responsible for incident. Though he is knowing the accused in the court room, but he is not saying that they are involved in the incident. Everything stated by this witness in his application dated 7/05/2008, statement dated 20/05/2008 and deposition before the court, is not on record.

41. **P.W.71 - Rawal Mangabhai Ramabhai** has stated on oath that, he is residing at Sardarpur and staying in Rawalvas which is just behind the Shaikh Maholla. There are four Rawalvas in Sardarpur, one behind the panchayat, 2nd in the market and 4th one behind Shaikh Maholla. There are 40 houses in Rawalvas falling behind the Shaikh Maholla. The said witness carries Tea Stall near Primary school. On 28.02.2002 there was Gujarat Bandh. He was in his house. In the late hours, he came to know about the burning of cabins. There was mob of Patels therefore, they could not go in the market. On the next day, at about 10.00 A.M., he

went to the market where his cabin was also burnt. He saw the cabins in burnt position therefore, he alongwith Haribhai Maganbhai and others whose cabins were burnt, gathered in the market and had decided to do something about the burning of cabins therefore, they went to the house of Manubhai and told Manubhai that their cabins have been burnt. Munsufkhan had written the complaint of Haribhai Maganbhai. Haribhai Maganbhai stated the names of the persons. As there was Bandh, transportation was also closed. They could not go to the Police and hence, Munsufkhan had informed the Vijapur Police. Vijapur Police had told that mobile van is coming. Then after, Munsufkhan went for offering Namaz and witness went to his house. On the same day, late night, at about 9.00 P.M. Ramabhai Mohanbhai Patel brought tractor and his tractor was standing in the road adjacent to the house in which 3-4 barrels of kerosene and petrol was there. Thereafter, he alongwith one Natubhai Kacharbhai, Jayantibhai Ambarambhai, Kalabhai Bhikhabhai, Jitendrakumar Kantilal and Bhikhabhai Joitaram, passing from the road falling just in front of his house went towards the house of Kantibhai Prabhudas in Kapoorvas. He saw them carrying with Kerosene. When they were passing from his house,

smell of kerosene was coming. There were two ways from the house of Kantibhai Prabhudas, for going to Kapoorvas. From that, a person can pass from Mahadev to Shaikh Maholla. They went accordingly and in the night, mob of Patels were seen. Thereafter, sometime, he saw the fire and flame coming from the house of Mahemudmiya and Shaikh Maholla. He heard the voices screaming for help. As mob was big, they could not go for help. They were standing just in front of their Maholla. Rasulmiya Nanamiya came to him screaming for help at that time, mob of police came and told them that if you help the Muslims, they will burn them also. Thereafter, he came to know that at about 2.30 A.M., 25 to 28 persons of Shaikh Maholla died. At about 2.30 A.M. police came and took the dead bodies. Due to fear of Patels, persons of Maholla and this witness went to their relatives. Only 2-4 persons were stayed in Maholla and he was also in the Maholla.

So far as evidence of this witness is concerned, he is the resident of Rawalvas, which is situated just behind Shaikh Maholla. As per Map produced by the prosecution the Rawalvas, where the present witness is staying is shown towards Northern side of Mahemudmiya's house. This witness is an independent witness. On the date of

incident dated 28.02.2002, his cabin in the market was also burnt by the mob. On the very next day when he went to the Market, he came to know about setting on fire to the cabins. Cabins which were burnt were belonging to Balabhai Ramabhai, Prahladbhai Ganpatbhai, Nayi Mangaldas Gulabchand, Munsufkhan, Jamal Dilshadmiya, Motibhai Maganbhai, Haribhai Maganbhai, Girish Mafatbhai and Kantibhai Khemabhai, as their cabins were burnt they gathered and to do something, a meeting was organised in the house of Munsufkhan Pathan, a complaint was drafted, which was written by Haribhai Maganbhai. As there was no transport facility available on that day, Munsufkhan informed the Police by telephone. Complaint in this regard is registered vide I.CR.No.45/2002 with the Vijapur Police Station supports the say of this witness regarding setting on fire cabins in the market on 28.02.2002. Further, as per deposition of this witness he saw Ramabhai Mohanbhai carrying Tractor at about 9.00 P.M., having barrels of kerosene, petrol etc. Thereafter, he saw Natubhai Kacharabhai Patel, Kalabhai Bhikhabhai Patel, Jayantibhai Ambaram Patel, Bakabhai Mangaldas Patel, Kantibhai Prabhudas, Jitendra Kantibhai, Bhikhabhai Joitabhai passing from the road. Thereafter

they went to the house of Kantibhai Prabhudas. He saw them carrying barrels of kerosene when they passed through his house, there was a smell of kerosene. Thereafter, he saw them passing through small doors for going towards Mahadev temple. On the very same day, he saw the mob. All the Patels mentioned above were in the mob. Thereafter, he saw the burning flames from Shaikh Maholla and persons from Shaikh Maholla were screaming for help. He was standing at the entrance of his Maholla, at that time Rasulmiya Nannumiya came to him and asked him to save him, at that time mob of Patels came and threatened him if he helps the Muslims, they will not leave him also. Thereafter, at about 2.30 A.M. Police came and took the dead bodies to Civil Hospital and rest of persons were shifted to their relatives. As per say of this witness, persons from Rawalvas also went to their relatives. Only Ganabhai Nathabhai, Bhikhabhai Nathabhai and Govindbhai Mohanbhai stayed there. From this evidence, taking of petrol, kerosene by the Patels in the evening is concerned, it transpires that this fact is stated by this witness with a view to show that, there was preplan to burn the houses in Shaikh Maholla or to burn the cabins as

alleged by the prosecution. But as discussed in the paragraph of conspiracy this evidence is already discussed, therefore, there is no necessity to discuss this evidence regarding conspiracy now. This evidence is not sufficient to prove conspiracy therefore, no reliance can be placed on this version of the witness. So far as cabins which were burnt on 28.02.2002 is concerned cabin of this witness was also burnt. This fact is also supported by Panchnama of scene of incident and other documents and therefore, the version of this witness in this regard is reliable. So far as he saw the mob of Patels is concerned, from this evidence it transpires that, he saw the flame of burning, who burnt which house and at that time who were in the mob is not satisfactorily explained by this witness. As per his say at the time of incident, he was standing at the entrance of his Maholla as the mob came from the entrance of Shaikh Maholla and proceeded towards Mahemudmiya's house, it was not possible for this witness to see whole incident from the entrance of Rawalvas. Therefore, it cannot be inferred that, this witness is the witness of incident of burning the houses in Shaikh Maholla. So far as threatening this witness by the mob is concerned, there is no such case of the prosecution that, the mob had threatened this witness.

So far as deposition of this witness regarding Rasulmiya Nannumiya is concerned, he might have approached to this witness but Rasulmiya Nannumiya is not examined as a witness. Further, it is not the case of prosecution that Rasulmiya Nannumiya approached to the witness therefore, no reliance can be placed on the version of this witness in this regard. So far as evidence regarding Police came at about 2.30 A.M. and took the dead bodies is concerned, that fact is supported by cogent and reliable evidence of the prosecution. Therefore, said version of this witness is reliable. He had replied to S.I.T., his statement was recorded by the S.I.T. From his cross-examination it transpires that, Rawalvas is at the distance of 50 Ft. if something occurs in Shaikh Maholla, it can be seen from Rawalvas. Front portion of Shaikh Maholla cannot be seen from Rawalvas while Graveyard can be seen from Rawalvas. He had not seen the incident of setting on fire. There was mob of Patels, he saw the mob at the distance of 100 Ft., he saw the mob proceedings towards Mahadev's temple, he saw the mob on the road which is falling just in front of his Maholla, there were about 500 to 700 persons while on other side road there were 200 to 300 persons in the mob. When the mob came towards Rawalvas there were 1000 to

1500 persons in the mob. When the mob came to Rawalvas, he saw the mob at the distance of 25 Ft. Threatening was given to him by the Patels from the distance of 20 Ft. At that time there were Govindbhai Mohanbhai, Bhikhabhai Nathabhai and Ganabhai Nathabhai with him. Mob came to kill Rasulmiya. So far as this evidence is concerned, this is not the case of prosecution. This witness is telling something new before the Court. This witness was silent about six years. Further first time he has made application to S.I.T. prior to that, he is not stating any fact which is stated by him in the application or in his deposition before the Court. Further, he is not a victim of incident. There was no necessity for him to have fear from Patels of the village. There is no rivalry between Patels and Rawals'. As per the case of prosecution there was no intention of mob to threaten or kill Rawals' etc. As per deposition of this witness, he was having close relation with Munsufkhan Pathan, which suggests that, there is possibility that, to help the victims at the instance of Munsufkhan, this witness is stating the facts contrary to the facts and evidence of prosecution. His evidence is contrary to his statement dated 20.05.2008, which was recorded by S.I.T. pursuant to his application dated 07.05.2008 and that

contradiction is proved in the deposition of Investigating Officer. This witness is silent in his statement about focus light. In his deposition he has stated some new facts, which are not stated in his application dated 07.05.2008 or 20.05.2008. Carrying of kerosene barrels by some of the persons is not stated by him in his statements. Further, when those persons were carrying kerosene barrels there was smell of kerosene. As this witness has deposed that Patels of his village are responsible for the incident occurred in the Shaikh Maholla and he is claiming that, he is knowing everyone in the village. Even the accused sitting in the Court room in spite of the fact that, he has not deposed that, those are involved in the incident, which occurred in the Shaikh Maholla. Relying on this fact, it is argued by Shri Dhruv that, from the deposition of this witness Patels of Village Sardarpur are not involved in the incident and which supports the defence case that, mob of Village Sundarpur has attacked the house of Mahemudmiya from the back side of his house. But this witness is not saying that mob had attacked the Mahemudmiya's house from the back side. From whole deposition of this witness no where it comes out that, mob of village Sundarpur has attacked the house of

Mahemudmiya, from the back side of the house therefore, arguments advanced by Shri Dhruv in this regard is not acceptable. However, considering whole deposition of this witness, as discussed above, is not much reliable, trustworthy. However, his evidence regarding burning of cabins in the market on 28.02.2002 is supported by other evidence and that is to be relied upon.

It is argued by Shri Shah that, he is the independent witness and resident of Sardarpur, Rawalvas having houses just backside of Mahemudmiya's house. As per this witness on 28.02.2002, at about 9.00 P.M., Rama Mohan came with tractor having two-three tins of Kerosene and one tin of Petrol. Thereafter, Natubhai Kachrabhai, Kantibhai Prabhudas, Jitendra Kantilal and Bhikhabhai Joitabhai came from the road falling just in front of his house and they went towards the house of Kantibhai Prabhudas. He had seen taking gallon of Kerosene and petrol. When they were passing smell of kerosene was coming. He is the witness of minor community. He has to stay in the village therefore, he won't go against the accused but there is possibility of pressure upon this witness. Therefore, if he was silent about this fact it is natural one. When again investigation started by S.I.T, he had given an application

stating facts which is reliable one and is required to be considered. No statements were recorded of these independent witnesses therefore, their names are not mentioned in the Charge-sheet. Assuming this witness is telling lie, then defence could have examined other three witnesses in their support. This witness is sufficient for the evidence of conspiracy and therefore, there is no reason to disbelieve this witness. He is staying in the village therefore, he knows the accused. He is the member of the Panchayat from where petrol and kerosene were brought and who brought the petrol and kerosene, for this evidence, this is an important witness. All the four accused have not explained in their further statement about this evidence as to what purpose they have brought petrol and kerosene.

Considering above all, this witness is an independent witness but the incident about taking two to three barrels of Kerosene and Petrol in Tractor and that he saw Natubhai Kacharabhai, Kantibhai Prabhudas, Jitendrabhai Kantibhai, Bhikhabhai Joitabhai came from the road falling just in front of the house of this witness and they went towards the house of Kantibhai Prabhudas is concerned, that incident cannot be considered as preplanned or

conspiracy. No doubt this witness belongs to minor community and he has to stay in the village, he may be under pressure of the accused but here in the present set of circumstances there is no evidence from which we can infer that, this witness was under pressure of accused. He was silent about six years. It is only before S.I.T. he has submitted the application. Considering the fact that, this witness is the resident of Village Sardarpur and he has to stay in Sardarpur and after the incident, victims have left the Village Sardarpur and this witness is of minor community and in that circumstances he was silent and on that strength we cannot infer that, this witness is a got up witness and he is telling lie. Initially his statement was not recorded and therefore, he has not been shown as witness in the charge-sheet. This fact at the most can be considered as irregularities in investigation but these irregularities are not such which will prejudice the rights of the accused. Further, accused could have examined other independent witnesses, which were with the present witness at the time of occurrence. But the defence has not resorted to that opportunity. Thus, the say of Shri Dhruv that this witness is not trustworthy, reliable is not acceptable.

P.W.72 - Rawal Prahladbhai Nathabhai resident of

Rawalvas in village Sardarpur has deposed that there are four Rawalvas viz. one is behind Panchayat office, two in the market and one behind the Shaikh Maholla and near to his house there are four houses of Rawals. Thus, total there are 75 houses in Rawalvas. He is carrying business of driving. On the next day of Godhra Carnage Patels of their village has burned the cabins situated between the school and his house. Those cabins where of Rawals', Harijans' and Muslims', and on that day, he was sitting on the Ottla of Mataji. Thereafter, he went to his house, and on the next day morning, he went to Sundarpur for driving. At about 8 – 9.00 P.M., he came back. He saw the mob of Patels of their village in the market. In the night he was in his house. At about 10.30 P.M., shop of Memon Chandbhai was broken and they entered in the house of Valikaka and were shouting to cut burn and beat Muslims, and they came towards their house. In the night, he slept at about 1.30 A.M. Junaidbhai and Vahidbhai came to him, they went to the house of Munsufkhan and he went to take the vehicle from Sundarpur. He went alongwith the Police and came back at the entrance of the Shaikh Maholla and took the dead bodies of 28 persons in the vehicle and went to Mahesana alongwith one Constable – Maharaj and

Badshah Mahemudkhan Pathan to Civil Hospital and after Post-mortem he took the dead bodies to graveyard and he went to Ilol alongwith the injured and other person, and in the night he came back.

It is argued by Shri Dhruv that, this witness has not implicated any of the accused by name in his deposition assigning any overt act. He has identified Dahyabhai Kacharabhai. Two sons of Valikaka, P.W.42 - Memon Altafhusen Valibhai & P.W.43 - Memon Aarifbhai Valibhai are examined but they have not stated about the damages and ransacking of warehouse. As per say of present witness Vallikaka came to his house at about 12.00 O'Clock and stayed there for about half an Hour, while sons of Vallikaka have stated that they went to Harijanvas and went to the house of present witness. He is the person who took the dead bodies in the vehicle to Civil Hospital, Mahesana for Post-mortem. Dead Bodies were taken to graveyard and survived persons were taken to Ilol. Till then he is silent about the attack at the house of Vallikaka. Even he had preferred an application in the year 2008 and he has not disclosed this fact. For the first time this fact is deposed by him before the court.

This witness is the person who took the dead bodies in his vehicle to Civil Hospital, Mahesana and after Post-mortem those dead bodies were taken by him in his vehicle to graveyard. Thereafter, he went to Ilol. This witness is also an independent witness. This witness was silent about for six years. No other evidence has supported the version of this witness that, house of Valikaka was set on fire.

42. **P.W.84 - Kureshi Imtiyazali Husenmiya** has deposed that, he is the resident of Sundarpur on 28.02.2002, there was Gujarat Bandh and on 01.03.2002, there was Bharat Bandh, he was in his house. On 28.02.2002, Patels of their village told that, if they want to save their lives, they may go to their relatives or at a safer place. On 01.03.2002, P.S.I. Shri Parmar came to his house. He called them and told that riots have taken place and if they wanted to go anywhere they will take them. Accordingly other persons of their Maholla were also told. Thereafter, they had a talk with Himmatkhan Tajkhan to take them from Sundarpur and P.S.I. Parmar, took them from Sundarpur to Sardarpur. About 20 persons were there in Jeep '705 Commander', who were taken from Sundarpur to Sardarpur, in four rounds. In the fifth round, when he was going from

Sardarpur, he saw a mob of Patels in Sardarpur market. As his vehicle came near to that mob, Becharbhai Odhavbhai threatened him that, if he will bring other in his vehicle they will burn him by pouring petrol, thereafter, he went to Sundarpur and told P.S.I. Shri Parmar about the threatening. Shri Parmar told him that, nothing will happen, he is there and Shri Parmar told him to take rest of the persons in his vehicle and thereafter, he took the vehicle to Sardarpur. P.S.I. Parmar, was in his vehicle and they went to Sardarpur in Pathan Maholla. Shri Parmar went to the house of Munsufkhan, wherein, 10 to 15 Muslims were in meeting. He took his vehicle to Sardarpur - Pathan Maholla. After half an hour he came to know that, in Sundarpur incident of burning and causing damage to vehicle has started. Thereafter, at about 9.00 P.M. at the entrance of Shaikh Maholla Patels have burnt the cabins. After half an hour, police came and the mob disbursed and thereafter the police went back. Again in the Chowk, mob gathered and hence started pelting stones towards the Pathan Maholla. At that time, they were present and they had also started pelting stone, thereafter, mob went towards Shaikh Maholla. Voices of screaming to save persons was coming from Shaikh Maholla and mob of Patels were

throwing the persons in the fire after beating them. Up to two to three hours this incident happened and there was silence and one Police person came to Pathan Maholla and told that in Shaikh Maholla 28 persons have been burnt and asked 4 to 5 persons to go to Shaikh Maholla. Therefore, this witness alongwith other persons from Pathan Maholla went to Shaikh Maholla. In Mahemudmiya's house, there were dead bodies, he got scared and went to Pathan Maholla, during incident he saw Babubhai Ambalal Panchal of Sundarpur Village who was injured and was taken by the persons to the private hospital. He was injured on his neck. This fact was not disclosed by Patels of Sardarpur. Earlier in the morning, two buses and Police Van came and took them to Savala. Subsequently, he came to know that, Dalumiya and sister Nurubibi were beaten by the mob and were lying just in front of their house. Police took them to Bhalak. On 28.02.2002, Mukeshbhai Madhabhai had organized a meeting in Sundarpur Village and had instigated the persons of Sundarpur that, in Sabarmati Train, Kar Sevaks are murdered therefore, in Pathan Maholla, there are persons from Sundarpur in Village Sardarpur and have instigated to cut and beat them.

It is submitted by Shri Dhruv on behalf of the accused that whatever he has stated before the court, it is stated for the first time. He went up to Savala alongwith Police authorities but he was silent, this witness is telling different story. As per this witness after assaulting persons they were thrown in the fire alive. None of other witness is telling this fact and this fact is not stated by him in his statement dated 21.05.2008. As per his deposition one Babubhai of Sundarpur was injured who was in the Mob which suggests that there was Mob of village Sundarpur instigated by prerogative speech of Mukeshbhai Madhabhai. This witness was shifted to village Sardarpur from Sundarpur. Thereafter, he was shifted to Savala camp. On 13.05.2008, he had preferred one application to S.I.T. narrating the certain facts in connection with the incident.

From the evidence of this witness as well as arguments advanced on behalf of both the sides, it transpires that, he is the witness who had taken the persons from Sundarpur to Sardarpur in Pathanvas, in his vehicle. This witness has stated that, he was threatened by Becharbhai Odhavbhai that, if he brings the persons from Sundarpur, he will be burnt by pouring petrol and kerosene. As per Shri Shah this facts suggests that,

persons from Sardarpur were annoyed as Muslims from Sundarpur were brought in Pathanvas. There is no evidence against Becharbhai Odhavbhai therefore, though application was preferred under Section 319 of Cr.P.C. to join him as an accused in the present case but after hearing both the sides and considering the evidence produced on record said application was rejected. This witness is saying that, he was threatened by Becharbhai Odhavbhai, which is not supported by any other evidence. This witness is stating the different story that after beating the victims they were thrown in the fire. This witness is the only witness who is telling about the presence of Babubhai Panchal of Village Sundarpur, who was present in the mob. No other witness is supporting this fact. Neither the Vijapur Police nor S.I.T. has taken Babubhai Panchal as an accused, as there was no evidence against Babubhai Panchal, assuming Babubhai Panchal was present in the mob. From that also we cannot infer that, Patels of Village Sardarpur were not present in the mob. As per deposition of this witness when he brought the persons from Sundarpur to Sardarpur and they were in Pathan Maholla and at that time incident in Shaikh Maholla occurred. This witness is the resident of Village Sundarpur. After the

incident, he stayed about two months in Savala Camp. Thereafter, he went to Siddhpur and at present he is residing at Village Sundarpur since four years. He has not informed Police or any other authority about the incident till he was in Savala Camp. Thus, this witness is telling something different from other witnesses. Relying upon the deposition of this witness, it is the say of Shri Dhruv that, this witness is supporting the defence of the accused side. But by considering the evidence as a whole there is nothing on record which suggest that, this witness is supporting the defence of accused that, mob from Sundarpur came and attacked Shaikh Maholla.

43. **P.W.39 - Memon Janmahmod Ismilbhai** has stated on oath that, he is the resident of village Sardarpur and he is caring business in the name of Sahakar Traders, and they are having Memon Cloth Store in Sardarpur. On 01.03.2002, there was Bharat Bandh and on 28.02.2002, there was Gujarat Bandh and therefore, the shops were closed and they were inside the house. At about 8.30 - 9.00 P.M. voices were coming to cut the Muslims, not a single Muslim should be left alive. Therefore, due to fear they went to Harijanvas, at about 12.00 – 12.30 A.M. he saw

smoke and at about 2.30 A.M. Police came and asked them to come out. They came out, at that time, there was silence, thereafter, they went to inquire about their shop. Shop was burnt. Whole items were burnt, including the furniture and approximately he sustained damages of more than Rs.2,00,000/-. Thereafter, they went to Shaikh Maholla and there was damage in Shaikh Maholla. Police was taking the dead bodies out from the house and there were seven to eight persons alive, who were taken to the hospital. Thereafter, they went to Himmatnagar.

It is submitted by Shri Dhruv that, this witness is staying in area surrounded by Patel community but there are no damage to their house. As per say of this witness on 28.02.2002 and 01.03.2002, he had done his daily routine work. He is not stating about the gathering of Patels of their village and attack. Even he is contrary with regard to the time of incident. This witness is not giving evidence against any accused.

From the evidence of this witness the incident of burning the cabins as well as the incident occurred in the Shaikh Maholla are supported and this witness has also stated about the damages, which were done by the mob

during burning of cabins in the market as well as the houses in Shaikh Maholla. Nothing more comes out from the evidence of this witness. There are contradictions in his deposition about the timings of gathering of mob and committing the offence. This witness is not involving anyone. So far defence in timings is concerned, that discrepancies are not such from which we can discard his whole evidence

P.W.40 - Memon Mahmodaarif Janmahmod has deposed on oath that he is resident of Village Sardarpur carrying business of cloths, in his father's name as Memon Cloth Stores and also having shop of Cement and Sanitary wares in the name of Sahkar Traders. On 28.02.2002 there was Gujarat Bandh and on 01.03.2002 there was Bharat Bandh. On 28.02.2002 cabins of Muslims were burnt in their village. Atmosphere was tense. On 01.03.2002, he was in his house. At about 7.30 - 8.00 P.M. he heard the voice of mob shouting to cut and burn the Muslims and burn the properties of Muslims. After hearing those voices, they went to Harijan Maholla. From there, they saw smoke and flame coming from Shaikh Maholla. At about 2.30 A.M., police came and they came out from Harijan Maholla and went

towards Shaikh Maholla. He saw 2-3 houses were burnt in Shaikh Maholla and police were taking the dead bodies from there. As he was scared, he went to his shop. His sanitary items were stolen. Gas and petrol were also stolen. Cement bags were in broken condition. Both the shops of his father were burnt and thereafter, they went to Himmatnagar in the vehicle of Sattarbhai Memon.

This witness is also supporting the incident of burning of cabins in the market and due to fear they went into Harijanvas and thereafter burning incident in Shaikh Maholla occurred. This witness is stating regarding the damage caused to the properties. Nothing more comes out from the deposition of this witness.

P.W.41 - Memon Abdulkadir Ismilbhai, resident of village : Sardarpur has deposed that he is carrying his business of Grocery in the name of Memon Grocery Store. There was Gujarat Bandh on 28.02.2002 and Bharat Bandh on 01.03.2002. On 28.02.2002, cabins of Muslims were burnt in Vadvavala chowk and on 01.03.2002, in the evening two cabins of Muslims were burnt and there was tense atmosphere in the village. At about 9.30 P.M., mob was shouting to cut the Muslims. Due to fear, they went to

Harijanvas. The incident occurred during whole night from 9.30 P.M. to 2.00 A.M. He saw the smoke. At about 3.00 A.M., police came and asked them to come out. Thereafter, they went to their house and they went to Himmatnagar.

P.W.42 - Memon Altafhusen Valibhai has deposed that due to Godhra incident, there were riots in Gujarat. In Sardarpur also, there was riots. On 28.02.2002, there was Gujarat Bandh and on 01.03.2002 there was Bharat Bandh therefore, after closing their shop, they were in other shops. On 28.02.2002 in night, about 8 to10 cabins of Muslims and Hindus were burnt and on 01.03.2002 at about 8.00 – 8.30 P.M., mob gathered therefore, by closing their houses, they went to Harijanvas and in the night, they heard the voices of mob. Mob was shouting to cut the Muslims. Not a single Muslims should be left alive. Thereafter, in the night, they heard the voices screaming for help coming from Shaikh Maholla and they also saw the smoke. At about 2.30 A.M., police came and police asked them to come out. Thereafter, they came out and went to their house and after taking their clothes they went to Himmatnagar.

P.W.43 - Memon Aarifbhai Valibhai has deposed that he is the resident of village Sardarpur having Pan Centre

cabin in the name of Rafash Pan Center, near the bus stand and Jognimata's temple. On the next day of Godhra incident, there was Gujarat Bandh therefore, his cabin was closed and on the next day, there was Bharat Bandh and on that day, he was also in his house after closing his shop. On that day, in the night, cabins were burnt including his cabin and he incurred loss worth Rs.20,000/-. On the next day, he heard the voices to cut and beat the Muslims. Thereafter, they went to the house of Harijanvas. At about 12.30 A.M. they heard the voices from Shaikh Maholla and saw the smoke. At about 3.00 A.M., police came and asked them to go at safer place. Thereafter, they went to Himmatnagar.

P.W.44 - Mansuri Munirahmed Noormahmed has deposed that he is the resident of Sardarpur. On 27.02.2002, there was Godhra incident. On the next day, there was Bharat Bandh, market was closed. Atmosphere was tensed. Due to fear, after closing the house, they went to Harijanvas and on that night, riots took place in Shaikh Maholla. 28 persons were dead and others were injured. Thereafter, there was silence and at about 4.00 A.M., in private vehicle they went to Himmatnagar. In the riot, his cabin was damaged and he incurred damages worth

Rs.35,000/-. His brother's cabin was also damaged and he too incurred damages worth Rs.35,000/-.

P.W.46 - Pathan Sabirmiya Akumiya has deposed on oath that he is the resident of Sardarpur village and resides in the house situated just opposite to Shaikh Maholla and he is serving as peon in the Gram Panchayat office. At the time of incident, he was serving as Bore Operator. That on 28.02.2002, there was Gujarat Bandh and at about 8.00 clock, he went to water works. Just in front of water works, there is a shop of Mahemudmiya. A mob of 8 to 10 persons were there and they were shouting to cut and beat the Bandiyas. After starting the water works, he went to his house and then to the market. Till then, the persons in the mob increased to 50-60 persons and mob compellingly asking to close the shops. After closing the market and cabins of Shaikh Maholla they went to Mahadev Temple. At that time, the witness went for water works. Thereafter, mob disbursed from the temple and the witness went to his house for his lunch. After lunch, again he came to water works as there was no light. At 5.00 P.M., after closing the water works, he was going to his house. Thereafter, at about 6.00 P.M., he alongwith his family members went to his father's old house. Thereafter, at about 8.00 P.M., anti

social element had burnt the cabins situated in the front of panchayat and Primary School. Those cabins were of Muslims and other communities. In the mob, persons from Patel Community were there. By burning the cabins, they created tense atmosphere in the village. On 01.03.2002, there was Bharat Bandh. He was in his father's house. In the night, there was meeting in Munsufkhan Yasinkhan's house with regard to discussing the burning of cabins of their community. First they discussed to lodge complaint but as the transport facility was closed therefore, they could not lodge the complaint. Shankerbhai Someshwar Pandya, Kehsabhai Mohanbhai Raval, Mafatbhai Sunderbhai Chauhan, Janmohmad Ismailbhai Memon, Kadarbhai Ismailbhai Memon, Nisarahmed Gulamnabi Mansuri, Pathan Kalekhan Aladkhan and Bachumiya Bapumiya were gathered in the house of Munsufkhan Pathan. Thereafter, the day being Friday, it was namaz time and they went to offer namaz and they decided to gather after namaz. After offering Namaz, they gathered and P.S.I. – Parmar from Vijapur came and they had requested Shri Parmar that there is tense atmosphere in the village. Some untoward incident may take place in the village and asked for police protection. Persons from Patel Community were

called and it was told to them that no untoward incident should occur. Only two persons from Patel community namely – Kanubhai Joitaram and Dashrathbhai Kacharbhai came in the meeting. They came and went away. Thereafter, P.S.I. Rathod came. They had also requested P.S.I. Rathod for police protection. Thereafter, P.S.I. Rathod and Parmar went to take round in the village. Thereafter, at about 2.30 A.M., the incident at Shaikh Maholla had started and thereafter the DSP came to them and went to Shaikh Maholla. Thereafter, he sent 4 to 5 persons to their Maholla and then police came and asked him to go to Shaikh Maholla to load the dead bodies in the vehicle. Alongwith him, Kalekhan Aladankhan Pathan, Mehmudkhan Latifkhan Pathan and Kamalkhan Umalkhan Pathan were there and they went to the Ordi of Mahemudmiya Ismailbhai. Door of the room was opened. D.S.P. went towards that door and he received an electric shock and near the window of the house of the Mahemudmiya, electric wire was passing from the house of Natvarbhai Prabhabhai and it was tied with one iron rod and that iron road was put inside from the window. Thereafter, they went inside the room. Dead bodies were lying there and they took the dead bodies in Mini Truck

(TATA-407). Prahaladbhai Raval was the driver of that vehicle. Thereafter, he went to his Maholla. Thereafter, they were taken to Savala.

It is submitted by Shri Dhruv that, this witness was residing in the house situated just opposite of Shaikh Maholla and was serving as bore operator in Gram Panchayat. This witness was called by the police after the incident to load vehicles with different dead bodies. His statement was neither recorded by police nor he had given his statement before police prior to formation of S.I.T and for the first time, on 06.05.2008, he had written a letter to S.I.T. Thereafter, his statement was recorded by S.I.T. It is submitted by the accused side that when this witness was called by the police in Shaikh Maholla, he had not narrated the incident dated 28.02.2002. He was having ample opportunity to narrate the incident before the police. Thereafter, he went upto Savala. Then also he has not narrated the incident dated 28.02.2002 upto six years. This witness is silent and now he is depositing before the Court about the incident dated 28.02.2002. Not only that as per his deposition, he went to the house of Munsufkhan Pathan on 01.03.2002 where a meeting was convened and people

from the village gathered there to discuss the issue. Police was there and in respect of that he is not saying a single word about the incident dated 28.02.2002. As per the deposition of this witness, incident dated 28.02.2002 they could not go to lodge the complaint because conveyance was worstly affected. P.W.90 - Parmar Galbabhai Khemabhai has deposed that he saw cabins which were set on fire. However, he had not received information who and when those cabins were set on fire. If the present witness was inclined to lodge the complaint, P.S.I. - Parmar was very much present in the house of Munsufkhan Pathan, he could have given the complaint to P.S.I. Parmar about the incident dated 28.02.2002. This witness is staying in Sardarpur still however, for the first time, he addressed a letter to S.I.T. dated 06.05.2008 and even that letter he has not disclosed that due to threat he could not disclose the incident dated 28.02.2002 and names of the accused side in person. It is alleged by the accused side that application dated 06.05.2008 and affidavit were prepared by the Citizen for Justice and Peace therefore, this witness is unable to show his ability to state whether the application was got up type. As per this witness it was rough writing executed by him but he has not produced any such rough writing.

Further, it is submitted by the accused side that evidence of this witness is of material contradictions and embellishment and liable to be rejected. This witness has involved Vanabhai Ishwarbhai and Rajeshbhai Govindbhai for the first time in his deposition. They are not the accused before the Court. Further, it is submitted that as per the deposition of this witness, incident occurred on 28.02.2002 at 8.00 A.M. and this witness has given certain names of the accused and has deposed that those persons were forcing the people to close down the market in respect of the incident dated 28.02.2002 but he has not stated anything about the incident dated 28.02.2002 at about 8.00 A.M. in his statement dated 20.05.2008 before the S.I.T. therefore, it is submitted by Shri Dhruv that this witness is not liable at all.

On perusing his evidence as well as topography of the village, it transpires that his house is just in front of Shaikh Maholla and at the time of incident he was working as Bore Operator in Gram Panchayat. At the time of first incident at about 09.30 P.M. he was sitting just in front of Shaikh Maholla, where there was a Gram Floor Mill, which was owned by his Uncle Sherumiya, As he is the resident of

that area, his presence at the time of incident, as narrated by him is quite natural. As per his deposition it has come out that, there was electric connection in Mahemudmiya's house. No doubt no one has died due to electrocution but the panchnama shows burnt wires and live wires lying but due to live wire lying no one died due to electrocution it cannot be said that, victims died due to electrocution not due to burns due to pouring of kerosene and petrol. From the evidence, panchnama and other witnesses it has come out that, at the time of incident his father was having house in Pathan house and in that house his brother was residing with his family members. There were 35 houses in Pathan Maholla and there were 166 Muslims residing in those houses. It suggests that, mob had left Pathanvas as there was more Muslim persons while in Shaikh Maholla there were 18 to 20 houses therefore keeping aside Pathanvas mob had attacked Shaikh Maholla. He is the witness, who had loaded the dead bodies in the loading vehicle. His statement was not recorded before police prior to forming of S.I.T. It is only on 06.05.2008, he had written a letter to S.I.T. and thereafter, his statement was recorded and on that strength accused have stated that, this witness remained silent about the incident till the application was

preferred by him as the complaint was already filed by the complainant and this witness was busy in loading the dead bodies in the loading vehicle and under such a grave and tense atmosphere everyone would try to save himself and go to a safer place and therefore, after loading dead bodies he went to Savala. Up to Village Savala, police was with him but he has not narrated the incident, this silence does not amount that, he was not present just in front of Shaikh Maholla and he has not seen the incident dated 28.02.2002. No one can expect such a prompt action from a person, who is having no roof for him or his family members, naturally person will try to get roof and shelter for him or his family members and therefore, silence on the part of witness for not narrating the incident to the police is of no importance. It is true that, he was having sufficient opportunity to narrate the incident before the Police but as discussed above, if this witness is narrating the incident after six years and the incident is otherwise proved by the prosecution, it is not going to prejudice the accused and therefore, this silence is of no importance. So far as gathering of village persons in the house of Munsafkhan Pathan is concerned, this witness was very much present in the meeting and a meeting was organised in the House of

Munsufkhan Pathan and this fact is supported by Galbabbhai Khemabhai Parmar – P.S.I., Munsufkhan Pathan and other evidence. Therefore, the version of this witness in this regard gets support from this evidence. In that circumstances if this fact is not stated in his statement it becomes insignificant. As per his say there was no transaction available therefore, they could not go to lodge the complaint about the incident dated 28.02.2002. This fact is supported from the deposition of P.W.90 - Parmar Galbabbhai Khemabhai, who has deposed that he has seen the cabins, which were set on fire however, he had not received any information who and when those cabins were set on fire. No such complaint was given by this witness or by Munsufkhan Pathan to P.S.I. Shri Parmar. The complaint was lodged subsequently about the incident dated 28.02.2002. It is true that, for the first time he has addressed a letter to S.I.T. on 06.05.2008 and in that letter also he has not disclosed about the threat. So far as affidavit and application preferred by the Citizen for Justice and Peace is concerned, if this witness being a low class person takes help from any NGOs like Citizen for Justice and Peace for preparing affidavit or application to get justice and if any NGOs supports the witness, we cannot

infer from that witness is telling lie or contents are false and fabricated one. Simply rough writing is not prepared as narrated by him in his version, we cannot infer that, non-production of rough writing means no rough writings were prepared by him and affidavits were prepared by the Citizen for Justice and Peace. So far as deposition of this witness regarding time is concerned this witness has stated the time as 8.00 A.M. on 28.02.2002 but this time and date is not stated in his statement dated 20.05.2008 before the S.I.T. Here this is a contradiction but it is the fact that on 28.02.2002 mob was compelling the persons to close the shops is well supported from the other evidence therefore, simply this fact is not stated in the statement does not amount that, this witness is stating falsely. On that count we cannot conclude that, this witness is not reliable at all.

44. **P.W.70 - Pathan Munsafkhan Yasinkhan** has stated on oath that he was serving with Police Department since 1969. At the time of incident, he was serving at Kalol City Police station as Police Constable. At the time of incident, he was on sick leave and was in Sardarpur. On 28.02.2002, cabins of Muslims and other community were bunt in the market just in front of Panchayat Office and Primary School. It was mob of Patels of their village. His agricultural

field is 4.00 Kms. away from the village. He saw the mob in the village and therefore, he came by tractor. At that time, Muslims were sitting and at about 5.00 A.M. they went to sleep. On the next day i.e. on 01.03.2002 he was in his house. Persons whose cabins were burnt on 28.02.2002, came to him and they discussed about lodging the complaint. Haribhai Maganbhai had seen the incident. He had narrated the incident and this witness had drafted the complaint. On that day, there was Bharat Bandh. Transportation was closed and therefore, they could not go to Vijapur. He informed Vijapur Police Station by phone and they were told that P.S.I. Parmar is coming for patrolling. Thereafter, they went for Namaz. After Namaz, he came back to his house. Meanwhile, P.S.I. Parmar came and the persons who came in the morning gathered in his house and the complaint which was provided at the instance of Haribhai Maganbhai, was given to P.S.I. Shri Parmar. There was tense atmosphere in the village as the Patels of the village were gathering. With the intention that there should not be any untoward incident in the village they called the leaders of the village. P.S.I. – Parmar himself went to the leaders of Patels. Thereafter, meeting was organized and in the said Meeting Kanubhai Joitabhai and Dashrathbhai

Kacharabhai came and other leaders of Patels were also called in the said Meeting through Kanubhai Sarpanch but no one turned and at that time Kanubhai told that it is not in his hands. Dashrathbhai was present upto 8.00 P.M. During that time, Revabhai Shankarbhai told to call the police as he apprehended untoward incident and they had talked with P.S.I. Parmar. P.S.I. Parmar had informed Vijapur police station that during that period, telephone of Himmatkhan Tajkhan from Sundarpur came to him and asked him to take them from Sundarpur as there was tense atmosphere. P.S.I. -Parmar was informed accordingly and P.S.I.- Parmar went to Sundarpur. He took all the ladies of Sundarpur and other males from Sundarpur. Some of the males came to Sardarpur from Sundarpur by walking. Thereafter, P.S.I. - Rathod came and stayed for half an hour in the house of witness and there after P.S.I. Shri Rathod and P.S.I. Shri Vaghela left from there. At that time, the witness had told them not to leave the village as there is tense atmosphere. Some untoward incident may occur. Then they told that they are returning back after patrolling and they went away. Thereafter, the witness went to his old house which is inside the Maholla. His new house is outside the Maholla. If some incident occurred, there was

fear of causing damage to his new house and therefore, he came to his old house. At about 9.30 P.M., Patels of neighboring village came shouting slogans to cut, beat and burn the miyas and went towards Shaikh Maholla. Thereafter, police vehicle came and the mob disbursed. Soon as the police went away, mob again came and they started pelting stones towards the old house. They were pelting stone on his house. He had also pelted stones to save himself. Thereafter, they entered Shaikh Maholla and burnt the houses in Shaikh Maholla. During late night, son of Asifmiya Bachumiya came to the Maholla and told that mob of Patels have burnt their jeep and houses and the persons who were sitting inside the Mahemudmiya's house were also set on fire and he requested for help therefore, this witness told him that there is big mob if they go, they will also kill them and he asked him to stay in their Maholla. If they come out, they will burn the persons of their Maholla also therefore, he stayed with them. At about 2.30 A.M. P.W.105 - Gehlot Anupamsinh Shreejaysinh came at the entrance of Pathan Maholla alongwith P.S.I. Parmar and called him and asked about the place of incident therefore, he went to Shaikh Maholla alongwith D.S.P. and thereafter, he came back to his Maholla. Thereafter, he

came to know that 28 persons have been burnt in Shaikh Maholla. One police man came to their Maholla to call for persons to take the dead bodies outside the room. Therefore, persons from Pathan Maholla went for taking out the dead bodies. Thereafter, Prahladbhai Nathabhai went to the Sundarpur to take the private vehicle and in that vehicle dead bodies were shifted to Civil Hospital, Mahesana and injured persons were also shifted to Mahesana Civil Hospital. Thereafter, D.S.P. asked him that they have less police force and the atmosphere is also tensed therefore, they went wherever they wanted to go. Thereafter, they were shifted to Savala in two police vehicles.

It is submitted by Shri Dhruv that, there was a police case registered against this witness on different times and at the same time, this witness has filed police case. He was under suspension also. He retired from the police department on 30.06.2009 as police constable. This reflects the nature and character of this witness. It is submitted by the accused that this witness is an engineer of the present case because the accused are from the village Sardarpur. As per the deposition of this witness, he had drafted the

complaint regarding the incident of cabins setting of fire on 28.02.2002 after discussing with the persons whose cabins were set on fire but could not send that complaint to the police station due to disturbance. As per his admission, he is possessing telephone at his residence and he could have lodged the complaint by telephonic message therefore, the say of this witness that he could not go to Vijapur for filing complaint is not acceptable. Further, P.S.I. Shri Parmar had been there but the complaint was not given by this witness to him. This witness is well conversant with the procedure to lodge the complaint but that complaint is not filed deliberately. Further as per the say of this witness, Haribhai Maganbhai was complainant of that complaint and that was given to P.S.I. Parmar on 01.03.2002 but as per the deposition of Shri Parmar, no such complaint is received by him. In fact the complaint was given by Haribhai Maganbhai on 06.03.2002 but this witness is trying to satisfy the Court about the delay in lodging the complaint. As per the deposition of P.S.I. Shri Parmar for the incident dated 28.02.202 of setting on fire the cabins in the village, no one had given him any complaint nor he has refused to receive any such complaint. Further, if there was any peace in the village and he would not have

requested P.S.I. Shri Parmar to bring relatives from Sundarpur to Pathan Maholla at Sardarpur. P.S.I. Parmar was on patrolling at Sardarpur as there was peace in the village, he went to Sundarpur, met Kureshi Husenbhai and at their request 50 males and females of village Sundarpur were shifted to Sardarpur and they were brought at the house of this witness. This fact suggests that there was peace in Sardarpur therefore, the say of this witness that Sardarpur was sensitive even to the day prior to the incident is not correct. Further, it is submitted by the accused side that after the incident, on arrival of police, P.S.I. Shri Parmar went to call him at that time, D.S.P. Gehlot was present and this witness met D.S.P. at the entrance of Pathanvas. This witness had arranged for the vehicle for transporting dead bodies and Prahladbhai Nathabhai was sent to Sundarpur to bring the vehicle. This witness has dropped D.S.P. at Shaikh Maholla. This witness has stated this fact just to show that he had not taken any part in lodging the complaint. It is the say of the defence that complaint is also engineered by this person therefore, the names of full accused are shown in the complaint. Looking to the facts, it is highly impossible to accept that this witness would not take interest in the rescue operation

after the incident. This witness has not stated about stone throwing on 28.02.2002 in his statement dated 06.03.2002. Thus, there is an improvement before the Court and by improving this fact, he is trying to show that the setting on fire the cabins on 28.02.2002, drafting of complaint for the same, calling for the meeting of the persons of the village for getting peace, request made to P.S.I. Rathod for not to leave the village as there is possibility of disturbance in village, arriving of mob of Patels, shouting of slogans and pelting of stones towards old house, all these aspects are improved versions with an intention to give him an opportunity to name the leading persons of the village in crime. He has not entered the Shaikh Maholla therefore, it is say of defence that he is the main person behind the curtain who created the whole case and involvement of the present accused. Whatever he has stated in para 2 and 3 of his deposition is not stated in his affidavit dated 31.03.2004 before the Hon'ble Supreme Court of India which suggests that he is master of creating false evidence. Further, say of this witness that he has opportunity to name the accused in the present case is also not found in any place in any of his statement or any of his affidavit. Thus, he was having no opportunity to see and recognize

any of the accused but he has admitted to give names of certain accused in his deposition by assigning a certain weapons to the accused which are major improvements and contradictions. With regards to the narration of the incident dated 28.02.2002, is not stated by him in his statement dated 11.06.2002 and 14.07.2008. As per deposition of this witness, he has read over his statement dated 06.03.2002 and his statement dated 11.06.2002 and 14.07.2002 were not read over to him. He has admitted that not only the statement was read over to him he had not even asked for it to be read. Further, it is admitted by him that he had not made any complaint to anyone in writing. This witness has confronted his statement dated 11.06.2008 and 14.07.2008 recorded by S.I.T. was also read over to him. Further, it is submitted by the accused that this witness in connivance with Teesta Setalvad and Raizkhan Pathan, prepared affidavits of the witness and filed the same before the Hon'ble Supreme Court of India. This witness is in habit of making false allegations against the leading persons of the State without knowing the genuineness of the allegation. It is admitted by him that he has levelled serious allegations against the Ex. Member of Parliament, Minister of Rajyasabha and M.L.A. Further, he has admitted that he

has not produced any record in respect of his allegations made in the affidavit. It is admitted by him that whatever stated in the affidavit, is prepared by him. Looking to the character of the witness, it is established that his deposition before the Court requires to be kept out of consideration. Whatever is deposed by him is not stated in his statement dated 06.03.2002, 11.06.2008 and 14.07.2008 and in the affidavit before the Hon'ble Supreme Court of India. He has deposed before the Court contrary to his statement and has placed improved version before the Court and therefore, this witness is not reliable. Further, it is submitted by the accused that this witness has attempted to show that there was pelting of stones even at Pathanvas. Pathanvas is surrounded by north south and west direction by Patel community. For entering Pathanvas, there is road without any doors or gate. If mob intended to enter in Pathanvas, it is very easy. Even new house of this witness is at the entrance of Pathanvas. If any conspiracy is headed by Patels of the village, mob of 1000 to 1500 Patels with weapons, they would have certainly attacked Pathanvas first. Looking to the damage or attack also, there is no damage to the house of the present witness or to any of the house in Pathan Maholla.

This witness is resident of Pathanvas. Further, at the time of incident he was serving in Police Department. The grievances made by the accused side as narrated in their submissions is that, this witness is the engine of this incident and he was guiding the witnesses as well as he was in touch with NGOs like Citizen for Justice and Peace. No doubt this witness was serving in Police Department. Much has been brought in cross-examination about his past history or past record like criminal cases or suspension etc. But the past history is not the ground to discard the evidence of this witness. On the day of incident, many Muslims from Village Sundarpur were brought to Pathan Maholla. Even other wise Pathan Maholla is big rather than Shaikh Maholla therefore, if by leaving Pathan Maholla, Shaikh Maholla was attacked by the mob from this fact the say of accused that, Shaikh Maholla was attacked from the back side not from the front side cannot be accepted. From the evidence adduced by the prosecution as well as from the evidence of Police witnesses, it has come out that mob came from the entrance side of Village Sardarpur, Fakirs' houses were burnt and thereafter from Market side mob came at the entrance of Shaikh Maholla and at the back side of Shaikh Maholla, there is Mahadev

Temple and one way is passing from Mahadev Temple to Shaikh Maholla and from the evidence of all the witnesses it has come out that, the mob entered in Shaikh Maholla from the entry of Shaikh Maholla and not from the back side of Shaikh Maholla. While coming from the market to Shaikh Maholla, Pathan Maholla is on the way but looking to the situation of Pathan Maholla and Shaikh Maholla, Pathan Maholla is much safer and big Maholla and if mob had not attacked the Pathanvas and mob has attacked Shaikh Maholla, it is possible and we cannot discard the evidence on this ground. It is true that, from Pathanvas a person cannot see what is happening in the Shaikh Maholla but from Pathanvas a person can see what is happening at the entrance of Shaikh Maholla or a person can see the flames of Shaikh Maholla or can hear the voices screaming for help. In that circumstances if the witness is saying by standing in front side of Pathan Maholla, he saw the mob passing towards Shaikh Maholla, that is quite genuine. Therefore, the say of accused side that mob came from Sundarpur side and they have attacked Shaikh Maholla is not acceptable. Persons from Sundarpur were brought to Pathan Maholla, if the mob came from Sundarpur they would have attacked Pathanvas, rather

than Shaikh Maholla and therefore, the say of prosecution that this defence of the accused is not tenable is acceptable. From the evidence of this witness prosecution case that a Meeting for peace was organized in his house is supported and in that Meeting P.W.90 - Parmar Galbabhai Khemabhai was present that is also supported by this witness and it also supported by this witness that, a complaint was prepared about the incident dated 28.02.2002, in which cabins in the Market were burnt and that complaint was prepared at the instance of Haribhai Maganbhai. But as there was no transport facility available, the complaint was given subsequently. However, P.S.I. Shri Parmar had denied the fact that, no such complaint was given to him on that day. It has also come out that P.S.I. Shri Parmar was on petrolling at village Sardarpur as there was peace in the village. Persons from Sundarpur were brought to Pathanvas of Village Sardarpur. Persons from Village Sundarpur were brought in the evening and at that time there was peace but the incident occurred in the night. This fact also gets support from the evidence of this witness. Further when D.S.P. came, he had accompanied the D.S.P. upto Shaikh Maholla. From this evidence we cannot infer that, this witness is intentionally

showing that, he had not taken any part in lodging complaint and he has taken active part during investigation of this case about the involvement of the accused. So far as the incident of pelting of stones on 28.02.2002 is concerned, it is not stated by this witness in his statement dated 06.03.2002. Incident regarding setting on fire on 28.02.2002 is also not stated in his statement dated 06.03.2002. It can be said an improvement in his version. But if this witness has taken active part in preparing affidavits dated 31.03.2004 before the Hon'ble Supreme Court and he had helped the witnesses it does not mean that, he is the engineer of all creations. So far as opportunity to see and recognize the accused is concerned, this witness is residing in Pathanvas and if mob is passing from market to Shaikh Maholla, Pathanvas is on the way and when the mob entered in the Shaikh Maholla, thereafter this person cannot see the mob. His opportunity to see the mob up to entrance of Shaikh Maholla can be believed. Therefore, this witness is saying about setting on fire of cabins just in front of Shaikh Maholla that is reliable. It is also an admitted fact that, though this witness is serving in Police Department has not filed any complaint about the incident dated 28.02.2002 and 01.03.2002. It has

also come out that, he was in touch with Teesta Setalvad and Raiskhan Pathan. So far as allegations that, this witness was in habit of making false allegations against the leading persons of the State is concerned, it has come out that, he has levelled serious allegations against the Ex-Member of Parliament, Minister of Rajya Sabha and M.L.As. Further, he has not produced any record in respect of allegations made in the affidavit. On the strength of this fact, we cannot discard the evidence of this witness, which is well supported from other evidence. We can consider the deposition of this witness in the light of evidence of other witnesses and police witnesses and other documentary evidences. Therefore, background history of this witness as well as character of this witness does not come in the way of the facts which are already proved by the prosecution. No doubt there are improvements in his version and there are contradictions and omissions in his statements but those improvements and contradictions are not going to effect the facts of prosecution which are already proved from the evidence of other witnesses. So far as arguments of accused side it is easy to enter Pathanvas and attack Pathanvas as there is no door in Pathanvas is concerned, considering the topography of Pathanvas, Shaikh Maholla

and surrounding areas at the time of incident there was no gate, at present there is gate of Pathanvas. It is surrounded by Patel Community but if the mob has not attacked Pathanvas and has attacked Shaikh Maholla, we cannot conclude that, this incident in Shaikh Maholla has not occurred or mob has not attacked the Shaikh Maholla. It has come out that, no damage was caused to Pathanvas. Thus, the presence of this witness in the village on the date of incident is natural one.

45. **P.W.90 - Parmar Galbabbhai Khemabhai**, P.S.I. has deposed on oath that on 28.02.2002 he was in Gandhinagar Vidhansabha Bandobast. Due to Godhra Carnage on 27.02.2002 he was relieved from Bandobast and he reached Vijapur Police Station at about 12.30 and he was posted at Vijapur Circle by P.I. Shri Vaghela. At about 19.00 hours, he was instructed to take the requisite mobile van alongwith his staff members for patrolling up to the village Ladol. As there was peace in the village, he came back to Vijapur. Thereafter, he received message that in Sardarpur village, cabins were burnt near Panchayat and he was instructed to go there alongwith his mobile van and staff members hence, he went there and saw the cabins

were burning just in front of Panchayat. There was no mob. He informed fire fighters. Thereafter, he was there. He tried to take the complaint but no one had given complaint before him and he returned back to Vijapur. On 01.03.2002 at about 8.00 O'clock. He was instructed to take patrolling at Vijapur town circle, Anandpura Cross Roads, Railway Station etc., just to see that there should not be any untoward incident. He was in patrolling at that time, P.I. told him that mob has gathered at Sardarpur, you go there. Therefore, alongwith his staff and mobile van he went to Sardarpur but there was no mob thereafter he went to Sundarpur and met Kureshi Husenbhai, he told him that they wanted to go to Sardarpur and Bhalak and therefore, P.S.I. managed to shift 50 ladies and gents to Pathanvas at Sardarpur in private vehicles and called a meeting of leaders of the village alongwith Kanubhai Sarpanch, B.K.Patel and others wherein they had a discussion about peace in the village and thereafter he went for patrolling in the village. In the front of Panchayat, he saw the tense atmosphere therefore he asked Vijapur Police Station to send more police force. He had continued his patrolling meanwhile P.S.I Rathod alongwith his staff and mobile van, came to Sardarpur and both mobile van had carried out the

patrolling in Sardarpur Village. When they were in patrolling at that time about 1000 persons came from Sundarpur side having weapons in their hands. When the witness was going towards the Panchayat, at that time, a mob of 500 persons came from north side means from Sardarpur side and tried to burn the cabins. Therefore, he asked the mob to disburse. Mob was not under control therefore, the lathi charge was done by him. As the mob had not disbursed Tear gas cells were lobbed. In spite of that, mob was not under control thereafter, P.S.I. Rathod had asked police constable Krishnakant to fire four rounds in air of 303 Rifle. Another constable Popatji was also instructed by him and he has fired two rounds in air. Thereafter, mob disbursed. Meanwhile P.S.I. Gohel from Ladol side came and he had also disbursed the mob and returned back to Ladol and both these P.S.I. alongwith their staff members were patrolling in the village. There after, there was no mob in the Village. There was peace in the village. He received a message from P.I. Vaghela that there is tense atmosphere in Vijapur and two Muslims have been burnt alive in Ladol and dead bodies of both the Muslims are brought to Vijapur for burial rituals therefore, he came to Vijapur and met P.I. Shri Vaghela and he carried

patrolling continuously in Vijapur town at Circle points, Railway Station, Anandpura Cross Roads etc. At about late night P.I. Shri Vaghela told him that again the mob has gathered in Sardarpur, you go to Sardarpur. Therefore, the witness alongwith the staff members and mobile van went to Sardarpur. While going to Sardarpur there were obstruction in the road near Ladol. Roads were blocked by putting wooden pieces, stones etc. By removing those obstructions they went to Sardarpur. P.S.I. Rathod alongwith the staff members and mobile van, came to Sardarpur. On the way of Sardarpur, near Village Sundarpur, road was obstructed and by removing those obstruction, they proceeded towards Sardarpur. Obstructions were made by Trolley of tractor, Cabins, Carts, Stones, Cement Pipes, woods etc. They went up to Pathan Maholla there was no mob and there was silence and when they reached near Shaikh Maholla, on seeing them mob ran away towards the opposite side. He saw the persons rushing towards the opposite side. At the entrance of Shaikh Maholla there were two to three cabins and houses were burnt therefore they had started rescue operation, meanwhile two injured Muslims came and told that there are ladies and children who are burnt in the

Mahemudmiya's house. Therefore, he alongwith Rathod and other police forces went to the house of Mahemudmiya and tried to open the door and they took approximately 10 persons who were injured due to burning. They were doing their rescue operation meanwhile their higher authorities alongwith their staff members came and took the persons out from the neighbouring houses and the injured were shifted to Mahesana Civil Hospital thereafter, he was present there and other Muslims were shifted to Savala, Bhalak etc.

In the cross-examination of this witness accused have tried to bring on record that, for day to day work they are required to make entry in the Daily Dairy and in the present case, no such entry was made by this witness in Daily Dairy. When we considered this aspect if entry of day to day activities is not made in Daily Dairy under such a tense atmosphere it does not amounts that, witness is telling lie. So far as cross-examination regarding burning of cabins in his presence on 28.02.2002 is concerned, in his cross-examination it has come out that, no cabins were burnt in his presence on 28.02.2002. He has no knowledge, who has burned the cabins, no complaint was given to him by any person though he asked if any one wanted to lodge

complaint. Further, in his cross-examination this witness has admitted that, he has not stated in his statement dated 09.03.2002 and on 16.08.2008 that, he came to Vijapur from Gandhinagar and he went to Police patrolling in Vijapur town as per instructions of P.I. Vaghela, during 19.00 hours, as per instructions he went to Ladol for patrolling as there was peace in Village Ladol, he came back to Vijapur and thereafter, he received a message about burning of cabins near Panchayat Office at Village Sardarpur and he was instructed to go to Sardarpur, he went to Sardarpur and saw the burning of cabins, near Panchayat. So far as this contradiction is concerned, this witness is a Government servant, he has performed his duties as per instructions issued by his higher authorities, he had gone to Sardarpur for patrolling, he had shifted Sundarpur Muslims to Sardarpur Pathanvas. Further, it is an admitted fact on record that a Meeting for peace was organized at the residence of Munsafkhan Pathan, in his presence. Investigating Officer Shri K.R.Vaghela also supports the fact that, Shri Parmar was sent to Sardarpur, witnesses are also stating the same and in that circumstances, if it is not stated in the statement it becomes immaterial as his presence and patrolling as well

as bringing of Sundarpur Muslims to Sardarpur are proved by the cogent evidence. If list of the persons who were brought from Sundarpur to Sardarpur is not prepared under such a tense atmosphere, it is natural one and we cannot expect from a person to seek and prepare a list in the such a tense circumstances rather than to shift the persons to a safer place. Therefore, deposition of this witness on this count cannot be discarded. Further, in his cross-examination it has come out that, he was on petrolling in the Village during 8.30 P.M. to 9.00 P.M. and he was in Sardarpur upto 10.00 P.M. till then no untoward incident occurred. Further, at about 10.00 P.M. when he was near Primary School, as per his say a mob of 1000 persons came from Sundarpur side, having weapons in their hands. He saw the mob at a distance of 400 Mtrs. As per his say he saw the mob at the entrance of Sardarpur where the Fakir House was burnt. Police was compelled to Lathi-charge in spite of that mob was not under control hence Police had lobbed tear gas cells. Six Rounds were fired and up to 23.00 hours no incident occurred. Further as per his deposition, he has seen the houses were burnt in the Shaikh Maholla. He had tried to shelter the persons in Shaikh Maholla, he brought out about 10 injured persons

from Mahemudmiya's house and from other houses. Two injured persons came out from one house, no statement of those two persons were recorded by him. It is quite natural. No one would go to record the statement in such a tense situations, in natural course in such a circumstance any one will try to save the life of persons first and same was done by this witness alongwith other police witnesses therefore, simply at that time not recording the statements of those two witnesses, under above circumstances it cannot be said that, deposition of said witness is not relevant on this point. So far as incident regarding lobbing of Tear gas and six round of fire in Air and lathi charge as narrated by the witness is concerned witness from Shaikh Maholla or nearby Shaikh Maholla who are examined as a witness are denying the incident of lobbing of Tear Gas Cells and Six round fire and lathi charge. When we evaluate the evidence of this witness on this point, as per this witness incident of tear gas cells, six round fire and lathi charge was happened at the entrance of village where Fakir House, Panchayat House and Primary School is situated. There is sufficient distance from Fakirvas, Shaikh Maholla and Primary School. Possibility cannot be ruled out that, witness from Shaikh Maholla might not have witnessed the

incident or heard the voices of such incident, in that circumstances if they are showing ignorance about this incident, it cannot be concluded that, they are suppressing this fact with ulterior motive. Further, it also cannot be concluded that, this witness has created this fact. The fact of lobbing of tear gas cell, discharge of six round fire and lathi charge are supported by other Police witnesses and other supporting documentary evidence. This witness has no reason to tell a lie. Assuming incident of firing had not taken place, even though this fact is not going to effect the main incident. But the fact stands that, as the police came mob was disbursed, injured witnesses as well as other witnesses are telling the same and therefore, discrepancies in respect of lobbing of tear gas, six round fire in air and lathi charge, which is pointed out by the accused are required to be ignored as it is established by the prosecution that, Police came and thereafter mob was disbursed. So far as discrepancies in respect of time is concerned, it is true that, this witness in his deposition is creating confusions regarding timings of incident. But in cross-examination, it has come out that up to 23.00 hours he alongwith P.S.I. Shri Rathod with his team were patrolling in the village. Further, from his cross-

examination it also comes out that, at about 10.00 P.M. first mob came. Further from his cross-examination it also transpires that, up to 12.00 Night hours no information about burning houses in Shaikh Maholla was received by him. If P.I. Shri Vaghela was not having detailed information about the incident and he asked the witness to go to Sardarpur i.e. also quite possible that, he might have received information only about the burning of houses and cabins. It does not mean that, no incident of burning of persons happened and deposition of this witness cannot be discarded on this point also.

P.W.91 - Rathod Mahendrasinh Lalsinh has deposed that, he was in patrolling alongwith his staff members. On 28.02.2002, he took patrolling from 6.00 to 10.30 A.M. in Vijapur town. Thereafter, there occurred some dispute between the Patels and Darbars in Madhi village and P.I. instructed him to go to Madhi and therefore, he went to Madhi and came back at 15.30 hours thereafter, from 18.30 to 21.00 hours, he was in patrolling and during 21.00 to 24.00 hours, he was in Falu and Ladol for Bandobast. On 01.03.2002, he was in 2nd mobile van alongwith head Constable Laljibhai Arjanbhai and others. They were in

patrolling from 6.00 O'clock to 10.00 O'clock. Thereafter, he received message to go to Ladol therefore, he went to Ladol for patrolling. He took the patrolling alongwith P.S.I. Shri V.D.Gohel and at about 12.00 O' clock, he came back to Vijapur. Again at 14.00 hours, he received message to go to Ladol and he went to Ladol as there occurred communal incident and hence, he remained over there. Two Muslim persons, dead bodies were brought to Vijapur at about 18.30 hours and after the completion of burial rituals of both the dead bodies, he was in police Bandobast. Thereafter, at about 20.00 hours P.I. Vaghela told him to go to Sardarpur alongwith his staff members. He went to Sardarpur and met P.S.I. Shri G.K.Parmar. At about 20.30 hours, they met near bus station and thereafter, they had done patrolling in Sardarpur and thereafter, when they were standing near Primary school, a mob of 1000 persons came from Sundarpur side and mob of 500 persons came from Sardarpur side i.e. from north side. They were having weapons with them. At that time, street light was working and mob was shouting to burn the properties of Muslims and to send the Patels back, they had warned the mob but the mob did not disburse therefore, Gas man Shri Khodidas had lobbed the cells but the mob was uncontrollable

therefore, P.S.I. Shri Parmar alongwith his staff members had charged lathi in spite of that the mob was not under control. They had burnt the cabins of northern side and had started pelting stones. Police Constable – Krishnakant Kantilal and Popatlal Jeevanji, fired in the air. Popatji fired towards north side of mob and Krishnakant had fired two rounds in air towards Sundarpur mob and thereafter, mob disbursed. P.S.I. Gohel also came and they removed the obstacles from road thereafter, P.I.Gohel went back. P.I.-Vaghela, told that dead bodies of two Muslims have been brought to Vijapur town from Ladol. Situation is tensed, if there is peace in Sardarpur, immediately go to Vijapur. As there was no mob in Sardarpur and there was peace, they came to Vijapur. After coming to Vijapur, he had lodged complaint of the cabins burnt and the fire which took place. Meanwhile, P.I. Vaghlea came back from patrolling. He was also informed by the witness. P.I.-Vaghela asked to lodge the complaint and after lodging the complaint, it was sent to P.S.O. – Devjibhai to register the offence. Meanwhile, they were in town. P.I.-Vaghela told him that you go to Sardarpur as the situation over there is tense. P.S.I. – G.K.Parmar was already sent there and therefore, on 02.03.2002 at about 00.10 hours, he came from Vijapur. On

the way, there were obstacles in the road which they removed with the help of other police persons. They went to Changod. There was also obstruction in the road and those obstructions were also removed by them. When they were going from Sundarpur to Sardarpur, there was cabins, carts, tractor and drainage pipes etc. By all these things, road was obstructed and they came near Panchayat. Near the Panchayat also, road was obstructed by putting trees on road and by removing those obstructions, they went to the market where the street light was off and cabins and shops were damaged near Shaikh Maholla. They saw the persons rushing towards the opposite side and near the entrance of Shaikh Maholla, cabins and houses were burnt. He saw the burning of cabins and houses and thereafter, they went in Shaikh Maholla and told the persons that they are the police persons and without keeping any fear they should come out. Two injured persons came out and told them that in Mahemudmiya's house, there are ladies, gents and children who are burnt. Therefore, they went towards Mahemudmiya's house. Voices were coming from inside the house. The door was opened by them and rescue operation took place. Injured were shifted to Mahesana. Dead bodies were also brought to Mahesana Civil Hospital for Post-

Mortem. D.S.P., Dy.S.P. and P.I. Shri Vaghela came there and fire fighters were also brought from Mahesana.

In his cross-examination accused side have tried to bring on record that, he has not mentioned the names of Police officials and Home-guards, who were with him. From his cross-examination it transpires that, he saw the mob from 500 Ft. Further from his cross-examination it has come out that, cabins were burnt by said mob. Further from his cross-examination it transpires that, first time when he went to Sardarpur at about 8.30 P.M. lights were on while when he went second time at about 1.45 A.M. lights were off in Sardarpur. Specially, when he went in Shaikh Maholla, lights were off. Simply in his statement dated 09.03.2002 and 17.06.2008, he has not stated that, persons from Mahemudmiya's house were screaming for help, it cannot be inferred that he was neither present nor took the injured out from the houses. That was not the right time to note down the names of injured witnesses. To save the injured witnesses, was the first and prime duty of the witness, considering the situation. Therefore, on this count also his testimony cannot be doubted and his presence at that time in Shaikh Maholla cannot be doubted. Further, it is true that, he has not stated in any of

his Police Statement about mob from two sides.

P.W.92 - Goswami Jivagiri Vihagiri has deposed on oath that he was on his duty as Armed A.S.I. He was in patrolling in Vijapur town. On 01.03.2002, there was Bharat Bandh. He was in requisite mobile van of 2nd P.S.I. G.K.Parmar. Rajakbhai, Daniyalbhai and Ramanbhai Valjibhai and two home guards were also with them. At about 12.30 a communal riot took place near Ladol in which two Muslims were dead. P.I. Shri Vaghela told them to go to Sardarpur. At about 17.00 hours, Shri G.K.Parmar alongwith them, went to Sardarpur at about 17.30 hours. At that time, there was no untoward incident. There was peace in the village. They went to Sundarpur Muslims Maholla. P.S.I. Shri Parmar met the Muslims and they told him that there is tense atmosphere therefore, P.S.I. Parmar took them to Musalman Maholla at Village Sardarpur. Some of Muslims were in private vehicle and they all came to Sardarpur Musalman Mahollas in private vehicle. Two to three rounds were done for carrying Muslims from Sundarpur to Sardarpur. About 50 Muslims were brought to Pathan Maholla. Thereafter, they were in patrolling. No untoward incident occurred. Thereafter, they were standing

near Panchayat and they saw the persons going on road. P.S.I. Shri Parmar informed Shri Vaghela about the gathering of persons. Therefore, Shri Rathod was sent to Sardarpur and Shri Rathod alongwith his staff members came in his mobile van to Sardarpur and they were standing near the Panchayat. There was dark. Mob of 1000 persons alongwith weapons, stick and dhariya came from Sundarpur side and mob of 500 persons came from north side. Mob was uncontrollable. P.S.I. Shri Rathod asked them to disburse but the mob was not under control and police had started lathi charge but the mob was not under control. Therefore, the police constable Khodidas lobbed the Tear Gas cells even though, mob was not under control. Police constable – Krishnakant had fired four rounds in air and Popatji Jeevanji had fired two rounds towards north side from their 303 Riffle. Thereafter, the mob disbursed. Meanwhile, P.S.I.- Gohel also came. They came to Vijapur and met P.I. Shri Vaghela. After some time, P.I. Shri Vaghela told Shri Rathod and G.K.Parmar to go to Sardarpur for patrolling. They reached Sardarpur at 00.00 hours and had started patrolling in Sardarpur. At the time of patrolling, he was going to Sardarpur from Vijapur. There were obstructions on the road, they had removed those

obstruction and they came upto Sundarpur. Near Sundarpur also, there were obstructions which they removed and they reached upto 1.45 A.M. When they reached at the entrance of Shaikh Maholla, three cabins were burning. Seeing the police van, children, ladies and other Muslims were shouting to save them. Houses of Shaikh Maholla were also burnt. In search light P.S.I.- Shri G.K.Parmar and Shri Rathod, took the injured persons out and the persons who were burnt inside the house of Mahemudmiya, were also taken out by opening the door. Dead bodies were also taken out from Mahemudmiya's house and rescue operation had taken place and the injured were shifted to Mahesana and the dead bodies were also shifted to Mahesana. 28 persons have died. Dead bodies were brought in private 407 vehicle. Prahaladbhai Raval was the driver of Matador. This witness was also sitting in the said Matador. He was in the team of P.S.I. Shri G.K.Parmar, alongwith Shri G.K.Parmar he went to Sardarpur and reached at Sardarpur 17.30 hours. He has stated similar to Shri G.K.Parmar. In his cross-examination he has admitted that, he has not stated about four round firing towards Sundarpur side and two round firing towards Sardarpur side and two round by Popatji and two round by

Krishnakant are mentioned. The fact that, firing was done by them is well supported by the documentary evidence as well as from the Police witnesses.

Considering the evidence of P.W.90 - Parmar Galbabbhai Khemabhai, P.W.91 - Rathod Mahendrasinh Lalsinh and P.W.92 - Goswami Jivagiri Vihagiri it transpires that, P.S.I. Parmar was in patrolling in Sardarpur, he brought Muslims from Sundarpur to Pathanvas. The defence theory is that mob from Sundarpur came and ransacked the shops and incident took place. If in fact, the mob was of Sundarpur, then they would have attacked Pathanvas in spite of Shaikh Maholla as the Muslims from Sundarpur were brought to Pathanvas. Further, this witness who has seen the earlier incident has deposed that there was tense atmosphere in the village and P.S.I. Shri Rathod was called and both had done patrolling in the village. In spite of that, mob gathered in the village. As per the say of this witness, mob came from Sundarpur side. It is not the say that mob from Sundarpur came. They were in patrolling in the village. On 10.00 O' clock after firing incident, they went to Vijapur and lodged complaint of firing thereafter, at 0.00 hours, message was received by them and they went to Sardarpur and he saw three cabins

at the entrance of Shaikh Maholla were burning. When he brought the Muslims from Sundarpur to Sardarpur, he had not prepared the list, this is natural one. Houses of accused were also burnt. After the incident, when the injured were shifted to the hospital, they were taken by P.S.I. Shri Rathod and P.S.I. Shri Parmar and others were with them. P.I. Shri Vaghela took 28 dead bodies. At that time, they have tried to save the injured persons in spite of taking statements and that is a natural conduct. This witness has stated that injured persons were taken out from Mahemudmiya's house and this evidence cannot be discarded. Mehendrabhai Lalsinh Rathod – P.S.I., reached at 8.30 P.M. at Sardarpur. He brought injured witness to Civil Hospital at 5.00 A.M. This fact is supported by Dr.Soni and deposition of Shri Rathod and Dr.Soni support this fact and tallies with each other. Two injured who first came out from Shaikh Maholla were brought to Civil Hospital as they were injured and were shifted to Mahesana for treatment and their complaint was recorded due to injury to them. Further, he has prepared the Panchnama of Memon Kariyana Store which is produced vide Exh.728. Jeevangiri Goswami reached at 5.30 at Vijapur and he was with P.S.I. Shri G.K.Parmar and he has supported the deposition of

P.S.I. Shri Parmar. Simply because he has not taken the complaint because P.I. Vaghela had taken the complaint and that the offence is registered by him, does not effect the case of prosecution.

P.W.99 - Krushnakumar Kantilal has deposed on oath that he is a Police Constable and on 28.02.2002 he was on patrolling alongwith P.S.I. – Rathod and on 01.03.2002, two Muslims were burnt alive in Ladol. Thus, the dead bodies were brought to Vijapur. Therefore, there was tense atmosphere in Vijapur. He was in patrolling meanwhile, at about 20.00 hours, P.I. Shri Vaghela informed them to go to Sardarpur and to help P.S.I. – Shri G.K.Parmar. He alongwith other staff members and P.S.I. – Rathod went to Sardarpur at about 20.30 hours and they had carried patrolling in Sardarpur. At about 10.00 P.M., they were standing near the panchayat office, a mob of about 1000 persons came from Sundarpur side while mob of 500 persons came from Sardarpur side. They were shouting slogans. First they warned the mob but mob did not disburse. Therefore, lathi charge was resorted and mob pelted stones therefore, P.S.I.- Shri Rathod asked the Gas man Khodidas to lob cells even then the mob did not

disburse thereafter, P.S.I. Rathod ordered to fire in air and therefore, this witness had fired four rounds in the air by his 303 Riffle. Police constable Popatji had also fired two rounds towards Sardarpur mob. Meanwhile, P.S.I.- Gohel alongwith the requisite mobile van came there and they disbursed the mob. Thereafter, the patrolling was done by them and they saw two cabins and one handcart which were burnt. Therefore, P.S.I. Shri Rathod went to Vijapur and rushed to lodge complaint about the incident. At about 00.10 to 00.15 hours, P.I. Shri Vaghela had informed them to reach Sardarpur therefore, he alongwith their staff members went to Sardarpur by removing obstacles on the road. They reached Sardarpur. At about 1.45 A.M. they went towards Shaikh Maholla. He saw the persons rushing towards the Mahadev Temple. Soon as they reached Shaikh Maholla, they asked the persons to come out as they were the police persons. Thereafter, on hearing this, 10-12 persons were brought from one house who were burnt and injured persons were shifted to Mahesana Civil Hospital alongwith the dead bodies.

In his cross-examination, accused side have tried to brought on record that, the mob came from Sundarpur

side. If this witness has stated in his statement dated 09.03.2002, that mob came from Sundarpur side, it does not mean that, mob was from Sundarpur Village therefore, this contradiction is of no importance. From the cross-examination of this witness, it itself comes out that, he was present in the chowk of Village Sardarpur, near Panchayat. From 8.30 to 10.00 P.M. they were in the village, incident of burning of three cabins occurred during that period except that no untoward incident occurred. Further, in his cross-examination it has come out that, firing was resorted in the air, no one was injured and period of incident is shown as one hour. He had not inquired about the burning of three cabins.

Considering his deposition it transpires that, he is the person who had fired in the air. As per deposition of this witness during panchnama they saw two cabins and one Handcart which were burnt just in front of Shaikh Maholla. He is the eye-witness of the incident. He has seen the mob at 9.30 P.M. and mob has burnt the cabins. In his cross-examination, it has come out that, at about 8.30 to 10.00 P.M., they were patrolling in the village and during that period, incident of burning the three cabins occurred. No other untoward incident occurred during that period. It

supports the say of the prosecution. Witnesses from Sardarpur are not saying about the firing. There is 2 to 3 furlong distance in between Panchayat office and Shaikh Maholla. Simply because witnesses are not saying about firing and this witness is saying about the firing, does not adversely effect the firing incident. In the whole cross-examination, it is not asked to this witness as to whether he has seen the burning of the three cabins. It is an admitted fact that, when they were in patrolling, at about 9.30 to 10.00 P.M., three cabins near the entrance of Shaikh Maholla were burnt. There is no contradiction at all on this point. Therefore, the say of this witness supports the prosecution case.

P.W.100 - Rajakbhai Allarakhabhai has deposed on oath that at the time of incident, he was Police Constable in C.P.I. office. On 28.02.2002, he was in patrolling alongwith P.S.I. Shri Parmar. On 01.03.2002, there was Bharat Bandh and they started patrolling at about 8.00 O' clock alongwith the Head Constable – Jivagiri Vihagiri, Police Constable - Ramanbhai Valjibhai, Police Constable - Daniyalbhai Khimjibhai and P.S.I. Shri Parmar and there were two Home Guards and the driver of Mobile van namely – Ramaji

Maganji Vihol. There was tense atmosphere. At about 17.00 hours, P.I. Shri Vaghela asked them to go to Sardarpur as the mob had gathered there. They were in patrolling in Sardarpur and there was peace. One leader had talked with P.S.I. Shri Parmar that there is tense atmosphere. Thereafter, about 50 persons were brought from Sundarpur to Sardarpur in requisite mobile van. Thereafter, meeting was organized in Munsufkhan Pathan's house just to see that no untoward incident occurred. They were standing in Primary school. Persons were passing from there. A mob of 1000 persons came from Sundarpur side having weapons in their hands and mob of 500 persons came from Sardarpur side shouting slogans. First, mob was warned to disburse but as the mob was not under control, Shri Rathod asked the constable – Khodidas to lob teargas cells towards Sundarpur. Though the teargas, lathi charge was resorted, the mob was not under control. Therefore, P.S.I. Shri Rathod told Krishnakant to fire in the air by his 303 riffle. Popatji Jivanji has also fired two rounds towards Sundarpur. At that time, P.S.I. Shri Gohel came and the mob of Sundarpur side disbursed and thereafter, they were in patrolling and went towards Shaikh Maholla wherein they saw three cabins were burnt and there were no

persons at all. P.I Shri Vaghela told them that if there is peace they should come to Vijapur as there is tense atmosphere in Vijapur. Therefore, P.S.I. Shri Parmar and Gohel went to Vijapur for patrolling. Thereafter, at about 00.00 hours, Shri Vaghela told them to go to Sardarpur immediately. Therefore, P.S.I. Shri Parmar and other members went to Sardarpur by requisite 2nd mobile van. When they were going to Sardarpur there were obstructions on the Ladol road. They removed the obstacles and went towards Sardarpur. P.S.I. Rathod also came alongwith his staff members and removed the obstacles and when they were standing near primary school, the road towards the Gram Panchayat, Sardarpur was obstructed by putting trees, pipes, supports etc. They removed those obstacles and went to Shaikh Maholla. Street lights were off. They reached Shaikh Maholla and they saw the persons were rushing towards the other side. Houses of Shaikh Maholla were burnt. They asked the persons to come out therefore, two Muslims came out and told that there are persons inside the house of Mahemudmiya who were burnt. Shri Parmar and Shri Rathod, opened the door of Mahemudmiya's house and they saw that persons were burnt inside the house. They were taken to the Mahesana

Civil Hospital and 28 dead bodies were taken to Mahesana Civil Hospital in 407 Matador for Post-Mortem. Thereafter, fire fighters came for extinguishing fire.

From the cross-examination of this witness, it transpires that, this witness was in the team of P.S.I. Shri G.K.Parmar and alongwith Shri G.K.Parmar, he had also shifted Muslims from Sundarpur to Pathanvas of Sardarpur and meeting for peace was organized in the house of Munsufkhan Pathan, Hindu leaders, Sarpanch, Kanubhai Patel were present in that meeting. Further in his cross-examination it also comes out that, during patrolling he saw three cabins in burnt conditions, there was no person and street light was on. In cross-examination it also comes out that, when first time he went to Shaikh Maholla the lights were on but when he went second time in Shaikh Maholla, there was darkness. From his cross-examination it also transpires that, mob does not attacked the police. No injury was sustained by the police. No list of persons of Muslims of Sundarpur was prepared.

P.W.101 - Khodidas Govindbhai has deposed that he was in the 2nd mobile van with P.S.I. Rathod alongwith him Head Constable Lalji Arjanji and Police Constable –

Punjabhai Bharatbhai was driving the mobile van. On 01.03.2002, two Muslims were burnt in Ladol village and after completion of their burial rituals they came to Vijapur and they were in patrolling. At about 20.00 hours, P.I. Shri Vaghlea informed the P.S.I. to go to Sardarpur to help Shri Parmar and so he, alongwith P.S.I. Rathod and other staff members went to Sardarpur and reached Sardarpur at about 20.30 hours and met P.S.I.- Parmar and had started patrolling. At about 22.00 hours, they were near the primary school and the mob of 1000 persons came from Sundarpur side shouting slogans and another mob of 500 persons came from Sardarpur village side shouting slogans and mobile van was surrounded by the mob. P.S.I. warned the mob, lathi charge was resorted but the mob was uncontrollable and therefore, teargas was lobbed to disburse the mob but then also, the mob was not under control and therefore, the Police Constable Krishnakant and Popatji, respectively was told by P.S.I. Shri Parmar to fire in air and therefore, Krishnakant had fired four rounds towards Sundarpur while Popatji had fired two rounds towards Sardarpur meanwhile, P.S.I. Shri Parmar also came and mob disbursed. Thereafter, they went for patrolling. P.S.I. Shri Gohel went back to Ladol. They were

in patrolling and during patrolling they saw that two to three cabins were in burnt position at the entrance of Shaikh Maholla. Thereafter, they went to Vijapur and at about 12.00 O'clock, again they went to Sardarpur and they reached Sardarpur at about 1.45 A.M. by removing the obstacles of the roads. They went at the entrance of Sardarpur. They saw the mob. Seeing the police, the mob rushed towards the Maholla side. The police went inside the Shaikh Maholla and told that they are the police, come out therefore, two persons came out and told that there are ladies, children and other persons in the house of Mahemudmiya who are burnt. Therefore, they all went towards the house of Mahemudmiya and opened the door. Meanwhile, Dy.S.P. Jadeja, D.S.P. Gehlot and P.I. Shri Vaghela came towards the house of Mahemudmiya. Approximately, there were 10 injured persons 28 dead bodies, who were taken out from the house of Mahemudmiya and they were shifted to Mahesana Civil Hospital.

From the cross-examination of this witness it transpires that, there was no light in Shaikh Maholla when second time he went in the Maholla. Further in both of his statements, he has not stated that, mob went towards

Mahadev side but the version as stated in chief-examination that mob of 1000 persons were came from Sundarpur side and mob of 500 persons came from Sardarpur is not challenged in cross-examination. Therefore, there is no reason to disbelieve his whole chief-examination.

P.W.102 - Desai Laljibhai Arjanbhai has deposed that he was working as A.S.I. and he was in the mobile van with P.S.I. Shri Rathod alongwith him Ganpatbhai Narsinhbhai, Krishnakant, Popatji, Jivaji and Khodidas Jivanbhai were there. On 01.03.2002, he was in 2nd Mobile Van and they were patrolling in Vijapur and Ladol and dead bodies of two Muslims were brought to Vijapur for performing burial rituals. As there was tense atmosphere in Vijapur, he was in patrolling with P.S.I. Shri Rathod. At about 20.00 hours, P.I. Shri Vaghela asked him to go to Sardarpur to help P.S.I. Parmar therefore, they went to Sardarpur from Vijapur by removing obstacles and they reached at about 20.30 hours and at Sardarpur they met P.S.I. Shri Parmar. At about 22.00 hours, they were near Gram Panchayat. A mob of 1000 persons came from Sundarpur side and mob of 500 persons came from

Sardarpur side and they were shouting and the persons of both the mobile van were surrounded by them. P.S.I. asked the mob to go back but the mob was not under control therefore, lathi charge was resorted even then the mob was uncontrollable and had started pelting stones towards police therefore, P.S.I.- Rathod asked the Police Constable – Khodidas to lob teargas. He lobbed teargas towards the Sardarpur but the mob was not under control therefore, P.S.I. Shri Rathod asked Police Constable Krishnakant and Jivanji to fire in the air and therefore, Krishnakant fired 4 rounds towards Sundarpur and Popatji fired 2 rounds towards Sardarpur and thereafter, the mob disbursed and P.S.I. Gohel also came and the mob was disbursed. Thereafter, they went for patrolling in the village, there was peace in the village and hence, they came back to Vijapur and the complaint was lodged about the burning of cabins in Sardarpur and they again went to patrolling. At about 00.10 hours, P.I. Shri Vaghela asked P.S.I. Rathod to go to Sardarpur to help P.S.I. Shri Parmar thereafter, they alongwith other staff members went to Sardarpur by removing obstacles from Ladol. They reached near Sundarpur. When they were coming from Sundarpur to Sardarpur, there were obstacles of Cabins, woods, pipes

etc. They had removed those obstacles and they went near the Shaikh Maholla. On seeing police, mob rushed towards Maholla side. At that time, voices were coming from Shaikh Maholla and there were smoke in Shaikh Maholla and therefore, they went inside the Shaikh Maholla and asked the persons to come out as they are the police persons. Two injured persons came out and told them that there are ladies and gents in the house of Mahemudmiya therefore, they went towards the house of Mahemudmiya and opened the door. About 10 persons were injured and 28 persons had died. Meanwhile, higher authorities came and rescue operation took place and injured were shifted to Mahesana Civil Hospital while the dead bodies were brought to Mahesana Civil Hospital for Post-Mortem.

In cross-examination it has come out that, there was no Halogen light, as claimed by the witness but there was light of flame of burning houses and Jeep and rescue operation was done in the headlight of the vehicle.

Considering his deposition it transpires that, houses were burnt and there was light due to the flame of burning. There is contradiction in the statement dated 09.03.2002 while there is no contradiction in the statement taken by

S.I.T. on 09.07.2008 therefore, there is no importance of this contradiction in respect of this fact.

P.W.103 - Ganpatbhai Narsinhbhai has deposed on oath that on 01.03.2002, there was Bharat Bandh and he was in the mobile van with P.S.I. Shri Rathod alongwith Arjanaji, Police Constable – Krishnakant, Driver – Punjaji Bharthaji, Police Constable – Popatji Jivanji and Gasman – Khodidas. On 01.03.2002, there was tense atmosphere at Vijapur as two Muslims had died in Ladol and dead bodies were brought to Vijapur for performing their burial rituals. They were in patrolling meanwhile, at about 20.00 hours, P.S.I. Shri Vaghela told P.S.I. Shri Parmar to go to Sardarpur therefore, they went to Sardarpur and met P.S.I. Shri Parmar. They reached Sardarpur at about 20.30 by removing the obstacles which were on the way. At about 22.00 hours they were in patrolling near Primary school, Sardarpur. Mob of 1000 persons came from Sundarpur side and mob of 500 persons came from Sardarpur side and they had caused damages to the cabins near the Bus stand. First, the officer asked them to disburse but as the mob was not under control, P.S.I. Shri Rathod told Khodidas to lob tear gas cell. Even then the mob was not

under control and therefore, Police Constables – Krishnakant and Popatji were ordered to fire in the air. Shri Krishnakant fired 4 rounds in the air while Popatji fired 2 rounds in the air. Mob disbursed and thereafter, P.S.I.-Gohel came and after patrolling, they came to Vijapur and at Vijapur, complaint was lodged.

It is admitted by this witness that, in his statement dated 16.03.2002 on seeing the Police vehicle near Shaikh Maholla, mob disbursed in the dark, they reached at about 1.45 A.M. in Shaikh Maholla. At the entrance of Shaikh Maholla, three cabins were burnt and they had worked in the light of flame of burning houses and in the light of Battery. There was no halogen light. So far as contradiction regarding breaking of door of Mahemudmiya's house is concerned whether persons were taken out after breaking the door if there is such contradiction it is of no importance as door was opened. This evidence cannot be discarded as it is much supported by other evidence.

P.W.104 - Jadeja Bachubha Vesalji who was the Dy.S.P. has deposed that he had received information from D.S.P., Mahesana to go to Vijapur Police Station and to

maintain law and order immediately. He went to the Vijapur Police Station and managed for law and order and had started patrolling. He received message to reach Visnagar as the situation at Visnagar was tense. He managed police Bandobast at Visnagar. He stayed at Visnagar. On 01.03.2002, during mid night, at about 2.00 A.M., D.S.P. informed him to reach Sardarpur therefore, he reached Sardarpur and reached near Shaikh Maholla. Street lights were off. P.S.I. Rathod, P.S.I. Parmar, P.I. Vaghela and D.S.P. were present and the houses in Shaikh Maholla were burnt. The cabins just at the entrance of Shaikh Maholla were also burnt. Not only that but the scooter and jeep were also burnt. They had done rescue operation in the light of scooter and jeep. At the last of Shaikh Maholla, there is graveyard. When they reached there the person whose jeep was burnt and other 2-3 persons came to them and told them that last house is of Mahemudmiya and there are persons inside the house therefore, P.S.I. Parmar, P.S.I. Rathod and P.I. Vaghela reached towards the house of Mahemudmiya and they took 10 injured persons out from the house of Mahemudmiya and they were shifted to Civil Hospital, Mahesana. Not only that but 28 persons have died in the house of Mahemudmiya who were taken out from the

house of Mahemudmiya and their dead bodies were taken to Mahesana Civil Hospital in 407 Matador. Thereafter, Muslims from Shaikh Maholla and other Maholla were sent to Vijapur, Savala, Bhalak, Ilol etc.

In the cross-examination of this witness defence has tried to bring on record that, complaint and Panchnama were not verify by this witness. This witness has not visited the scene of offence and it is submitted on behalf of accused side that, complaint was not verified by this witness because the complaint was created subsequently. Simply because the complaint is not verified by this witness, it cannot be said that complaint is concocted one. In a case when it is otherwise proved this witness has given satisfactory explanation that, complainant and witnesses were taken to Civil Hospital, Mahesana and therefore, he could not verified the complaint. Further, it is also explained by him that, complaint was not verified up to 23.02.2002 as he was busy in investigation of other major offences. A question was put to him whether he inquired about the incident with the person whose Jeep was burnt and the two persons who came from the Shaikh Maholla on reaching the Police. It is answered by this witness that, he

had inquired about the incident with the person whose Jeep was burnt and two persons who came out soon as Police reached in Shaikh Maholla but they have not narrated any fact about the incident before him. So far as contradictions with regard to statements dated 09.07.2008 before S.I.T. is concerned, it is denied by this witness that, he has not stated before the S.I.T. that, when they reached in Shaikh Maholla the person by whom the Jeep was owned and other two to three persons came to him and told him that, in the House of Mahemudmiya there were persons, screaming for help. No question is asked about this contradiction to Investigating Officer Shri G.V.Barot, therefore, the fact cannot be discarded that, the person whose Jeep was burnt and the other two persons came to him and told about Mahemudmiya's House and the persons inside the House, screaming for the help. Simply the names of persons who were taken off alive from the house, no list of those persons were prepared it cannot be inferred that this is a false fact. In such a grave and tense atmosphere no one will sit to prepare a list instead of rushing for rescue to the victims. Therefore, this defence is not tenable. Further, it is admitted by this witness that, all the vehicles were out of Shaikh Maholla as it was not possible to go inside with

the vehicle because the Passage is so narrow. No doubt it is an admission but it is established by the prosecution from the Panchnama as well as other evidence that, Jeep of Bachumiya Imammiya was lying just in front of his house.

Considering his deposition it transpires that, they had tried to save life of persons, who were taken out from the house of Mahemudmiya and he has no reason to tell the lie. They had made attempts to shift them to the Civil Hospital Mahesana as early as possible. He has supervised the whole investigation. P.I. Shri Vaghela has recorded the statements which were verified by this witness. After recording the complaint, statements of witnesses were recorded by P.I. Shri Vaghela and on very next day, those statements were verified, therefore, his action is prompt. He has also verified the statement dated 06.03.2002. The law and order position was worse in Gujarat at that time. This fact is also to be considered and kept in mind. Shri Jadeja was very much present at the place of incident and was supervising and as per instruction statements of 11 persons were recorded.

P.W.105 - Gehlot Anupamsinh Shreejaysinh, who

was D.S.P., Mahesana at the time of incident has deposed that there was Bharat Bandh on 01.03.2002 and he had arranged police Bandobast. During the night, he received information that in Sardarpur village mob had gathered and there is possibility of attack upon the Muslims therefore, he instructed Vijapur P.I. to send police officers to Sardarpur and had also instructed to fire if necessary. Two P.S.Is. were sent to Sardarpur. They went to Sardarpur by removing obstacles from Ladol road. D.S.P. himself also went to Sardarpur and ordered other officers to reach Sardarpur, near Ladol. He saw the trees were burnt, drainage pipes were lying on the road, Tractor trolley was lying on the road and by removing those obstructions, they reached Sardarpur. Near Pathanvas, he stopped and asked about the incident. One person came and told him to go towards Shaikh Maholla therefore, he rushed towards Shaikh Maholla. There was darkness and in two police vehicle, P.S.I. Shri Parmar and Rathod were coming and they were searching the victims and at the entrance of Shaikh Maholla with the help of light of vehicles and batteries, they went inside the Shaikh Maholla. About 20 houses were burnt and rescue operation was in progress. In one room, there were ladies, gents and children. That room

was also burnt. Injured persons were taken from house and dead bodies were taken from that house. The dead bodies as well as the injured persons were shifted to Mahesana Hospital. Thereafter, Muslims from the village were shifted to other place like Savala, Ilol etc. Further, he has deposed that when he reached Sardarpur, it was about 2.25 A.M. and he stayed there upto 5.00 A.M.

In his cross-examination defence has tried to bring on record that, it is not possible to see from Pathanvas what is happening in Shaikh Maholla. This witness has admitted that, a person cannot see from Pathanvas to Shaikh Maholla. During the Inspection visit by the Court it was observed that, it is not possible to see from Pathanvas to Shaikh Maholla but a person can see by standing in Pathanvas what is happening at the entrance of Shaikh Maholla. Suppose there is burning flame in Shaikh Maholla that also can be seen from Pathanvas. Further, in his cross-examination it has come out when he entered in Shaikh Maholla he saw houses were burnt, Jeep and two Wheelers were burnt. Further two burnt persons came to him from other houses of Shaikh Maholla, who told him to go to Mahemudmiya's house where the major incident took

place. There was total darkness, in the light of vehicle rescue operation was done, 10 persons were saved while 28 dead bodies were taken from the house of Mahemudmiya. About 40 persons were brought from other houses.

Considering his deposition it transpires that, he received message from Savala village that Patels from Kansa Village had purchased bulk of Petrol from the Petrol Pump and they will burn Savala during night. Therefore, he immediately went to Savala, from Unjha via Visnagar and had alerted the Police Officers accordingly. Thereafter, he came to know about the mob gathered in Sardarpur Village and there was fear of untoward incident and therefore he had instructed the concerned Police Officer accordingly. His this deposition supports the say of the witness that petrol and kerosene were brought in Sardarpur village. Further from the deposition of this witness, it reveals that position of Sardarpur was tense and therefore, he went to Sardarpur where he had taken care that there should not be any untoward incident happened. His deposition also supports the say of Munsufkhan that Munsufkhan had told them to go to Shaikh Maholla and this witness stopped at the entrance of Shaikh Maholla.

P.W.110 - Vaghela Kakusinh Ranjitsinh who is the first Investigating Officer of this case has deposed on oath that at the time of incident, he was P.I., Vijapur. Due to Godhra riots, so as to avoid untoward incident, police patrolling as well as police Bandobast were arranged on 27.02.2002, 28.02.2002 and 01.03.2002. On 01.03.2002, there was Bharat Bandh. At about 17.00 hours, he received message about the mob towards Sardarpur and that atmosphere in Sardarpur was tense. He asked P.S.I.- Parmar to take him to Sardarpur alongwith his staff members in mobile van. He was in Bandobast in Vijapur town. At about 18.30 hours, mob of Hindu had burnt one Muslim husband and wife and their burial rituals were performed in Vijapur town and the Muslims of neighbouring village came to Vijapur. Atmosphere was tense. At about 8.00 P.M., P.S.I.- Parmar had asked for additional police therefore, P.S.I.- Parmar alongwith his staff members and his mobile van, were sent to Sardarpur. Thereafter, P.S.I. Gohel was also sent to Sardarpur. As the Vijapur town was tense and there was peace in Sardarpur, he called all the P.S.Is. to Vijapur and told them that the mob has gathered and are burning the cabins and shops

and therefore, they lathi charged and lobbed tear gas cells but the mob did not disburse therefore, six round fire was resorted by them and then there was peace. Therefore, they came back to Vijapur. They were in police Bandobast and P.S.I. Rathod was instructed to lodge the complaint in respect of firing done by them in Sardarpur. On 02.03.2002 at about 2.30 A.M., he received message by D.S.P. Gehlot to come to Sardarpur, immediately meanwhile, fire fighters came from Mahesana to Sardarpur. Dy.S.P. Jadeja and D.S.P. Gehlot also came there and they went to Shaikh Maholla. At the entrance of Shaikh Maholla, they saw the burnt cabins. In Shaikh Maholla, there was one pakka house and there were persons in that house who were burnt. There were some injured persons in the neighbouring houses who were also burnt and those who were alive and injured, were sent to Mahesana Civil Hospital for treatment. P.S.I. Rathod approximately took 25 persons to Mahesana Civil Hospital and thereafter, dead bodies lying in the room were taken in 407 Matador to Mahesana Civil Hospital and rest of the Muslims from Sardarpur were shifted to Savala, Bhalak, Vijapur etc. Thereafter, complaint was lodged by the complainant before him in the Civil Hospital which was recorded as per the say

of the complainant and the said complaint was registered with Vijapur Police Station and he has recorded the statements of some of the witnesses on different dates.

When we evaluate the evidence of this witness, he has deposed that, atmosphere in Sardarpur village was tensed. He had sent P.S.I. – Parmar at Sardarpur. At about 8.00 P.M. P.S.I. Parmar had asked for further police force. and P.S.I. Rathod and Gohel were also sent to Sardarpur. Thereafter, there was peace in Sardarpur. All the P.S.Is. were called at Vijapur as there was tense atmosphere in Vijapur as two persons were burnt alive in Ladol. P.S.I. from Sardarpur had told him that as mob gathered, they had burnt the shops and cabins therefore, they were lathi charged and to disburse the mob, teargas cell were lobbed. Even then, the mob was not under control, then six rounds were fired and now there is peace in the village. Therefore, P.S.I. was instructed to file complaint on behalf of the Government. This fact supports the say of P.S.I. Parmar that he was sent to Sardarpur at 5.00 P.M. as well as whole incident subsequently narrated by P.S.I. Parmar and Rathod and other police officers. Further, offence registered vide I.CR.No.45/2002 which is produced vide Exh.690 supports the say of this witness.

P.W.112 - Barot Gautamkumar Vishnubhai has deposed that in his investigation, it has come out that on 01.03.2002 at about 10.30 P.M., police had fired towards the mob which came from Sundarpur village side to Sardarpur.

46. So far as F.I.R. given by the complainant in respect of I.CR. No.46/2002 is concerned it is regularly exhibited and in Para 21 discussed in detail and the contents of this complaint is required to be considered for corroboration of the deposition of witnesses and complainant. When we peruse the contents of this F.I.R. it is mentioned in the complaint that, on 01.03.2002 there was Bharat Bandh due to Godhara Rail Carnage incident. At about 11.30 in the night there were in their Village, Patels from their village have burnt the cabins and they have also pelted stones and the mob of about 1000 persons, having weapons like sticks, stones, Dhariya etc. and they were shouting slogans as the Police came mob was disbursed, police had resorted firing to disburse the mob, soon as Police went back, mob of Patels again gathered and had burnt the houses of complainant and other persons. Persons from the mob were having Petrol, Kerosene and Stones with them.

Complainant as well as witnesses had also pelted stones to themselves and as there was big mob and witnesses were surrounded by the mob due to fear the complainant and other witnesses could not protest the mob. He had seen and identified the persons in the mob. In the incident, complainant had received injury due to pelting of stones and the family members of the complainant went to the house of Mahemudmiya being Pakka house and complainant was in his House and the accused as well as other persons from the mob caused damages to the houses of complainant and witnesses and thereafter they went back and when the complainant went towards Mahemudmiya's house and saw that the house of Mahemudmiya was burnt in which Rafikmiya Manumiya and Firoz Maqbulmiya were alive while his wife Ruksana alias Jayada, Daughter Parvin and Raziya were found dead. Asiyanabanu Aashikhusen was alive, she was taken out from the room, Sharayabanu, D/o.Abbasmiya Kesarmiya, Yunushusen Sherumiya Rasulmiya, Aarifhusen Manubhai Shaikh, Sultanbhai Mahemudmiya Husenmiya Shaikh, Javedmiya Mustufamiya Rasulmiya, Rasidabanu, W/o. Jamalbhai Doshubhai, Idrishbhai Akbarbhai Shaikh, Mahemudabibi, W/o. Sherumiya Rasulmiya, Vahidabanu,

W/o. Nazirmiya Akbarmiya, Barubibi, W/o.Babumiya Motamiya, Mumtazbanu, W/o.Maqbulhusen Kesarmiya, Faridabanu, D/o. Mahemudbhai Husenmiya, Mumtazbanu, D/o. Sherumiya Rasulmiya, Shamimbanu, W/o.Mustufamiya Rasulmiya, Sakkarbanu W/o. Mahemudmiya Husenmiya Shaikh, Husenabibi, W/o. Hizbulmiya Husenmiya Shaikh, Abbasmiya Kesarmiya Shaikh, Bismillabanu Bhikhumiya Kalumiya, Ruksanabanu Abbasmiya Kesarmiya, Johrabanu Manubhai Husenbhai, Rifakathusen Hizbulmiya Husenmiya, Irfanhusen Mahemudmiya Shaikh, Bachumiya Nathumiya Shaikh, Sherumiya Rasulmiya Shaikh were died and they were burnt while in the incident Iqbalmiya Rasulmiya, Hizbulmiya Husenmiya, Mustufamiya Rasulmiya, Nazirmiya Akbarmiya, Gulamali Akbarmiya, Faridabibi Aasiqmiya, Basirabibi Bachumiya and Ruksana, D/o.Ibrahimmiya Rasulmiya, Aminabibi Acchumiya, Bhikhumiya Kalumiya about 15 to 17 persons were injured while Yasinabanu had died on the way to Hospital. As the police came at late night and the dead bodies as well as injured are brought in the Government Hospital, this incident occurred due to Godhra Train incident.

As discussed earlier this complaint was given at about 09.30 hours while the incident occurred early in the morning and the injured were shifted to Civil Hospital, Mahesana. This complaint was recorded in Civil Hospital, Mahesana. Thus there was no time for concoction, whatever time has been taken in recording the complaint that time was spent by the Police witnesses in saving the lives of victims or in shifting the injured as well as dead bodies to the Civil Hospital, Mahesana. Thus, the delay which has been caused is satisfactorily explained by the Police witnesses as well as by the Complainant and in that circumstance when we consider the contents of this complaint, if suppose the prosecution case that about 28 persons were dead and 24 persons were injured and names of injured persons and names of dead persons, which are mentioned in the complaint, corroborates the version of other witnesses as there was mistake in the name of wife of the complainant . In fact Ruksana is the daughter of the Complainant and in the complaint her name is mentioned as wife of the complainant and that mistake is subsequently rectified. In medical documentary evidence also that mistake is subsequently rectified, which is well supported by the Medical Officer. Thus, this complaint fully

corroborates the prosecution case about the incident occurred at about 11.30 hours on 01.03.2002 in Shaikh Maholla, specially in Mahemudmiya's House. And this Complaint is first in time and there is no reason to disbelieve these contents of the complaint.

47. So far as history given before Medical Officer is concerned it is a corroborative piece of evidence and required to be considered in the light of other evidence on record. It is argued by Shri Shah that referring the history that the medical history given by the injured persons himself in the medical certificate, supports the fact that the injuries were caused during the incident while the learned advocate appearing on behalf of the accused has argued that in fact there are 24 injured persons in number and as per charge there are 20 injured. Out of the 24 injured, 2 injured died subsequently, namely Rafik Manubhai Shaikh and Firoz Maqbulhusen. Injury certificates are produced vide Exh.159 and Exh.165 while 22 Injury Certificates are produced. Out of the 22 injured, 14 witnesses are examined, 17 injured received stone injuries during the riots, one injured received injury by electric shock, one injured received injuries by stone, lathi and burns while 3 persons received

burns during riots. Injured witnesses have given specific history in connection with 2 persons. The injury certificates of 24 injured contains the history of burning in room and how they have received the injuries. Herein the present case, majority of the witnesses have given history by themselves or in some cases, history is given by their relatives. The history, which is given by relatives, requires explanation. Unless those relatives are examined, that history is inadmissible in evidence while the history given by the patient is admissible. Referring to the history given by the complainant, it is argued by Shri Dhruv that the history mentioned in the certificate is not narrated in the complaint. In the evidence, it is mentioned that he was not in the house. As per his affidavit, he was in the room. As per his deposition, he was not in room. Both are contradictory while history speaks that they were locked in the room and burnt by pouring of petrol or kerosene. Therefore, it is the say of Shri Dhruv or it is the true fact that the history given by the complainant is not reliable. Further, as per the medical certificates, some of the injured found with abrasion and fracture. They were in the room and how they have received such abrasion and fracture is not explained. It is not the case of the prosecution that they

were beaten by stick, stone etc. and thereafter, they were locked in room and thereafter, they were burnt. As per the prosecution case, they were in the room. Therefore, it is the say of Shri Dhruv that it is required to be explained by the prosecution. In the absence of any explanation, no presumption can be drawn about the fracture, abrasion etc. Different stories are given by different witnesses, which suggests that certain important things are not stated by the witnesses therefore, presumption in favour of the accused is required to be drawn. Referring to the clothes of the injured, it is argued by Shri Dhruv that in which clothes stones were pelted is not explained and as per the say of witnesses, there were pelting of stones and they have received injury by stones during riots. Simply because they are injured therefore, they are the eye witnesses, it cannot be presumed. The incident had started at 9.00 P.M. They might have received injury in other place. Further, it is argued by him that as per the evidence of Doctor, injury is possible by stone, hard and blunt substance also. There are 4 certificates which are produced vide Exh.163, 175, 177 and 187. They speak about no external injury. 4 Certificates Exh.167, 172, 174, 185 speak about the abrasion and 2 certificates Exh.183 and Exh.191 speak about contusion. 5

Certificates Exh.169, 182, 193, 195 and 219 speak about CLW. In Exh.161, two fractures are shown, injury by stone is shown. There is no bleeding injury. 3 Certificates produced vide Exh.170, 189 and 195 show burn injuries. Thus, there are injury in addition to CLW. Some of these witnesses are examined. Some of the witnesses are not examined. Though injury certificates are on record. None of the injured witnesses who are examined says that they were beaten. On one set, as per the say of Doctor, injury is possible by hard and blunt substance by stone. On the other side, none of the witnesses have explained about these injuries. So far the burns injuries are concerned, in Exh.195 shows CLW, history is given stone, lathi, burns during riots. Witness was inside the room of Mahemudmiya's house. There may be specific evidence that the injury is possible by hard and blunt substance or by pelting of stones. In absence of such evidence, that possibility cannot be ruled out. Therefore, there is possibility that when mob came, the injured witnesses might have tried to save themselves and for that they might have rushed from hither to thither and they might have received injuries in above circumstances. There is no corroboration of the injury by stone. As per the case of the

prosecution, 33 persons were inside the house of Mahemudmiya, 7 persons came alive from the house of Mahemudmiya and those 7 persons are examined as P.W.56 - Shaikh Ayubmiya Rasulmiya, P.W.73 - Shaikh Faridabibi Aashikhusen, P.W.75 - Shaikh Firozabanu Bachumiya, P.W.78 - Shaikh Basirabibi Bachumiya, P.W.79 - Shaikh Samimbanu Mahemudmiya, P.W.80 - Shaikh Ruksanabanu Ibrahimmiya and P.W.81 - Shaikh Dilavarkhan Abbasmiya. As per the say of the complainant, only 3 persons came out alive from Mahemudmiya's house and those 3 persons had died subsequently. Out of 7 witnesses only 3 injury certificates are produced. There is no injury certificate for other 4 witnesses. Thus, it can be presumed that there was no injury to the 4 witnesses i.e. P.W.56 - Shaikh Ayubmiya Rasulmiya, P.W.75 - Shaikh Firozabanu Bachumiya, P.W.76 - Shaikh Hamidabibi Akbarmiya and P.W.89 - Makwana Ambalal Karshanbhai. P.W.73 - Shaikh Faridabibi Aashikhusen and P.W.78 - Shaikh Basirabibi Bachumiya were having no burn injuries respectively. There were exclusive burns and deceased died due to burns and suffocation and there was inhale hot smoke. This fact is supported by the F.S.L. and panch witnesses etc. Whether in such circumstances, can it be

possible that out of 7 persons only 3 were injured and there were no injury to 4 persons. Further, the room, as per the Panchnama and other evidence, was blackened and there was smoke burns. In that circumstance, whether it is possible that the witnesses would not have sustained injury or there is no effect to their clothes ? In such circumstances, every one who were inside the house, are bound to effect by burns. From the record, it appears that the persons came from different houses. The injured who was compelled to take acid whether that injured was inside the house is not explained. While there is no injury certificate in respect of P.W.56 - Shaikh Ayubmiya Rasulmiya, P.W.75 - Shaikh Firozabanu Bachumiya, P.W.79 - Shaikh Samimbanu Mahemudmiya and P.W.81 - Shaikh Dilavarkhan Abbasmiya while P.W.73 - Shaikh Faridabibi Aashikhusen, P.W.78 - Shaikh Basirabibi Bachumiya and P.W.80 - Shaikh Ruksanabanu Ibrahimmiya were injured. Injury Certificates are produced to that effect. P.W.80 - Shaikh Ruksanabanu Ibrahimmiya gives history of lathi, stone burns. P.W.78 - Shaikh Basirabibi Bachumiya gives history of burn injury. Photographs, videography, map and Panchnama shows the position of room. As per Dr.Soni's deposition, there were 4 persons who suffered suffocation

and carbon particles were there in trachea. What was the position of their clothes. There was no effect to their clothes which suggest that they were no inside the room therefore, it is the say of Shri Dhruv that it is doubtful whether these four persons were inside the room or not ? Further, 3 persons who were inside the room whether they have received burn injuries ? There were several houses set on fire by the mob and looking to deposition of panch witness P.W.38 - Shaikh Inayat Husen Bachumiya, Panchnama - Exh.424, map, videography and photographs, all these things suggest that many houses were set on fire. As per the say of Investigating Officer they saved many injured witnesses from different houses. As per say of Shri Gehlot, 40 persons were saved. Referring to the deposition of P.W.76 - Shaikh Hamidabibi Akbarmiya, it is argued by Shri Dhruv that there was injury by pelting of stones but no burn injuries. As per the say of Investigating Officer - Shri Vaghela, P.W.76 - Shaikh Hamidabibi Akbarmiya was in Nazirmiya's house and houses were burnt therefore, the said witness rushed and she sustained injuries. From the evidence, it comes out that Nazirmiya's house was burnt. In complaint, only 27 persons are shown as deceased. Their houses were also burnt. In those houses, also, persons

were burnt. Simply because witnesses sustained injuries by stone, it cannot be presumed that he saw the incident. In above circumstances, the presence of witness inside the house is doubtful. Prosecution is suppressing something and that the prosecution has not come with clean hands. Complainant was having fracture and not bleeding injury. Complainant's version is contradicting with the medical evidence. Referring to the deposition of P.W.62 - Shaikh Rafikmiya Mahmadsusen, it is argued by Shri Dhruv that contradiction is proved by the deposition of Investigating Officer - Shri K.R.Vaghela. Referring to the deposition of P.W.84 - Kureshi Imtiyazali Husenmiya, it is argued by Shri Dhruv that, he is a witness from Sundarpur, he speaks something else that he saw 2 to 3 persons were thrown in burning cabins and he saw the incident at a distance of 150 Ft. He further states that he saw the mob beating with weapons. There is no complaint about suffocation. Referring to the Inquest Panchnama and Post-Mortem of Bachumiya Nathumiya, it is argued by him that fracture injury which is shown, is not possible by stone. It is not the case of the prosecution that accused entered in the house of Mahemudmiya and they have beaten the witnesses. Further, from where the blood from different bodies came, it

is also not explained. In some of the Post-Mortem Reports, injuries by burns are shown which suggest that incident as narrated by the witnesses has not happened. There is possibility that injured and deceased might have been beaten outside or inside the room and thereafter, thrown inside the room and burnt but witnesses are not saying so. As per the case of prosecution, 7 witnesses were inside the room none of them are saying that what were the persons doing who were inside the room. Injury of Bachumiya corroborates with the Inquest Report but no opinion is given by the doctor that the injury sustained is possible by flame. So far as fracture in Sherumiya's Post-Mortem is concerned, nothing is mentioned by the doctor. Thus, there injuries on different body, there were blood stains, suffocation and presence of carbon particles and all the chambers were full of blood. There were 1st, 2nd and 3rd degree burns, in that circumstances, persons cannot survive if they were inside the room. All these facts suggest that incident has not happened in the way and manner as witnesses have deposed. Prosecution is required to explain the injuries sustained to the witnesses. There is silence on the part of the injured persons in this regard. For this purpose, Shri Dhruv has relied upon **1988 Criminal Law**

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RAJASTHAN, in which it has been observed that, statement of disinterested person Medical Officer that, deceased told him that her mother-in-law has burnt her accepted though he has not recorded the same in Medical register. In the cited ruling the doctor was Government Doctor, on duty in the Hospital, who has treated the deceased, nothing had been elicited from his cross-examination that, he was interested in or inimical disposed towards the accused. Further, he has relied upon **1996 (1)**

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HARIJAN, in which it has been observed that, Medical officer while recording history of the injury not mentioning name of assailant under the pretext that such was the practice. Practice was deprecated with observations that, it is the duty of the Medical Officer to take down whatever voluntarily falls from the lips of the victim. It would also be the duty of the Medical Officer to inquire and find out from the injured the name of assailant, if possible. It is indeed the first and foremost duty of such doctor to take down whatever voluntarily falls down from the lips of the injured forming it part of case papers and if injured person does not volunteer of his/her own naming the assailant then in

that case, it is equally the further duty of the concerned doctor to inquire and find out from him as to who was the assailant because at that stage what ought we not know that but for the last statement of injured recorded by doctor he may ultimately come to the injury there would be nothing no other piece of evidence to tress and connect with the accused with the crime under such demanding and not to be taken chance with the circumstances if the doctor attending the injured remains just wooden passive placid unconcerned, mechanical he would be simply inadvertently playing in the hands helping the accused to go unpunished. No doubt it is first and foremost duty of the medical officer to treat the injured person and that he is certainly not police officer to record the complaint but at the same time in all medico legal case medical officer attending upon the treating injured when has opportunities to know the material facts more particularly the names of assailants he would not be justified in not recording the same on the ground that he was the first and last job was only to give medical treatment only to the injured and that he had no concern or business whatsoever to do anything further by recording the names of assailants. In the cited rulings it is also observed that, the medical papers

indicating that history of the incident was given by father of the deceased creating doubt whether injured was in fit state of mind when the complaint was given. In that circumstances it was stated by the father of the deceased had stated that, doctor was present when the complaint was given. Under above circumstances it was held doubtful.

Keeping in mind the ratio laid down in the cited rulings, when we consider the present case the history given before the doctor in the present case is concerned, it transpires that there are 24 injury certificates containing history of burning in room. It is not specifically mentioned how they received injuries in the room. It is also true that in some of the cases history is given by the patient himself and in some of the cases, history is given by the relatives of the injured. In that circumstances, names of relatives are not mentioned in the history and that relatives are also not examined by the prosecution. Unless and until that relatives is examined the history given by the relatives are inadmissible in evidence. But the history given by the patient himself is admissible in evidence. Therefore, the arguments advanced by the learned advocate Shri Dhruv in this regard are acceptable in the eye of law. So far as history given by the complainant is concerned, when we

peruse the certificate of complainant, which is produced on record vide Exh.161, in the certificate history of pelting stones and burning by pouring petrol and kerosene in the room on 02.03.2002 at between 00.30 to 2.30 A.M. patient was conscious is mentioned. Whether this history is given by the complainant, this certificate is silent about it. However, the arguments advanced by the learned advocate Shri Dhruv that, this fact is not narrated in the complaint and in evidence he was not in the house of Mahemudmiya while as per his affidavit he was in the room and thus contradictory statements are there in this regard and history given by the complainant is not reliable is concerned, this point will be decided at the time of discussing and appreciating the evidence of the complainant. So far as injuries of abrasion and fractures sustained by some of the witnesses is concerned, it is true that those injuries are not explained by the witnesses in their depositions but those injuries are not such to discard the burns injuries. If those injuries are not explained by the witnesses, that will not effect the burns injuries, which are sustained by the injured in the room and those cannot be discarded on the ground of non-explanation of injuries of abrasion and fracture and that is true that more than 55

persons were in the room, there were suffocation in the room due to burns, they might have sustained abrasion and fracture injuries either in the room or before going inside the room, as there is clear cut evidence that before the witnesses went inside the house of Mahemudmiya, incident of pelting stones took place and witnesses were injured in pelting stones. In that circumstances if in the history before the doctor, it is mentioned that, injuries were sustained in pelting stones that corroborates the version of the witnesses as well as that supports the injuries of abrasion and fractures by hard and blunt substance. Therefore, non- explanation of those injuries would not amount failure of the evidence of prosecution in respect of burns injuries and history mentioned cannot be discarded on that count. Therefore, if in the above circumstances if the history is given by the patient that is admissible and reliable one.

48. Thus from above evidence prosecution has established beyond reasonable doubt that, the alleged incident occurred on 01.03.2002 during 09.30 P.M. to 02.30 A.M. in Shaikh Maholla of Sardarpur village, in which 33 persons died and 24 persons were injured and houses in Shaikh

Maholla were set on fire and three cabins at the entrance of Shaikh Maholla were burnt and the main incident occurred in Mahemudmiya's house and that there were about 55 to 60 persons inside the Mahemudmiya's house and by pouring petrol and kerosene and other inflammable items, house of Mahemudmiya was burnt by the mob and the result is 33 persons died and others were injured. Some of the deceased died due to suffocation and carbon particles in trachea and one victim has sustained injuries due to electrocution. It is also proved by the prosecution that, damage to the graveyard was also caused by the mob and one Jeep bearing Registration No.GJ-17-A-8775 , which was standing near the house of Bachumiya Imammiya was burnt by the mob and one Scooter bearing Registration No.GAF-4710 which was lying in front of the house of Shaikh Babubhai Mahmadbhai were burnt. It is also proved by the prosecution that, all the victims were shifted to Civil Hospital, Mahesana, where Post-Mortems of 32 persons were performed either in Civil Hospital Mahesana or in Civil Hospital, Ahmedabad. The prosecution also proves injury Certificates of 24 persons. It is also proved by the prosecution that, there was sufficient light at the time of occurrence. It is also proved by the prosecution that, firing

was resorted by the Police to disburse the mob at about 09.30 P.M. when first mob came. It is also proved by the prosecution that, mob has come from two sides, one from Sundarpur side and another from Sardarpur side. It is also established by the prosecution that, meeting for peace was organized at the residence of Munsufkhan Yasinkhan Pathan. It is also proved by the prosecution that, at about 02.30 A.M. D.S.P. Shri Gehlot, Dy.S.P. Shri Jadeja, P.I. Shri K.R.Vaghela, P.S.I. Shri Rathod, Parmar and Gohel and other police officials reached at the place of occurrence and rescue operation took place at about 2.30 A.M. and subsequently, the victims were shifted to village Savala and other places as per their desire. But the prosecution could not prove the meeting organized by Patel Naranbhai Lallubhai, M.L.A., Unjha at Mahadev Temple of Village Sardarpur and Hareshbhai's meeting about halogen light, about direct illegal wire, about distribution of kerosene and also about Basirabibi was told in the shop about the eating of Bhajia (edible food) when she took gram floor and about the key of the water works was taken before the incident.

So far as contention regarding consistent improvements in the evidence of witnesses who had

supported the prosecution case is concerned, all these witnesses have been extensively cross-examined and all possible latitude was given to the learned advocates in the matter of cross-examination and no attempt was made to curtail the length of the same at any time. Further the whole argument of impossibility to see the mob is unrealistic seeing or observing a mob is not the same thing as observing a single stationary object. In the present case mob is stated to be consisting of 1000 to 1500 persons it is true to that correctness of the figure can be doubted but there can be no dispute that a large number of persons were there in the mob. The area and the space occupied by such a big mob would be considerable and it would be futile to say that mob could be seen from any particular point only or that it could be seen from another particular point. The position of a person in the mob can be at a very far place from that another in same mob as the mob was moving towards Mahemudmiya's house the evidence shows the presence of at the time and place of occurrence. The eye-witnesses also present in the Shaikh Maholla. Under these circumstance there is nothing to indicate that claim of having seen some of the accused amongst the mob of rioters as deposed by the eye-witnesses in their evidence

relate to any particular point of time. The evidence of eye-witness cannot be construed so as to mean that what so ever were seen by them as persons in the mob of rioters were so observed only when they were inside the Mahemudmiya's house or some other house in Shaikh Maholla they did not see any one. Thus, the conclusion is therefore irresistible that there is nothing in the evidence which would indicate that it was not possible for the eye-witnesses to have seen or identified any persons in the mob of rioters. Evidence indicates that there was every possibilities of the eye-witnesses or being able to see the mob at least some persons in the mob during the period for which the mob was there.

49. Now, whether the present accused or any of them is involved in the incident is required to be appreciated for this purpose. When we peruse the evidence of P.W.110 – Vaghela Kakusinh Ranjitsinh, it is deposed by him that, on 08.03.2002 at about 11.15 to 1.15 one Dhariya was produced by Rameshbhai Kantibhai in presence of Panchas and one Iron pipe was produced by Dashrathbhai Ambalal, one sword by Baldevbhai Ranchhodbhai, one thick iron rod was produced by Rajendrabhai Karshanbhai, one iron pipe

by Madhabhai Vitthalbhai, which was recovered and Panchnama was prepared in the presence of P.W.29 - Naranbhai Manilal Patel and P.W.30 - Babubhai Mathurbhai Patel and the said Panchnama is produced vide Exh.822. In this regard Naranbhai Manilal Patel – Panch is examined at Exh.376 while Babubhai Mathurbhai Patel – Panch is also examined at Exh.387, who are not supporting this Panchnama. They had been declared hostile but they have admitted their signatures in the Panchnama and they have also admitted their signatures in the slips, pasted on the Muddamal Articles. Those slips are produced vide Exh.377, 378, 379, 380, 381, 382, 383, 384, 385 and 386. When we go through the Panchnama produced vide Exh.822, it supports the say of Investigating Officer and it is signed by both the Panchas as well as by the Investigating Officer, it was prepared on 08.03.2002 at about 11.15 to 13.15. Slips of Muddamal Articles, which are signed by both the panchas also supports the say of Investigating Officer about the recovery of Muddamal Articles, as deposed by the Investigating Officer in his deposition thereafter, on 12.03.2002 four accused appeared before him and Patel Rameshbhai Ramabhai has produced Dhariya while Ashvinbhai Jagabhai, Prahladbhai Jagabhai

and Parshottam Mohanbhai appeared before him and Panchnama was prepared in presence of Panchas - Patel Arvindbhai Becharbhai and Babubhai Varvabhai and that Panchnama is produced vide Exh.829. When we peruse the Panchnama, produced vide Exh.829 it supports the say of Investigating Officer and that Panchnama is prepared on 12.03.2002 at about 13.00 to 14.30 hours and it is signed by Arvindbhai Becharbhai and Babubhai Varvabhai. For this purpose when we peruse the deposition of Arvindbhai Becharbhai and Babubhai Varvabhai at Exh.389 and 391 as P.W.31 and 32 respectively, they are declared as hostile and they have not supported the say of Investigating Officer but they have admitted their signatures in Panchnama and in Slips pasted on Muddamal Articles and which is produced vide Exh.390. For this purpose when we peruse the cross-examination of the Investigating Officer nothing comes out by the accused side from which we can infer that, the Investigating Officer is inimical to the accused or have any ulterior motive against the accused. It is the duty of the accused to bring out on record that, the Panchnama is prepared by the Investigating Officer with ulterior motive but from whole cross-examination, nothing comes out from which we can infer about the malafide intention of the

Investigating Officer therefore, the say of Investigating Officer that, he has prepared the Panchnama produced vide Exh.829 and accordingly he has recovered the Muddamal Articles from the accused as narrated in the Panchnama and those weapons were sent to F.S.L. By following due procedure and those weapons were received by F.S.L. in intact condition and the said procedure was adopted by the Investigating Officer in his official capacity therefore, the contents of Panchnama are proved by the prosecution in the deposition of Investigating Officer which is much supported by the F.S.L. report. Thereafter, on 15.03.2002 three accused appeared before Investigating Officer, as per his deposition he has prepared the panchnama during 17.00 hours to 18.15 hours and the panchnama was prepared in the presence of Babulal Sankalchand Panchal and Thakore Amaraji Kodarji. As per deposition of Investigating Officer Ambalal Maganbhai and Rameshbhai Prabhabhai have produced Dhariya while Kanaiyalal Nathalal has produced sticks. The panchnama was prepared and Muddamal articles were seized and signature of panchas in the slips were taken and it was affixed in muddamal. The said panchnama is produced vide Exh. 834. Panchas of this panchnamaAAmrajiodarji Thakore and

Manishkumar Babulal Oza are examined vide Exh.392 and 396 as P.W.33 and 34 both are declared hostile and they have not supported the say of Investigation Officer but they have admitted their signatures in panchnama and in slip and the said muddamal was sent to F.S.L. in due course which was received by F.S.L. which supports the say of Investigating Officer

When we peruse the deposition of P.W.109 - Baranda Rohitkumar Dhuljibhai, he has deposed on oath that on 11.06.2002, Patel Jayantibhai Ambaram with stick, Jivanbhai Dhwarkadass with Iron pipe appeared before him and he had prepared the Panchnama in the presence of Fulabhai Somabhai Chauhan and Manishbhai Babubhai Oza. The said panchnama was prepared during 17.00 hours to 18.30 hours. For this purpose when we peruse the deposition of Chauhan Fulabhai Somabhai he is declared hostile. He has not supported the say of Investigating Officer. Only his signature in slip as well as panchnama is admitted by him. The said panchnama is produced vide Exh.778. When we peruse the panchnama produced vide Exh.778, it is prepared on 11.06.2002 during 17.00 to 18.30 hours it is signed by panch Fulabhai Somabhai Chauhan and Oza Manishkumar Babulal. This panchnama is

support the say of Investigating Officer. When we peruse the cross-examination of both Investigating Officer nothing comes out by the accused side from which we can infer that, the Investigating Officer is inimical to the accused or have any ulterior motive against the accused. It is the duty of the accused to bring out on record that, the Panchnama is prepared by the Investigating Officer with ulterior motive but from whole cross-examination, nothing comes out from which we can infer about the malafide intention of the Investigating Officer therefore, the say of Investigating Officer that, they have prepared the Panchnama produced vide Exh.778, 822 and 829 and accordingly they have recovered the Muddamal Articles from the accused as narrated in the Panchnama and those weapons were sent to F.S.L. By following due procedure and those weapons were received by F.S.L. in intact condition and the said procedure was adopted by the Investigating Officer in his official capacity therefore, the contents of Panchnamas are proved by the prosecution in the deposition of Investigating Officer which is much supported by the F.S.L. report. For this purpose when we peruse F.S.L. report vide Exh.684 and 691 are supporting the say of Investigating Officer. As per F.S.L. report in three Dhariyas human blood was found,

as per F.S.L. report article No.C-1 Dharia was produced by Rameshbhai Kantibhai while Article No.C-2 was produced by Dashrathbhai Ambalal and No.C-6 was produced by Ramanbhai Jivabhai. In Muddamal Article No.C-6 the human blood was found but blood group could not be determined by the F.S.L. Officer while in Article C-1 and C-2 human blood group-B was found. It is not the say of Prosecution that any of these three above the said accused have wielded their Dharia on any of the witnesses. Witnesses have not deposed about those articles having been used by any of the accused. Therefore it would not connect any of the accused with the crime. It is say of Shri Dhruv that, any recovery of muddamal articles and weapons from the accused and find all blood stains over it is of no help. About 16 weapons were sent to F.S.L. but in 13 weapons nothing have been found. Further, it is not the say of prosecution that those weapons were wielded over any of the witnesses. As per say of prosecution muddamal article No.37 Dharia has been recovered from Rameshbhai Kantibhai. While P.W.49 Iqbalmiya Rasulmiya deposes that muddamal article No.37 was in the hands of Mathurbhai Trikambhai while as per P.W.55 Ashikhusen Bachumiya Shaikh assigns the same muddamal article No.37 in the

hands of Rameshbhai Prabhobhai. As per prosecution version muddamal article No.37 was in the hands of Mathurbhai Trikambhai and Rameshbhai Prabhobhai. But the said muddamal was not recovered from Mathurbhai Trikambhai and Rameshbhai Prabhobhai. No doubt muddamal contains blood stains over it but, it cannot connect Rameshbhai Kantibhai with the crime. Further, as per panchnama vide Exh. 822 muddamal article No.38 was recovered from Dashrathbhai Ambalal but as per deposition of Investigating Officer the pipe was recovered from Dashrathbhai Ambalal. Complainant Iqbalmiya Rasulmiya assigns muddamal article No.38 in the hands of Rameshbhai Punjabhai while P.W.59 - Mohmad Sattar Bachumiya assigns muddamal articles No.46 in the hands of Rajeshbhai Punjabhai while Muddamal article No.46 is said to have been recovered from Sureshbhai Baldevbhai. As per say of prosecution Muddamal article No.46 stick was recovered from Sureshbhai Baldevbhai while muddamal article No.38 is recovered from Dashrathbhai Ambalal. On muddamal article No.C-2 blood Group-B human blood stains is found. It is submitted by Shri Dhruv that it is proved to be contrary. It is argued by Shri Dhruv that prosecution has concocted the case thorough tutored

witnesses against the accused and have attempted to involve the accused by assigning them specific weapons. Muddamal article No.42 Dharia is recovered from Ramanbhai Jivabhai but Mohmad Sattar Bachumiya deposes said article in the hands of Rameshbhai Kantibhai. Further, three gallons were found from the scene of offense one of tin gallon which is attributed by different witnesses to different accused. Further, muddamal article No.30 plastic can is attributed by Iqbalmiya Rasulmiya in the hands of Ashvinbhai Baldevbhai while Ashikhusen has attributed article No.36 gray colour plastic gallon in the hands of Ashvinbhai Baldevbhai. Thus, different witnesses assign different articles in the hands of same accused. F.S.L. report in respect of weapons no where connect any of the accused with crime. Further, participation of accused in the incident if proved beyond reasonable doubt in that circumstances recovery of no incriminating material from the accused can alone be no ground for acquittal or non-identification of Muddamal article alone in above circumstances can be a ground to disbelieve the testimony of witness. Further, if nothing recovered/discovered from the accused it does not amount fatal of prosecution case.

50. Before entering into the involvement of accused in the offence, it is desirable to discuss the law relating to identification parade and overt act and unlawful assembly, common object. Both the sides have cited rulings in support of their respective case. Considering the citations prosecution has relied upon the Judgement delivered in **CRIMINAL APPEAL NO.1156 OF 2001, DANA YADAV v. STATE OF BIHAR**, in the cited ruling accused were identified by the witness first time in the Court without previous identification parade and it was held in the cited ruling that failure to make test identification parade does not make the evidence of identification in the court inadmissible. Further, **2002(1) G.L.H. 176, VINUGIRI MOTIGIRI v. STATE OF GUJARAT**, in which it is observed that, failure to hold an identification parade does not make inadmissible the evidence of identification in the court. If a witness identifies the accused in Court for the first time after a long time, the probative value of such uncorroborated evidence becomes minimal. It is also held by the Hon'ble High Court that, there is difference between the persons unknown and the persons whose names may not be known failure to hold an identification parade does not make it an inadmissible. The evidence of identification

in T.I. Parade is not a substantive piece of evidence but it is a corroborative piece of evidence. If a witness has known an accused earlier and inconsistency there is no reason why the statement in Court about identification of accused should not be relied upon. It was held in the cited ruling that, complainant knew all the accused and therefore, not naming two of them in F.I.R. does not help the accused not named as complainant identified all of them in the Court and her evidence also gets support from the evidence of other witnesses, who had known all the accused and have named them accordingly conviction was confirmed. Further, in the case of **2000(2) G.L.H. PAGE 572, RAMANBHAI NARANBHAI PATEL v. STATE OF GUJARAT** the Hon'ble Supreme Court of India has observed that, Indian Penal Code, 1860 - Ss.149, 302, 307 and 326 - Evidence of injured eye-witness - Identifying accused for the first time in Court - No identification Parade was held - Evidence not totally irrelevant or inadmissible. Further, in the case of **CRIMINAL APPEAL NO.1156 OF 2001 DANA YADAV v. STATE OF BIHAR**, the Hon'ble Supreme Court of India has observed in the cited ruling that, accused identified by witness first time in Court without previous identification parade - examination of

accused by witness after a lapse of 2 years - whether the fact that prayer for holding Test Identification Parade was rejected or if granted no such parade was held is material and would in any manner affect the evidence of identification of an accused in Court by a witness - Trial Court convicted appellants and High Court confirmed the conviction with sentence of life imprisonment - held, failure to make test identification parade does not make the evidence of identification in court inadmissible. Further in the case of **2002(1) G.L.H. PAGE 176, VINUGIRI MOTIGIRI v. STATE OF GUJARAT**, the Hon'ble High Court of Gujarat has observed in the cited ruling that, identification parade - two of the accused out of six, not named initially - witnesses were knowing them by face - there is a difference between persons unknown and persons whose name may not be known. Failure to hold an identification parade does not make inadmissible the evidence of identification in Court. The evidence of identification in TI Parade is not a substantive evidence but is only corroborative evidence - If a witness identifies the accused in Court for the first time after a long time the probative value of such uncorroborated evidence becomes minimal, so much so that it becomes unsafe to rely on such

a piece of evidence - However, if a witness has known an accused earlier and if there is no inherent improbability or inconsistency, there is no reason why his statement in court about identification of accused should not be relied upon - On facts, held that the complainant knew all the accused and therefore, not naming two of them in FIR does not help the accused not named as complainant identified all of them in court and her evidence also gets support from the evidence of other witnesses who had known all the accused and had named them - conviction of all accused confirmed - appeals dismissed.

While accused side has relied upon **52 CRIMINAL LAW JOURNAL 1951, PRAVASH KUMAR BOSE v. THE KING**, wherein it is held that, the fact that the witnesses have identified the accused in the court is of very little consequence in a prosecution when none of the witnesses knew the accused from before such identification can be accepted as sufficient to establish the identity of the accused. It is very necessary that there must be good corroborative evidence. The evidence of their having identified such persons at a test identification parade has not substantive value but it is very important corroboration of their evidence in court.

Accused have also relied upon **1979 CRI. L.J. 919, KANAN AND OTHER v. STATE OF KERALA**, wherein it has been observed that, where a witness identifies an accused who is not known to him in the Court for first time, his evidence is absolutely valueless unless there has been previous T.I. Parade to test his powers of observation.

In the case of **1991 SUPREME COURT CASES (CRI.) 586, BOLLAVARAMPEDDA NARSI REDDY AND OTHERS v. STATE OF ANDHRA PRADESH** wherein it has been observed that, the credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and the memorize the impression when the crime was committed during the hours of darkness and the assailants were utter strangers to the witnesses. The identification of the accused persons assumes great importance. The prevailing light is a matter of crucial significance. Necessity to have the suspects identified by the witnesses soon after their arrest also arises. Further it is observed in the cited rulings that, in a case when witness is a stranger to the accused and he identifies the

accused person before the Court for the first time the Court will not ordinarily accept that identification as conclusive. It is to lend assurance to the testimonies of the witnesses. That evidence in the form of earlier identification is standard. If the accused persons are identified by the witness soon after their arrest and such identification does not suffer from any infirmity. That circumstances lends corroboration to the evidence given by the witness before the Court but in a case where the evidence before the Court is itself shaky the identification before the Magistrate would be of no assistance to the prosecution.

In the case of **2001 CR.LAW J. 1762, GANGA DIN AND OTHERS v. STATE OF U.P.** in the cited ruling incident took place in dark night. In F.I.R. only one torch was mentioned as a source of light while in his statement more than one torch mentioned. There was improved version regarding descriptions of miscreants. It was found doubtful about the availability of source of light to identify the accused persons at the place of incident. Further, possibility of accused having been shown to the witnesses in transit to jail was also there. In that circumstances, identification of accused person was considered doubtful.

In the case of **2005 SUPREME COURT CASES (CRI.) 801, STATE OF M.P. v. GHUDAN** in the cited rulings the witnesses had stated existence of tube-light at the place of occurrence because of which he identifies the accused and in site plan no such light was mentioned. In that circumstances identification was held doubtful.

In the case of **2007(1) SUPREME COURT CASES (CRI.) 140, AROKIA THOMAS v. STATE OF T.N.** in the cited ruling witness had not stated in the F.I.R. that, he identified the accused in the source of light. During the investigation he was known and after two and half year the witness had disclosed the fact before the Sessions Court that, he identified the accused in the light of Motorcycle while other witness was claiming to have identified the accused in the torch light from a distance of 400 Ft., which was considered highly improbable and benefit was given to the accused.

In the case of **1998 SCC (CRI.) PAGE 1064, MOHD. IQBAL M. SHAIKH v. STATE OF MAHARASHTRA**, it is observed in the cited ruling that, it was the case in which

the witness had identified the accused by face. It was observed in it that, while the witness was residing in the same locality for a fairly long period and was other wise known to the accused persons and according to several accused persons were threatening in the locality before the actual incident of fire. It is impossible to believe that, even by facial identification he could only point out two of them. It was observed that, the conduct on the part of the witness is highly improbable in as much if he was scared to remain alone with his family members in their own room and wanted to stay in the neighbours room when it is expected from all of that, they would remain together. Further another witness in the cited ruling has stated the name of the accused but on being asked to identify him in Court, though he correctly point out some but could not correctly point out some others. In earlier statements, he had not stated that the accused came to the Chawl at the time of incident. It was observed in the ruling that though the witnesses are claiming residing for a long period in the locality, it would be highly unsafe to rely on their evidence.

The case of **52 CR.L.J. 1951 CALCUTTA HIGH COURT (C.N. 268), PROVASH KUMAR BOSE & ANOTHER**

v. THE KING, was a case of identification before Court and in the cited ruling it was held that, the fact that the witnesses have identified in Court, the accused is of very little consequence in a prosecution u/s.384, Penal Code, when none of the witnesses knew the accused from before. Before such identification can be accepted it is very necessary that there must be good corroborative evidence and the corroborative evidence which one is entitled to expect in cases of this nature is the evidence of the witnesses having pointed the accused whom they identified in Court from the midst of other persons with whom they were mixed up at a test identification parade. The evidence of their having identified such persons at a test identification parade has no substantive value but is very important corroboration of their evidence.

The case of **2001 CRI.L.J. PAGE 1762, GANGA DIN AND OTHERS v. STATE OF U.P.** was a case of identification of accused persons. In this case incident took place in dark night – In F.I.R. only one torch was mentioned as source of light – But in statement before Court availability of more than one torch mentioned – Further there was improved versions regarding figurative description of miscreants –

Availability of source of light to identify accused persons at place of incident doubtful.

So far as the factum of availability of proper light for identification of these accused person is concerned, the evidence of the witnesses is embellished by improvement. In the FIR only one torch is alleged, that too with Jai Ram Singh, which was taken away by the miscreants. No other light is alleged in this document. In the statement in Court all the witnesses have stated clearly that the dacoits were also holding torches, which they were flashing towards them and the light of these torches and the torch of Jai Ram Singh they were able to identify the miscreants. It is further important to point out that no figurative description was disclosed by these witnesses in the FIR or in their statements to the I.O., but in the trial Court they have stated that they have given out the description about the culprits in their statements to the I.O. It is also admitted to the witnesses that it was a dark night and no other source of light except the torches were available to them to identify the miscreants. These improvements are serious omissions in their previous statements and they go to the

root of the case of the prosecution regarding availability of any source of light. If there was no light available to them then it is next impossible to accept the value of their test identification and the identification of these culprits by them in Court. Without any outside aid it is unbelievable that these witnesses could have performed so excellently. Appellant Ganga Din was identified by as many as seven witnesses out of nine sent for the purpose and Sundar was identified by the all nine witnesses. These identification results, in the circumstance discussed above, are too good to be acknowledged by this Court. In the result the value of the identification is lost to the prosecution for the purposes of upholding their conviction.

In the case of **1979 CRI. L.J. PAGE 919 = AIR 1979 SUPREME COURT 1127, KANAN AND OTHERS v. STATE OF KERALA**, it is observed in the cited ruling by the Hon'ble Supreme Court of India that, where a witness identified an accused who is not known to him in the Court for the first time his evidence is absolutely valueless unless there has been a previous T.I. Parade to test his powers of observation. The idea of holding T.I. Parade u/s.9 is to test the veracity of the witness on the question of capability to

identify an unknown person whom the witness may have seen only once. If no T.I. Parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.

In the case of **1991 SUPREME COURT CASES (CRI.)**
PAGE 586, BOLLAVARAM PEDDA NARSI REDDY AND
OTHERS v. STATE OF ANDHRA PRADESH, it is observed in the cited ruling by the Hon'ble Supreme Court of India that, the credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression. When the crime was committed during the hours of darkness and the assailants were utter strangers to the witnesses, the identification of the accused persons assumes great importance. The prevailing light is a matter of crucial significance. The necessity to have the suspects identified by the witnesses soon after their arrest arises. It is further held that, in absence of cogent evidence that the witnesses by reason of the visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in

order that their features could get impressed in their minds to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the accused-appellants are the real assailants. When the Investigating Officer visited the scene, he made reference to the street lights, petrol bunk light etc. Whether the street lights and the petrol bunk light had been burning at the time of the occurrence and the spot where the incident happened was so located as to receive the light emanating from these sources are required to be made out by the prosecution. When this significant fact is left out in the earliest record, the improvement in the course of the investigation and trial would be of no avail. When no natural light was available and the street light was at a distance it is unlikely that the eye-witnesses by momentary glance of the assailants who surrounded the victim had a lasting impression and the chance of identifying the assailants without mistake.

It is further held that, the evidence given by the witnesses before the Court is the substantive evidence. In a case where the witness is a stranger to the accused and he identifies the accused person before the court for the first

time, the Court will not ordinarily accept that identification as conclusive. It is to lend assurance to the testimony of the witnesses that evidence in the form of an earlier identification is tendered. If the accused persons are got identified by the witness soon after their arrest and such identification does not suffer from any infirmity that circumstance lends corroboration to the evidence given by the witness before the court. But in a case where the evidence before the court is itself shaky, the identification before the magistrate would be of no assistance to the prosecution. In the present case, the appellants are admittedly persons with whom the two witnesses had no previous acquaintance. The occurrence happened on a dark night. When the crime was committed during the hours of darkness and the assailants are utter strangers to the witnesses, the identification of the accused persons assumes great importance. The prevailing light is a matter of crucial significance. The necessity to have the suspects identified by the witnesses soon after their arrest also arises. According to the prosecution, the attack on the deceased was sudden and simultaneous and the assailants slipped away in to time. There, in the absence of cogent evidence that Pws1 and 2 by reason of the visibility of the

light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their mind to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the appellants are the real assailants. There is no whisper in Ex.P-1 that there was some source of light at the scene. The omission cannot be ignored as insignificant. When the Investigating Officer has visited the scene, he made reference to the street lights, petrol bunk light etc. Whether the street lights and the petrol bunk light had been burning at the time of occurrence and the spot where the incident happened was so located as to receive the light emanating from these sources are required to be made out by the prosecution. When this significant fact is left out in the earliest record, the improvement in the course of the investigation and trial could be of no avail. The fact that there had been no proof regarding the identity of the assailants until August 18, 1974 would suggest that even persons who collected at the scene in the course of the incident or soon thereafter were not in a position to identify any one of the assailants. Since the Investigating Officer

arrived at the scene the same night and the inquest was held the next morning, it would have been possible for the investigating agency to collect information regarding the identity of the assailants earlier to August 18, 1974, if they had been really identified by any of the witnesses examined in the case. When no natural light was available and the street light was at a distance it is unlikely that the eye-witnesses by momentary glance of the assailants who surrounded the victim had a lasting impression and the chance of identifying the assailants without mistake. The credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression. This aspect of the matter had been stressed by the trial court in appreciating the evidence of PWS 1 and 2. The High Court has ignored the inherent infirmity and failed to deal effectively with every important circumstance in the evidence which weighed with the trial court to disbelieve the prosecution case.

In case of **2005 SUPREME COURT CASES (CRI.)**
PAGE 801, STATE OF M.P. v. GHUDAN it is held by the Hon'ble Supreme Court of India that, it was a very

important fact mainly because the identification of the accused is a vital factor to be proved by the prosecution. The benefit of the omission to point out the existence of such light in the sketch should go to the accused. It is further held that, in I.T. Parade there was serious discrepancies witness had specifically stated certain silent features of accused which assisted him in identifying the accused. But his evidence in Court regarding I.T. Parade indicating that, he was not able to see though silent features during I.T. Parade and the witness failed to identify the accused. It was held that identification of the accused by the witness was not reliable. Further it is held in the ruling that, the recovery could not be said to be from a place to which respondent alone had exclusive access. Much importance cannot be placed on a recovery of this nature.

51. Before discussing the overt act, identification parade, common object and unlawful assembly it is desirable to have a look upon the citations submitted by the Special Prosecutor Shri Shah and learned advocate Shri Y.B. Shaikh, on behalf of complainant as well as by learned advocate Shri Dhruv in respect of unlawful assembly, common object etc.

In support of prosecution case Mr.Shah has relied upon the case of **(2009) 10 SUPREME COURT CASES 477, VISHNU AND OTHERS V. STATE OF RAJASTHAN** the Hon'ble Supreme Court of India has held that, Section 149 IPC provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly their common object and the behaviour of the members soon before, at or after the

actual commission of the crime would be relevant factors for drawing an inference in that behalf.

In the case of **AIR 1997 SUPREME COURT 322,**
BINAY KUMAR SINGH v. STATE OF BIHAR, the Hon'ble Supreme Court of India has observed that, Identification of accused - massacre - drawing hiatus between injured witnesses and non-injured witnesses as for capacity of identify assailants while in action - not proper. It is further held that, number of witnesses -identification of accused - even a testimony of single witness is sufficient - however is case large size of unlawful assembly, the court can insist on at least two reliable witnesses for identification of accused. It is further held that, there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of the single witness, if wholly reliable is sufficient to establish the identification of an accused as member of an unlawful assembly.

In the case of **AIR 2001 SUPREME COURT PAGE 4024, CHANDRA SHEKHAR BIND v. STATE OF BIHAR,** the Hon'ble Supreme Court of India has held that, large number of accused participated in incident - Two witness theory can be adopted - Benefit of doubt given to accused who had not been identified by more than one witness - Conviction of other accused persons who were identified by two witnesses, maintained - Moreso, when presence of these two witnesses on scene cannot be denied - And there is no reason why they should falsely implicate accused - And all the accused were known to these witnesses - Plea of juvenility being mixed question of law and fact and not raised before trial Court or High Court or in SLP - Plea cannot be permitted to be raised for first time in criminal appeal before Supreme Court.

In the case of **1998 CRI. L.J. PAGE 988 DULI CHAND v. THE STATE.** It was a case of Unlawful assembly and mass killing. The Hon'ble Delhi High Court has observed in the cited ruling that, accused charged with aid of S.149 - prosecution proving that accused was member of unlawful assembly which shared common object of murder, loot and burning properties - proof of specific overt

act in such situation is not necessary. Further there was allegation that, accused were among rioters having common object of killing persons of particular community looting and burning their properties -minor discrepancies and contradictions in testimony of witnesses - tardy investigation - non recovery of dead bodies or weapon of offence in facts and circumstances not fatal - non mentioning of name of accused-victim in FIR also not significant - conviction of accused proper. Further it is held that, Offence took place more than 12 years ago- mere long lapse of time due to total apathy of administration and police during riots - not sufficient ground to convert death sentence into life imprisonment - case falls within category of rarest of rare cases - death sentence imposed on accused confirmed.

In the case of **1989 CRI. L.J. PAGE 850 LALJI AND OTHERS v. STATE OF U.P.**, the Hon'ble Supreme Court of India has held that, Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. The Section creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common

object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the Section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. The basis of the constructive guilt under S.149 is mere membership of the unlawful assembly, with the requisite common object or knowledge. Thus, once the Court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing of that offence was a member of the same assembly is to be held guilty of that offence. After

such a finding it would not be open to the Court to see as to who actually did the offence act or require the prosecution to prove which of the members did which of the offensive acts. The prosecution would have no obligation to prove it. In other words it is not open to the Court to acquit members of the unlawful assembly for lack of corroboration as to their participation. Further it is held that, Section 149, I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person, who at the time of committing of that offence is a member of the same assembly, is guilty of that offence. As has been defined in S.141, I.P.C. an assembly of five or more persons is designated an 'Unlawful Assembly', if the common object of the persons composing that assembly is to do an act or acts stated in clauses 'First' 'Second', 'Third', 'Fourth' and 'Fifth' of that Section. An assembly, as the explanation to the Section says, which was not unlawful when it assembled, may subsequently become an unlawful assembly. Whoever being aware of facts which render any assembly an unlawful assembly intentionally joins that

assembly, or continues in it, is said to be a member of an unlawful assembly. Thus, whenever so many as five or more persons meet together to support each other, even against opposition, in carrying out the common object which is likely to involve violence or to produce in the minds of rational and firm men any reasonable apprehension of violence, then even though they ultimately depart without doing anything whatever towards carrying out their common object, the mere fact of their having thus met will constitute an offence. Of course, the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm person of reasonable firmness and courage. The two essentials of the Section are the commission of an offence by any member of an unlawful assembly and that such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Not every person is necessarily guilty but only those who share, in the common object. The common object of the assembly must be one of the five objects mentioned in S.141, I.P.C. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and

the behaviour of the assembly at or before scene of occurrence. It is an inference to be deducted from the facts and circumstances of each case. Section-149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. The section creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the act done in pursuance of the common objects of the unlawful assembly or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial.

In the case of **2011 (0) GLHEL-SC 49654 SUPREME COURT OF INDIA KULDIP YADAV v. STATE OF BIHAR,**

the citation Rajendra Shantaram Todankar V. State of Maharashtra and others (2003) 2 SCC 257 = 2003 SCC (cri.) 506 is referred in which it has been held that, Section 149 of the Indian Penal Code provides that if an offence is

committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Sec.149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere

possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Sec.149 - either clause - is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Sec.149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be cable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act....”

In support of complainant's case Mr. Shaikh has relied upon the case of **(1995) 4 SUPREME COURT CASES 392 RANBIR YADAV v. STATE OF BIHAR.** In the citation of *Baladin v. State of U.P., AIR 1956 SUPREME COURT PAGE 181* has been referred in which it is held that, it is well settled that, mere presence in an assembly did not make a person of a member of an unlawful assembly unless it has shown that, the person has done something or omitted to do something which would make him a member of an unlawful assembly or unless the case fall under Section 182 of I.P.C. Further it was held in the cited ruling that, it is for the prosecution to lead evidence pointing to the conclusion that, the accused had done or being committing some overt act in prosecution of the common object of the unlawful assembly.

In the case of **AIR 2004 SUPREME COURT 4570, DANI SINGH AND OTHERS v. STATE OF BIHAR,** the Hon'ble Supreme Court of India has observed in the cited ruling that, Unlawful assembly - Proof - No proof that some of accused dissuaded other accused persons from committing criminal act or withdrew during course of incident - would constitute by itself step in furtherance of ultimate offence -

Plea that those accused persons did not commit any overt act - Not of any consequence. It is further held that, Unlawful assembly and murder - proof - Eye-witnesses identifying accused persons - No discrepancy so far as identification was concerned and about weapons carried by identified accused persons - Targeted victims were deceased persons with whom animosity was admitted - Objective findings recorded by Investigation Officer on spot verification also in line with evidence of eye-witnesses - Village being faction ridden no independent witnesses could be examined - Nothing coming out in lengthy cross-examination of eye-witnesses which would belie their credibility - Conviction of accused - Not liable to be set aside.

In the case of **(1994) 4 SUPREME COURT CASES 397, KAKI RAMESH AND OTHERS v. STATE OF A.P.,** the Hon'ble Supreme Court of India has observed in the cited ruling that, for fastening of liability with the aid of Section 149 of the Penal Code, commission of overt act is not necessary. This proposition in law is well settled. In the present case the mere fact that only in the course of trial two of the appellants alongwith four others had been

named as those who had dragged the deceased out from inside the room, cannot create reasonable doubt about these appellants having really done so on the face of clear statement in the FIR about dragging the deceased and naming of these two appellants also in the FIR as members of the unlawful assembly; who in particular had dragged the deceased was not required to be stated in the F.I.R.

In the case of **AIR 1995 SUPREME COURT PAGE 1748, SHAMSHUL KANWAR v. STATE OF U.P.**, the Hon'ble Supreme Court of India has observed in the cited ruling that, in the cited ruling there was incident of rioting and murder and on facts it was held that, accused party were aggressors and indulged in indiscriminate firing causing death of many people. It was held that they were members of unlawful assembly with common object of attacking and killing the members of opposite party.

In support of the case of accused, learned advocate Shri Dhruv has relied upon following citations :-

In the case of **1965 (1) CRI.L.J. PAGE 226 (VOL.70, C.N. 73) MASALTI (IN CR.A.NO 30 OF 1964) MUNGA**

RAM AND OTHERS (IN CR.A.NO. 31 OF 1964)

BHAGWATI AND OTHERS (IN CR.A.NO.32 OF 1964)

CHANDAN SINGH AND OTHERS (IN CR.A.NO.33 OF

1964) LAXMI PRASAD (IN CR.A.NO.34 OF 1964) v. THE

STATE OF UTTAR PRADESH, it is held by the Hon'ble

Supreme Court of India that, mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under S. 142, I.P.C. cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained alongwith the other members of the assembly the common object as defined by S.141, I.P.C. An assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of S. 141, is an unlawful assembly. The crucial question to determine in such a case

is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by S.141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. In fact. S. 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by S.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. The observations in (S) AIR 1956 S. C. 181, Explained.

In the case of **2009 3 SUPREME COURT CASES**
(CRI.) PAGE 431, AKBAR SHEIKH AND OTHERS v.

STATE OF WEST BENGAL, it is observed in the cited ruling by the Hon'ble Supreme Court of India that, the core question which arises for consideration is as to whether some of the appellants who had not committed any overt act must be held to be a part of the unlawful assembly or shared the common object with the main accused.

The question came up for consideration before the Court in *Baladin V. State of U.P.* wherein Hon'ble Court has opined that with a view to invoke the provisions of Section 149 of the Penal Code, "it was necessary therefore for the prosecution to lead evidence pointing to the conclusion that all the appellants before us had done or been committing some overt act in prosecution of the common object of the unlawful assembly.

A court is not entitled to presume that every person who is proved to have been present near a riotous mob at anytime or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge.

Section 141 of the Penal Code defines “unlawful assembly” to be an assembly of five or more persons. They must have a common object inter alia to commit any mischief or criminal trespass or other offence. Section 142 of the Penal Code postulates that whoever, being aware of facts which render any assembly an unlawful one, intentionally joins the same would be a member thereof.

Section 143 of the Penal Code provides for punishment of being a member of unlawful assembly. Section 149 provides for constructive liability on every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly knew to be likely to be committed in prosecution of that object.

In such a case, it may be safe to convict only those persons against whom overt act is alleged with the aid of Section 149 IPC.

In the case of **1991 SUPREME COURT CASES (CRI.)**
PAGE 1059, SHEREY AND OTHERS v. STATE OF U.P. it

is observed by the Hon'ble Supreme Court of India that, when there is a general allegation against a large number of persons, court hesitates to convict all of them on vague evidence - there must be some reasonable circumstances lending assurance - Held on facts, it would be safe to convict only those accused whose presence was not only consistently mentioned from the stage of FIR but also to whom overt acts were attributed - Fact that they were armed with lethal weapons and attacked the victims shows that they were members of an unlawful assembly with the common object of committing murder and other offences with which they were charged. But names of other accused mentioned in an omnibus way that they were armed with lathis without attributing any overt act to anyone of them and medical evidence ruling out any lathis having been used - Hence these accused cannot be convicted.

In the case of **(2006) 2 SUPREME COURT CASES (CRI.) PAGE 43 MUNNA CHANDA v. STATE OF ASSAM**, it is observed by the Hon'ble Supreme Court of India that, Homicidal death of the deceased is undisputed. However, there is no evidence as to who had assaulted him. Role played by the accused either conjointly or individually in

causing death of the deceased is not known. Some offence was committed, but who did so is not known. It is also not known as to whether if one or all of the appellants were present, when the last blow was given. It cannot be said that they had common object of intentional killing of the deceased. Neither Sec.34 nor Sec.149 of the Penal Code is, therefore, attracted.

The concept of common object, it is well known, is different from common intention. It is true that so far as common object is concerned no prior concert is required. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of the assembly, however, is a relevant factor. At what point of time the common object of the unlawful assembly was formed would depend upon the facts and circumstances of each case.

Section 149 IPC creates a specific and distinct offence.

There are two essential ingredients thereof :

- (a) commons of an offence by any member of an unlawful assembly, and
- (b) such offence must have been committed in prosecution of the common object of that assembly

or must be such as the members of that assembly knew to be likely to be committed.

52. While dealing with the issue of Unlawful Assembly, accused side has relied upon **PANDURANG CHANDRAKANT MHATRE AND OTHER v. STATE OF MAHARASHTRA, (2010) 1 SUPREME COURT CASES (CRI.) 413**, it is observed in the cited ruling that, conduct of each member of unlawful assembly before and at the time of attack is relevant consideration. Object of unlawful assembly is a question of fact, which has to be determined keeping in view the nature of assembly, arms carried by members and behaviour of members at or near scene of incident. Further, it is observed in the ruling that, designs of unlawful assembly may not have been shared by the other members of unlawful assembly hence by applying rule of caution the presence as members of parties of assailants was consistently mentioned and their overt acts in chasing and assaulting the deceased were clearly proved beyond reasonable doubt.

Relying upon the above citations, it is argued by Shri Dhruv that here in the present case, there are no eye witness making all claims of having witnessed the incident.

They have not deposed before the Hon'ble Court that out of the mob, who do not claim to be at the time commission of offence and who set on fire the house of Mahemudmiya, killing 25 persons in it. If any of them have already witnessed the incident, they would have certainly named particular persons. As so many persons have been named in FIR and statements, who assaulted and set on fire the house of Mahemudmiya. Further, it is argued by him that substantive offence of murder be shown to have been committed by any particular accused and if there is no evidence on record that who set on fire the house of Mahemudmiya, the present accused cannot be convicted.

Convicting the accused with the aid of Section 149, some overt act must be shown to have been committed by the accused for committing substantive offence. Further it is submitted that all the witnesses including complainant have materially improved their version and they have given absolutely different version than what they gave before Investigating Authority. Over and above, they have materially changed and improved upon there being written affidavits produced before the Hon'ble Supreme Court of India and written applications addressed to S.I.T. more particularly in dealing with the communal riots matter

where emotions were running high between the two groups. Evidence of witnesses would require to be examined very cautiously. Evidence adduced by all the witness is full of material and important contradictions. They have absolutely changed their version before the Court that what they first stated before the Investigating Agency or in the affidavits or in the applications. Further it is submitted by Shri Dhruv that, defence submitted by the accused is much acceptable on the basis of the evidence adduced before the Court. Accused is not required to prove his case beyond reasonable doubt as it is upon the prosecution to prove the guilt of the accused beyond reasonable doubt. As reasonable doubt about the complicity of the accused, is shown on the basis of the prosecution evidence, the accused would be entitled for acquittal. In the present case, accused have successfully shown that the house of Mahemudmiya which is alleged to have been set on fire in which there were nearly 29 persons who have died, was attacked from the backside of his house by the mob of village Sundarpur and not by the mob of Sardarpur from where the present accused belongs. Even all the accused have given plausible and possible explanation, as to why they have been framed as an accused by the witnesses.

Further, it is argued by Shri Dhruv that witnesses have claimed that they have seen the accused from a very little distance. They identified certain accused from the mob, also however, all the witnesses are silent about the fact as to who set on fire the house of Mahemudmiya and how the house was set on fire. Further, it is argued by Shri Dhruv that looking to the position of the houses, it is impossible that any one who is inside would ever survive. However, prosecution witnesses claim that certain injured witnesses were rescued from the house of Mahemudmiya and for this purpose, Shri Dhruv has drawn my attention towards the FIR in which it is mentioned that only three persons were rescued from the house of Mahemudmiya who have died on the way to the hospital. As per P.W.56 - Shaikh Ayubmiya Rasulmiya, P.W.73 - Faridabibi Aashikhusen Shaikh, P.W.78 - Shaikh Basirabibi Bachumiya and P.W.80 - Shaikh Ruksanabanu Ibrahimmiya Shaikh, all of them have deposed before the Court that they sustained injury while they were inside the room. Further, there is no evidence on record to suggest that attack was predetermined or act of setting on fire the house of Mahemudmiya was predetermined. There is evidence on record to show that Mahemudmiya's house was targeted for

particularly it contained more persons inside it. If a mob has predetermined to set on fire the persons on particular community then they would not spare any witnesses found single on their way. Further it is submitted by Shri Dhruv that, assuming the accused shared common object to kill a person of particular community then the certain witnesses who were seen by the mob standing in the said Maholla, none of the witnesses were attacked by that mob and therefore, it is the say of Shri Dhruv that the mob referred by the witnesses has not killed anyone or set on fire the house of Mahemudmiya. The witnesses who were found in the said Maholla, seen by the mob were very soft target to take away their lives even though none of the persons from the mob had any object though those witnesses were found standing in the Maholla therefore, it can never be said that the mob had any object even in commission to kill particular person of that community. Further, it is submitted that the incident has not occurred in the manner in which it is deposed by the witnesses. What is deposed by the witnesses in the Court is not being stated at the first available opportunity either to the police to any of the member of any or community or to S.I.T. formed after 6 years. It goes to suggest that probably the witnesses have

not witnessed the incident and they have framed the accused.

53. So far as contention regarding consistent improvements in the evidence of the witnesses, who have supported the prosecution case is concerned, all these witnesses have been extensively cross-examined. All possible latitude was given to the learned advocates in the matter of cross-examination and no attempt was made to curtail the length of the same, at any point of time. Further, the whole arguments of accused side in respect of impossibility to see the mob is unrealistic, seeing or observing the mob is not the same thing as observing a single stationary object. In the present case mob is stated to be consisting of 1000 to 1500 persons. It is true that, correctness of this figure can be doubted. But there can be no dispute that, large number of persons were there in the mob. The area and space occupied by such a big mob would be considerable and it would be futile to say that, mob could be seen from any particular point only or that it could not be seen from another particular point. The position of a person in the mob can be at a very far place from that of another in the same mob as the mob was not standing but moving towards Mahemudmiya's house. The evidence shows the

presence of mob at the place of occurrence during the period. The eye-witnesses were also present. Under these circumstances there is nothing to indicate that, the claim of having seen the some of accused among the mob of rioters as made by the eye-witnesses within their evidence relates to any particular point of time. The evidence of eye-witnesses cannot be construed so as to mean that, whatsoever were observed by them as persons in the mob of rioters were so observed only when they were inside the Mahemudmiya's or some other house in Shaikh Maholla they did not see anyone. Thus, the conclusion is therefore irresistible that, there is nothing in the evidence which would indicate that it was not possible for the eye-witnesses to have see or identify any persons in the mob of rioters. Evidence indicates that, there was every possibility of the eye-witnesses being able to see the mob. At least some persons in the mob during the time for which mob was there. So far as the arguments advanced by the accused side that, if object of the mob was to kill the Muslims why they have left the witnesses, who were very much present in Shaikh Maholla. No one had prevented the mob to kill them to achieve their object is concerned, an unlawful assembly though does possess a common unlawful assembly object is

not necessarily governed by any fix or planned programme. The object is common and it is to be accomplished but the method are left to the member concerned to be decided on the basis of what would happened on the spot. It is evident that, there was no specific object to kill any specific persons or any specific number of persons, setting on fire the cabins and houses in Shaikh Maholla. Specially the house of Mahemudmiya in Shaikh Maholla was the easiest and most convenient way of causing damage to the person and property to create more terrible impact or fear in the minds of Muslim community. House of Maholla was dwelling house and members of unlawful assembly were clearly aware that, number of persons were inside the house in spite of that, the whole house was set on fire. Considering above all it cannot be said that, the object of the unlawful assembly was not to take away the lives of any of the persons. The arguments on behalf of the accused that, if the object of mob was to kill the Muslims how they have spared the witnesses is concerned, it is not that any individual member of assembly would instantly kill any Muslim as soon as Muslim would come in contact with him. It is the only collective action of the assembly, supported by numerous persons then only he would be

instigated to commit such act. When an individual is apart of the mob he loses his identity and takes on the identity of the mob then any person however mild or aggressive, he may be, does what the mob does. It is always seen in action by mob and individual comes up with the strongest possible expression on such occasion while in the mob of rioters. Further, change in the composition of the assembly would not make any difference in the penal liability to be fastened on an individual accused. For fastening such liability on him it is to be shown that, he was a member of unlawful assembly at the time of committing an offence. Thus, assuming there is number of changes in the composition even then it is to be treated as a single unlawful assembly by reason of the continuity of its activities and identify of the object and accused is liable for guilt for offence if he was present in unlawful assembly at the time of incident. The moment a member disassociates from the membership of unlawful assembly his responsibility or liability for the acts committed by unlawful assembly thereafter comes to an end. Here, the members of unlawful assembly have committed capital offences. The act of setting on fire the houses in Shaikh Maholla, specially the Mahemudmiya's house is an indicative of an intention or at

least the knowledge necessary to constitute the offence of murder in the circumstances that death of 33 persons and 24 injured on account of fire so set.

By keeping in mind the ratio laid down in all the citations, cited on behalf of both the sides, when we consider the fact of the present case, accused as well as witnesses are the resident of the same village. They are known to each other. As discussed earlier there was sufficient light at the time of occurrence. So that witness could see the mob. Under above circumstances if no identification parade of the accused is carried out it becomes of no importance.

54. Whether accused persons were members of unlawful assembly is required to be established on the basis of identification of the accused also. The main challenge from the accused side is that it was not possible for the witnesses to see the mob of rioters and it is argued by them that no identification parade of accused persons has been made during investigation. The fundamental and basic question in respect of fixation of identity of the accused is concerned, the actual evidence regarding identification is that which is given by a witness in the court. If that

evidence is acceptable the question whether the identity of the accused had been satisfactorily established at the investigation stage would be immaterial. However, it may be relevant for judging the reliability of the identification made in the court identity satisfactorily established during the investigation stage in some cases serve as corroboration to the identification to the court but it would not be relevant at all. The identity during trial is to be established by proper evidence. If the victim or witness names certain persons as accused during the investigation, confirmation about the identity of the accused is necessary for arresting purpose and investigating officer has to ascertain the identity of the accused before sending him for trial. Once the case comes to the trial the identity of the accused is required to be established by legally admissible evidence. As discussed earlier while appreciating evidence, it would be normal re-action of witnesses to see as to what was happening when the stones were being pelted, slogans were being given, and cabins were set on fire and to see who were the persons forming the mob. It is only after knowing what they were doing, the witnesses would know to what extent they were in danger. Usually a person under such a tense atmosphere observes better and remembers clearly.

The evidence of the witness is required to be appreciated with extra care and caution. Here in the present case the incident has lasted for a long period more than one hour. There was sufficient opportunity to the witnesses to see the offenders. More particularly in a circumstances when the mob was from the same locality. Duration of incident manner and opportunity to observe the incident is required to be considered while appreciating the evidence on identification, there cannot be a rejection of evidence on the ground that they were not able to see the mob. There was every possibility for the witnesses to see the persons in the mob as mob was for a long period in the Maholla. Once the accused are well known to the witnesses, there is no necessity for test of identification parade. By keeping in mind the settled proposition of law in this regard, when we consider the present case the substantive evidence as regard the identification would only be the identification of an accused made by a witness in the court. Test identification parade is necessary where offender would not be known to the witnesses before incident. Thus, failure to hold identity parade may disprove fact only in cases where the offender would not be known to the witnesses. The rule is based on logic common sense and prudence. Here in the

present case accused have been identified by them as they were known to them since previously. Here some of the witnesses have identified the accused by face as those are not known to them by name. Here no identification parade was demanded by the accused during investigation. During the trial it has come out that accused belongs to the same village and same area. It is not in dispute that accused are not belonging from Sardarpur. On the contrary evidence suggests that accused are from same area. Then in that case nothing more is required to accept statement of the witnesses that they know them unless it is shown positively that witnesses are lying in this record. Here there is positive claim of the witnesses that, they and accused belong to the same area. There is no reason to disbelieve the say of witnesses when they say that accused identified by them are known to them since before. Now the questions which requires to be appreciated is whether evidence of identification should be disbelieved on the ground that either the names or the details of particulars of the accused identified by the witnesses were not mentioned by them to the police, it is true that it would amount omission to state a material and to the significant fact, rejection of the evidence of such identification in the

court is a matter that depends upon different factor. The effect of not naming the accused or not giving details or information to the police would result in rejection of evidence of identification made by such witnesses latter in the court is matter depending on a number of facts. The actual evidence regarding identification is that, which is given by a witness in the Court. If that evidence is acceptable the question whether the identity of the accused had been satisfactorily established at the investigation stage would be immaterial. Save and except in so far as it may be relevant for judging the reliability of the identification made in the Court. If the identity of the accused is satisfactorily established during investigation stage, it may in some of the cases serve as corroboration to the identification in Court. But by itself it would not be relevant at all. the confirmation of the identity of the culprits by the investigating officer at the time of the arrest would undoubtedly be necessary but the investigating officer cannot be restricted to have such confirmation of identity from a particular case or in a particular manner. His confirmation of identity is for his own satisfaction but not for the satisfaction of the Court during the trial. His satisfaction about the identity would be relevant for the

purpose of arrest and till that stage the identity during the trial is to be established by proper evidence. If the victims or the witnesses would name certain person or persons as accused undoubtedly, the investigating officer while arresting them is required to confirm their identity as the same persons against whom allegations has been leveled. However, this satisfaction is to be reached by the Investigating Officer. He can arrive at it by any mode which he thinks satisfactory. This is clear from the fact that even where the names are not given, or even where the culprit is stated to be unknown to the victims, the Investigating Officer has to ascertain the identity of an accused as the culprit before sending him for trial. Obviously, in such cases, confirmation of identity cannot be done from the victims. The source on which his belief would be based, has nothing to do with the admissibility, as a piece of evidence, of that source. The Investigating Officer may reach the requisite satisfaction from a source other than the victims and the witnesses even where they have named the offenders. The contention of impossibility of the eye-witnesses having seen the mob or some persons in the mob as advanced is concerned the mob was of 1000 to 1500. It is proved that, stones were thrown and kerosene and petrol

were poured in that circumstances it would be a normal behaviour of witnesses to see what was happenings when the stones were pelted and slogans were being given and fire was being set. At any rate a common reaction of a human being would be to try to ascertain as to from where how serious and of what nature the danger exists. When the mob would be collected and giving slogans, it would be quite natural for the witnesses to first try to see as to what was happenings and in that process obviously to see who were the persons forming the mob. It is only after knowing what they were doing the witnesses would know to what extent they were in danger.

Prior acquaintance may not be inferred from the fact that accused and witnesses are the residence of the same locality or nearby area. Here is a specific case of witnesses that witnesses and accused belong to the same village which strengthen the claim of witnesses.

It is not in dispute that during the period of present incident number of cases of serious offences were being registered and there was serious law and order problem

which the police was facing. It was not possible to make detailed inquiry with the witnesses and try to illicit detail information from them. Further considering the mental and physical condition of the injured witnesses, it was not possible to accept that they will give details of the incident. It was not possible to maintain accurate record of what the witnesses said. The authenticity and accuracy of the statements recorded by Investigating Officer are required to be considered carefully. The alleged discrepancies contradictions, omissions in the appreciation are required to be considered by keeping above evidence in the mind. Most of the contradictions and omissions which are brought on record are insignificant and immaterial. The only significant and material omission would be to state the names of certain accused persons as being present in the mob in case of those witnesses who claim to have known them from before. Contradictions in the statements of concerned eye-witnesses as compared with the statements recorded by Investigating Officer, cannot be allowed to effect the credibility of those witnesses. Further no much importance can be given to the so called contradictions and omissions in the circumstances in which statements were recorded. There cannot be inflexible

rule that if a witness did not name an accused before the police his evidence identifying the accused for the first time in the court cannot be relied upon. Failure to name the accused in the statements before the police though known would not result in drawing an adverse inference against the prosecution. There may be several reasons for witnesses not naming the accused or to state that the accused was known to him and if the reasons are found acceptable, the evidence of the witnesses cannot be doubted only due to such failure. Such omissions on the part of witnesses would only require deeper and closer scrutiny of the evidence and does not warrant its outright rejection. Further, effect of the victim not naming the accused before the police though previously known to him is concerned here in the present case victims have suffered a brutal mental agony and in that circumstances and that too, that accused and witnesses are residing in same and near by locality would certainly prevent the witnesses from naming the accused before police. There was tense atmosphere. The victims were under tremendous tense atmosphere. In that circumstances if the witnesses have not named the accused before police though known to them that would not be sufficient to discard their

testimony. The basic supposition about the behaviour or reaction or perception of the witnesses regarding the incident will be wrongly presumed if we expect that they should have mentioned specifically in spite of the situation prevailing at that time. We have to give a thought how a witness will express as to what had happened. The attack was indeed by a Hindu mob with no particular enmity towards any particular victim. The actions of individual accused were only a part of the actions of the mob and naturally were precised as actions of the mob by the victims and witnesses. In such circumstances history as given in medical papers is proper, whether any body from the mob was known to the witnesses was matter which could be stated by the witnesses only on specific question to them, in the light of evidence as to the condition of injured, tense atmosphere, heavy burden on the police, it is impossible to hold that any attempt to elicit this specific information against the offenders were made or injured witnesses were in a position at the material point of time to give such evidence. In the situation that was prevailing at the material time, it was impossible for Investigating Officer to coolly and calmly elicit such details from the victims who were under such tense atmosphere and injured. Therefore,

evidence of eye witnesses cannot be discredited on the ground that no identification test parade was done or accused were not identified by the witnesses before the police. Here in the present case it is not claimed by the accused that they are not known to the witnesses. They have not demanded test identification parade during investigation which is not held. Accused are identified by the witnesses in the court during the trial that would not help the accused in any way.

55. I have no hesitation to conclude that the evidence of eye-witnesses regarding identification cannot be discredited on the ground that, they had not named or not given description of the accused identified by them to the police though they are previously known. There is nothing contradictory, incredible, improbable or inconsistent in their evidence. Further, considering the whole evidence of the witnesses, all the witnesses have avoided attributing false overt acts to the accused identified by them, which would have been quite easy for them. There are number of incidents in evidence of these witnesses, which suggest that they could have implicated more accused than identified by them or attributed more serious acts to the accused

identified by them which has not been done.

56. It is submitted on behalf of accused that, eye-witness are tutored by Smt.Teesta Setalvad. The interest of Teesta Setalvad and her organization in the present case is obvious. The witnesses have specifically denied that, Teesta Setalvad has told them as to what evidence was to be given in a case. Considering the evidence and fact in this regard when we consider this fact mere discussion about the case would not necessarily indicate tutoring. It is not an accepted proposition that, the witnesses are never to be contacted by any one or spoken to about the matter regarding which they are to depose. A number of things can be told to the witnesses such as not to be nervous, carefully listen to the question put to them, state the facts before the Court without fear, therefore it does not appear any objectionable morally or legally. Tutoring a witness is quite different from guiding him as to his behaviour. In the present case, the injured witnesses were in such a state of mind that without the active support of someone they might not have come before the court to give evidence at all. The encouragement and the advice if provided by Citizen for Peace and Justice that cannot be considered as

tutoring and simply because of that, we cannot infer that the witnesses are tutored. From the matter it transpires that Citizen for Justice and Peace have made allegations before the Hon'ble Supreme Court of India against the State authorities but on that strength it cannot be said that, NGOs. have worked with bad motives. If they had fought for truth what was believed by them as truth. It does not mean that they have tutored the witnesses to falsely identify the accused in the Court.

57. In this regard when we consider the evidence, witness could be tutored only by a person who knew the facts. It is difficult for a person who was not present at the time of occurrence to tutor an occurrence witness and if at all this can be done, it would be based on the records of the case, which does not seem to have been happened in the present case. Further, more the happenings and the manner in which in the present case took place, is also not much in dispute, so the aspect of tutoring would be confined to the identification only. It is not easy to tutor one to identify another as victims and accused are previously known to each other but not known to tutoring persons. Tutoring of this type would require the persons tutoring, the concerned

accused and the concerned witness to be together for a reasonable period or one or more occasions. Further, tutoring in such cases would be in consonance with police record or prosecution case which does not appear to be happened in this case. Further, it is also important to be considered that, before identification in the Court by the witness accused were asked to sit in the Court as per their own choice, they were not forced to sit at serial number given to them in Charge-sheet or any other fix order and their names were never loudly being called out in the court in the presence of witnesses. The identification of accused have taken place under the observation of the Court. So the court can view the actions/reactions of the witnesses. All precautions were taken by the Court while identification of accused were carried out in the Court room. Further, precautions were also taken by the Court whether witness could see the persons sitting in the Court room. Similarly accused were given liberty to sit in the court in any manner, any where.

58. So far as irregularities as pointed out committed during the course of investigation is concerned, from the evidence on record it appears that, Investigating Officer Shri

K.R.Vaghela was making sufficient efforts for arrest of accused. Due to non support from locality he could not arrest all the accused immediately and it took sometime. Even, some of the accused are arrested subsequently, by Shri R.D.Baranda, the then Police Inspector and after Investigation by S.I.T., I.O. Shri G.V.Barot it does not amount fatal to the case since all the accused are not named in F.I.R. or in the statement of witnesses. Thus, there is no deliberate defective investigation, no Lecuna left for falsely implicating the accused. The allegation of manipulation of F.I.R. have no substance, as discussed earlier there is no evidence suggesting the manipulation of the record with intent to implicate the accused more and more. No manipulation have been done with regard to the articles sent for examination to F.S.L. for connecting the articles with the offence in question. No doubt there are some irregularities and lapses in investigation but those are not such which could prejudice the accused. Thus the case stands on the evidence of identification of accused by witnesses and no proper efforts to collect any other evidence were made during the investigation. The claim of the accused side that, this was done to implicate the accused falsely, is not acceptable. It is well settled if there is

any irregularities in investigation and if accused is not prejudiced due to such irregularities, it will not be a fatal of the case. Here accused are not claiming that, they are not known to the witnesses and also have not demanded Identification Parade, which is not held in the present case and witnesses have identified the accused in the court but no such steps were taken by the accused in the present case. Thus, there is nothing in the case to indicate about defective investigation due to which accused are prejudiced. Thus, there is nothing wrong and improper in the identification evidence.

59. In Criminal trial motive is one of the factor but in a case of murder and of direct evidence motive is of no importance if the case is otherwise proved from other cogent and reliable evidence. While in a case of circumstantial evidence motive plays important role. However, when we consider the evidence in the present case, the motive behind the present occurrence is to take revenge from Muslim community as "Kar Sevaks" were burnt alive in Sabarmati Train at Godhra and this motive is proved from the evidence of all the witnesses and also it is not challenged.

60. The unlawful assembly has to be determined with respect of each such assembly that was formed during the period of occurrence. Unlawful assembly as defined in Section 149 of I.P.C. In assembly of five or more persons actuate by an entertaining one or more of the common objects specified by the five clauses of the said section is an unlawful assembly. Change in the composition in the assembly would not make any difference in the penal liability to be fastened on an individual accused. For fastening such liability on him, it is to be shown that he was member of unlawful assembly at the time of committing of an offence. Thus assuming there are changes in composition even then it is to be treated as single unlawful assembly by reason of the continuity of its activities and identity of object. An accused is liable for guilt for offence if he was present in unlawful assembly at the time of incident, the moment a member disassociate from the membership of the unlawful assembly his responsibility or liability for the acts committed by unlawful assembly thereafter comes to an end. The act of setting on fire the houses in Shaikh Maholla, especially of Mahemudmiya's house in Shaikh Maholla is an indicative of an intention or at least the knowledge which is necessary to constitute the offence of

murder in the circumstances of death of 33 persons and 24 injured on account the fire so set. So far as the arguments advanced by Shri Dhruv that if, object of the mob was to kill the Muslims they would not have left the witnesses alive in Shaikh Maholla who were very much present in the Shaikh Maholla. No one had prevented the mob to kill them to achieve their object and unlawful assembly though does not possess a common unlawful object, is not necessarily governed by any fixed and planned programme. The object is common and it is to be accomplished where the methods are left to the members concerned to be decided on the basis of what would happen on the spot. It is evident that there was no specific object to kill any specific person or specific number of person setting on fire the cabins and houses in Shaikh Maholla, specially the house of Mahemudmiya in shakih Maholla was easiest and most convenient way of causing damage to the person and property to create more terrible impact or fear in minds of Muslim community. House of Mahemudmiya dwelling house and members of unlawful assembly were aware that number of persons had been inside the house in spite of that whole house was set on fire. Considering above all it cannot be said that the object of unlawful assembly was not

to take away lives of any person. So far as argument by Shri Dhruv that, if the object of mob was to kill the Muslims how they have spared the witness is concerned it is not that any individual of assembly would instantly kill any Muslim as soon as Muslim would come in contact with him. It is only the collective action of the assembly supported numerous persons then only he would be instigated to commit such acts. When an individual is apart of the mob he loses his identity and takes on the identity of the mob then any person however mild or aggressive, he may do what the mob does. It is always seen in an action by mob an individual comes up with the strongest possible expression on such occasion only while in the mob of rioters. In the present case it cannot be ignored that communal riots started as a re-action cause by the belief that Kar sevak had been burnt to death by Muslims. The riots are said to be retaliatory action. Therefore, there is nothing surprising if method of burning is adopted for killing the people. To burn anyone to death is an easy form of murder. It does not need any weapon and there is no evidence left behind it, is an easiest way to inflict pain and there is no physical contact between the assailant and victim. The various acts such as shouting slogans and

pelting stones, burning cabins houses, were not committed at the whims of individual member composing the unlawful assembly. It is evidence on record that setting on fire the cabins and houses in Shaikh Maholla causing burns injury to injured as well as to deceased clearly indicate the common object of the said unlawful assembly. Further entering in Shaikh Maholla by the mob itself indicate towards the common object of the mob therefore, there was no reason for any of the person from the mob to go to Shaikh Maholla at such a late hours. In Shaikh Maholla only the witnesses were residing. It was not a public place or public way for passing and re-passing a person. Persons can be expected in Shaikh Maholla for particular purpose only. It is not the say of any of the accused that, he had been there for any other purpose. Further there was no previous enmity between the victims and accused on the contrary witness were working either in the fields of the accused or in brick-klin or some other places of the accused why the witnesses will try to falsely implicate the persons who were providing source of income to them by leaving the actual culprits. Thus, the common object of unlawful assembly is clearly established by the prosecution.

61. Now, keeping in mind above concept of settled proposition of Law alongwith the evidence and fact of the present case we have to discuss the involvement of accused in the crime. In Sessions Case No.275/2002 there were total 55 accused persons, out of which accused No.10 – Patel Jayantibhai Jivanbhai died during the trial of this case hence case against him is abated while one Rohitkumar Ramanbhai Prajapati is shown as Accused No.19 in the Charge-sheet but being minor i.e. 17 years age, case against him is ordered to be proceeded before the Juvenile Justice Board against said accused, vide Exh.71, while accused No.20 – Prajapati Ravikumar Amratbhai was shown aged about 17 years but by virtue of Pursis passed below Exh.74, it was found that, said accused is aged about 18 years at the time of commission of crime hence case against him is conducted by this Court. In Sessions Case No.7/2009 accused No.1 – Patel Kantibhai Prabhudas, aged about 61 Years has died during the trial of this case and therefore, case against him is abated in pursuance of order passed below Exh.540 and 523, while Supplementary Charge-sheet against accused Arvind Kashiram was submitted, which was committed before Sessions Court vide Sessions Case No.72/2010 hence charge, against him was framed on

25.08.2010 and their Session Case is tried alongwith other Sessions Cases, arising from the same Crime Register Number, by consolidating all the Sessions Cases.

62. The main defence of the accused is based on falsely implication of accused. The Court cannot keep aside the real issues in dispute which required to be deeply examined therefore, it is absolutely necessary to examine the evidence against each accused separately. To see whether is of such a degree so as to come to a conclusion of the involvement of the particular accused of the alleged offence. It is rarely that the court comes to the conclusion of a witness being wholly reliable so as to accept and believe everything that he says. The point of reliability does not depend only on the attitude of the witness or his desire to speak the truth but also on the accuracy of his perception and his memory.

63. **Accused No.1 – PATEL RAMESHBHAI KANJIBHAI**
(Sessions Case No.275/2002)

P.W.47 – Ibrahimmiya Rasulmiya Shaikh, who is the complainant has deposed in his deposition that, when the mob had burnt the houses in Shaikh Maholla at that time he saw the accused in the mob. But in his deposition he

has not identified the accused in the Court. But in the complaint, he has mentioned the name of the accused but in his statement dated 10.03.2002, 01.06.2002 and application dated 01.06.2002 and affidavit dated 06.11.2003 and in the Statement dated 11.06.2008 before the S.I.T., name of present accused is not mentioned. His name is also not mentioned in the application and statement dated 09.05.2008 before S.I.T. When we peruse the deposition of P.W.68 – Gulamali Akbarmiya Shaikh, he has stated the name of present accused in his deposition that, he saw the accused in the mob when mob came inside, he was standing in the Naveli of Bachumiya Imammiya Shaikh. This witness has identified the accused before the Court, he took 12 minutes in identifying the present accused alongwith other accused. He has mentioned the name of this accused in his statement dated 10.03.2002 but has not mentioned his name in the application dated 09.05.2008 and he has named the accused in his statement dated 10.05.2008 but there is contradiction in his statements from where and how he has seen the accused but as discussed earlier this contradiction became insignificant as there was sufficient opportunities for the witness to see the mob and in that case if the witness is saying that he saw

the accused that is reliable which is corroborated by F.I.R. P.W.73 – Faridabibi Aashikhusen Shaikh has not stated the name of this accused in her statement dated 02.03.2002 and 11.06.2008 and has not named in her deposition but she has identified the accused in the Court for the first time by face only.

As discussed earlier in this Judgement, all the three witnesses had sufficient opportunities to see the mob. In that circumstances if P.W.47 – Ibrahimmiya Rasulmiya Shaikh and P.W.68 – Gulamali Rasulmiya Shaikh are stating that, they have seen the accused in the mob that possibility cannot be ruled out as accused and witnesses are resident of village Sardarpur and well known to each other. So far as identification of this accused by Faridabibi Aashikhusen Shaikh before the Court is concerned, she has not named the accused in any of her statement nor before the Court but by face she is identifying the accused. As the accused and witness are resident of Village Sardarpur in that circumstances when the witnesses not knowing the name of the accused, much reliance cannot be placed on the say of P.W. 73 – Faridibibi Aashikhusen Shaikh on this point without the support of other evidence but the say of Ibrahimmiya Rasulmiya Shaikh and

Gulamali Akbarmiya Shaikh about the presence of said accused in the mob cannot be doubted. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that odd time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident

of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the accused and offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

64.

**Accused No.2 - PATEL CHATURBHAI ALIAS BHURIO
VITTHALBHAI**

(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has stated in his deposition that, he saw the accused in the mob and he has identified the accused No.2 – Chaturbhai Vitthalbhai Patel, and he is silent about the name of the present accused in the application dated 06.05.2008 and this witness has not stated the name of present accused in the statement dated 05.08.2008. While P.W.47 – Ibrahimbhai Rasulbhai Shaikh has taken name in his deposition of the present accused in respect of incident dated 01.03.2002 but this accused is not identified by the witness in spite of the fact that, this witness is the complainant and on perusing the complaint dated 02.03.2002 name of the accused is stated. While name of this accused is not stated by the complainant in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 06.11.2008. Further, this complainant has not stated the name of this accused in the application before S.I.T. dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. While P.W.55 – Aashikhusen Bachumiya Shaikh has taken name of this accused in his deposition in respect of incident dated 01.03.2002 and this accused identified by the witness and for identification he took 15

minutes time. There is contradiction in the statement dated 02.03.2002 about the fact from where and how the witness had seen the accused. This witness has not taken the name of this accused in his affidavit dated 06.11.2003. Further, statement dated 19.05.2008 before S.I.T. is silent about this accused. While P.W.59 -Mohmad Sattar Bachumiya Shaikh has taken name of this accused about the incident dated 01.03.2002 at about 09.30 P.M. in respect of setting on fire of cabins and also about the incident occurred during 11.30 to 12.00 P.M. on the same day and has also stated the name of this accused in the incident of pelting stones. This accused is identified by the witness in the Court. He took 15 minutes time in identifying the accused. This witness has not stated the name of this accused in his statement dated 02.03.2002 and also not stated the name of this accused in his affidavit dated 06.11.2003. In a statement before S.I.T. dated 19.05.2008 it is stated that, name of this accused in the statement dated 02.03.2002 is written by the Police. He took 15 minutes time in identifying the accused in the court but when we consider the evidence of this witness no doubt he took 15 minutes time in identifying the accused alongwith other accused in the Court but he took 15 minutes time in identifying about 17

to 18 persons. Thus, 15 minutes time in identifying the accused can be said reasonable time. At the time of identification it was verified by the Court whether the witness is able to see all the persons in the Court and after satisfactory answer witness had identified the accused in the Court. P.W.66 - Akbarmiya Rasulmiya Shaikh has named this accused in his deposition about the incident dated 01.03.2002 and has identified the accused in the Court. He took 10 minutes time for identifying the accused in the Court. Height of this witness is about 5 Ft. It was verified that, this witness could see each and every person sitting in the Court and thereafter, he has identified eight accused in the Court. Out of eight accused, he has identified accused No.2 also. In above circumstances if he took 10 minutes time that is reasonable one. There is contradiction, in his statement dated 10.03.2002 how and from where he has seen the witness but as discussed earlier while appreciating the evidence of this witness that, this witness was able to see the mob this contradiction become insignificant. This witness has not stated the name of this accused in his application dated 09.05.2008 and in his statement before S.I.T. dated 09.05.2008. This witness has taken the name of this accused in respect of role of

pelting stone. While P.W.70 – Munsufkhan Yasinkhan Pathan has stated in his deposition that, he saw the incident and persons at the time of pelting stones throw on his old house at Pathan Maholla on 01.03.2002. He has identified the accused before the Court and he took 7 minutes time for identifying the accused in the Court but in 7 minutes, he has also identified other 14 accused. This witness was Police employee, well conversant with the legal procedures and in that circumstances if he identifies 14 accused within 7 minutes that is quite possible. In his statement dated 06.03.2002, there is contradiction about from where and how he has seen the incident. He has not stated the name of this accused in his affidavit dated 31.03.2004. There is contradiction from where and how he has seen the accused in his statement before S.I.T. dated 11.06.2008. In his statement before S.I.T. dated 14.07.2008 incident alongwith the name of this accused is not stated. While P.W.73 – Faridabibi Aashikhusen Shaikh has not named the accused in the Court but identified the accused in the Court for the first time by face only. She has identified the accused as Mathurbhai instead of Chaturbhai Vitthalbhai. She has not named this accused in her statement dated 02.03.2002, 11.06.2008. P.W. 77-

Badrunisha Akbarmiya Shaikh has named the accused about the incident dated 01.03.2002 but she has identified Chaturbhai Kanabhai as Chaturbhai Vitthalbhai. In her statement dated 06.03.2002 from where and how she saw the accused is contradictory but this contradiction is already discussed while discussing the evidence of this witness. In her statement dated 22.05.2008, it is stated by her that she has given name of the accused but she was not knowing to him. P.W. 79, Samimbanu Mahmadiya Shaikh has not named the accused in her deposition but identified the accused in the court for the first time by face. In her statement dated 06.03.2002 she has stated that, she saw the accused but it is not stated that, she can identify the accused by face. While in statement dated 22.05.2008 she has not stated that she can identify the accused by face.

Thus considering the over all evidence against the present accused, no doubt some of the witnesses have identified him in the Court by face and his name is not stated in their earlier statement, one of the witness has wrongly identified him, some of the witnesses have not identified him in the Court but some of the witnesses like

P.W.66 – Akbarmiya Rasulmiya Shaikh, P.W.70 – Munsufkhan Yasinkhan Pathan, P.W.55 – Aashikhusen Bachumiya Shaikh, P.W.46 – Sabirmiya Akumiya Pathan, have identified the accused in the court and this accused was in the mob having stone in his hands. Therefore, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the mob and pelting stones in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The

question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the accused and offence in the evidence of witnesses. But much importance cannot be given to this aspect if the evidence of identification of accused is established. In his Further Statement, recorded under Section 313 of Cr.P.C. he has added that, Aashikmiya Bachumiya Shaikh and Samirmiya Bachumiya Shaikh are drivers and accused is also driver and therefore, they know each other very well and hence he

has falsely been implicated in the case. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

65. **Accused No.3 – PATEL KARSHANBHAI TRIBHOVANBHAI**
(Sessions Case No.275/2002)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused, nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

66. **Accused No.4 – NARAYANLAL SHITALMAL LAKHWARA**
(Sessions Case No.275/2002)

P.W.55 – Aashikhusen Bachumiya Shaikh has named this accused in respect of incident dated 01.03.2002. As per this witness, this accused was involved in pelting stone but this witness has not identified the accused though he took

15 minutes time for identification of the accused. He has not stated the name of this accused in his statement dated 02.03.2002, affidavit dated 06.11.2003. In his statement before S.I.T. dated 19.05.2008, he has stated that, he has not given the name of the accused in the statement dated 02.03.2002. No other witness has involved this accused in his deposition. Thus, presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is

not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

67. **Accused No.5 – PATEL JAYANTIBHAI MANGALBHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed that Jayantibhai Mangalbai was present in the mob in the incident occurred on 28.02.2002 and also in the incident occurred on 01.03.2002. He has identified Jayantibhai Mangalbai as Bakabhai Mangalbai. He has narrated his name in his application dated 06.05.2008 and statement dated 20.05.2008. P.W.47 – Complainant - Shaikh Ibrahimbai Rasulbai has mentioned the name of the accused in respect of incident dated 01.03.2002. As per the deposition of the complainant, Jayantibhai Mangalbai was present in the mob and the complainant has identified the witness in the Court and he has taken name of the accused in his complaint dated 01.03.2002 and name of the accused is taken as “Baka Mangal”. Complainant has not stated the name of the accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated

06.11.2003 and statement before S.I.T. dated 11.06.2008 and has not stated name of the present accused in the application before S.I.T. in statement dated 09.05.2008. While P.W.55 – Shaikh Aashiqhusen Bachumiya has named the accused in the incident dated 01.03.2002. He has not identified the accused in the Court though, he took 15 minutes time for identification of the accused and in his affidavit dated 06.11.2003 he has not stated the name of the accused. P.W.57 – Shaikh Mustufamiya Rasulmiya has named this accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 15 minutes time in the Court for identification of accused. For this purpose when we peruse the deposition no doubt he took 15 minutes time for identification of accused but in 15 minutes he has identified 17 accused. Before identification in the Court it was verified by the Court that, whether the witness can see the persons sitting in the Court and thereafter, accused was identified by the witness. He has not stated the name of this accused in his statement dated 10.03.2002, affidavit dated 06.11.2003, statement dated 19.05.2008, statement dated 05.08.2008. P.W.59 – Shaikh Mohmad Sattar Bachumiya has deposed the name of this accused in his

deposition in respect of incident dated 01.03.2002 and during identification, he has stated that, this accused is not present in the court in spite of the fact that 15 minutes time was taken by the witness for identifying the accused. So far as statement dated 02.03.2002 is concerned, it is stated by this witness in his statement dated 19.05.2008 that name of this accused was written by Police. This witness has not stated the name of this accused in his affidavit dated 06.11.2003. In his statement dated 19.05.2008 before S.I.T. this witness has stated that, name of this accused is written by the police in his statement dated 02.03.2002. P.W.62 - Shaikh Rafikmiya Mahmadiusen has deposed the name of this accused in his deposition in respect of incident dated 01.03.2002. He has deposed that, this witness was very much present in the mob. He has identified the accused in the Court. He took 15 minutes time for identification of accused and during 15 minutes he identified 9 accused including the present accused. After due verification by the Court that, he can see all the persons sitting in the Court. As the height of this witness is 5'3" he could see all the persons sitting in the court and it was managed in the Court that, the witness could see the persons therefore, there was no

necessity to permit the witness to step down from the witness box and to identify the accused from very near. He has not stated the name of this accused in his statement dated 10.03.2002 and 10.05.2008. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed in his deposition that, this accused was present in the mob alongwith weapon. He has not identified the accused in the Court. He has not stated the name of the present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated 09.05.2008. P.W.71 – Rawal Mangabhai Ramabhai has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes time for identification of the accused in the Court and in 7 minutes he has identified four accused. This witness is having 5' Height and it was satisfied by the Court and he could see the persons sitting in the Court. This witness has not stated the name of this accused in his statement dated 20.05.2008. P.W.78 – Shaikh Basirabibi Bachumiya has deposed the name of this accused in her deposition and she has identified the accused in the Court. She took 12 minutes time for identification and she has identified 8 accused in the Court. before identification, it was satisfied

by verifying by the Court that the witness can see the persons in the Court. She is having 5' height but as per deposition of this witness she is aged about 50 years and her eye sight is weak and as per her say she is able to see persons sitting in two lines only but she has identified the present accused who was sitting in the fourth line in the Court. She has not stated the name of this accused in her statement dated 22.05.2008 and 11.06.2008. Therefore, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of

same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Further as per witnesses the present accused was present in the mob with Sword but there is no evidence about the use of sward by the accused in the incident. Therefore, the weapon in question cannot be connected with the offence and no importance cannot be given to this aspect as the evidence of identification of

accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

68. **Accused No.6 – PATEL AMRATBHAI SOMABHAI**
(Sessions Case No.275/2002)

P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of this accused in the incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of this accused in his statement dated 06.03.2002. P.W.54 – Shaikh Sharifmiya Bhikhamiya has deposed the name of this accused in his statement in respect of incident dated 01.03.2002. He has not identified the accused in the Court. This witness has stated that, this accused has connected the Halogen light on Electric Pole

on 01.03.2002 at 7.00 PM. He has not stated the name of this accused in his affidavit dated 06.11.2003, statement dated 06.03.2002 and 22.05.2008. P.W.55 – Shaikh Aashiqhusen Bachumiya has not stated the name of this accused in his deposition in respect of incident dated 01.03.2002 but identified the accused in the Court and he took 15 minutes time for identification of the accused in the Court and he has identified 4 accused in the Court. During said 15 minutes he has identified 17 accused in the Court. He has not stated name of the accused in his statement dated 02.03.2002. In affidavit he has stated that, accused was in mob but in his statement before S.I.T. dated 19.05.2008 he has not stated the name of the accused. P.W.59 – Shaikh Momhad Sattar Bachumiya has not named this accused in respect of incident 01.03.2002 but identified the accused in the Court. He took 15 minutes time for identification of the accused in the Court. During 15 minutes he has identified about 20 accused. This witness has identified the accused after due satisfaction by the Court that, this witness could see each and every person in the Court. P.W.70 – Pathan Munsafkhan Yasinkhan has deposed that, this accused was present at the time of stone throwing. At that time this witness was in

his old house. He has identified the accused and for identification he took 7 minutes and in 7 minutes he has identified 14 accused. He has not stated the name of this witness in his affidavit dated 31.03.2004, statement before S.I.T. dated 14.07.2008. There is contradiction about from where and how he has seen the accused in his statement dated 06.03.2002 and 11.06.2008. Therefore, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question

requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the accused and offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time

of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

69. **Accused No.7 – PRAJAPATI BABUBHAI LAVJIBHAI**
(Sessions Case No.275/2002)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

70. **Accused No.8– PRAJAPATI RAJESHKUMAR AMRUTBHAI**
(Sessions Case No.275/2002)

P.W.55 – Shaikh Aashiqhusen Bachumiya has deposed the name of this accused in the incident dated 01.03.2002. He has identified the accused in the Court. There is contradiction in respect of where and how the witness had

seen the accused. This witness has not stated the name of this accused in his affidavit dated 06.11.2003. In his statement dated 19.05.2008 before S.I.T. he has stated that, he has not given the name of this accused in statement dated 02.03.2002. P.W.81- Shaikh Dilvarkhan Abbasmiya has not stated the name of the accused in the deposition but identified the accused in the court for the first time by face only. He has not stated the name of the accused in his statement dated 22.05.2008. No other witness has involved this accused in his deposition. Thus, presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It

would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused, but it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

71. **Accused No.9- PATEL BHAVESHKUMAR KANUBHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath naming the present accused in respect of presence of this accused in the Court regarding the incident dated 28.02.2002. He has identified the accused by stepping down from the witness box from very near. P.W.55 – Shaikh Aashiqhusen Bachumiya has named the present accused in his deposition in respect of incident dated 01.03.2002. He has deposed that he saw accused with weapon though he took 15 minutes time but has not identified the accused in the Court. There is contradiction in his statement about from where and how he has seen the accused. He has not stated the name of the accused in the affidavit dated

06.11.2003, statement before S.I.T. dated 19.05.2008. P.W.80 – Shaikh Ruksanabanu Ibrahimmiya has not named present accused but identified the accused first time in the court by face only. She took 7 minutes time for identifying the accused in the Court. In her statement dated 10.03.2002 she has named other accused stating that, she saw them but she has not stated that, she can identify them by face. She has not stated the name of the accused in her statement dated 22.05.2005. Thus considering the evidence of all the three witnesses, Sabirmiya is telling the presence of this accused in the incident dated 28.02.2002. While for incident dated 01.03.2002, there is no satisfactory evidence showing the involvement of this accused as Aashiqhusen has not identified the accused and Ruksanabanu is identifying the accused by face. Therefore, involvement of this accused is not proved by this accused by the prosecution beyond reasonable doubt.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. No specific role has been attributed to the accused by any of the witnesses. Therefore, the additional explanation given by the accused in his Further Statement

that, he is the son of Kanubhai, the then Sarpanch and at the time of incident he was studying in 12th Standard and preparing for examination and simply because he is the son of Kanubhai he has falsely been involved in the incident is acceptable. Further accused not identified by the witnesses. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

72. **Accused No.10- PATEL JAYANTIBHAI JIVANBHAI**
(Sessions Case No.275/2002)

Abated as accused died during the pendency of trial.

73. **Accused No.11- PATEL JAGABHAI DAVABHAI**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimmiya Rasulmiya has taken the name of this accused in his deposition in respect of incident dated 01.03.2002 but has not identified the accused in the Court but has narrated the name of the accused in the complaint dated 02.03.2002. He has not stated the name of this accused in his statement dated 10.03.2002, application and statement dated 01.06.2002 and affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 and application before S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.59 – Shaikh Mohmad Sattar Bachumiya has stated the name of this accused in respect of incident dated 01.03.2002. As per his deposition accused was present in the mob during 11.30 to 12.00 PM. He has identified the accused before the Court and he took 15 minutes time for identification and in 15 minutes he has identified about 21 accused. before identification, it was satisfied that, the witness could see all the persons sitting in the Court. Thereafter, he has identified the present accused in the Court. As per statement dated 19.05.2008, it is stated by this witness that, in his statement dated 02.03.2002, name of this accused is written by the Police and name of this accused is not mentioned in the affidavit dated 06.11.2003. In his

statement dated 19.05.2008 before S.I.T. he has stated the name of this accused was written by Police in his statement dated 02.03.2002. P.W.70 – Pathan Munsufkhan Yasinkhan has deposed on oath that, he saw the incident and persons at the time of throwing stones on his house in Pathan Maholla on 01.03.2002. He took 7 minutes time for identification of accused and he has identified 14 accused in the Court including present accused. He has stated in his statement dated 11.06.2008 that, he has not given the name of this accused in his statement dated 11.06.2008 that he had not given the name of this accused in the statement dated 06.03.2002. He has not stated the name of this accused in affidavit dated 31.03.2004. In his statement before S.I.T. dated 14.07.2008 has not narrated the incident with name of this accused. Thus considering the evidence of all the three witnesses, P.W. 70 was a police employee, much conversant, with the law and procedure and educated person. If he has not mentioned the name of this accused in his statement, affidavit, in that circumstances if he is identifying the accused before the court and saying that, he saw the incident from his old house at Pathan Maholla, much reliance cannot be placed upon the testimony of this witness in respect of identification of this accused. While

P.W.59 – has identified this accused before the Court but in any of his statement, he has not stated the name of this accused. And the complainant who has named the accused in complaint but has not identified the accused before the Court. From such type of evidence, it cannot be said that, prosecution has proved the involvement of this accused beyond reasonable doubt. Therefore, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question

requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of

incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

74. **Accused No.12- PATEL PRAHLADBHAI SOMABHAI**
(Sessions Case No.275/2002)

P.W.55 – Shaikh Aashiqhusen Bachumiya has taken the name of this accused in his deposition in respect of incident dated 01.03.2002 that, this accused was involved in pelting stones. He has identified the accused in the Court and he took 15 minutes time for identification of accused. He was permitted to identify the accused after satisfying that he can see the persons sitting in the Court and he has identified 17 accused before the Court within 15 minutes. P.W.79 – Shaikh Samimbanu Mahmadiya has not named accused in her deposition but identified the accused in the Court for the first time by face. She has not stated in her statement dated 06.03.2002 and 22.05.2008 that she can identify the accused by face. P.W.80 – Shaikh

Rusksanabanu Ibrahimmiya has not named the accused in her deposition but identified the accused by face in respect of incident dated 01.03.2002. She took 7 minutes for identification of accused. She has not stated in her statement dated 10.03.2002 that she can identify the accused by face. She has not stated the name of this accused in her statement dated 22.05.2005. Thus P.W.79 and P.W.80 are simply identifying the accused by face but whether he was in the mob or not, it is not stated by them. Therefore, simply identification in the Court, without any involvement of the accused in the incident cannot be relied upon. P.W. 55 is identifying him but he has not stated anything about his presence in any of his statement but he is involving the accused in incident of pelting of stones. Therefore, as per deposition of P.W. 55, this witness was very much present in the mob but there is no other evidence supporting the presence of this accused in the Court. Even none of the witness in their supported the presence of this accused in the mob. Therefore, simply mere identification and involvement of this accused in the mob by this witness cannot be given much weightage. Considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this

accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. No specific role has been attributed to the accused by any of the witnesses. Further accused not identified by the witnesses. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

75.

**Accused No.13 – PRAJAPATI BHARATBHAI
RAMESHBHAI**

(Sessions Case No.275/2002)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

76.

Accused No.14– PATEL KACHARABHAI TRIBHOVANDAS
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbai Rasulmiya has deposed on oath in respect of incident dated 01.03.2002 involving the present accused. As per his deposition at the time of incident Kacharabhai Tribhovandas in the mob. He has identified the accused in the Court. He has not stated the name of present accused in the complaint dated 02.03.2002. He has not stated the name of the present accused in the statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and statement dated 11.06.2008 before S.I.T. while he has stated the name of the accused in the affidavit dated 06.11.2003. While P.W.48 – Shaikh Sabirhusen Kadarmiya has named the present

accused in his deposition about the incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of the accused in his statement dated 06.03.2002 and statement dated 10.05.2008 before S.I.T. P.W.55 – Shaikh Aashiqhusen Bachumiya has stated the name of the present accused in respect of incident dated 01.03.2002. As per deposition of this witness the present accused had fired his Jeep. He has identified the accused in the Court. He took 15 minutes time in identifying the accused. He has not named the accused in his affidavit dated 06.11.2003. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused in his deposition that, the accused was present in the mob. As the witnesses has requested to leave him he told to fold the hands, the witness has folded hands in spite of that, they were not left and they were burnt. He has identified the accused in the Court. He has not stated the name of the present accused in his statement dated 10.03.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 19.05.2008. P.W.57 - Shaikh Mustufamiya Rasulmiya has stated the name of the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 15 minutes time for

identifying the accused. He has identified the accused from very near with the permission of the Court as he was having Pterygium in his eye but at the time of incident he was able to see. He has not stated the name of the present accused in his affidavit dated 06.11.2003, statement dated 19.05.2008. P.W.58 – Shaikh Sabirhusen Imamsha has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused before the Court. He has not stated the name of the present accused in the statement dated 03.03.2002. P.W.59 – Shaikh Mohmad Sattar Bachumiya has named in his deposition the accused in respect of incident dated 01.03.2002. He has identified the accused before the Court. He took 15 minutes for identifying the accused in the Court. He has identified the present accused after satisfying by the Court that, he is able to see each and every person sitting in the Court. He has not stated the name of the present accused in the statement dated 02.03.2002. As per his statement dated 19.05.2008 name of the present accused was written by the Police. In his affidavit dated 06.11.2003 this witness has not stated the name of present accused. In his statement before S.I.T. dated 19.05.2008 he has stated that, in his statement dated

02.03.2002 name of this accused is written by the Police. P.W.60 – Shaikh Bachumiya Imammiya has stated the name of the present accused in his deposition in respect of dated 01.03.2002. First incident about 09.30 P.M. in respect of setting on fire the cabins and second incident at about 11.00 P.M. and has stated that, during second incident this accused has poured kerosene on his Jeep. He has identified the accused before the Court. He took 12 minutes for identification of accused. During 12 minutes he has identified about 21 accused. He has not stated the name of this accused in respect of incident occurred at about 09.30 P.M. P.W.61 – Shaikh Safikmiya Bachumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has deposed that, this accused was in mob with weapon. He has identified the accused in the Court. He took 15 minutes in identifying the accused. He has identified 6 accused in the court. After due satisfaction by the Court that the witness can see each and every person in the Court. This witness is having height of 4'11". There is contradiction in respect of from where and how witness had seen the accused. P.W.63 – Shaikh Bhikhumiya Kalumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has

identified the accused in the Court. P.W.65 – Shaikh Akbarmiya Nathumiya has not named the accused in his deposition but identified the accused in the mob. P.W.66 – Akbarmiya Rasulmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. As per his deposition accused was present in the mob with Bottle and tins. This witness has identified the accused in the Court. He took 10 Minutes for identifying the accused in the Court. He has identified 8 accused in the Court. before identification, it was satisfied by the Court that, witness can see each and every person in the Court. In his application dated 09.05.2008 he has not stated that, accused was with weapon and he has also stated the same before S.I.T. in his statement dated 09.05.2008. P.W. 67 – Shaikh Imtiyazbhai Mahmudhusen has deposed on oath about the presence of this accused in the mob in respect of incident dated 01.03.2002 he has identified the accused in the Court. He took 5 minutes for identification. He has identified 2 persons in the Court. There is contradiction about from where and how he has seen the accused, which is already discussed while appreciating the evidence on that point. P.W. 69 – Shaikh Mahemudmiya Husenmiya has deposed on oath about the involvement of this accused in

respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 20 minutes for identifying the accused. He has identified 5 accused in the Court. Court had verified from the witness whether, he could see the persons present in the Court and after due satisfaction identification was performed. No doubt witness is handicapped but in the Court it was properly arranged so that, the witness can see the person sitting in the Court. He has not stated the name of the present accused in his statement dated 06.03.2002 and has stated that, his statement dated 22.05.2008 was not recorded. P.W. 70 – Pathan Munsufkhan Yasinkhan has stated in his deposition about the incident dated 01.03.2002 stating therein that, Kacharabhai Tribhovandas Patel was present in the mob with bottle. He has identified the accused in the Court. He took 7 minutes time for identification of the accused. However, witness has stated the name of the accused with bottle. In his statement dated 06.03.2002 witness has stated the name of present accused in the affidavit dated 31.03.2004. In his statement before S.I.T. dated 11.06.2008 there is contractions about bottle. While in statement before S.I.T. dated 14.07.2008 incident alongwith the accused not narrated. P.W.73 – Faridabibi

Aashiqhusen Shaikh has not stated the name but identified the accused in the Court for the first time and that is too by face. He has not stated the name of the accused in her statement dated 02.03.2002 and has also not stated the name in the statement dated 11.06.2008. P.W.75 – Shaikh Firozabanu Bachumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. As per her deposition she saw the accused at the time of firing of Jeep. She has identified the accused before the Court. She has taken 15 minutes time for identification of accused. During 15 minutes she has identified 7 accused. Her height is about 5' meaning thereby she is able to see the person sitting in the court. P.W.77 – Shaikh Badrunisha Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. She has identified the accused in the Court. She has not stated the name of the present accused in her statement dated 06.03.2002 and 22.05.2008. P.W. 78 – Shaikh Basirabibi Bachumiya has deposed the name of the present accused in the mob. She has identified the accused in the Court. She took 12 minutes for identification of the accused. She has stated about the involvement of the accused in the incident and identified 8 accused. before

identification, it was verified by the Court whether the witness can see the persons sitting in the court and after due satisfaction identification was performed in the Court. As per say of this witness, at the last this witness by shouting "Bharat Mata Ki Jay" went but this fact is not stated in her statement dated 17.04.2002. She has not named the present accused in her statement dated 22.05.2008 and 11.06.2008. P.W.79 – Shaikh Samimbanu Mohmadmiya has not named the accused in the Court but identified the accused in the Court for the first time by face. In her statement dated 06.03.2002 she has not stated that, she can identify the accused by face. In her statement dated 22.05.2008 also she has not stated that, she can identify the accused by face. P.W.83 – Shaikh Sharifabanu Sabirhusen has deposed on oath about the involvement of this accused in the mob in respect of incident dated 01.03.2002 but she has not identified the accused in the Court. Thus all the witnesses have identified the accused in the Court and stated about the involvement of the accused in the incident. In this regard when we consider the say of accused side, it is the say of accused that the present accused was the Vice-Sarpanch of Village Sardarpur, he has been involved by the witness assigning a

role of instigating the mob in the deposition. He has falsely been involved. The accused is identified by all the three witnesses and has also named in deposition. In his deposition he has deposed that, Sabirhusen has deposed that the accused was very much present in the mob and was instigating the mob and thereafter they have started setting on fire the houses in Shaikh Maholla and pelting stones. Simply because this accused was Vice-Sarpanch, it cannot be said that, he has falsely been involved as an accused in the incident, why the witnesses will involve innocent person leaving real culprit free. Nothing has come out from cross-examination from which we can infer the absence of this accused in the mob. Specific role has been attributed to this accused that, he was very much involved in burning the Jeep of Bachumiya Imammiya Shaikh and he had instigated the mob. He was present in the mob with bottle and he poured the kerosene on the Jeep. He is identified by P.W.60, P.W.61, P.W.62, P.W.63, P.W.66, P.W.67, P.W.68, P.W.69, P.W.70, P.W.75, P.W.77, P.W.78 and has been identified by face by P.W.79. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he

was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as

incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. On perusal of F.S.L. Report, no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. This accused has added that earlier, he was Sarpanch of the village hence, people from the village know him very well. If any officer calls him, he has to go to that officer in the capacity of Sarpanch. Police had called him at about 2.00 O'clock in the midnight and arrested him. His name is not mentioned in the F.I.R. but he has falsely been involved by the complainant and witnesses. In the year 2002, he was in jail even though persons from each community of the village had selected him as Sarpanch. He had done good work for the village and he had made attempts that all persons from different community resides in the village cordially. He has made attempts for the development of each community but he has falsely been involved in the

incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

77. **Accused No.15 - PATEL JAYANTIBHAI BALDEVBHAI**
(Sessions Case No.275/2002)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused, nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

78. **Accused No.16 - PATEL MANGALBHAI MATHURBHAI**
(Sessions Case No.275/2002)

P.W.55 – Shaikh Aashiqhusen Bachumiya has named this accused during his deposition in respect of incident dated 01.03.2002 that this accused was in the mob and he was pelting stones. He has identified the accused in the Court. He took 15 minutes time for identification. He has identified 17 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 17 accused he took 15 minutes time, which can be considered as reasonable time for identification. He has not stated the name of this accused in his affidavit dated 06.11.2003.

P.W.58 – Fakir Sabirhusen Imamsha has deposed in his deposition about the incident dated 01.03.2002. As per his deposition the present accused Patel Mangalbai Mathurbhai was present in the mob. He has identified the accused in the Court. There is contradiction in his statement dated 03.03.2002 in respect of from where, when and how he has seen the accused. Further there is contradiction in his statement before S.I.T. dated 22.05.2008 from where, when and how he has seen the accused.

P.W.60 – Shaikh Bachumiya Imammiya has deposed on oath naming the present accused in respect of

incident dated 01.03.2002 about first incident of setting on fire the cabins at about 09.30 PM and also named the accused in second time mob. He has identified the accused in the Court. He took 12 minutes time for identification of accused. In his deposition he has identified 5 accused in 12 minutes. His height is about 5'. It was verified by the Court whether, the witness could see the persons sitting in the Court and the arrangement was made accordingly. Considering his height, it was quite possible for a person to see all the persons sitting in the Court. And he has identified the present accused from the witness box. This witness has not stated the name of this accused in respect of incident of setting on fire the cabins at about 09.30 PM and also not stated the name of present accused in respect of incident occurred at about 11.30 PM. Statement dated 10.05.2008 before S.I.T. and application dated 09.05.2008 is silent about it. As per say of accused this witness has not stated the name of this accused attributing any role on setting on fire cabins outside Shaikh Maholla at about 09.30 PM. In his statement dated 03.03.2002 he has not stated the name of present accused. P.W.66 – Shaikh Akbarmiya Rasulmiya has stated the name of this accused in respect of incident dated 01.03.2002 and as per his

deposition this accused was present in the mob with weapon. He has not identified the present accused in the Court though he took 10 minutes time. He has not stated the name of present accused in his statement dated 10.03.2002, in his application dated 09.05.2008. He has not stated that, accused was with weapon. In his statement before S.I.T. dated 09.05.2008, he has not stated that, accused was with weapon. It is submitted by the accused that, in his cross-examination this witness has stated that, he saw the accused in the mob from the distance of 10 Ft. while in his application dated 09.05.2008 and statement recorded by S.I.T. dated 09.05.2008 stated that, the accused was pelting brick from the terrace of nearby houses injuring Bachumiya Nathumiya on his head by the brick therefore, on the strength of this deposition, it is argued by Shri Dhruv that, deposition of this witness is not believable at all. Further it is submitted by Shri Dhruv that, this witness has falsely implicated this accused and his evidence is required to be discarded. For this purpose considering his whole evidence, this witness has not identified present accused and has also not stated the name of this accused alongwith weapon in any of his statement, therefore, the deposition of this witness is not

supporting the involvement of present accused. P.W.78 - Shaikh Basirabibi Bachumiya has deposed on oath stating the name of the present accused in the mob. As per her deposition she has identified the accused in the Court. before identification, it was verified by the court whether she could see the persons sitting in the Court. She has identified the present accused and she took 12 minutes time for identification of accused and during said 12 minutes she has identified 8 accused. She has not stated the name of the present accused in her statement dated 17.04.2002 and statement dated 11.06.2008 and also not stated from where and how she has seen the accused in the mob in her statement dated 22.05.2005. It is argued by Shri Dhruv that, though this witness has identified the accused before the Court but not named the accused in her first statement which was recorded nearly after one and half month. Placing reliance on it, it is argued by Shri Dhruv that identification under above circumstances does not inspire any confidence. And this witness has at her sweet will adding and subtracting names of the accused in the different statements therefore, her statement cannot be relied upon. No doubt she has not stated the name of the present accused in any of her statement though her first

statement was recorded after one and half months. But considering her deposition as discussed earlier she was able to see the persons in the mob and as per her deposition she had seen the accused in the mob and other witnesses are also supporting the fact that, the present accused was present in the mob and therefore, her this say is reliable and inspiring confidence and therefore, arguments advanced by Shri Dhurv in this regard is not sustainable. P.W.80 – Shaikh Ruksanabanu Ibrahimmiya has not named the accused in her deposition in respect of incident dated 01.03.2002 but for the first time, she has identified the accused in the court by face. In her statement dated 10.03.2002 she has stated that, she can identify the accused by face. But in her statement dated 22.05.2005 she has not stated the name of present accused. It is argued by Shri Dhurv that, no reliance can be placed upon the evidence of this witness. This witness had taken 7 minutes time for identification of accused and she has identified 9 accused by face. From over all evidence of this witness it transpires that, she has no where stated the fact that, she can identify the accused by face and therefore, no reliance can be placed on the say of this witness in respect of presence of this accused in the mob. P.W.82 – Fakir

Sabirabibi Sabirhusen has named present accused in her deposition in respect of incident dated 01.03.2002. She has identified present accused before the Court. But in her statements dated 03.03.2002 and 22.05.2008 she has not stated the name of this accused. She has identified the present accused in the Court. She is having height about 5'. P.W.83 – Fakir Sharifabanu Sabirhusen has named the present accused in her deposition and as per her say this accused was very much present in the Court. She has identified the accused. She has not stated the name of present accused in her statements dated 03.03.2002 and 24.06.2008. Thus considering overall evidence of all the witnesses presence of this accused in the mob cannot be doubted as it is supported by the evidence and he is identified by the witnesses in the Court. Therefore, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of

Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore

involvement of accused is well established from the above circumstances. But no weapon is connected with the accused and offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

79. **Accused No.17- PRAJAPATI GORDHANHBHAI
REVABHAI**
(Sessions Case No.275/2002)

P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused

persons. He has not stated the name of present accused in his statement dated 11.06.2008, 05.08.2008, 19.05.2008. In his statement dated 19.05.2008 he has stated that, Police has written the name of the present accused in statement dated 19.05.2008. While statement dated 10.03.2002 is silent in respect of involvement of present accused. P.W.55 – Shaikh Aashiqhusen Bachumiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his deposition the present accused was pelting stones in the mob. He has identified Gordhanbhai Revabhai as Ashwinbhai Baldevbhai. He took 15 minutes for identification. In his statement dated 02.03.2002 from where, how he has seen the accused is not mentioned. In his affidavit 06.11.2003 he has not stated the name of present accused while in his statement before S.I.T. dated 19.05.2008 he has stated that, he has not given the name of accused in his statement dated 02.03.2002. Thus, considering the above evidence against the present accused, one of the witness is not identifying the accused and one witness though identifying but in any of their statements they have not mentioned the name of present accused. For the first time his name has been mentioned before the Court. Thus, it does not inspire

confidence and on the strength of these evidence. Considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires

acquittal.

80. **Accused No.18- PATEL BHIKHABHAI JOITABHAI**
(Sessions Case No.275/2002)

P.W.55 – Shaikh Aashiqhusen Bachumiya has deposed in his deposition the name of the present accused in respect of incident dated 01.03.2002. As per his deposition this accused was pelting stones in the mob. He has identified the accused in the Court. He has identified 17 accused in the court. It was verified by the Court, whether the witness could see the persons in the Court room and after due satisfaction witness has identified the accused. In 15 minutes time witness has identified 17 accused, that can be said reasonable time for identification. In his statement dated 02.03.2002, he has not stated from where, how he has seen the accused. In his affidavit 06.11.2003 and statement before S.I.T. dated 19.05.2008 he has not stated about the presence of this accused. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed on oath the name of the present accused in respect of incident dated 01.03.2002. As per his deposition this accused was in the mob with weapon. He has identified the accused in the Court. He took 10 minutes for identification of accused. During said

10 minutes he has identified 8 accused. It was verified whether the witness could see the persons sitting in the Court and after full satisfying identification was made by the present witness. He has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008, statement before S.I.T. dated 09.05.2008 while P.W.68 – Shaikh Gulamali Akbarmiya has stated the name of present accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court and he took 12 minutes time in identifying the accused. It was verified and after full satisfaction identification was carried out and the witness has identified 19 accused within 12 minutes and that can be said reasonable time. He has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W.71 – Rawal Mangabhai Ramabhai has stated the name of the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes for identification of accused. before identification, it was verified and after full satisfaction identification was carried out and this witness has identified 4 accused in the Court. He has not

stated the name of this accused in the application before S.I.T. and statement dated 20.05.2008. P.W.76 – Shaikh Hamidabibi Akbarmiya has deposed on oath about the presence of this accused in the mob in respect of incident dated 01.03.2002. She has stated that, she cannot identify the person from the mob. She could not identify Bhikhabhai Joitabhai in the Court. She has identified Jagabhai Jivanbhai as Bhikhabhai Joitabhai in the Court. In respect of statements dated 21.06.2002 and 22.05.2008 she has stated that, her statement was not recorded. Thus considering the oral evidence in respect of present accused none of the witnesses have stated the name of present accused in their earlier statements. But Four witnesses have identified the accused in the Court and his specific role is attributed to the present accused. Presence of this accused in the mob in respect of incident dated 01.03.2002 at about 11.30 PM cannot be doubted though reliance cannot be placed upon the deposition of P.W.76 – Hamidabibi Akbarmiya Shaikh as she could not identify the accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the

mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as

incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the accused and offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. This accused has added in his Further Statement that, on the back side wall of the house of the accused, Shaikh Maholla is situated and accused is falsely involved. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

81. **Accused No.19 - PRAJAPATI ROHITKUMAR RAMANBHAI**
(Sessions Case No.275/2002)

As per order passed below Exh.71, trial against this accused sent to Juvenile Justice Board.

82. **Accused No.20 - PRAJAPATI RAVIKUMAR AMRATBHAI**
(Sessions Case No.275/2002)

P.W.52 - Shaikh Hizbulmiya Husenmiya has deposed about the presence of this accused in the mob in the incident dated 01.03.2002. He has taken 15 minutes time for identification of accused but could not identify the accused. He has identified "Rajeshbhai Amratbhai" as "Ravi Amratbhai" He has not named the present accused in his affidavit dated 06.11.2003, statement dated 11.06.2008, 05.08.2008 and statement dated 19.05.2008. He has mentioned that, accused was not in the mob. Police has written the name of the accused. Thus, on the strength of such evidence we cannot conclude the presence of this accused in the mob. P.W.55- Shaikh Aashiqhusen Bachumiya has deposed in his deposition about the incident dated 01.03.2002 and stated that, accused was pelting stones in the mob. He took 15 minutes time but could not identify the accused. In his statement dated

02.03.2002, he is contradicting from where and how he has seen the accused. In his affidavit dated 06.11.2003, he has not stated the name of the present accused while in his statement before S.I.T. dated 19.05.2008 he has stated that, he has not given the name of the present accused in the statement dated 02.03.2002. Thus, considering the whole evidence of this witness, we cannot conclude that this accused was not in the mob. While P.W.81 – Shaikh Dilavarkhan Abbasmiya has not named the present accused in the Court regarding his presence in the incident dated 01.03.2002 but identified in the Court for the first time by face only. In his statement dated 22.05.2008 before S.I.T. he has not given name of any of the accused. Thus, considering the evidence of all the three witnesses against the present accused, there is no such evidence from which we can conclude the involvement of present accused in the incident. Thus considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witnesses. This accused has added that, he was studying in 12th Standard and during the midnight on 04.03.2002, he was sleeping, at that time he was arrested is acceptable. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

83.

Accused No.21 – PATEL BABUBHAI KANTIBHAI

(Sessions Case No.275/2002)

P.W.51 – Shaikh Nazirmohammad Akbarmiya has deposed about the presence of this accused in the mob in the incident dated 01.03.2002 and he has deposed that, the present accused was in the mob with burning rag. He has identified the accused in the Court. He has not stated the name of the present accused in his affidavit dated 06.11.2003. P.W.59 – Shaikh Mohmadsattar Bachumiya has deposed in respect of incident dated 01.03.2002. He has deposed that, the present accused was present in the mob with stone. He could not identify the accused in the Court. As per his statement dated 02.03.2002, he has not narrated the name of the present accused while in affidavit dated 06.11.2003, he has not stated the name of the present accused. In his statement before S.I.T. dated 19.05.2008 he has stated that, in the statement dated 02.03.2002 Police has written the name of the accused. P.W.70- Pathan Munsufkhan Yasinkhan has stated that, he saw the accused at the time of stone throwing at his old house situated in Pathan Maholla incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes time for identification of accused. In his statement dated 06.03.2002, he has not named the accused. There is contradiction from where and how he has seen the

accused. In his affidavit dated 31.03.2004, he has not named the accused. In his statement before S.I.T. dated 11.06.2008, from where, how he has seen the accused is contradictory. In his statement before S.I.T. dated 14.07.2008 he has not stated the name of the present accused. Thus, there are three witnesses, out of which one witness is saying that this accused was with burning rag, another is saying this accused was with stone while the other witness who is the police employee has saw the present accused while stone throwing. All the three witnesses are stating differently about the involvement of this accused. Further, one of the witness is not identifying the accused in the Court and statement and affidavit and applications are silent about the involvement of the accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of

Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witnesses. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

84. **Accused No.22 – PATEL DINESHKUMAR BALDEVBHAI**
(Sessions Case No.275/2002)

P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed in his deposition about the presence of this accused in the mob in the incident dated 01.03.2002. He has not identified the accused in the Court. He has not stated the name of the present accused in the Court while he has stated the

name of the present accused before the S.I.T. in statement dated 10.05.2008. P.W.59 – Shaikh Mohmadsattar Bachumiya has deposed on oath and in his deposition he has named the present accused in the mob in incident dated 01.03.2002 with stone. He has identified the accused in the Court. He took 15 minutes time for identifying the accused. After verifying the witness could see the persons sitting in the Court, identification of accused was carried out and he has identified the present accused alongwith 22 accused and that can be said reasonable time for this witness for identification of accused. As per statement dated 19.05.2008 it is stated by this witness that, in the statement dated 02.03.2002, Police has written the name of the accused while in affidavit no name of the present accused is mentioned. P.W.73 – Shaikh Faridabibi Aashiqhusen has not taken the name of present accused in her deposition but identified the accused for the first time in Court by face in respect of incident dated 01.03.2002. She has not stated the name of present accused in her statement dated 02.03.2002. His name is not stated in the statement dated 11.06.2008. Thus, considering the evidence of all these three witnesses, one witness is identifying the accused by face, one is identifying the

accused before the Court and one witness is not identifying the accused in the Court. When the witness P.W.59 has identified the accused, from his statements it has come out that, name of this accused is written by the Police. Thus, considering above all there is no cogent and reliable evidence for involving the present accused in the incident. Furthermore, one witness is involving this accused having stone with him in the incident. Thus, evidence against the present accused does not inspire any confidence. Thus, considering the appreciation of evidence as discussed, while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution beyond reasonable doubt. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witnesses. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the

present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

85. **Accused No.23 – PATEL VISHNUBHAI GOPALBHAI**
(Sessions Case No.275/2002)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

86. **Accused No.24 – PATEL KANUBHAI KARSHANBHAI**
(Sessions Case No.275/2002)

So far as involvement of this accused in the incident is

concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

87. **Accused No.25 – PRAJAPATI DAHYABHAI VARVABHAI**
(Sessions Case No.275/2002)

P.W.52 – Shaikh Hizbulmiya Husenmiya has deposed on oath in respect of incident dated 01.03.2002 that, this accused was present in the mob with pipe. He took 15 minutes time and has identified Jaga Jivan as Dahyabhai Varvabhai. He has not stated the name of the present accused in his statement dated 10.03.2002, affidavit dated 06.11.2003, statement dated 11.06.2008, statement dated 05.08.2008 while in his statement dated 19.05.2008 he has stated the name of present accused. As this witness has not identified the accused properly we can safely say that, this witness failed in involving the accused in the incident. P.W.55 – Aashiqhusen Bachumiya has deposed in his deposition about the incident dated 01.03.2002. As per his deposition, this accused was present in the mob and was involved in pelting stone. He has identified the present

accused before the Court and he took 15 minutes for identification of accused. He had seen 22 persons in the mob. As per his deposition he saw the accused in the mob with weapon. He has identified 17 accused. He has identified the accused within reasonable time but in his statement dated 02.03.2002 from where, how he has seen the accused is contradictory. In his affidavit dated 06.11.2003 name of present accused is not mentioned while in his statement before S.I.T. dated 19.05.2008 he has stated the name of present accused. P.W.68- Shaikh Gulamali Akbarmiya has not named the present accused in his deposition but identified before the Court. He took 12 minutes time for identification of accused. In his statement dated 10.03.2002 from where, how he has seen there is contradiction about it. In application dated 09.05.2008 from where and how he has seen there is contradiction. While in his statement dated 10.05.2008 name of the present accused is not mentioned. This witness has identified 19 accused in 12 minutes. After verifying that he was able to see the persons sitting in the Court room, identification was carried out. Therefore, he took reasonable time in identifying the accused. P.W.75 – Shaikh Firozabanu Bachumiya has stated the name of the present

accused in her deposition but has not identified the accused in the Court. On the contrary she has identified Gordhanbhai Revabhai as Dahyabahi Varvabhai. Thus, no reliance can be placed on deposition of this witness in respect of involvement of present accused in the incident. P.W.80 – Shaikh Ruksanabanu Ibrahimmiya has not named the present accused in her deposition but identified the accused in the Court for the first time by face. In respect of incident dated 01.03.2002, she has not stated that, she can identify the accused by face. In her statement dated 22.05.2005, she has not stated the name of present accused. Considering such evidence no reliance can be placed in respect of involvement of present accused in the incident dated 01.03.2002. Considering the fact that, one witness is stating that, this accused was having Pipe in his hand while other witness is saying that, this accused was pelting stone while another witness is not naming the present accused but identifying and silent about the weapon in the hand of this accused. Therefore, considering above all evidence as a whole it does not inspire confidence to involve the present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of

this accused in the mob is not satisfactorily proved by the Prosecution beyond reasonable doubt. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witnesses. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

(Sessions Case No.275/2002)

P.W.59 – Shaikh MohmadSattar Bachumiya has deposed in his deposition about the involvement of this accused in respect of incident dated 01.03.2002 at about 11.30 to 12.00 P.M. As per deposition of this witness, the present accused was present in the mob with the stone. He has not identified the accused in the Court though 15 minutes time was taken by him. As per his statement dated 19.05.2008 name of the present accused was written by the Police in the statement dated 02.03.2002 and in his affidavit dated 06.11.2003 no name of the present accused is mentioned. Thus, evidence of this witness is not involving the present accused in the incident. Simply, in his deposition, he is naming the accused. P.W.60 – Shaikh Bachumiya Imammiya has deposed on oath, in respect of incident dated 01.03.2002. The accused has asked him to transfer his cabin from near his house as his grass will burn but he has not identified the accused though he took 12 minutes time for identification. In his statement dated 03.03.2002 he has not stated the incident dated 27.02.2002. Thus, there is no evidence in deposition of P.W.60 regarding the involvement of present accused. P.W. 61 – Shaikh Safikmiya Babumiya has deposed involving the

present accused in the incident dated 01.03.2002. As per his deposition this accused was present with weapon. He has identified the accused before the Court. He took 15 minutes time for identification of accused and he has identified 7 accused in the Court within 15 minutes. Thus, he took reasonable time for identification of accused and identification was carried out after due verification whether witness was able to see the persons sitting in the Court as the height of this witness is about 4'11". He has not stated the name of present accused in the statement dated 10.03.2002, 03.05.2002 and 10.05.2008. P.W.70 – Pathan Munsufkhan Yasinmiya has stated the name of present accused in pelting stone. As per his deposition he saw the incident and the accused at the time of stone pelting on his old house at Pathan Maholla on 01.03.2002. He has identified the accused in the Court. He took 17 minutes time for identification of accused and in the said 17 minutes, he has identified 14 accused. In his statement dated 11.06.2008, he has not given the name of present accused with weapon in his statement dated 06.03.2002. He has not named the present accused in his affidavit dated 31.03.2004. In his statement before S.I.T. dated 11.06.2008, he has not stated from where and how he has

seen the accused with weapons. He has not stated the incident with name of present accused. In his statement before S.I.T. dated 14.07.2008. P.W.75 – Shaikh Firozabanu Bachumiya has deposed in her deposition in respect of incident dated 01.03.2002 that, she saw the accused in the mob while going towards Mahemudmiya's house. She took 15 minutes time for identification of accused but she could not identify the accused in the Court. In her statement dated 02.03.2002 from where and how she has seen the accused is not stated. In her statement dated 22.05.2008 from where and how she has seen the accused, her statement is contradictory. Thus, deposition of this witness is not sufficient to involve the present accused in the incident. So far as involvement of this accused by P.W. 70 is concerned, he was a police employee, well conversant with the law and procedure even though he has not stated the name of present accused in his affidavit. Further, his statement is contradictory about from where, how he has seen the accused with weapon. While he is stating in his deposition about the involvement of accused with stone. Considering the standard of this witness, we can not conclude the involvement of the accused on the basis of evidence of this witness. We have to consider the other evidence also.

Whether there is other evidence to involve the present accused in the incident evidence of P.W.59, 60 and 75 are not sufficient to involve the present accused. So far as evidence of P.W. 61 is concerned, he has involved the present accused with weapon. He has identified this accused before the court. Thus, P.W. 70 is involving the accused in the mob with stone. While P.W. 61 is involving the accused with weapon. There is no other evidence to support the involvement of this accused in the incident. Thus, by keeping reliance upon these two evidence which are contradictory to each other. We cannot conclude about the involvement of present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses, the presence of this accused in the mob is not proved beyond reasonable doubt by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the

accused by any witness. Further accused not identified by the witnesses. This accused has added in his Further Statement that, he was carrying business of milk and buttermilk etc. therefore, presence from the village know him well therefore, he was identified falsely by the witnesses who are residing behind his house is acceptable. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court, as a person who was in the mob requires acquittal.

89. **Accused No.27 – PATEL MATHURBHAI RAMABHAI**

(Sessions Case No.275/2002)

P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of the present accused in respect of incident

dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of the present accused in his statement dated 06.03.2002 while in his statement before S.I.T. dated 10.05.2008 his name is stated. It is also deposed in his deposition that, this accused was in the mob and instigating the mob and he was also involved in pelting stone. This witness has identified the accused after verification that he is able to see all the persons sitting in the Court. While P.W.59 – Shaikh Mohmad Sattar Bachumiya has deposed on oath in respect of incident dated 01.03.2002 that this accused was involved in pelting stone. He has identified the accused in the Court. Before identification, it was verified by the Court whether witness could see the persons sitting in the court and after due satisfaction, identification was carried out and this witness has identified about 22 accused. This witness has stated in his statement dated 09.05.2008 that, in his statement dated 02.03.2002 police has written the name of the accused. This witness has not stated the name of this accused in his affidavit dated 06.11.2003. P.W.62 – Shaikh Rafikmiya Mahmadsusen has not named this accused in his deposition but identified “Ramdas” as “Mathurbhai Ramabhai” and he took 15 minutes time for identifying the

accused. He has stated the name of the present accused in his statement dated 10.03.2002 and 10.05.2008. Identification was carried out after due satisfaction that witness could see the persons sitting in the Court and in 15 minutes he has identified 9 accused. P.W.65 – Shaikh Akbarmiya Nathumiya has not stated the name of this accused in his deposition but identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. P.W.68 – Shaikh Gulamali Akbarmiya has deposed on oath naming the accused in respect of incident dated 01.03.2002 that he was present in the mob. He took 12 minutes time in identifying the accused. He has identified 19 accused in the Court. Identification took place after due verification whether witness could see the persons sitting in the Court. He has not stated the name of this accused in his statement dated 10.03.2002, in his application dated 09.05.2008 from where and how he has seen the accused is contradictory mentioned and in his statement dated 10.05.2008 he has not stated the name of present accused. P.W.70 – Pathan Munsufkhan Yasinkhan has named the

accused. As per his deposition he saw the incident and persons at the time of stone throwing on his old house at Pathan Maholla on 01.03.2002. As per his deposition this accused was present in the mob with stone. He took 7 minutes time in identifying the accused. He has identified 14 accused in the Court. In his statement dated 06.03.2002 from where and how he has seen the accused is contradictory mentioned. There is also contradictions about the weapon. He has not stated the name of this accused in his affidavit dated 31.03.2004. In his statement before S.I.T. dated 11.06.2008 from where and how he has seen the accused with weapon is contradictory. In his statement before S.I.T. dated 14.07.2008 he has not narrated the incident with name of the present accused. It is argued by Shri Dhruv that, this witness has deposed before the Court referring the name of the present accused having seen by the witness when the mob set on fire three cabins near Shaikh Maholla. He has not named this accused in his first statement. Thus, there is material improvement in his deposition which is proved contradiction. It is argued by Shri Dhruv in respect of deposition of P.W.59 – Shaikh Mohmad Sattar Bachumiya that, he has named this accused before the Court. In earlier statements he has not

named the present accused therefore, it is submitted by him that, his deposition in respect of identification of this accused is required to be discarded. It is submitted by Shri Dhruv that, in spite of the fact that, P.W.62 – Shaikh Rafikmiya Mahmadsusen has not deposed in the deposition that, this accused was in the mob at the time of alleged incident even though he has identified the accused in the Court just to involve the accused falsely. It is argued by Shri Dhruv that, P.W.65 – Shaikh Akbarmiya Nathumiya has not implicated the present accused in his deposition but identified him before the Court therefore, this identification has no value as he is not assigned any role in the mob. Referring to the deposition of P.W.70 – Pathan Munsufkhan Yasinkhan, it is submitted by Shri Dhruv that, this witness has identified the present accused in the Court and has deposed about the presence of this accused in the mob at the time of incident but in his affidavit and other statements this witness has not implicated the present accused therefore, this witness has tried to implicate present accused falsely. Considering the evidence against present accused P.W.48 – Sabirhusen Kadarmiya Shaikh has identified the accused and deposed the presence of this accused while Mohmad Sattar has stated

the presence of this accused with stone but none of his statement supports that he has earlier stated the name of the present accused while in two statements of P.W.62 - Rafikmiya Mohmadhusen Shaikh name of this accused is mentioned. In two statements and one affidavit P.W.65- Akbarmiya Nathumiya Shaikh, name of this accused is mentioned. He has identified this accused. P.W.68- Gulamali Akbarmiya Shaikh has stated the name of this accused as well as in application also name of this accused is mentioned. Simply there is contradiction from where and how he has seen the accused but this issue is discussed at the relevant time while appreciating the evidence. While appreciating the evidence on this point P.W.70 - Munsufkhan Yasinkhan is the Police employee and well conversant with the Law and Procedure. He has identified the accused. There is contradiction about from where, how he has seen the accused. There is contradiction about weapon also. We cannot weight the evidence of this witness more but while considering the evidence of other witnesses, we can consider the evidence of this witness also. From the evidence of all the witnesses as stated above, there is sufficient reasons to disbelieve the arguments advanced by Shri Dhruv that, this accused was not in the mob and has

falsely been involved by the witness. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the

accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the

accused is not acceptable.

90. **Accused No.28 – PATEL SURESHBHAIRANCHHODBHAI**

(Sessions Case No.275/2002)

P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has deposed on oath that, this accused was instigating the mob and he alongwith the mob burning the houses in Shaikh Maholla and also pelting the stone. He has identified the accused in the Court and there is contradiction in his statement dated 06.03.2002 from where and how he has seen the accused but this contradiction is already discussed at the relevant time in the Judgement. This witness has not named this accused in his statement before S.I.T. dated 10.05.2008. It is argued by Shri Dhruv that, this witness has seen the present accused in the mob setting on fire three cabins near Shaikh Maholla in the Focus light, fixed near the Shaikh Maholla. But he is not stating the name of this accused in his statement. P.W.54 – Shaikh Sharifmiya Bhikhumiya has deposed on oath the name of the present accused in the mob with burning rag. He has not identified the present accused in the Court though he has identified four accused

in the Court. Present accused is present in the Court. Witness has stated that, he is not present in the Court. In his statement dated 06.03.2002 from where and how he has seen the accused, there is contradiction about it. But this contradiction is already discussed at the time of appreciation of evidence. This witness has not stated the name of this accused in his affidavit dated 06.11.2003 and statement before S.I.T. dated 22.05.2008. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 that, this accused was present in the mob with burning rag. This witness has identified the present accused in the Court. He took 12 minutes time for identification and has identified 19 accused in 12 minutes. His height is about 5”2” and it was verified whether he could see the persons sitting in the Court and after due satisfaction identification was carried out. There is contradictions in his statement dated 10.03.2002 from where and how he has seen the accused. Evidence in respect of contradiction is already discussed. This witness has not stated in his application dated 09.05.2008 that, this accused was present with burning rag. There is contradiction in his statement dated 10.05.2008 from where and how he has seen the accused,

which is already discussed. P.W.69 – Shaikh Mahemudmiya Husenmiya has deposed on oath that, this accused was very much present in the mob with burning rag. He has not identified the accused in the Court. While as per say of this witness, his statement was not recorded on 22.05.2008. P.W.81 – Shaikh Dilavarkhan Abbasmiya has not named this accused in this deposition but identified the accused in the Court by face only and he has not named the present accused in his statement dated 22.05.2008. Thus considering the over all evidence of all these witness, it is come out that, this accused was very much present in the mob with burning rag and he took active part in the incident and he was also instigating the mob. P.W.48, P.W.68 fully supports this fact while the evidence of P.W.54 does not inspire confidence about the presence of this accused in the mob. Evidence of P.W.69 and 81 does not inspire any confidence and therefore, no reliance can be placed upon their say about the presence and role played by the accused in the incident. But the evidence of other witness supports the presence of this accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses, the presence of this accused in the mob is satisfactorily proved by the

Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as

incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. In the evidence of witnesses this accused was connected with burning rag. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

91. **Accused No.29 – PATEL CHATURBHAI KANABHAI**

(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbhai Rasulbhai has deposed in respect of incident dated 01.03.2002 and named the

present accused. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the present accused in his complaint but not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 but named the present accused in the application and statement before S.I.T. dated 09.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed in his deposition naming the present accused in the mob in respect of incident dated 01.03.2002. He has identified the accused in the Court. As per deposition of this witness the present accused alongwith other accused was instigating the mob and also pelting stone and burning the houses in Shaikh Maholla. He has identified 14 accused in the Court. before identification, it was verified whether he was able to see the persons sitting in the Court and after satisfying identification was carried out. He has not stated the name of present accused in his statement dated 06.03.2002. He has stated the name of present accused in the statement before S.I.T. dated 10.05.2008. It is submitted on behalf of the accused that, the present witness has deposed that,

mob of nearly 500 to 700 persons set on fire three cabins near Shaikh Maholla in the Focus light, fixed near the Shaikh Maholla. He saw the present accused. This witness has falsely involved the present accused but has not named the accused in his first statement. Thus, there is material improvement in his statement and there is contradiction in the deposition of this witness which is proved in the deposition of Investigating Officer P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused with pipe in the mob. He has not identified the present accused. There is contradiction in his statement dated 10.03.2002 from where and how he has seen the accused but in the statement before S.I.T. dated 10.05.2008 and 10.06.2008 supports the say of the witness. While P.W.52 – Shaikh Hizbulmiya Husenmiya has deposed in his deposition naming the present accused in the mob with pipe. He has not identified the present accused. He has stated the name of the present accused in the statement dated 10.03.2002 but has not named in his affidavit dated 06.11.2003, statement dated 11.06.2008, statement dated 05.08.2008 and statement dated 19.05.2008. It is argued by Shri Dhruv that, out of 12 accused, 8 accused are named by present witness in his

statement by full name but unable to identify them before the Court. Further, it is argued by Shri Dhruv that, this witness has assigned Muddamal Article No.41 – Pipe in the hands of present accused while P.W.49 – Ibrahimmiya Rasulmiya Shaikh assigns Muddamal Article No.41 – Pipe to accused No.51 – Marvadi Aashutosh alias Pavankumar Murlidhar. Thus, said Muddamal is assigned to different accused by the witnesses. Thus, there is improvement in the statement of this witness and witness has tendency to involve false persons in the crime and the evidence of this witness is not credit worthy. P.W.55 – Shaikh Aashiqhusen Bachumiya has deposed the name of the present accused in his deposition in respect of incident dated 01.03.2002. Looking to his deposition he has not named that, this accused was in the mob. He has identified the present accused in the Court. He took 15 minutes time and during 15 minutes he has identified 4 accused. He has stated the name of present accused in his affidavit dated 06.11.2003 whereas has not stated the name of present accused in the statement dated 19.05.2008 before S.I.T. P.W.56 – Shaikh Shaikh Mustufamiya Rasulmiya has deposed the name of the present accused with pipe in the mob in respect of incident dated 01.03.2002. He has not identified the

accused in the Court. In his statement dated 10.03.2002 he has not stated the name of the present accused in the mob. In his statement before S.I.T. there is contradiction about from where and how this witness has seen the accused. So far as contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. P.W.59 – Shaikh Mohmad Sattar Bachumiya has deposed in his deposition in respect of incident dated 01.03.2002 at about 11.30 to 12.00 P.M. naming the present accused with pipe in the mob. He has identified “Chatur Kanji” as “Chatur Kana”. He took 15 minutes time for identification of accused and has identified about 20 accused in the Court. before identification, it was verified whether the accused could see the persons sitting in the Court room and after due satisfaction the identification was carried out. As per his statement dated 19.05.2008 Police has written the name of present accused in the statement dated 02.03.2002. In his affidavit witness has not stated the name of present accused. P.W.61 – Shaikh Safikmiya Babumiya has deposed on oath in respect of incident dated 01.03.2002 naming the present accused in the mob having weapon in his hand. He has identified 6 accused in the Court. His height is about 4'11”. He took 15 minutes time

for identifying the accused in the Court though proper arrangement was made so that, witness could see each and every person in the Court in spite of that, witness was not able to see some of the accused and he had requested to step down from the witness box and accordingly he was permitted for the same and has identified the present accused from very near. He has not stated the name of present accused in his statement dated 10.03.2002 and 03.05.2002 but has stated the name of present accused in his statement dated 10.05.2008. P.W.77 – Shaikh Badrunnisha Akbarmiya has deposed in her deposition naming the present accused in the incident dated 01.03.2002. She has not identified the present accused. She has identified “Chatur Kanji” as “Chatur Vitthal”. As per her statement dated 06.03.2002 she saw from the Field side. She has not stated the name of present accused in her statement dated 06.03.2002 and there is contradiction in her statement dated 22.05.2008 from where and how she has seen the accused. This fact is already discussed while appreciating the evidence in this regard. P.W.80 – Shaikh Ruksanabanu Ibrahimmiya has not named the present accused in her deposition in respect of incident dated 01.03.2002. But she has identified the accused for the first

time in the Court. She took 7 minutes time for identifying the accused. In her statement dated 10.03.2002 she has not stated that, she saw the accused and she can identify him by face. In her statement dated 22.05.2005 she has not stated the name of present accused. Considering the evidence of above all witnesses, no doubt in complaint name of present accused is mentioned but complainant has not identified the accused. P.W.48 – Sabirhusen Kadarmiya Shaikh, P.W.49 – Iqbalmiya Rasulmiya Shaikh though saying that this accused was present in the mob with pipe. But no reliance can be placed on his say as he has not identified the present accused. Hizbulmiya is also not identifying the present accused and therefore, no reliance can be placed on the evidence of this witness also. P.W.55 – Aashiqhusen Bachumiya Shaikh is not saying the presence of present accused in the mob however he is identifying the accused therefore, no reliance can be placed on his deposition also. So far as P.W. 56 – Ayubmiya Rasulmiya Shaikh is concerned, he is saying about the presence of this accused with pipe in the mob but not identifying the accused in the court and therefore, no reliance can be placed on his deposition about the involvement of present accused in the incident. P.W.59 – Mohmad Sattar

Bachumiya Shaikh is not properly identifying the present accused and therefore, his say about the presence of this accused alongwith pipe cannot be given weightage in a case where in the statement dated 19.05.2008 it is stated the name of the present accused is written by the Police in the statement dated 02.03.2002. P.W.61 – Safikmiya Babukmiya Shaikh though identifying and naming the present accused. Evidence of Badrunnisha and Ruksanabanu are not sufficient to involve the present accused in the incident. Thus, overall evidence is not much satisfactory to conclude beyond reasonable doubt that the present accused was involved in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by

the witnesses. This accused has added in his Further Statement that, his old house is 62 to 70 Ft. away, since the year 1997 he is staying 0.5 Km. away from the village and as earlier he was staying in the old house witnesses were known to him is acceptable. This accused has added in his Further Statement that, he was carrying business of milk and buttermilk etc. therefore, presence from the village know him well therefore, he was identified falsely by the witnesses who are residing behind his house is acceptable. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbhai Rasulbhai has deposed the name of present accused in respect of incident dated 01.03.2002 but he has not identified the accused in the Court but has named in the Complaint dated 02.03.2002 but not stated the name of the accused in the statement dated 10.03.2002, application dated 01.06.2002, statement dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 but has named the accused in his application to S.I.T. dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W.51- Shaikh Nazirmohmad Akbarmiya has deposed the name of present accused in respect of incident dated 01.03.2002 that the present accused was present in the mob with burning rag but has not identified the accused in the Court but has stated the name of the present accused in his statement dated 10.03.2002. He has not stated the name of present accused in affidavit dated 06.11.2003 but has stated the name of the accused in his statement dated 19.05.2008 before S.I.T. P.W.57 – Shaikh Mustufamiya Rasulmiya has named the accused in his deposition in respect of incident dated 01.03.2002 and has identified the accused in the Court. He took 15 minutes time for identification. He has

stated the name of the accused in the statement dated 10.03.2002 but there is contradiction in the statement from where and how he has seen the accused and that is already discussed in earlier part of the judgement at the time of appreciating the evidence. He has not named the accused in his affidavit dated 06.11.2003 has not stated the name of the present accused in his statement dated 19.05.2008. He has stated the name of the present accused in his statement dated 05.05.2008 but so far as contradiction from where and how he has seen the accused is concerned already discussed in the earlier part of the Judgement. P.W.61 – Shaikh Safikmiya Babumiya has deposed on oath that, present accused was present in the mob in the incident dated 01.03.2002. He was having weapon with him. He has identified the present accused in the Court and took 15 minutes time for identifying the accused. He has identified six accused during 15 minutes. Before identification, it was verified and proper arrangement was made so that the, witness can see the persons in the Court. Height of the witness is 4'11". He has identified the accused after stepping down from the witness box with the permission of the Court. He has not stated the name of the present accused in his statement dated 10.03.2002,

03.05.2002 and 10.05.2008. P.W.65 – Shaikh Akbarmiya Nathumiya has deposed in his deposition naming the present accused having burning rag in the mob. He took 10 minutes time in identifying the accused in the Court. In 10 minutes he has identified 10 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. The height of the witness is 4'7". He has not stated the name of the present accused in his application . There is contradiction about from where and how witness has seen the accused in his statement dated 10.03.2002 and statement before S.I.T. dated 10.05.2008. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed on oath in his deposition naming the present accused in respect of incident dated 01.03.2002. As per his deposition present accused was present in the mob with weapon. This witness has not identified the present accused in the Court in spite of 10 minutes time taken by him. He has not stated the name of the present accused in his statement dated 10.03.2002. He has not stated the name of the present accused with weapon in his application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W.67 – Shaikh Imtiyazbhai Mahmadsen has deposed the name

of the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the present accused in the Court. It was verified and satisfied by the Court whether witness could see the persons sitting in the Court and thereafter identification was carried on. He took five minutes time for identification of the accused and has identified three persons. This witness has not stated the name of the present accused in his statement dated 17.04.2002 but has stated the name of present accused in his statement dated 22.05.2008. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 stating therein that, the accused was present in the mob with burning rag. He has not identified the present accused in the Court. 12 minutes time has been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. Height of the witness is 5'2". From where and how he has seen the accused there is contradiction it about in his statement dated 10.03.2002 which is already discussed at the earlier stage. So far as naming the present accused in the application dated 09.05.2008 and statement dated 10.05.2008, is concerned, it is not mentioned in the

application that, accused was present with burning rag in the mob. Further there is contradiction in respect from where and how the witness has seen the accused. P.W.77 – Shaikh Badrunisha Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. She has identified the accused in the Court but she has not stated the name of the present accused that she saw the accused from Field side. Further she has not stated the name of present accused in her statement dated 22.05.2008. P.W.79 – Shaikh Samimbanu Mahemudmiya has not named the present accused in her deposition but identified the accused in the Court for the first time by face in respect of incident dated 01.03.2002 but she has not stated in her statement dated 06.03.2002 and 22.05.2008 that she can identify the accused by face. P.W.81 - Shaikh Dilavarkhan Abbasmiya has not stated the name of the present accused in his deposition in respect of incident dated 01.03.2002 but identified the accused in the court for first time by face and in his statement dated 22.05.2008 before S.I.T. he has not stated the name of the present accused. Thus considering above all complainant though named in the complaint but has not identified the accused in the Court. P.W.51, P.W.66, P.W.67, P.W.68 have

also not identified the accused and therefore, no reliance can be placed upon their deposition in respect of identification of present accused. In the complaint, name of the present accused is mentioned that can only be considered for corroboration purpose. But complainant himself is not identifying the accused. But P.W. 57, P.W.61, P.W.65, PW.77 have identified the accused in the Court and as per their say the accused was present in the mob with burning rag. As discussed earlier they were having sufficient opportunities to see the mob. Therefore, their say that they have seen the accused with burning rag cannot be discarded and their say is corroborated from the complaint. So far as deposition of P.W.81 is concerned, he has simply identified the accused by face and there is no such statement supporting his say and therefore, no reliance can be placed on his this say. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in

furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

93. **Accused No.31 – PATEL RAMANBHAI JIVANBHAI**

(Sessions Case No.275/2002)

P.W.46 – Shaikh Sabirmiya Akumiya and P.W.48 – Shaikh Sabirhusen Kadarmiya have deposed the name of present accused in respect of incident dated 01.03.2002 that this accused was present in the mob and have

fsidentified the accused in the Court. Before identification it was verified and satisfied whether the witnesses could see the persons sitting in the Court room. P.W.46 – Shaikh Sabirmiya Akumiya has stated the name of the accused in his application dated 06.05.2008 but not stated the name of present accused in his statement dated 20.05.2008 while P.W.48 – Shaikh Sabirhusen Kadarmiya has not stated the name of the accused in his statement dated 06.03.2002 and statement before S.I.T. dated 10.05.2008. P.W. 59 – Shaikh Mohmad Sattar Bachumiya has stated the name of the present accused in respect of incident dated 01.03.2002 about cabin fire incident at 09.30 PM and main incident about 11.30 to 12.00 P.M. It is deposed by the witness that, accused was present in the mob with stone. He has identified the accused in the Court. He took 15 minutes time for identifying the accused in the Court. He has identified about 20 accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 02.03.2002, affidavit dated 06.11.2003. In his statement before S.I.T. dated 19.05.2008 he has stated that, in his statement dated 02.03.2002

Police has written the name of the present accused. P.W.67 -Shaikh Imtiyazbhai Mohmadhusen has deposed the name of the present accused in respect of incident dated 01.03.2002. He has not identified the present accused in the Court though sufficient opportunities were given to him for identifying the accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. There is contradiction in his statement dated 17.04.2002 and 22.05.2008 from where and how he has seen the accused. Contradiction is already discussed at the time of appreciation of evidence. P.W.68 - Shaikh Gulamali Akbarmiya has not named the present accused in the Court but identified the present accused in the Court. He took 12 minutes time for identifying the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 10.03.2002, 10.05.2008 and there is contradiction in his application dated 09.05.2008 from where and how he has seen the accused. This contradiction is already discussed. Considering above all evidence, P.W.46, P.W.48, P.W.59 have supported the prosecution case that, accused was present

in the mob with stone while P.W.67 could not identify the accused therefore, no reliance can be placed on his deposition in respect of identification of this accused. So far as P.W.68 is concerned, he has simply identified the accused in the court but not named that, he was in the mob therefore, no reliance can be placed in his deposition in respect of identification of this accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question

requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. The witnesses have stated that, this accused was having burning rag in their hands at the time of incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to

accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

94. **Accused No.32 – PATEL RAJESHBHAI KARSHANBHAI**
(Sessions Case No.275/2002)

P.W.55 – Shaikh Aashikhusen Bachumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. As per his deposition the accused was present in the mob with pipe. This witness has identified the accused in the Court. He took 15 minutes time for identifying the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. There is contradiction in his statement dated 02.03.2002 from where and how he has seen the accused. This contradiction is already discussed earlier. This witness has not stated the name of the present accused in his affidavit dated 06.11.2003. He has stated the name of the present accused in his statement before S.I.T. dated 19.05.2008. As per deposition of this witness Muddamal Article No.40 –

Iron Pipe was in the hands of present accused. For this purpose when we peruse the Panchnama it tallies that Muddamal Article No.40 was with the present accused. P.W.62 – Shaikh Rafikmiya Mohmadhusen has deposed on oath about the presence of this accused in the mob with Lathi and Pipe in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 15 minutes time for identifying the accused in the Court. He has identified 9 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. There is contradiction in his statement dated 10.03.2002, 10.05.2008 about from where and how he has seen the accused. It is already discussed in the earlier part of this Judgement. P.W.68 – Shaikh Gulamali Akbarmiya has deposed on oath about the presence of this accused in the mob in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 12 minutes time for identifying the accused in the Court. He has identified 19 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. His height is 5'2". He has not stated the name of the present accused in his statement dated 10.03.2002, in his

application dated 09.05.2008 and statement dated 10.05.2008. There is contradiction about from where and how he has seen the accused. It is already discussed in the earlier part of this Judgement. Considering above all the evidence, all the three witnesses have stated the name of present accused in the mob and identified the accused in the court. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The

question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in furtherance of common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their depositions that, this accused was having Lathi and Pipe in his hands at the time of incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this

ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

95. **Accused No.33 – PATEL RAMESHBHAI KANTIBHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002 near water works and incident dated 28.02.2002 – morning incident. This witness has identified the accused in the Court. In his application dated 06.05.2008, he has stated the name of the present accused but has not stated the name in shouting and also not stated the name in his statement dated 20.05.2008 in respect of incidents dated 28.02.2002. P.W.47 – Shaikh Ibrahimbai Rasulbai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has not identified the accused in the Court but has taken the name of the present accused in the Complaint dated 02.03.2002 but not

stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 and also not stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.51 – Shaikh Nazirmohmad Akbarmiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 and has stated that, accused was present in the mob with Dhariya. This witness has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has stated the name of the present accused in his statement dated 10.03.2002 and 19.05.2008 but not named the accused in his affidavit dated 06.11.2003. P.W.55 – Shaikh Aashiqhusen Bachumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. As per his deposition present accused was throwing stone from the mob. He took 15 minutes time for identifying the accused in the Court. He has identified 17 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the

name of the present accused in his affidavit dated 06.11.2003. He has stated the name of the present accused in his statement before S.I.T. dated 19.05.2008. There is contradiction in his statement dated 02.03.2002 from where and how he has seen the accused, which is already discussed in the Judgement at the relevant time. P.W.59 – Shaikh Mohmad Sattar Bachumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 about 11.30 to 12.00 PM incident. As per deposition of this witness the accused was present in the mob with Dhariya. This witness has identified the accused in the Court. He took 15 minutes time for identifying the accused in the Court. He has identified about 21 accused. As per deposition of this witness Muddamal Article No.42 – Dhariya was in the hands of present accused. But it does not tally with the Panchnama and other evidence. As per deposition of this witness in his statement before S.I.T. 19.05.2008 he has stated that, Police has written the name of the present accused in his statement dated 02.03.2002. He has not stated the name of the present accused in his affidavit dated 06.11.2003. P.W.60 – Shaikh Bachumiya Imammiya has deposed on oath the name of present accused in respect of incident dated 28.02.2002 for closing

the cabins incident and incident in respect of 09.30 P.M. in respect of setting on fire to the cabins. This witness has not stated this incident in the statement dated 03.03.2002. He has not stated the name of the present accused in 09.30 cabin incident. He has not identified the accused in the Court though sufficient opportunities were given to him. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. P.W.62 – Shaikh Rafikmiya Mohmadhusen has deposed on oath the name of present accused in respect of incident dated 28.02.2002 cabin incident and incident in respect of 01.03.2002. He has not identified the accused in the court though sufficient opportunities were given to him. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. Height of this witness is 5'3". He has not stated the incident dated 28.02.2002 in his statement dated 10.03.2002 and also not stated the name of present accused in respect of incident dated 01.03.2002. Further, he has not stated the incident dated 28.02.2002, in his statement dated 10.05.2008. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 and has stated that, accused

was present in the mob with weapon. He has not identified the accused in the Court though sufficient opportunities were given to him. Before, identification it was verified and satisfied whether the witness could see the persons sitting in the Court room. He took 10 minutes time but could not identify the accused in the Court. He has not stated the name of the present accused in his statement dated 10.03.2002, he has not stated the name of the present accused with weapon in his application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W. 68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 at about 2.30 PM and incident dated 01.03.2002. He has identified the accused in the Court. He took 12 minutes time for identifying the accused in the Court. He has identified 19 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of the present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated 10.05.2008. Considering the evidence in respect of involvement of present accused no doubt Muddamal Article No.42 – Dhariya, which is shown in the hands of accused

does not tally with the Panchnama. It is but natural that in a mob of 1000 to 1500 that too in the night, if the Muddamal Article – Dhariya is shown in the hands of accused does not tally, does not amount that, the witness is telling lie simply on that basis. The witnesses have identified the accused. Presence of accused and involvement of accused is proved from the evidence of witnesses. As discussed above considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of

same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that odd time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Dharia in his hands at the time of incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply

witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

96. **Accused No.34 – PATEL MADHABHAI VITTHALBHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002 near water works and incident dated 28.02.2002 – morning incident. This witness has identified the accused in the Court. In his application dated 06.05.2008, he has stated the name of the present accused but has not stated the name in shouting and has not stated the name in his statement dated 20.05.2008 in respect of incidents dated 28.02.2002. P.W.47 – Shaikh Ibrahimbai Rasulbhai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has not identified the accused in the Court but has taken the name of the present accused in the

Complaint dated 02.03.2002 and not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 and also not stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed in his deposition naming the present accused in the mob in respect of incident dated 01.03.2002. He has not identified the accused in the Court. As per deposition of this witness the present accused alongwith other accused was instigating the mob and also pelting stone and burning the houses in Shaikh Maholla. He has identified 14 accused in the Court. before identification, it was verified whether he was able to see the persons sitting in the Court and after satisfying, identification was carried out. He has not stated the name of present accused in his statement dated 06.03.2002. He has stated the name of present accused in the statement before S.I.T. dated 10.05.2008. P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob with pipe. He has identified the present accused.

There is contradiction in his statement dated 10.03.2002 from where and how he has seen the accused but his statements, before S.I.T. dated 10.05.2008 and 10.06.2008 supports the say of the witness. P.W.51 – Shaikh Nazirmohmad Akbarmiya has not named present accused in respect of incident dated 01.03.2002 in his deposition, this witness has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of the present accused in his affidavit dated 06.11.2003. P.W.55 – Shaikh Aashiqhusen Bachumiya has named this accused during his deposition in respect of incident dated 01.03.2002 that this accused was in the mob with pipe. He has identified the accused in the Court. He took 15 minutes time for identification. He has identified 17 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 17 accused he took 15 minutes time, which can be considered as reasonable time for identification. He has not stated the name of this accused in his affidavit dated 06.11.2003. As per deposition of this witness Muddamal Article No.45 was

in the hands of present accused but on perusing the Panchnama it does not tally with the deposition of this witness. P.W.56 - Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused with Dhariya in the mob in respect of incident dated 01.03.2002. He has identified the accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. In his statement dated 10.03.2002 and 19.05.2008 before S.I.T. there is contradiction about from where and how this witness has seen the accused. So far as contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. In his affidavit dated 06.11.2003 he has not stated the name of present accused. P.W.57 - Shaikh Mustufamiya Rasulmiya has stated the name of the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 15 minutes time for identifying the accused. In his statement dated 10.03.2002, 10.05.2008 and application there is contradiction about from where and how this witness has seen the accused. So far as contradictions in the statements are concerned that is

discussed and decided at the time of appreciation of evidence. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. As per his deposition accused was present in the mob with weapon. This witness has not identified the accused in the Court. He took 10 Minutes for identifying the accused in the Court. He has identified 8 accused in the Court. before identification, it was satisfied by the Court that, witness can see each and every person in the Court. In his application dated 09.05.2008 he has not stated that, accused was with weapon and has also stated the same before S.I.T. in his statement dated 09.05.2008. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 12 minutes time for identifying the accused in the Court. He has identified 19 accused. Before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of the present accused in his statement dated 10.03.2002 and statement dated 10.05.2008 while he has stated the name of present accused in his application dated 09.05.2008. Considering the evidence in respect of

involvement of present accused P.W.46, P.W.49, P.W.51, P.W.55, P.W.56, P.W.57, P.W.65, P.W.68 have fully supported the prosecution case while P.W.47 though named the accused in the Complaint not supporting the prosecution case in respect of involvement of present accused. P.W.48, P.W.57 and P.W.66 are also not supporting the involvement of present accused. There is sufficient evidence involving the present accused in the incident. As discussed above considering the appreciation of evidence as discussed while discussing the evidence of witnesses, the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of

same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Lathi, Pipe and Dharia in his hands at the time of incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of

incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

97. **Accused No.35 – PATEL SURESHKUMAR BALDEVBHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002 near water works and incident dated 28.02.2002 – morning incident. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in shouting and has not stated the name in his statement dated 20.05.2008 in respect of incidents dated 28.02.2002 and has not stated the incident of distribution of Trishul by Haresh Bhatt. P.W.47 – Shaikh Ibrahimhai Rasulbhai – complainant has deposed on oath the name of present accused in respect of incident

dated 01.03.2002. This witness has not identified the accused in the Court but has taken the name of the present accused in the Complaint dated 02.03.2002 and has not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 and has also not stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. He has not identified the accused in the Court though sufficient opportunities were given to him. He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused persons. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of present accused in his statement dated 10.03.2002, 11.06.2008, 05.08.2008 but has stated the name of present accused in his affidavit dated 06.11.2003 and 19.05.2008. P.W.62 – Shaikh Rafikmiya Mahmadsusen has named present accused in respect of incident dated 28.02.2002 of closing of cabins

but has not identified the accused in the Court though sufficient opportunities were given. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He took 15 minutes time for identifying the accused and in 15 minutes he has identified 9 accused. He has not stated the incident in his statement dated 10.03.2002 and 10.05.2008. P.W.70-Pathan Munsufkhan Yasinkhan has stated that, he saw the accused at the time of stone throwing at his old house situated in Pathan Maholla incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes time for identification of accused. In his affidavit dated 31.03.2004 he has not named the accused. In his statement before S.I.T. dated 11.06.2008 from where, how he has seen the accused is contradictory. In his statement before S.I.T. dated 14.07.2008 he has not stated the name of the present accused. Considering the evidence of above all witnesses, P.W.46 and P.W.70 have supported the case of prosecution involving the present accused in the incident while P.W.47 though named in the complaint has not identified the accused in the Court. Therefore, naming the accused in the complaint can simply be considered as corroboration but the complainant himself has not stated in his deposition.

Evidence of P.W.52 and P.W.62 are not satisfactory to support the case of prosecution. So far as involvement of this accused by P.W. 70 is concerned, he was a police employee, well conversant with the law and procedure even though he has not stated the name of present accused in his affidavit. Further, his statement is contradictory about from where, how he has seen the accused with weapon. While he is stating in his deposition involvement of accused with stone. Considering the standard of this witness we can not involve the accused on the basis of evidence of this witness alone. We have to consider the other evidence also. Whether there is other evidence to involve the present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as

regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance

cannot be given to this aspect as the evidence of identification of accused is established. This accused has added in his Further Statement that, Munsufkhan Pathan has not given his name in any of his statement but just to involve him in the incident, he is identified by Munsufkhan Pathan for the first time. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

98. **Accused No.36 – PATEL DASHRATHBHAI AMBALAL**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbai Rasulbai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has not identified the accused in the Court but has taken the name of the present accused in the Complaint dated 02.03.2002

and not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 and also not stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.64 – Shaikh Rafikmiya Babumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 10 minutes time for identification. He has identified 4 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 4 accused he took 15 minutes time, which can be considered as reasonable time for identification. From where and how he has seen the accused there is contradiction in his statement dated 27.03.2002, which is already discussed and decided in this Judgement at the relevant time. Further, there is contradiction in respect of time as 11.30 in the statement dated 22.05.2008, which is also decided at the relevant time in this judgement. P.W.79 – Shaikh Samimbanu Mahmadiya has not named accused in her

deposition but identified the accused in the Court for the first time by face. She has not stated in her statement dated 06.03.2002 and 22.05.2008 that she can identify the accused by face. P.W.80 – Shaikh Rusksanabanu Ibrahimmiya has not named the accused in her deposition but identified the accused by face in respect of incident dated 01.03.2002. She took 7 minutes for identification of accused. She has not stated in her statement dated 10.03.2002 that she can identify the accused by face. She has not stated the name of this accused in her statement dated 22.05.2005. Thus P.W.79 and P.W.80 are simply identifying the accused by face but whether he was in the mob or not, it is not stated by them. Therefore, simply identification in the Court, without any involvement of the accused in the incident is not sufficient for involvement of accused. Considering the above evidence, P.W.47 though named in deposition as well as in complaint, not identifying therefore, accused cannot be involved on the strength of deposition of this witness. So far as P.W. 64 is concerned, this witness takes 10 minutes time and in 10 minutes he is identifying only 4 persons and there is no other evidence supporting the say of this witness involving the present accused in the incident therefore, considering the evidence

as a whole on the strength of evidence of P.W.64 only it is rather risky to conclude the involvement of present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is

established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

99. **Accused No.37 – PATEL VISHNUBHAI PRAHLADBHAI**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbhai Rasulbhai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has not identified the accused in the Court but has taken the name of the present accused in the Complaint dated 02.03.2002 and not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 and also not stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.51 – Shaikh Nazirmohammad Akbarmiya has deposed about the presence of this accused in the mob in the incident dated 01.03.2002 and deposed that, the present accused was in the mob with Dhariya. He has identified the accused in the Court. He has not stated the name of the present accused in his affidavit dated 06.11.2003 but has stated the name of

present accused in the statement dated 10.03.2002 and statement dated 19.05.2008 before S.I.T. P.W.64 – Shaikh Rafikmiya Babumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 10 minutes time for identification. he has identified 4 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 4 accused he took 10 minutes time, which can be considered as reasonable time for identification. From where and how he has seen the accused there is contradiction in his statement dated 27.03.2002, which is already discussed and decided in this Judgement at the relevant time. Further, there is contradiction in respect of time as 11.30 in the statement dated 22.05.2008, which is already decided at the relevant time in this judgement. Considering the evidence of above all witnesses, P.W.51 and P.W.64 have supported the case of prosecution involving the present accused in the incident while P.W.47 though named in the complaint has not identified the accused in the Court. Therefore, naming the accused in the complaint can simply be considered as

corroboration but the complainant himself has not stated in his deposition. Thus, evidence of P.W.51 and P.W.64 supporting the prosecution case involving the present accused in respect of incident dated 01.03.2002, the name of present accused is also mentioned in the complaint which also supports the deposition of these two witnesses. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses, the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question

requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Dharia in his hands at the time of incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to

accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

100. **Accused No.38 - PATEL RAJENDRAKUMAR ALIAS
RAJESH PUNJABHAI TRIBHOVANDAS**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbai Rasulbai – complainant has deposed on oath the name of present accused in respect of incident dated 28.02.2002 putting burning rag under his cabin and incident dated 01.03.2002 stating therein that, present accused was very much present in the mob. This witness has identified the accused in the Court. He has not narrated the incident dated 28.02.2002 in the complaint dated 02.03.2002. While he has narrated the incident dated 01.03.2002 in the complaint dated 02.03.2002 but not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008. P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused with Dhariya in the mob. He

has identified present accused as "Babubhai Kanabhai". P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused with Dhariya in the mob in respect of incident dated 01.03.2002. There is contradiction about from where and how this witness has seen the accused in his statement dated 10.03.2002 and 19.05.2008 before S.I.T. So far as contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. But he has not named the accused in his affidavit dated 06.11.2003. P.W.59 – Shaikh Mohmad Sattar Bachumiya has named in his deposition the accused in respect of incident dated 01.03.2002 in respect of cabin fire incident at about 09.30 PM and incident during 11.30 to 12.00 PM. As per his deposition present accused was in the mob with Lathi. He has identified the accused before the Court. He took 15 minutes for identifying the accused in the Court. He has identified the present accused after satisfying by the Court that, he is able to see each and every person sitting in the Court. He has not stated the name of the present accused in the statement dated 02.03.2002. As per his statement dated 19.05.2008 name of the present accused was written by the Police. In his affidavit dated 06.11.2003 this witness has

not stated the name of present accused. In his statement before S.I.T. dated 19.05.2008 he has stated that, in his statement dated 02.03.2002 name of this accused is written by the Police. P.W.60 – Shaikh Bachumiya Imammiya has stated the name of the present accused in his deposition in respect of dated 01.03.2002. First incident about 09.30 P.M. in respect of setting on fire the cabins and the accused was present in the mob at about 11.00 PM with burning rag and he had thrown burning rag on the Jeep. He has not identified the accused and has not stated the incident dated 28.02.2002 in respect of closing cabins in his statement dated 03.03.2002 and has also not stated the name of the accused in 09.30 cabins incident while in respect of incident at about 11.00 PM there is contradiction from where and how he has seen the accused which is already discussed and decided at the relevant time in this Judgement. He has stated the name of present accused in the application dated 09.05.2008 as well as statement before S.I.T. dated 10.05.2008. P.W.62 – Shaikh Rafikmiya Mahmadsusen has named this accused in his deposition in respect of incident dated 01.03.2002 and has identified the accused in the Court. He took 15 minutes time for identifying the accused. He has not stated the name of the

present accused in his statement dated 10.03.2002 and 10.05.2008. Identification was carried out after due satisfaction that witness could see the persons sitting in the Court and in 15 minutes, he has identified 9 accused. P.W.65 – Shaikh Akbarmiya Nathumiya has stated the name of this accused in his deposition in respect of incident dated 01.03.2002 and as per his deposition this accused was present in the mob with Lathi. He has identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. There is contradiction about from where and how he has seen the accused in his statement dated 10.03.2002, application, statement dated 10.05.2008, which is already discussed and decided in the Judgement at the relevant time. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. As per his deposition accused was present in the mob with Lathi. This witness has not identified the accused in the Court. He took 10 Minutes for identifying the accused in the Court. He has identified 8 accused in the Court. before identification, it was satisfied

by the Court that, witness can see each and every person in the Court. In his application dated 09.05.2008 he has not stated that, accused was with weapon and he has also stated the same before S.I.T. in his statement dated 09.05.2008 and application dated 09.05.2008 before S.I.T. while there is contradiction in his statement dated 10.03.2002 in respect of from where and how he has seen the accused, which is already discussed and decided. P.W.67 – Shaikh Imtiyazbhai Mahmadiusen has deposed the name of the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the present accused in the Court. It was verified and satisfied by the Court whether witness could see the persons sitting in the Court and thereafter identification was carried on. He took five minutes time for identification of the accused and has identified three persons. This witness has not stated the name of the present accused in his statement dated 17.04.2002 and 22.05.2008. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 stating therein that, the accused was present in the mob. He has identified the present accused in the Court. 12 minutes time has been taken by him for identification of the

accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. Height of the witness is 5'2". From where and how he has seen the accused there is contradiction about in his application dated 10.05.2008 which is already discussed at the earlier stage. He has not stated the name of the present accused in his statement dated 10.03.2002 and 09.05.2008 and has not stated the whole incident in his statement dated 11.04.2008 while in his application dated 10.05.2008 there is contradiction from where and how he has seen the accused which is already discussed at the relevant time in the Judgement. P.W.69 – Shaikh Mahemudmiya Husenmiya has deposed on oath that, this accused was very much present in the mob and he was breaking ceiling with big hammer. He has not identified the accused in the Court. 20 minutes time has been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. He has identified 5 accused. He took 20 minutes time for identification but could not identify the accused in the Court though the accused was very much present in the Court. This witness has not stated the name of present accused in his

statement dated 06.03.2002. P.W.70- Pathan Munsufkhan Yasinkhan has stated that, he saw the accused at the time of stone throwing on his old house situated in Pathan Maholla incident dated 01.03.2002. As per his deposition the present accused was present with Lathi in the mob. He has identified the accused in the Court. He took 7 minutes time for identification of accused. In his affidavit dated 31.03.2004, he has not named the accused. In his statement before S.I.T. dated 11.06.2008 from where, how he has seen the accused is contradictory. In his statement before S.I.T. dated 14.07.2008 he has not stated the name of the present accused. P.W.78 - Shaikh Basirabibi Bachumiya has deposed on oath stating the name of the present accused in the mob in respect of incident dated 01.03.2002. As per her deposition she has identified the accused in the Court. before identification, it was verified by the court whether she could see the persons sitting in the Court. She has identified the present accused and she took 12 minutes time for identification of accused and during said 12 minutes she has identified 8 accused. She has not stated the name of the present accused in her statement dated 17.04.2002 and statement dated 11.06.2008 and there is contradiction from where and how

she has seen the accused in the mob in her statement dated 22.05.2008. Considering the evidence of above all witnesses, P.W.47 fully supports the case of prosecution involving the present accused in the incident which is also corroborated by the complaint. P.W.56, P.W.59, P.W.62, P.W.65, P.W.67, P.W.68, P.W.70 and P.W.78 also supports the prosecution case while P.W.49, P.W.60, P.W.66, P.W.68 and P.W.69 are not the sufficient evidence establishing the guilt of present accused. So far as involvement of this accused by P.W. 70 is concerned, he was a police employee, well conversant with the law and procedure even though he has not stated the name of present accused in his affidavit. Considering the standard of this witness, we can not involve the accused on the basis of evidence of this witness alone. We have to consider the other evidence also. Whether there is other evidence to involve the present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in

furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Lathi, Pipe, Dharia, Hammer and burning rag in his hands at the time of incident. This accused has added in his Further Statement that, he is residing in Sardarpur Village and witnesses were knowing him well and he has falsely been involved in the incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

101. **Accused No.39 – PATEL BALDEVBHAI RANCHHODBHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident

dated 01.03.2002 as well as in respect of incident dated 28.02.2002 near water works and incident dated 28.02.2002 – morning incident. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but not stated the name in his statement dated 20.05.2008. P.W.47 – Shaikh Ibrahimbai Rasulbai has deposed in respect of incident dated 01.03.2002 and has named the present accused. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the present accused in his complaint but not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 and in the application and statement before S.I.T. dated 09.05.2008. P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his deposition present accused was in the mob with Sword. He has not identified the accused in the Court. He took 15 minutes time for identification of accused. Before identification, it was verified and satisfied whether the

witness could see the persons sitting in the Court room. During 15 minutes he has identified 5 accused persons. He has not stated the name of present accused in his statement dated 11.06.2008, 05.08.2008, 19.05.2008 and affidavit dated 06.11.2003 but has stated the name of the present accused in his statement dated 10.03.2002. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 that, this accused was present in the mob. This witness has not identified the present accused in the Court. He took 12 minutes time for identification and has identified 19 accused in 12 minutes. His height is about 5”2” and it was verified whether he could see the persons sitting in the Court and after due satisfaction identification was carried out. This witness has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated 10.05.2008. Considering above all P.W.46 is identifying the present accused while complainant has given name of this accused in his complaint and P.W.52 has named this accused with Sword but none has identified the present accused except P.W.46, who has not stated the name of this accused in any of his earlier statements. No doubt in complaint the name

of present accused is mentioned but considering above all evidence of P.W.46 as discussed earlier is required some corroboration from other evidence but here the evidence is not satisfactory to corroborate the say of witness No.46 and therefore, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness, however it is deposed by the witness that, he was having Sword in his hands. Further accused is not identified by the witness. This accused has added in his Further Statement that, he is an acting member of Seva Sahakari Mandali and Umiya Kisan Dairy since last 15 years. Therefore, just to cause damage to his image, he has falsely been involved. Therefore, the facts remains that, it is not safe to hold accused guilty on the

basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

102. **Accused No.40 – PATEL PRAHLADBHAI JAGABHAI**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbhai Rasulbhai has deposed in respect of incident dated 01.03.2002 and has named the present accused in the mob. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the present accused in his complaint but has not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 and statement before S.I.T. dated

09.05.2008. P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his deposition present accused was in the mob. He has not identified the accused in the Court. He took 15 minutes time for identification of accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. During 15 minutes he has identified 5 accused persons. He has not stated the name of present accused in his statement dated 11.06.2008, 05.08.2008, 19.05.2008 and affidavit dated 06.11.2003 but has stated the name of the present accused in his statement dated 10.03.2002. P.W.54 – Shaikh Sharifmiya Bhikhumiya has deposed on oath the name of the present accused in the mob in respect of incident dated 01.03.2002. He has identified the present accused in the Court. In his statement dated 06.03.2002 from where and how he has seen the accused there is contradiction about it. But this contradiction is already discussed at the time of appreciation of evidence. This witness has not stated the name of this accused in his affidavit dated 06.11.2003 and statement before S.I.T. dated 22.05.2008. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present

accused in the mob in respect of incident dated 01.03.2002. He has not identified the accused in the Court. In his statement dated 10.03.2002 he has not stated the name of the present accused in the mob while in affidavit dated 06.11.2003 he has mentioned the name of present accused. In his statement before S.I.T. there is contradiction about from where and how this witness has seen the accused. So far as contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. P.W.59 – Shaikh Mohmad Sattar Bachumiya has deposed in his deposition in respect of incident dated 01.03.2002 naming the present accused in the mob. He took 15 minutes time for identification of accused and has identified about 20 accused in the Court. before identification, it was verified whether the accused could see the persons sitting in the Court room and after due satisfaction the identification was carried out. In his affidavit dated 06.11.2003 and statements dated 02.03.2002, 19.05.2008 witness has not stated the name of present accused. P.W.69 – Shaikh Mahemudmiya Husenmiya has deposed on oath that, this accused was very much present in the mob with burning rag. He has identified the accused in the Court. 20 minutes time has

been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. He has identified 5 accused. There is contradiction from where and how he has seen the accused in the mob in his statement dated 06.03.2002 while he has stated that, his statement was not recorded on 22.05.2008. P.W.70- Pathan Munsufkhan Yasinkhan has stated that, he saw the accused with burning rag at the time of stone throwing on his old house situated in Pathan Maholla incident dated 01.03.2002. As per his deposition the present accused was present with burning rag in the mob. He has identified the accused in the Court. He took 7 minutes time for identification of accused. In his affidavit dated 31.03.2004 he has not named the accused. In his statement before S.I.T. dated 11.06.2008 and statement dated 06.03.2002 from where, how he has seen the accused is contradictory. In his statement before S.I.T. dated 14.07.2008 and affidavit dated 31.03.2004 he has not stated the name of the present accused. Considering the evidence of above all witnesses, P.W.47, P.W.52, P.W.56 have not identified the accused though complainant has given his name in the complaint. P.W.54, P.W.59, P.W.69 and P.W.70 have supported the case

of prosecution. No doubt there is contradiction in their statement about from where and how they have seen the accused but as discussed earlier while appreciating the evidence presence of this accused in the mob is supported by these witnesses. So far as involvement of this accused by P.W. 70 is concerned, he was a police employee, well conversant with the law and procedure even though he has not stated the name of present accused in his affidavit. Considering the standard of this witness we can not involve the accused on the basis of evidence of this witness alone. We have to consider the other evidence also. Whether there is other evidence to involve the present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as

regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having burning rag in his hands at

the time of incident. This accused has added in his Further Statement that, he is residing in Sardarpur Village and witnesses were knowing him well and he has falsely been involved in the incident. This accused has added in his Further Statement that, Shri Ram Parlour which was run by him and his brother was set on fire and Rs.2000/- is paid by the Government towards the damages. Since 1996 to 2002 they were running the business in the name of Dairy parlour and Candy parlour therefore, they are known by the village persons therefore, he is falsely been involved. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

103.

Accused No.41 – PATEL RAMESHBHAI RAMABHAI

(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbai Rasulbhai has deposed

in respect of incident dated 01.03.2002 and has named the present accused in the mob. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the present accused in his complaint but has not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 and statement before S.I.T. dated 09.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed in his deposition about the presence of this accused in the mob in the incident dated 01.03.2002. He has identified the accused in the Court as “Rameshbhai Ramabhai Gangavat”. In his statement dated 06.03.2002 from where and how he has seen the accused is not stated. This contradiction is already discussed at the relevant time in this Judgement. He has not stated the name of the present accused before the S.I.T. in statement dated 10.05.2008. P.W.51- Shaikh Nazirmohmad Akbarmiya has deposed the name of present accused in respect of incident dated 01.03.2002 that the present accused was present in the mob with Dhariya but has not identified the accused in the Court and has stated the name of the

present accused in his statement dated 10.03.2002. He has not stated the name of present accused in affidavit dated 06.11.2003 but has stated the name of the accused in his statement dated 19.05.2008 before S.I.T. P.W.58 – Shaikh Sabirhusen Imamsha has stated the name of the present accused in respect of incident dated 01.03.2002. He has not identified the accused before the Court. As per his say accused is not present in the court but in fact accused was very much present in the Court. From where, how and when he has seen the accused there is contradiction in this regard in his stated dated 03.03.2002 and statement before S.I.T. dated 22.05.2008 in this regard. P.W.63 – Shaikh Bhikhumiya Kalumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of the present accused in the statements dated 10.03.2002 and 10.05.2008 before S.I.T. and applications dated 10.05.2008. P.W.65 – Shaikh Akbarmiya Nathumiya has named the accused in his deposition that accused was present in the mob with Dhariya in the incident dated 01.03.2002. He has identified the accused “Ramesh Rama Gangavat” as “Ramesh Gangavat”. As per his statement dated 10.05.2008 in his statement dated 10.03.2002 he has

not stated the name of the present accused while in his statement dated 10.03.2002 as well as in his application from where how he has seen the accused there is contradiction about it. This contradiction is already discussed in the relevant time in this Judgement. In his statement dated 10.05.2008 he has stated that, he has not stated the name of present accused in his statement dated 10.03.2002. There is contradiction in his statement dated 10.05.2008 before S.I.T. from where how he has seen the accused there is contradiction about it. This contradiction is already discussed in the relevant time in this Judgement. P.W.66 - Akbarmiya Rasulmiya Shaikh has named this accused in his deposition about the incident dated 01.03.2002. As per his deposition accused was present in the mob with weapon. He has identified the accused in the Court. He took 10 minutes time for identifying the accused in the Court. Height of this witness is about 5 Ft. It was verified that, this witness could see each and every person sitting in the Court and thereafter, he has identified eight accused in the Court. In above circumstances if he took 10 minutes time that is reasonable one. He has not named the present accused in his statement dated 10.03.2002 while in his application dated 09.05.2008 and

statement before S.I.T. dated 09.05.2008 he has not stated that said accused was present in the mob with weapon. P.W.68 – Shaikh Gulamali Akbarmiya has stated the name of present accused in his deposition in respect of incident dated 01.03.2002 that accused was present in the mob with Dhariya. As per his deposition accused was instigating the mob by talking in the village as “Bandiya ne kapi nakho, mari nakho”. He has identified the accused in the Court and he took 12 minutes time in identifying the accused. It was verified and after full satisfaction identification was carried out and the witness has identified 19 accused within 12 minutes and that can be said reasonable time. He has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008 but has stated the name of “Ramesh Rama” but there is contradiction in his statement 10.03.2002 and 10.05.2008 from where and how he has seen the accused with Dhariya while in application 09.05.2008 he has not stated about the presence of this accused in the mob with Dhariya. P.W.70-Pathan Munsufkhan Yasinkhan has stated that, he saw Ramesh Rama Gangavat with Dhariya at the time of stone throwing at his old house situated in Pathan Maholla

incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes time for identification of accused. In his affidavit dated 31.03.2004 and statement dated 06.03.2002 and statement dated 11.06.2008 before S.I.T. there is contradiction from where and how he has seen the accused with weapon while in his statement dated 14.07.2008 before S.I.T. incident with the name of accused is not stated. P.W.76 – Shaikh Hamidabibi Akbarmiya has deposed on oath about the presence of this accused in the mob in respect of incident dated 01.03.2002. She has stated that, she cannot identify the person from the mob. She has identified the accused in the Court. As per her say, her statement was not recorded on 21.06.2002. There is contradiction from where and how she has seen the accused is already discussed. P.W.82 – Fakir Sabirabibi Sabirhusen has stated the name of Ramesh Rama in respect of incident dated 01.03.2002. As per her deposition Ramesh Rama was present in the mob. She has not identified Ramesh Rama in the Court and has not stated the name of Ramesh Rama in her statement dated 03.03.2002 in respect of incident about 2.30 night. In her statement dated 22.05.2008 she has not stated the name of present accused. P.W.47, P.W.51, P.W.58 and P.W.82 not

identifying before the Court while P.W.48, P.W.63, P.W.65, P.W.66, P.W.68, P.W.70 and P.W.76 have identified him in the Court and his name has been mentioned in the complaint.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident

of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Dharia in his hands at the time of incident. This accused has added in his Further Statement that, he was member of Gram Panchayat and during the year 1998-2002 he was Secretary of Sarvodaya Kelvani Mandal. He was working as Sarpanch and Member of Taluka Panchayat and just to cause damage to his image, he has falsely been involved. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person,

keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

104. **Accused No.42 – PATEL PARSOTTAMBHAI ALIAS
PASHABHAI MOHANBHAI**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbai Rasulbai has deposed in respect of incident dated 01.03.2002 and has named the present accused in the mob. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the present accused in his complaint but has not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008. P.W.54 – Shaikh Sharifmiya Bhikhumiya has deposed on oath the name of the present accused in the mob with Tin. As per his deposition said accused was not present in the court in fact accused was present at the time of identification before the Court. He has not identified the present accused though sufficient time was given to him. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. In his statement dated

06.03.2002 from where and how he has seen the accused there is contradiction about it. But this contradiction is already discussed at the time of appreciation of evidence. This witness has not stated the name of this accused in his affidavit dated 06.11.2003 and statement before S.I.T. dated 22.05.2008. P.W.55 – Shaikh Aashiqhusen Bachumiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his deposition the present accused was with Tin in the mob. He has identified Pasha Mohan as Parshottam Mohan. He took 15 minutes for identification. In his statement dated 02.03.2002 from where, how he has seen the accused is not mentioned. In his affidavit 06.11.2003 he has not stated the name of present accused while in his statement before S.I.T. dated 19.05.2008 he has stated the name of present accused. P.W.61 – Shaikh Safikmiya Bachumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has deposed that, this accused was in mob with weapon. He has identified Parshottambhai as Pashabhai Mohanbhai. He took 15 minutes in identifying the accused. He has identified 6 accused in the court. After due satisfaction by the Court that the witness can see each and every person in the Court. This witness is having

height of 4'11". He has not stated the name of present accused in his statement dated 10.03.2002, 03.05.2002 but has stated the name of present accused in his statement dated 10.05.2008. P.W.62 – Shaikh Rafikmiya Mahmadsen has named this accused in his deposition in respect of incident dated 01.03.2002 with weapon. He has not identified the accused though sufficient time was given to him. He took 15 minutes time for identifying the accused. Identification was carried out after due satisfaction that witness could see the persons sitting in the Court and in 15 minutes he has identified 9 accused. There is contradiction in his statement dated 10.03.2002 and 10.05.2008 from where and how he has seen the accused. This contradiction is already discussed at the relevant time in this Judgement. P.W.66 – Akbarmiya Rasulmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. As per his deposition accused was present in the mob with Weapon. This witness has identified the Parshottambhai as Pasabhai in the Court. He took 10 Minutes for identifying the accused in the Court. He has identified 8 accused in the Court. before identification, it was satisfied by the Court that, witness can see each and every person in the Court. In his application dated

09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W. 67 – Shaikh Imtiyazbhai Mahmadsen has deposed on oath about the presence of this accused in the mob in respect of incident dated 01.03.2002. He has not identified the accused in the Court though sufficient opportunities were given to him. He took 5 minutes for identification. He has identified 2 persons in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. There is contradiction in his statement dated 17.04.2002 and 22.05.2008 from where and how he has seen the accused. Contradiction is already discussed at the time of appreciation of evidence. P.W.68 – Shaikh Gulamali Akbarmiya has stated the name of present accused in his deposition in respect of incident dated 01.03.2002. He has not identified the accused in the Court though sufficient opportunities were given to him. He took 12 minutes time in identifying the accused. It was verified and after full satisfaction identification was carried out and the witness has identified 19 accused within 12 minutes and that can be said reasonable time. He has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated

10.05.2008. P.W. 69 – Shaikh Mahemudmiya Husenmiya has deposed on oath about the involvement of this accused in respect of incident dated 01.03.2002. As per his deposition said accused was present in the mob with Tin of Kerosene. He has not identified the accused in the Court though sufficient opportunities were given to him. He took 20 minutes for identifying the accused. He has identified 5 accused in the Court. Court had verified from the witness whether, he could see the persons present in the Court and after due satisfaction identification was performed. No doubt witness is handicapped but in the Court it was properly arranged so that, the witness can see the person sitting in the Court. He has stated the name of the present accused in his statement dated 06.03.2002 but there is contradiction about from where how he had seen the accused, which is already discussed at relevant point of time. This witness has stated that, his statement was not recorded on 22.05.2008. P.W.70- Pathan Munsufkhan Yasinkhan has stated that, he saw the accused at the time of stone throwing at his old house situated in Pathan Maholla incident dated 01.03.2002 with gallon. He has not identified the accused in the Court. He took 7 minutes time for identification of accused. In his statement dated

06.03.2002 and statement dated 11.06.2008 before S.I.T. there is contradiction from where and how he has seen the accused with weapon, which is already discussed at relevant point of time. In his affidavit dated 31.03.2004 he has not named the accused. In his statement before S.I.T. dated 14.07.2008 he has not stated the name of the present accused. P.W.77 – Shaikh Badrunnisha Akbarmiya has deposed in her deposition naming the present accused in the incident dated 01.03.2002. She has not identified the present accused. As per her statement dated 06.03.2002 she saw the accused from the Field side. In her statement dated 06.03.2002 and 22.05.2008 there is contradiction from where and how she has seen the accused. This fact is already discussed while appreciating the evidence in this regard. P.W. 78 – Shaikh Basirabibi Bachumiya has deposed the name of the present accused in the mob in respect of incident dated 01.03.2002. She has not identified the accused in the Court though sufficient opportunities were given. She took 12 minutes for identification of the accused. She has identified 8 accused. before identification, it was verified by the Court whether the witness can see the persons sitting in the court and after due satisfaction identification was performed in the Court.

She has not named the present accused in her statement dated 17.04.2002 and 11.06.2008 while in her statement dated 22.05.2008 there is contradiction from where and how she has seen the accused. P.W.81 – Shaikh Dilavarkhan Abbasmiya has not named this accused in his deposition but identified the accused in the Court by face only and he has not named the present accused in his statement dated 22.05.2008. Considering the above all evidence against the present accused complainant P.W.47, P.W.54, P.W.62, P.W.67, P.W.68, P.W.69, P.W.70, P.W.77, P.W.78 have not identified the accused in the Court therefore, no reliance can be placed upon their evidence in respect of present accused. Further P.W.81 identifying the accused by face but there is no other evidence supporting the say of P.W.81 in respect of identifying the accused by face but P.W.55, P.W.61, P.W.66 have identified the accused in the Court and in their earlier statements also name of present accused is mentioned. So far as the dispute raised by the accused in respect of name of Pasha Mohan or Parshottam Moahn is concerned, he is the one and the same person. It is not the say of the accused that, there are two different persons. Therefore, it is proved from the evidence of these three witnesses that, said accused was

present in the mob with gallon. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the

accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Kerosene gallon and weapon in his hands at the time of incident. This accused has added in his Further Statement that, so as to cause financial loss and damage to his image, he has falsely been involved in the incident. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would

falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

105. **Accused No.43 – PATEL ASHWINBHAI JAGABHAI**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbhai Rasulbhai has deposed in respect of incident dated 01.03.2002 and has named the present accused in the mob. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the present accused in his complaint but has not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008. P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused as “Jayesh Jaga” instead of “Ashwin Jaga” and thus has not identified. He took 15 minutes time for identification of accused. During 15 minutes, he has identified 5 accused persons. He has not stated the name of present accused in his statement dated 11.06.2008,

05.08.2008, 19.05.2008 and affidavit dated 06.11.2003 but has stated the name of present accused in his statement dated 10.03.2002. P.W.54 – Shaikh Sharifmiya Bhikhumiya has deposed on oath the name of the present accused in the mob. He has stated that accused is not present in the court though accused was present in the Court. In his statement dated 06.03.2002 from where and how he has seen the accused, there is contradiction about it. But this contradiction is already discussed at the time of appreciation of evidence. This witness has not stated the name of this accused in his affidavit dated 06.11.2003 and statement before S.I.T. dated 22.05.2008. P.W.59 – Shaikh Mohmadsattar Bachumiya has deposed in respect of incident dated 01.03.2002. He has deposed that, the present accused was present in the mob during the incident at 11.30 to 12.00 PM. He has identified the accused in the Court. As per his statement dated 02.03.2002 he has not narrated the name of the present accused while in affidavit dated 06.11.2003 and statement before S.I.T. dated 19.05.2008 he has not stated the name of the present accused. P.W.62 – Shaikh Rafikmiya Mahmadsattar has named this accused in his deposition with lathi and pipe. He has identified the accused. He took

15 minutes time for identifying the accused. Identification was carried out after due satisfaction that witness could see the persons sitting in the Court and in 15 minutes he has identified 9 accused. He has stated the name of the present accused in his statement dated 10.03.2002 and 10.05.2008 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement.

P.W.65 – Shaikh Akbarmiya Nathumiya has not stated the name of present accused with Tin in his deposition but has not identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. He has not stated the name of present accused in his application while has stated the name of present accused in his statement dated 10.03.2002 and 10.05.2008 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement.

P.W.69 – Shaikh Mahemudmiya Husenmiya has deposed on oath that, this accused was very much present in the mob with burning rag. He has

identified the accused in the Court. 20 minutes time has been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. He has identified 5 accused. This witness has stated the name of present accused in his statement dated 06.03.2002 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. P.W.75 – Shaikh Firozabanu Bachumiya has not named the present accused in respect of incident dated 01.03.2002 but identified the accused by face only. She has taken 15 minutes time for identification of accused. During 15 minutes she has identified 7 accused. Her height is about 5' meaning thereby she is able to see the person sitting in the court. She has not stated the name of present accused in her statement dated 02.03.2002. She has stated the name of present accused in her statement dated 22.05.2008. Considering above all evidence complainant though named in complaint not identifying P.W.52, P.W.54, P.W.65 the accused while P.W.59, P.W.62, P.W.69 and P.W.75 have identified the accused in the Court and some of the witnesses have stated the name of present accused in

their statements and in complaint also name of the present accused and thus there is sufficient evidence regarding the involvement of present accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh

Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Lathi, Pipe, gallon and burning rag in his hands at the time of incident. This accused has added in his Further Statement that, he is residing in Sardarpur Village and witnesses were knowing him well and he has falsely been involved in the incident. This accused has added in his Further Statement that, Shri Ram Parlour which was run by him and his brother was set on fire and Rs.2000/- is paid by the Government towards the damages. Since 1996 to 2002 they were running the business in the name of Diary parlour and Candy parlour

therefore, they are known by the village persons therefore, he is falsely been involved. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

106. **Accused No.44- PATEL AMBALAL MAGANBHAI KAPOOR**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name and incident in his statement dated 20.05.2008. P.W.47 – Shaikh Ibrahimhai Rasulbhai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has identified the

accused in the Court and has taken the name of the present accused in the Complaint dated 02.03.2002 and has not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 but has stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 and has also taken the name of present accused in respect of connecting direct light. He has identified the accused in the Court. He has stated the name of the present accused in his statement dated 06.03.2002 but there is contradiction from where and how he has seen the accused and has not stated about the facts of Light in his statement dated 06.03.2002. He has also stated the name of present accused in his statement before S.I.T. dated 10.05.2008. This witness has identified the accused before the court after verifying that he is able to see all the persons sitting in the Court. P.W.54 – Shaikh Sharifmiya Bhikhumiya has deposed on oath the name of the present accused in the mob with Dhariya. He has identified the present accused in

the Court. He has stated the name of the present accused in his statement dated 06.03.2002 but from where and how he has seen the accused there is contradiction about it. But this contradiction is already discussed at the time of appreciation of evidence. This witness has not stated the name of this accused in his affidavit dated 06.11.2003 and statement before S.I.T. dated 22.05.2008. P.W.55 – Shaikh Aashiqhusen Bachumiya has named this accused during his deposition in respect of incident dated 01.03.2002 that this accused was in the mob and he has set on fire his Jeep. He has identified the accused in the Court. He took 15 minutes time for identification. he has identified 17 accused in the Court. Before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction, the witness has identified the accused. For identifying 17 accused he took 15 minutes time, which can be considered as reasonable time for identification. He has not stated the name of this accused in his affidavit dated 06.11.2003. He has not stated in his statement dated 02.03.2002 about setting on fire the Jeep by this accused. He has stated the name of the present accused in his statement dated 19.05.2008. P.W.58 – Fakir Sabirhusen Imamsha has

deposed in his deposition about the incident dated 01.03.2002. As per his deposition the present accused was present in the mob. He has identified the accused in the Court. There is contradiction in his statement dated 03.03.2002 and 22.05.2008 in respect of from where, when and how he has seen the accused. P.W.59 – Shaikh Mohmadsattar Bachumiya has deposed in respect of incident dated 01.03.2002. He has deposed that, the present accused was present in the mob with Dhariya. He has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. As per his statement dated 02.03.2002 he has not narrated the name of the present accused while in affidavit dated 06.11.2003 he has not stated the name of the present accused. In his statement before S.I.T. dated 19.05.2008 he has stated that, in the statement dated 02.03.2002 Police has written the name of the accused. P.W.60 – Shaikh Bachumiya Imammiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 at about 9.30 PM in respect of setting on fire the cabins but has not stated his name in respect of this incident in his statement dated 03.03.2002 while he has stated the name

of the present accused in respect of incident dated 01.03.2002 at about 11.00 PM and as per his deposition, this accused has poured the kerosene on his Jeep. He has identified the accused in the Court. He took 12 minutes time for identification of the accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. But has not stated the name of present accused in the statement dated 03.03.2002 but has stated the name of the present accused in his application dated 09.05.2008 and statement before S.I.T. dated 10.05.2008. P.W.61 – Shaikh Safikmiya Babumiya has deposed on oath that, present accused was present in the mob in the incident dated 01.03.2002. He was having weapon with him. He has identified the present accused in the Court and took 15 minutes time for identifying the accused. He has identified six accused during 15 minutes. before identification, it was verified and proper arrangement was made so that the, witness can see the persons in the Court. Height of the witness is 4'11". He has not stated the name of the present accused in his statement dated 10.03.2002, 03.05.2002 while he has stated the name of present accused in his statement dated 10.05.2008. P.W.62 – Shaikh Rafikmiya Mohmadhusen has

deposed on oath the name of present accused in respect of incident dated 01.03.2002 with Dhariya. He has identified the accused in the court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. Height of this witness is 5'3". He has stated the name of present accused in his statement dated 10.03.2002 and 10.05.2008 but from where and how he has seen the accused there is contradiction about it. This contradiction is already discussed at the relevant point of time in this Judgement.

P.W.63 – Shaikh Bhikhumiya Kalumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of the present accused in the statements dated 10.03.2002 and 10.05.2008 before S.I.T. but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. He has stated the name of present accused in his application dated 10.05.2008.

P.W.64 – Shaikh Rafikmiya Babumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 10 minutes time for identification. he

has identified 4 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 4 accused he took 15 minutes time, which can be considered as reasonable time for identification. He has not stated the name of present accused in his statement dated 27.03.2002 and 22.05.2008. P.W.65 – Shaikh Akbarmiya Nathumiya has not stated the name of this accused in the mob in respect of incident dated 01.03.2002 in his deposition but identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. He has stated the name of present accused in his statement dated 10.03.2002, 10.05.2008 and application. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed on oath in his deposition naming the present accused in respect of incident dated 01.03.2002 with Dhariya. As per his deposition present accused was present in the mob with weapon. This witness has identified the present accused in the Court. He has stated the name of the present accused in his statement dated 10.03.2002 but

there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. He has not stated the name of the present accused with weapon in his application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W.68 - Shaikh Gulamali Akbarmiya has named the present accused in the Court and has also narrated about the incident dated 27.02.2002 about 4.00 P.M. that accused was talking "bandiya ne kapi nakho" but this incident is not stated in any of his statement or application but has named the accused in respect of incident dated 01.03.2002 that accused was present in the mob with Dhariya and instigating the mob and has identified the accused. He took 12 minutes time for identifying the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 10.03.2002, 10.05.2008 while in his application dated 09.05.2008 he has stated the name of present accused. So far as incident dated 01.03.2002 is concerned, this witness has stated the name of present accused in his statement dated 10.03.2002 and 10.05.2008 but there is

contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. In his application dated 09.05.2008 he has not stated that, accused was in the mob having Dhariya with him. P.W.69 – Shaikh Mahemudmiya Husenmiya has deposed on oath that, this accused was very much present in the mob with Dhariya. He has identified the accused in the Court. 20 minutes time has been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. He has identified 5 accused. He took 20 minutes time for identification This witness has stated the name of present accused in his statement dated 06.03.2002 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. Further, he has stated that, his statement was not recorded on 22.05.2008. P.W.70- Pathan Munsufkhan Yasinkhan has stated that, he saw the accused at the time of stone throwing on his old house situated in Pathan Maholla incident dated 01.03.2002. As per his deposition the present accused was present in the mob. He has identified

the accused in the Court. He took 7 minutes time for identification of accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. In his affidavit dated 31.03.2004 and statement before S.I.T. dated 11.06.2008 he has stated the name of present accused but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. He has not stated the incident with name in his statement dated 14.07.2008 before S.I.T. P.W.75 – Shaikh Firozabanu Bachumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. As per her deposition she saw the accused at the time of firing of Jeep. She has identified the accused before the Court. She has taken 15 minutes time for identification of accused. During 15 minutes she has identified 7 accused. Her height is about 5' meaning thereby she is able to see the person sitting in the court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She has stated the name of present accused in her statement dated 02.03.2002, 22.05.2008 but there is contradiction regarding from where and how he has seen

the accused. But this contradiction is already discussed at the relevant time in this Judgement. P.W.76 – Shaikh Hamidabibi Akbarmiya has deposed on oath about the presence of this accused in the mob in respect of incident dated 01.03.2002 but she has stated that, she cannot identify the person from the mob but she has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. As per say of this witness her statement was not recorded on 21.06.2002 and 22.05.2008. P.W.77 – Shaikh Badrunisha Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. She has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She has stated the name of the present accused in her statement dated 06.03.2002 and as per her say she saw the mob from Field but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. Further, she has stated the name of present accused in her statement dated 22.05.2008 but from where and how she has seen the accused there is

contradiction about it but this contradiction is already discussed at the relevant time in this Judgement. P.W.82 – Fakir Sabirabibi Sabirhusen has named present accused in her deposition in respect of incident dated 01.03.2002. She has not identified present accused before the Court though sufficient opportunities were given to her. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She is having height about 5'. But in her statements dated 22.05.2008 she has stated the name of this accused but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. She has stated the name of present accused in her statement dated 03.03.2002. P.W.83 – Fakir Sharifabanu Sabirhusen has named the present accused in her deposition in respect of incident dated 01.03.2002 but has not identified the accused in the Court though sufficient opportunities were given to her. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She has not stated the name of present accused in her statements dated 03.03.2002 and 24.06.2008. Considering above all evidence P.W.46, P.W.47,

P.W.48, P.W.54, P.W.55, P.W.58, P.W.59, P.W.60, P.W.61, P.W.62, P.W.63, P.W.64, P.W.65, P.W.66, P.W.68, P.W.69, P.W.70, P.W.75, P.W.76 and P.W.77 have identified the accused in the Court and name of the present accused is also mentioned in the statements of the some of the witnesses and in the complaint by the complainant. Complaint is prompt in the present case. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question

requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. Witnesses have stated in their evidence that, this accused was having Dharia in his hands at the time of incident and he poured kerosene on the Jeep and fired the Jeep. Further he was instigating the mob to cut, beat bandiyas. Thus, over act against the present accused is well established. This accused has added in his Further Statement that, he was active in public service in the public

institutions such as Gram Panchayat, Seva Sahakari Mandali, Vijapur Taluka Market Committee, Sarvodaya Kelvani Mandal and he was also working as President, Secretary, Member etc. in the above institutions, he has further narrated that, he has rendered his services in the above institutions since last 25 years and therefore, the persons of village know him well and due to political enmity Munsufkhan has falsely involved him as accused. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

107. **Accused No.45- PATEL KALABHAI ALIAS KANAIYALAL NATHABHAI.**
(Sessions Case No.275/2002)

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village

Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

108. **Accused No.46 – PATEL RAMESHBHAI PRABHABHAI**
(Sessions Case No.275/2002)

P.W.47 – Shaikh Ibrahimbai Rasulbai has deposed in respect of incident dated 01.03.2002 and has named the present accused in the mob. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has named the

present accused in his complaint but has not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and 09.05.2008, affidavit dated 06.11.2003 and statement before S.I.T. dated 09.05.2008 and 11.06.2008. P.W.55 – Shaikh Aashiqhusen Bachumiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his deposition the present accused was with Dhariya in the mob. He has identified the accused. He took 15 minutes for identification. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has identified 17 accused in said 15 minutes and it can be considered as reasonable time for identification. He has stated the name of present accused but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. In his affidavit 06.11.2003 he has not stated the name of present accused while in his statement before S.I.T. dated 19.05.2008 he has stated the name of present accused. Considering the evidence of both these witnesses, evidence of P.W.55 is supported by the complaint given by P.W. 47 in which name of present accused is mentioned and P.W.55 has also stated

the name of present accused as well as statement dated 02.03.2002 and 19.05.2008. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common

object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. The witnesses have stated that, said accused was having Dharia in his hands at the time of incident. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an

innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

109.

Accused No.47 – PATEL JIVANBHAI DHWARKADAS

(Sessions Case No.275/2002)

P.W.79 – Shaikh Samimbanu Mohmadmiya has not named the accused in the Court but identified the accused in the Court for the first time by face. In her statement dated 06.03.2002 and 22.05.2008 she has not stated that, she can identify the accused by face. P.W.81 - Shaikh Dilavarkhan Abbasmiya has not stated the name of the present accused in his deposition in respect of incident dated 01.03.2002 but identified the accused in the court for first time by face and in his statement dated 22.05.2008 before S.I.T. he has not stated the name of the present accused. Thus considering above evidence there is no evidence at all involving the present accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

110. **Accused No.48 – PATEL JAYANTIBHAI AMBALAL**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has

stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.47 – Shaikh Ibrahimbhai Rasulbhai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has not identified the accused in the Court but has taken the name of the present accused in the Complaint dated 02.03.2002 and has not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 and affidavit dated 06.11.2003, Statement before S.I.T. dated 11.06.2008 while has stated the name of the present accused in the application to S.I.T. dated 09.05.2008 and statement dated 09.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has stated the name of the present accused in his statement dated 06.03.2002 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. He has not stated the name of present accused in his statement before S.I.T. dated 10.05.2008. This witness has identified the accused before

the court after verifying that he is able to see all the persons sitting in the Court. P.W.55 – Shaikh Aashiqhusen Bachumiya has deposed the name of the present accused in his deposition in respect of incident dated 01.03.2002. Looking to his deposition accused was present in the mob and was throwing stone. He has identified the present accused in the Court. He took 15 minutes time and during 15 minutes he has identified 4 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of present accused in his affidavit dated 06.11.2003 and statement dated 02.03.2002 and statement dated 19.05.2008 before S.I.T. P.W.59 – Shaikh Mohmad Sattar Bachumiya has deposed in his deposition, in respect of incident dated 01.03.2002 at about 11.30 to 12.00 P.M., naming the present accused in the mob. He has identified the present accused. He took 15 minutes time for identification of accused and has identified about 20 accused in the Court. before identification, it was verified whether the accused could see the persons sitting in the Court room and after due satisfaction the identification was carried out. He has not stated the name of present accused in his statement dated 02.03.2002, 19.05.2008 and

affidavit dated 06.11.2003. P.W.60 – Shaikh Bachumiya Imammiya has stated the name of the present accused in his deposition in respect of incident dated 01.03.2002. First incident about 09.30 P.M. in respect of setting on fire the cabins. He has not stated the name of present accused about the cabin incident of 09.30 PM in the statement dated 03.03.2002. He has stated the name of present accused in respect of incident dated 01.03.2002. He has not identified the accused. He has stated the name of present accused in the application dated 09.05.2008 as well as statement before S.I.T. dated 10.05.2008. P.W.65 – Shaikh Akbarmiya Nathumiya has stated the name of present accused in his deposition in respect of incident dated 01.03.2002 and as per his deposition this accused was present in the mob with Lathi. He has identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. There is contradiction about from where and how he has seen the accused in his statement dated 10.03.2002, application, statement dated 10.05.2008, which is already discussed and decided in the Judgement

at the relevant time. He has not stated the name of present accused in his application. P.W.66 – Shaikh Akbarmiya Rasulmiya has not named the present accused in respect of incident dated 01.03.2002 but identified the accused for first time in the Court. This witness has identified the accused in the Court. He took 10 Minutes for identifying the accused in the Court. He has identified 8 accused in the Court. before identification, it was satisfied by the Court that, witness can see each and every person in the Court. In his application dated 09.05.2008 has stated the name of present accused and he has also stated the same before S.I.T. in his statement dated 09.05.2008 and application dated 09.05.2008 before S.I.T. while he has not stated the name of present accused in the statement dated 10.03.2002. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 stating therein that, the accused was present in the mob. He has identified the present accused in the Court. 12 minutes time has been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. Height of the witness is 5'2". He has not stated the name of

present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated 10.05.2008. P.W.70 – Pathan Munsafkhan Yasinkhan has deposed that, this accused was present at the time of stone throwing. At that time this witness was in his old house. He has identified the accused and for identification he took 7 minutes and in 7 minutes he has identified 14 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of this accused in his statement dated 06.03.2002, affidavit dated 31.03.2004 but has stated the name of present accused in his statement dated 11.06.2008 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. In statement before S.I.T. dated 14.07.2008 incident with name not stated by this witness. P.W.71 – Rawal Mangabhai Ramabhai has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes time for identification of the accused in the Court and in 7 minutes he has identified four accused. This witness is having 5' Height and it was satisfied by the Court and he

could see the persons sitting in the Court. He has not stated the name of present accused in the statement dated 20.05.2008. This witness is regarding the collection of Kerosene from Tractor on 01.03.2002 at 09.00 PM. He is not the eye witness of the incident of Shaikh Maholla. P.W.78 – Shaikh Basirabibi Bachumiya has deposed the name of this accused in her deposition and she has identified the accused in the Court. She has deposed the name of the present accused in respect of incident dated 28.02.2002 and has deposed about Bore Account Book taken by this accused and has also deposed about the presence of this accused in the night incident dated 01.03.2002. She has identified present accused. She took 12 minutes time for identification and she has identified 8 accused in the Court. before identification, it was satisfied by verifying by the Court that the witness can see the persons in the Court. She is having 5' height but as per deposition of this witness she is aged about 50 years and her eye sight is weak and as per her say she is able to see persons sitting in two lines only but she has identified the present accused who was sitting in the last line on the stage in the Court. She has identified the accused after stepping down from the witness box with the permission of

the Court. She has not stated the name of this accused in her statement dated 22.05.2008 and 11.06.2008. Thus, considering above evidence P.W.46, P.W.48, P.W.55, P.W.59, P.W.65, P.W.67, P.W.68, P.W.70, P.W.71, P.W.78 have identified the accused in the Court and the complainant though not identified but named the accused in the complaint. Complaint was given within time which corroborates the say of witnesses that, present accused was very much present in the mob and was pelting the stone in the mob. Thus, there is sufficient evidence involving the present accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of

witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. The witnesses have stated that, said accused was having Lathi in his hands at the time of incident. But much importance cannot be given to this

aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that, he was also an acting member in Seva Sahakari Mandali for the period from 2005 to 2010. He is well acquainted with the office of Kisan Diary and he was a Government employee and at the time of incident, he was in his office for Programme. On 28.02.2002 he was at Karanpur and on 01.03.2002 he was at Aithor for billing programme. In support of his this say, he has produced Certificate of Umiya Kisan Diary, Sardarpur, Certificate from Sarvodaya Kelvani Mandal and Certificate from Gujarat Vidhyut Board, Sub-Division Office, Patan. From the above explanation it does not transpires that, the accused was at Aithor or Karanpur for billing programme as the incident took place during late night hours. It is possible that, during day time the accused might have been at Aithor for billing programme but the explanation about his absence given by him is not satisfactory for a prudent person hence not accepted. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would

falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

111. **Accused No.49 – PATEL KANUBHAI JOITARAM**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 and 28.02.2002 morning incident and Water Works Key taken incident. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.47 – Shaikh Ibrahimbai Rasulbai – complainant has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has not identified the accused in the Court and also not stated the name of the present accused in the Complaint dated 02.03.2002 and has also not stated the name of the present accused in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002 Statement before S.I.T. dated 11.06.2008 and application to S.I.T. dated 09.05.2008 while has stated the name of the

present accused in the affidavit dated 06.11.2003 and statement dated 09.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of the present accused in his statement dated 06.03.2002 but has stated the name of present accused in the statement dated 10.05.2008. This witness has identified the accused before the court after verifying that he is able to see all the persons sitting in the Court. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused in the mob in respect of incident dated 01.03.2002. He has identified the accused in the Court. In his statement dated 10.03.2002 and affidavit dated 06.11.2003 he has not stated the name of the present accused in the mob. In his statement before S.I.T. there is contradiction about from where and how this witness has seen the accused. So far as contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. This witness has also stated the name of present accused in respect of incident of 01.03.2002 evening time Halogen Lamp on Street Light Pole but this fact is not stated in his statement dated 10.03.2002. P.W.58 – Shaikh

Sabirhusen Imamsha has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused before the Court. He has not stated the name of the present accused in the statement dated 03.03.2002. He has stated the name of present accused in his statement dated 22.05.2008 but there is contradiction from where and how he has seen the accused. This contradiction is already discussed and decided at the relevant point of time. P.W.59 – Shaikh Mohmad Sattar Bachumiya has named in his deposition the accused in respect of incident dated 01.03.2002. He has identified the accused before the Court. He took 15 minutes for identifying the accused in the Court. He has identified the present accused after satisfying by the Court that, he is able to see each and every person sitting in the Court. He has not stated the name of the present accused in the statement dated 02.03.2002 and 19.05.2008. In his affidavit dated 06.11.2003 also this witness has not stated the name of present accused. P.W.60 – Shaikh Bachumiya Imammia has stated the name of the present accused in his deposition in respect of incident of Direct Line on Electric Pole near Shaikh Maholla and also about setting on fire of cabins at about 09.30 PM but the fact of Light on

Pole is not stated in the statement dated 03.03.2002 and name of the accused is not stated in 09.30 cabins incident in his statement dated 03.03.2002 while this witness has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused before the Court. He took 12 minutes for identification of accused. During 12 minutes he has identified about 21 accused. He has not stated the name of this accused in respect of incident occurred at about 09.30 P.M. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of present accused in his statement dated 03.03.2002 but has named the accused in the application dated 09.05.2008 and statement dated 10.05.2008. P.W.63 – Shaikh Bhikhumiya Kalumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of the present accused in the statements dated 10.03.2002 and 10.05.2008 and application dated 10.05.2008. P.W.64 – Shaikh Rafikmiya Babumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He

took 10 minutes time for identification. he has identified 4 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 4 accused he took 15 minutes time, which can be considered as reasonable time for identification. He has stated the name of present accused in his statement dated 27.03.2002 but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. Further there is contradiction about the time as 11.30 in his statement dated 22.05.2008, which is already discussed. P.W.65 – Shaikh Akbarmiya Nathumiya has stated the name of this accused in the mob in respect of incident dated 01.03.2002 at about 4.00 to 5.00 PM street light focus near House but this fact is not stated in the statement dated 10.03.2002 while he has stated the name of present accused in respect of incident dated 10.03.2002. He has identified the accused. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has

identified 10 accused. He has not stated the name of present accused in his statement dated 10.03.2002 but has stated the name of present accused in the statement dated 10.05.2008 and application. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed on oath in his deposition naming the present accused in respect of incident dated 01.03.2002 with Weapon. As per his deposition present accused was present in the mob with weapon. This witness has identified the present accused in the Court. He has not stated the name of the present accused in his statement dated 10.03.2002 He has not stated the name of the present accused with weapon in his application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008. P.W.68 - Shaikh Gulamali Akbarmiya has named the present accused in the Court in respect of incident dated 01.03.2002 that accused was present in the mob. He took 12 minutes time for identifying the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 10.03.2002, 10.05.2008 while in his application dated 09.05.2008. P.W.70- Pathan Munsufkhan Yasinkhan has stated that, he saw the

accused at the time of stone throwing at his old house situated in Pathan Maholla incident dated 01.03.2002. As per his deposition the present accused was present in the mob. Further there was a Shanti Samiti Meeting and Kanu Joita was present in that Meeting. He has identified the accused in the Court. He took 7 minutes time for identification of accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. In his affidavit dated 31.03.2004 and statement before S.I.T. dated 11.06.2008 he has stated the name of present accused but there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. He has not stated the name of accused in his statement dated 06.03.2002 and has also not stated the incident with name in his statement dated 14.07.2008 before S.I.T. P.W.74 – Shaikh Sikandarmiya Rasulmiya has stated the name of the present accused regarding incident dated 27.02.2002 at Baldevbhai Vanzara for involving Kanubhai Joitabhai for not giving Kuber (Gutkha) but identified the accused but this witness is not the eye witness and this witness has not named the present accused in the application and

statement dated 22.05.2008 but it is stated by this witness that, Ishvarbhai say no for Kuber to this witness. P.W.79 – Shaikh Samimbanu Mahmadiya has not named accused in her deposition but identified the accused in the Court for the first time by face. She has not stated in her statement dated 06.03.2002 and 22.05.2008 that she can identify the accused by face. P.W.82 – Fakir Sabirabibi Sabirhusen has named present accused in her deposition in respect of incident dated 01.03.2002. She has not identified present accused before the Court though sufficient opportunities were given to her. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She is having height about 5'. But in her statements dated 22.05.2008 and 03.03.2002 she has not stated the name of this accused. P.W.83 – Fakir Sharifabanu Sabirhusen has named the present accused in her deposition in respect of incident dated 01.03.2002 but has not identified the accused in the Court though sufficient opportunities were given to her. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She has not stated the name of present accused in her statements dated 03.03.2002 and 24.06.2008. Considering

above all evidence P.W.46, P.W.48, P.W.56, P.W.58, P.W.59, P.W.60, P.W.63, P.W.64, P.W.65, P.W.66, P.W.68, P.W.70, P.W.74 have identified the present accused while P.W.47 though deposed the name of present accused in his deposition but has not named the present accused in the Complaint. In this regard when we consider the say of accused side, it is the say of accused that the present accused was the Sarpanch of Village Sardarpur, he has been involved by the witness assigning a role of instigating the mob in the deposition. The accused is identified by so many witnesses and have also named in depositions. In their depositions they have deposed that, the accused was very much present in the mob and was instigating the mob and thereafter they have started setting on fire the houses in Shaikh Maholla and pelting stones. Simply because this accused was Sarpanch, it cannot be said that, he has falsely been involved as an accused in the incident, why the witnesses will involve innocent person leaving real culprit free. Nothing has come out from cross-examination from which we can infer the absence of this accused in the mob. Specific role has been attributed to this accused that, he was very much involved in the incident and instigating the mob. Thus, considering the appreciation of evidence as

discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident

of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob and has instigated the mob. Therefore involvement of accused is well established from the above circumstances. On perusal of F.S.L. Report, no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. This accused has added that, he was Sarpanch of the village in the year 2002. Mahemudmiya Husenmiya and other persons of the Shaikh Maholla had applied under Sardar Avas Yojna for free house. Application of Mahemudmiya was granted while applications of other persons were rejected and with that political enmity, the Muslims and Munusfkhan have involved him as accused and false applications and affidavits are filed by the witnesses. A peace committee met in the house of Munsufkhan Pathan and in the presence of P.S.I. - Shri G.K.Parmar, he alongwith other 4 Patel persons were present in the meeting at the relevant time. He came

to know the fact that, Muslims from Sundarpur were brought to Sardarpur. He has further stated that, people of the Village were agreed to maintain peace in the village. On 28.02.2002, during night, he was at Khedhbrahma temple as he used to go there on that day since last 25 years. And on that day his son Bhavesh and other two persons were there alongwith him at Khedhbrahma. On 01.03.2002 at about 10.00 A.M. he came in the village and came to know about the incident. On 02.03.2002 at about 6.00 A.M., he was called by Mamlatdar, Talati, P.I. etc. He went to that place and his statement was recorded. He offered to lodge a complaint but the Police Inspector refused to take the complaint as the complaint was already lodged and in complaint, his name was not there. He was assisting Government officers. On 04.03.2002, Bachumiya Imammiya Shaikh and other two persons of their Maholla came to Sardarpur and at that time Munsufkhan and P.S.I. Parmar were with them. At that time, he came to know about the names mentioned in the complaint. Munsufkhan told that, he did know the persons who came from outside but they have to take the names of the village persons whether they were involved or not, if they wanted to save themselves they should give the names of the persons

who came from outside. He has refused to give the names of the village persons as the village persons were not involved in the incident. Munsufkhan was the member of Panchayat and he has political rivalry with the accused, therefore, name of the accused has falsely been involved by the complainant in the application and affidavit before S.I.T. and witnesses have falsely taken his name as an accused. So far as explanation given by the accused about rendering his services is concerned, it cannot be denied that being a Sarpanch he was rendering his services in different fields. So far as denial of house to other persons in Shaikh Maholla is concerned this ground is not such for which the persons from the village will indulge the accused falsely, specially when as per his say he was rendering services for the welfare of Village Sardarpur. So far as his plea regarding alibi that on the day of incident he was at Khedbrahma Temple is concerned, except bare words there is not other evidence to prove the said alibi on the basis of preponderance of probabilities. Thus, this plea is not acceptable. So far as offering for lodging of complaint is concerned, this is also bare words, why a Police Inspector will refuse to the Sarpanch to lodge a complaint. As the complaint was already lodged in that circumstances, if

Police Inspector is restraining for the same there is nothing wrong. So far as involvement of this accused by Munsufkhan Bachumiya Shaikh and others are concerned the explanation which is submitted by this accused that there is political rivalry with Munsufkhan for that nothing has been submitted by way of evidence. Therefore, except bare words of political rivalry there is no evidence to support this fact. In the cross-examination of Munsufkhan no question has been asked by the accused in respect of political rivalry. Therefore, also his this application cannot be accepted and the say of the accused that he has falsely been involved is not accepted in the eye of law and fact. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

112. **Accused No.50 – PRAJAPATI RAMANBHAI GANESHBHAI**
(Sessions Case No.275/2002)

P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob with Tin. He has identified the present accused. There is contradiction in his statement dated 10.03.2002 from where and how he has seen the accused but in the statement before S.I.T. dated 10.05.2008 he has stated that, this accused was not in the mob. P.W.51 – Shaikh Nazirmohmad Akbarmiya has named present accused in respect of incident dated 01.03.2002 that accused was present in the mob with Kerosene Tin. This witness has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has stated the name of the present accused in his statement dated 10.03.2002. He has not stated the name of present accused in the affidavit dated 06.11.2003. He has stated the name of present accused in the statement dated 19.05.2008 before S.I.T. that, Raman Ganesh was not in the mob, which was stated is false. P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of

incident dated 01.03.2002. He has identified the accused in the Court though sufficient opportunities were given to him. He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused persons. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of present accused in his statement dated 10.03.2002, 11.06.2008, 05.08.2008, 19.05.2008 and affidavit dated 06.11.2003. P.W.55 – Shaikh Aashiqhusen Bachumiya has named this accused during his deposition in respect of incident dated 01.03.2002 that this accused was in the mob and he was pelting stones and fired his Jeep. He has identified the accused in the Court. He took 15 minutes time for identification. he has identified 17 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 17 accused he took 15 minutes time, which can be considered as reasonable time for identification. He has not stated the name of this accused in his affidavit dated 06.11.2003. In the statement dated 02.03.2002 there is contradiction regarding from where and how he has seen the accused.

But this contradiction is already discussed at the relevant time in this Judgement. In his statement dated 19.05.2008, he has stated that, he has not given the name of accused in his statement dated 02.03.2002. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused with pipe in the mob in respect of incident dated 01.03.2002 with Tin. In his statement dated 10.03.2002 there is contradiction regarding from where and how he has seen the accused. But this contradiction is already discussed at the relevant time in this Judgement. He has also not stated the name of present accused in his affidavit dated 06.11.2003. In his statement dated 19.05.2008 before S.I.T. there is contradiction regarding from where and how he has seen the accused. Further he has stated that, he has not stated the name of present accused in his statement dated 10.03.2002. P.W.65 – Shaikh Akbarmiya Nathumiya has deposed in his deposition naming the present accused having Tin in the mob. He has not identified the present accused. He took 10 minutes time in identifying the accused in the Court. In 10 minutes, he has identified 10 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. The height of the witness is 4'7".

In application and statement dated 10.03.2002 and 10.05.2008 there is contradiction about from where and how witness has seen the accused. In his statement dated 10.05.2008 he has stated that, he has not named the accused in his statement dated 10.03.2002. P.W.75 – Shaikh Firozabanu Bachumiya has named the present accused in respect of incident dated 01.03.2002. She has further stated that, she saw the accused while setting on fire the Jeep. She has identified the present accused in the Court. She has taken 15 minutes time for identification of accused. During 15 minutes she has identified 7 accused. Her height is about 5' meaning thereby she is able to see the person sitting in the court. She has not stated the name of present accused in her statement dated 02.03.2002 and 22.05.2008. P.W.82 – Fakir Sabirabibi Sabirhusen has not named the accused in the mob in respect of incident dated 01.03.2002. She has identified the present accused in the mob. She has stated the name of present accused in the statement dated 03.03.2002 and 22.05.2008. Considering the above all P.W.49, P.W.51, P.W.52, P.W.55, P.W.75 and P.W.82 have identified the present accused in the Court as well as they have attributed the specific role to the present accused. As the

present accused was involved in setting on fire the Jeep. As discussed earlier there is contradiction about from where and how the witness Nos.P.W.49, P.W.55, P.W.56, and P.W.65 had seen the accused but this point is already discussed in the Judgement at the relevant time in this Judgement. The fact that, witnesses were very much present in the Shaikh Maholla and could see the accused and therefore, presence of witnesses cannot be discarded and the say of the witnesses about the presence of this accused with specific role is to be relied upon. Thus, there is sufficient evidence involving the present accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of

witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of

identification of accused is established. The witnesses have stated that, this accused was seen with gallon of kerosene and he is involved in firing of Jeep, instigating the mob, pouring of kerosene on Jeep. This accused added in his Further Statement that, he was Government Servant and he has falsely been involved. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

113. **Accused No.51 – MARVADI AASHUTOSH ALIAS
PAVANKUMAR MURLIDHAR**
(Sessions Case No.275/2002)

P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in

the mob with Pipe. He has identified the present accused. There is contradiction in his statement dated 10.03.2002 from where and how he has seen the accused but in the statement before S.I.T. dated 10.05.2008 and 10.06.2008 he has stated that, this accused was in the mob. P.W.65 – Shaikh Akbarmiya Nathumiya has deposed in his deposition naming the present accused instigating the mob. He has not identified the present accused. He took 10 minutes time in identifying the accused in the Court. In 10 minutes he has identified 10 accused. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. The height of the witness is 4'7". In application and statement dated 10.03.2002 and 10.05.2008 there is contradiction about from where and how witness has seen the accused. In his application he has not stated the name of present accused. Considering the above evidence against the present accused, one of the witness has identified the accused while other has not identified. One witness is attributing pipe with him while other is attributing the role of instigation of present accused. Thus, the evidence is not to that satisfaction so that, it can be concluded about the involvement of this accused in positive beyond reasonable

doubt. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not proved by the Prosecution satisfactorily and he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires

acquittal.

114. **Accused No.52 – PATEL DAHYABHAI KACHARABHAI**
(Sessions Case No.275/2002)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob with Pipe and was instigating the mob that no Muslims should be left alive. He has identified the present accused. There is contradiction in his statement dated 10.03.2002 from where and how he has seen the accused but in the statement before S.I.T. dated 10.05.2008 and 10.06.2008, he has stated that, this accused was in the mob. P.W.51 – Shaikh Nazirmohmad Akbarmiya has named present accused in respect of incident dated 01.03.2002 that accused was present in the mob with Stone. This witness has identified the accused in the

Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has stated the name of the present accused in his statement dated 10.03.2002. He has not stated the name of present accused in the affidavit dated 06.11.2003. He has stated the name of present accused in the statement dated 19.05.2008 before S.I.T. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused in the mob in respect of incident dated 01.03.2002 with Pipe. He has identified the accused in the Court. In his statement dated 10.03.2002 and 19.05.2008 there is contradiction about from where and how this witness has seen the accused. So far as contradiction in the statements are concerned that is discussed and decided at the time of appreciation of evidence. This witness has not stated the name of present accused in the affidavit dated 06.11.2003. P.W.72 – Rawal Prahladbhai Nathabhai has not stated the name of present accused in the mob in respect of incident dated 01.03.2002. He has identified the accused in the Court and stated the name of present accused in his application before S.I.T. and statement dated 20.05.2008. P.W.80 - Shaikh Ruksanabanu Ibrahimmiya has not named present accused but identified the accused first time in the

court by face only. She took 7 minutes time for identifying the accused in the Court. In her statement dated 10.03.2002 she has named other accused stating that, she saw them but she has not stated that, she can identify them by face. She has not stated the name of the accused in her statement dated 22.05.2005. Thus considering above evidence P.W.46, P.W.49, P.W.51, P.W.56 and P.W.72 have identified the accused in the Court and in their earlier statement P.W.49, P.W.56 have stated the name of accused though there is contradiction about from where and how they had seen the accused but as discussed earlier presence of these witnesses in Shaikh Maholla at the time of incident cannot be doubted and therefore, say of this witnesses that, they had seen the accused in the mob cannot be discarded. No doubt two of the witnesses are attributing the role of present accused instigating the mob as well as having Pipe in his hand. Thus involvement of present accused in the incident is satisfactorily established by the prosecution. Simply there is difference between the fact that, whether he was having stone or pipe in his hand. The very fact that, he was present in the mob and instigating the mob cannot be discarded. Thus, considering the appreciation of evidence as discussed while discussing

the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was present in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful

assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. The witnesses have stated that, this accused was very much present in the mob having Pipe in his hands but the use of said Muddamal article is not established. Witnesses have also stated that, this accused was instigating the mob at the time of incident. But much importance cannot be given to this aspect as the evidence of identification of accused is established. This accused has added in his Further Statement that, during the incident he was bedridden due to accident and in support of his say, he has produced Disability Certificate, issued by the Resident Medical Officer, Civil Hospital, Ahmedabad. The Medical Certificates, which are produced by the accused are of the year 1999, 2000 and 2001. Disability Certificate is dated 30.08.2000, in which disability is assessed as 60%. While in the Disability

Certificate dated 19.12.2005 also shows 60% disability. Looking to all Medical Certificates, it is not shown that accused cannot walk and he is bedridden. None of the document shows that, at the time of incident, this accused was bedridden. No doubt he is having disability but disability is not such which can support him from getting out from his involvement in the incident. Therefore, his this explanation is not acceptable. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

115. **Accused No.53 - PATEL RAMESHBHAI BALDEVBHAI**
(Sessions Case No.275/2002)

P.W.73 - Faridabibi Aashiqhusen Shaikh has not stated the name but identified the accused in the Court for the first time and that is too by face. He has not stated the

name of the accused in his statement dated 02.03.2002 and also not stated the name in the statement dated 11.06.2008. P.W.81 - Shaikh Dilavarkhan Abbasmiya has not stated the name of the present accused in his deposition in respect of incident dated 01.03.2002 but identified the accused in the court for first time by face and in his statement dated 22.05.2008 before S.I.T. he has not stated the name of the present accused. Considering above both the evidence, the name of the present accused was not named in any of the statement by any witness and both the witnesses are identifying the accused in the Court but not attributing the role to present accused in the mob. Thus, the evidence is not to that satisfaction so that, it can be concluded about the involvement of this accused in positive. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of

Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

116. **Accused No.54 – PATEL MATHURBHAI TRIKAMDAS**
(Sessions Case No.275/2002)

P.W.46 – Shaikh Sabirmiya Akumiya has deposed the name of present accused in respect of incident dated 01.03.2002 that this accused was present in the mob and has identified the accused in the Court. Before identification it was verified and satisfied whether the witnesses could see the persons sitting in the Court room.

He has not stated the name of present accused in the statement dated 20.05.2008 but has stated the name of present accused in the application dated 06.05.2008. P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob with Dhariya. He has identified the present accused. There is contradiction in his statement dated 10.03.2002 from where and how he has seen the accused but the statements before S.I.T. dated 10.05.2008 and 10.06.2008 support the say of the witness. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 evening time Halogen Lamp on Street Light Pole and also deposed about the presence of this accused in respect of night incident dated 01.03.2002, deposing the presence of this accused in the mob with Dhariya. He has identified the accused in the Court. In his statement dated 10.03.2002 he has not stated the fact regarding Halogen Lamp on Street Light Pole. In the statement dated 10.03.2002 and 19.05.2008 before S.I.T. there is contradiction about from where and how this witness has seen the accused. So far as contradictions in the statements are concerned, that is already discussed

and decided at the time of appreciation of evidence. He has not stated the name of present accused in the affidavit dated 06.11.2003. P.W.58 – Shaikh Sabirhusen Imamsha has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused before the Court. He has not stated the name of present accused in his statement dated 03.03.2002 and statement before S.I.T. dated 22.05.2008 in this regard. P.W.60 – Shaikh Bachumiya Imammiya has deposed on oath the name of present accused in respect of incident of direct line from Pole, near Shaikh Maholla and also presence of accused in the night incident dated 01.03.2002. This witness has not stated the light incident in the statement dated 03.03.2002. He has also not stated the name of the present accused in the mob in respect of night incident dated 01.03.2002. He has identified the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He took 12 minutes time for identification and has identified about five persons. P.W.63 – Shaikh Bhikhumiya Kalumiya has deposed the name of the present accused in respect of incident dated 01.03.2002. He has not identified the accused in the Court. He has not stated the

name of the present accused in the statements dated 10.03.2002 and 10.05.2008 before S.I.T. and application dated 10.05.2008 P.W.64 – Shaikh Rafikmiya Babumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002. He has identified Parshottam Mohan as Mathur Trikam. He took 10 minutes time for identification. he has identified 4 accused in the Court. before identification, it was verified by the Court whether the witness could see the persons sitting in the Court and after due satisfaction the witness has identified the accused. For identifying 4 accused he took 15 minutes time, which can be considered as reasonable time for identification. There is contradiction regarding timing of incident in his statement dated 22.05.2008. So far as contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. P.W.65 – Shaikh Akbarmiya Nathumiya has stated the name of present accused in respect of connection of street light focus near house at about 4.00 to 5.00 P.M. on 01.03.2002 as well as presence of this accused in the night incident. In his deposition he has identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due

verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. He has not stated the name of present accused in his statement dated 10.03.2002 whereas he has stated the name of present accused in the statement and application dated 10.05.2008. P.W.66 – Shaikh Akbarmiya Rasulmiya has deposed on oath in his deposition naming the present accused in respect of incident dated 01.03.2002 with weapon. As per his deposition present accused was present in the mob with weapon. This witness has not identified the present accused in the Court. He took 10 minutes time for identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. And during said 10 minutes he has identified 10 accused. His height is about 4'7". He has not stated in his application dated 09.05.2008 and statement before S.I.T. dated 09.05.2008 about weapon. P.W.68 - Shaikh Gulamali Akbarmiya has named the present accused in the Court and has also narrated about the incident dated 01.03.2002 about 2.30 P.M. in the village incident about talking "bandiyo ne kapi nakho". Further he has stated about the presence of this accused in the night

incident with stone. He has identified the accused. He took 12 minutes time for identifying the accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 10.03.2002 and 10.05.2008 about incident of talking "Bandiyo ne kapi nakho" while in his application dated 09.05.2008 he has stated the name of present accused with stone. So far as incident dated 01.03.2002 is concerned, this witness has stated the name of present accused in his statement dated 10.03.2002 and 10.05.2008 but there is contradiction regarding from where and how he has seen the accused with stone. But this contradiction is already discussed at the relevant time in this Judgement. P.W.83 – Fakir Sharifabanu Sabirhusen has named the present accused in her deposition and as per her say this accused was very much present in the mob She has identified the accused in the Court. She has not stated the name of present accused in her statements dated 03.03.2002 and 24.06.2008. So far as connection of Halogen Lamp on Street Light Pole incident is concerned, as earlier discussed it is discussed and decided as an improvement and therefor the evidence of all these

witnesses in respect of connection of Halogen Light on Street Light Pole by this accused cannot be accepted and it is to be considered as an improvement. But from this fact we cannot conclude the evidence of all above witnesses untrustworthy and unreliable wholly. As discussed earlier identification of present accused by P.W.46 in the Court as well as deposition of present witness regarding presence of this accused in the mob is much supported by other witnesses like P.W.49 who has also identified the accused in the Court and named the present accused in his statement dated 10.03.2002 though there is contradiction from where and how he has seen the accused but the presence of this witness in Shaikh Maholla is already established by the prosecution and therefore, as discussed earlier this witness was able to see the mob and therefore, the say of this witness that, the present accused was present in the mob and is acceptable. P.W.56 has also supported the say of above those witnesses about the presence of this accused in the mob with Dhariya and has also identified him in the Court and also stated the name of present accused in earlier statements, which supports the prosecution case about the involvement of present accused in the incident. P.W.58 has also supported the presence of said accused in

the mob and by identifying the accused, he has supported the prosecution case. P.W.60 has also supported the presence of this accused in the mob during night incident and identified the accused in the Court, therefore, supports the prosecution case about the involvement of present accused in the incident. P.W.65 also supports the involvement of present accused in the incident by stating the presence of accused in the mob. P.W.68 has also supported the prosecution case by identifying the accused and stating the presence of present accused in the mob and by stating name of present accused in his statement 10.03.2002, application 09.05.2008 and statement dated 09.05.2008. P.W.83 also supports the involvement of present accused in the night incident dated 01.03.2002 while evidence of P.W.66, P.W.63 not supporting the prosecution case about the involvement of present accused by not identifying the accused in the Court. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object

of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. The witnesses have stated that, this accused was having Dharia in his hands at the time of incident. But much importance cannot be given to this aspect as the evidence of identification of accused is established. This accused has added in his Further Statement that, he was working in GEB since the year 1999 to 2009 and he had worked as Village helper. During the incident time, he was in his service and village persons know him well. After two to three months of the incident, his name has been added as an accused, as he is a Government Servant. His house is 1.00 Km. away from Shaikh Maholla and therefore, he has falsely been involved in the incident. Simply because he was in service or his name has been added after two to three months from incident, his explanation is not satisfactory at the preponderance of probabilities, hence cannot be accepted. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply

witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

117. **Accused No.55 – PATEL ASHWINBHAI BALDEVBHAI JOITABHAI**
(Sessions Case No.275/2002)

The case against present accused is discussed alongwith the case discussed against **Accused No.6 – PATEL (NAGAR) ASHWINBHAI BALDEVBHAI** of Sessions Case No.120/2008.

118. **Accused No.1 – PATEL BABUBHAI VANABHAI**
(Sessions Case No.120/2008)

P.W.47 – Shaikh Ibrahimbai Rasulbai has deposed in respect of incident dated 01.03.2002 and has named the present accused. He has identified the accused in the Court He has not named the present accused in his complaint as well as in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003

and statement before S.I.T. dated 11.06.2008 and in the application and statement before S.I.T. dated 09.05.2008. P.W.78 - Shaikh Basirabibi Bachumiya has deposed on oath stating the name of the present accused in the mob in respect of incident dated 01.03.2002. As per her deposition she has identified the accused in the Court. before identification, it was verified by the court whether she could see the persons sitting in the Court. She has identified the present accused and she took 12 minutes time for identification of accused and during said 12 minutes she has identified 8 accused. She has not stated the name of the present accused in her statement dated 17.04.2002 and statement dated 11.06.2008 and there is contradiction from where and how she has seen the accused in the mob in her statement dated 22.05.2008. Considering the above evidence no doubt complainant has identified the present accused in the Court but has not named present accused in the complaint not in any of his statement or application and therefore, simply on identification in the Court it is rather risky to convict an accused in absence of other corroborative evidence. P.W.78 has identified the accused in the Court but not stating the name of present accused in earlier statement and therefore,

it cannot be considered as sufficient evidence for concluding the involvement of present accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards

him in the Court as a person who was in the mob requires acquittal.

119. **Accused No.2 – PATEL RAMESHBHAI KACHARABHAI**
(Sessions Case No.120/2008)

P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob and was instigating the mob to kill the Muslims and no one should left alive. He has identified the present accused. He has not stated the name of present accused in the statement dated 10.03.2002 and 11.06.2008 while he has stated the name of present accused in the statement before S.I.T. dated 10.05.2008. P.W.81 - Shaikh Dilavarkhan Abbasmiya has not stated the name of the present accused in his deposition in respect of incident dated 01.03.2002 but identified the accused in the court for first time by face and in his statement dated 22.05.2008 before S.I.T. he has not stated the name of the present accused. Thus considering above evidence simply accused is identified and P.W. 49 is stating about the instigation by this accused but this fact is not supported from his any of the statement nor by other evidence and therefore, it is

rather risky to convict present accused on the strength of evidence on record. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though there exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards

him in the Court as a person who was in the mob requires acquittal.

120. **Accused No.3 – PATEL BABUBHAI KANJIBHAI**
(Sessions Case No.120/2008)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002 – morning incident. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob and instigating the mob to kill the Muslims. He has identified the present accused. He has not stated the name of present accused in the statement dated 10.03.2002 and 11.06.2008. P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. He has not identified the accused in the Court though sufficient opportunities were given to him. He took 15 minutes time

for identification of accused. During 15 minutes he has identified 5 accused persons. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. He has not stated the name of present accused in his statement dated 10.03.2002, 11.06.2008, 05.08.2008 but has stated the name of present accused in his affidavit dated 06.11.2003 and 19.05.2008. P.W.73 – Faridabibi Aashikhusen Shaikh has not stated the name of this accused in her statement dated 02.03.2002 and 11.06.2008 and has not named in her deposition but she has identified the accused in the Court for the first time by face only. P.W.78 - Shaikh Basirabibi Bachumiya has deposed on oath stating the name of the present accused in the mob in respect of incident dated 01.03.2002. As per her deposition she has not identified the accused in the Court, though sufficient opportunities were given. before identification, it was verified by the court whether she could see the persons sitting in the Court. She has identified the present accused and she took 12 minutes time for identification of accused and during said 12 minutes she has identified 8 accused. She has not stated the name of the present accused in her statement dated 17.04.2002 and statement dated

11.06.2008 and there is contradiction from where and how she has seen the accused in the mob in her statement dated 22.05.2008. P.W.81 - Shaikh Dilavarkhan Abbasmiya has not stated the name of the present accused in his deposition in respect of incident dated 01.03.2002 but identified the accused in the court for first time by face and in his statement dated 22.05.2008 before S.I.T. he has not stated the name of the present accused. Considering the above evidence P.W.49, P.W.52, P.W.73, P.W.78, P.W.81 have not identified the present accused in the Court while P.W.73 and 81 have identified the accused by face in the Court but in none of the statement these witnesses have stated the fact that, they can identify the accused by face. In these circumstances P.W.46 who has also not stated the name of present accused in his earlier statement, simply he has identified the accused in the Court, by stating that he was present in the mob and P.W.49 has also not stated the name of present accused in any of his earlier statement and therefore, simply identify in the Court and stated presence of the accused in the mob and instigating cannot be considered as sufficient evidence for involvement of accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of

witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

(Sessions Case No.120/2008)

P.W.59 – Shaikh Mohmadsattar Bachumiya has deposed in respect of incident dated 01.03.2002. He has deposed that, the present accused was present in the mob. He has identified the accused in the Court. He has not stated the name of present accused in the statement dated 02.03.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 19.05.2008. P.W.78 - Shaikh Basirabibi Bachumiya has deposed on oath stating the name of the present accused in the mob in respect of incident dated 01.03.2002. As per her deposition she has identified the accused in the Court. before identification, it was verified by the court whether she could see the persons sitting in the Court. She has identified the present accused and she took 12 minutes time for identification of accused and during said 12 minutes she has identified 8 accused. She has not stated the name of the present accused in her statement dated 17.04.2002 and statement dated 11.06.2008 and there is contradiction from where and how she has seen the accused in the mob in her statement dated 22.05.2008. P.W.81 – Shaikh Dilavarkhan Abbasmiya has not named this accused in his deposition but identified the accused in the Court by face only and he has not

named the present accused in his statement dated 22.05.2008. Thus, considering the above evidence against the present accused no doubt P.W.59 and P.W. 78 have identified the accused in the Court but P.W. 59 has not stated the name of this accused in his any earlier statement while P.W.78 has also not stated the name of present accused in her earlier statement. It is only the statement dated 22.05.2008 in which she has stated the presence of present accused. As discussed earlier while appreciating the evidence of this witness there is contradiction from where and how he has seen the accused while the evidence of P.W. 81 is not to the satisfaction of the Court from which we can conclude regarding the involvement of accused. Thus, there is no sufficient evidence to the best satisfaction of the Court to consider the involvement of present accused, under above circumstances. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

122. **Accused No.5 – PATEL NATVARBHAI KACHARABHAI**
(Sessions Case No.120/2008)

P.W. 59 – Shaikh Mohmad Sattar Bachumiya has stated the name of the present accused in respect of incident dated 01.03.2002. It is deposed by the witness that, accused was present in the mob. He has identified the

accused in the Court. He took 15 minutes time for identifying the accused in the Court. He has identified about 20 accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 02.03.2002, 19.05.2008 and affidavit dated 06.11.2003. P.W.71 - Rawal Mangabhai Ramabhai has stated the name of the present accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 7 minutes time for identification of the accused in the Court and in 7 minutes he has identified four accused. This witness is having 5' Height and it was satisfied by the Court and he could see the persons sitting in the Court. He has not stated the name of present accused in the statement dated 20.05.2008. This witness is regarding the collection of Kerosene from Tractor on 01.03.2002 at 09.00 PM. He is not the eye witness of the incident of Shaikh Maholla. Considering above evidence, evidence of P.W.71 cannot be considered as involvement of present accused in the incident simply because this accused was involved in collection of Kerosene from Tractor and we cannot connect this fact with the incident occurred

in the night. This witness has tried to depose about collection of kerosene from tractor in respect of conspiracy as discussed earlier conspiracy is not proved by the prosecution and therefore, on the strength of evidence of this witness and simply on identification we cannot conclude about the involvement of present accused in the night incident dated 01.03.2002. So far as evidence of P.W.59 is concerned, he has not stated the name of present accused in any of his statements therefore, simply in deposition name is deposed and identified in the Court in the absence of any other supporting evidence it is not desirable to conclude the involvement of present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution beyond reasonable doubt and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the

accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

123. Before discussing the involvement of Patel (Nagar) (Botham) Ashwinbhai Baldevbhai – Accused No.6 of Sessions Case No.120/2008, it is equally necessary to discuss the involvement of Ashwinbhai Baldevbhai Joitabhai Patel – Accused No.55 of sessions Case No.275/2002. Therefore, the evidence involving both the persons are hereby discussed and decided simultaneously as under :-

Accused No.55 – PATEL ASHWINBHAI BALDEVBHAI JOITABHAI

(Sessions Case No.275/2002)

OR

**Accused No.6 – PATEL (NAGAR) ASHWINBHAI
BALDEVBHAI**

(Sessions Case No.120/2008)

P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in respect of incident dated 01.03.2002. He has stated that this accused was in the mob with Tin. He has identified Ashwin Baldevbhai as Ashwin Baldev Botham but it is not clear that, which Ashwin Baldev is identified by him. While in his statement dated 10.03.2002 he has stated that, there are two Ashwin Baldev in village. Ashwin Baldev – Gadivala was in the mob. Thus, from the evidence whether Ashwin Baldev Botham was present in the mob or Ashwin Baldev Joitabhai Patel was present, it is not clear from his evidence. P.W.56 – Shaikh Ayubmiya Rasulmiya has deposed the name of the present accused with Tin in the mob in respect of incident dated 01.03.2002. He has not identified the accused in the Court. In his statement dated 10.03.2002 and statement before S.I.T. there is contradiction about from where and how this witness has seen the accused. So far as

contradictions in the statements are concerned that is discussed and decided at the time of appreciation of evidence. Further, he has stated in his statement dated 19.05.2008 that, Ashwin Baldev – Gadivala was not in the mob while in his affidavit dated 06.11.2003 he has not stated the name of present accused. Thus, from the evidence of this witness also, it is not clear whether Ashwin Baldev Botham was present or Ashwin Baldev Gadivala was present. P.W.49 and P.W. 56 inter-se differs on this point. P.W.57 – Shaikh Mustufamiya Rasulmiya has named this accused in his deposition in respect of incident dated 01.03.2002. He has identified the accused in the Court. He took 15 minutes time in the Court for identification of accused. For this purpose when we peruse the deposition no doubt he took 15 minutes time for identification of accused but in 15 minutes he has identified 17 accused. Before identification in the Court it was verified by the Court that, whether the witness can see the persons sitting in the Court and thereafter, accused was identified by the witness. He has not stated the name of present accused in the statement dated 10.03.2002 but has stated that, Ashwin Baldev Joita Gadivala was in the mob. He has not stated the name of present accused in his in his affidavit

dated 06.11.2003, statement dated 19.05.2008, statement dated 05.08.2008. There is contradiction from where and how he has seen the accused in the statement dated 05.08.2008. So far as contradictions in the statements are concerned those are discussed and decided at the time of appreciation of evidence. Thus the evidence of this witness itself is contradictory from his statement and it is not clear from the evidence of this witness whether Ashwin Baldev Botham was present in the mob or Ashwin Baldev Joita Gadivala was present. On the strength of this contradictory version we cannot conclude the involvement of any of these two accused in the incident. P.W.60 – Shaikh Bachumiya Imammiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002, at about 09.30 P.M. in respect of setting on fire the cabins. This witness has not stated this incident in the statement dated 03.03.2002. He has not stated the name of the present accused in 09.30 cabin incident. He has not identified the accused in the Court though sufficient opportunities were given to him. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. Thus, considering above evidence the evidence of this witness is not involving any of these two

accused i.e. Ashvinbhai Baldevbhai. P.W.65 – Shaikh Akbarmiya Nathumiya has stated the name of this accused with Tin in his deposition but has not identified the accused in the Court. He took 10 minutes time in identification and identification was carried out after due verification whether the witness is able to see the persons sitting in the Court. During said 10 minutes he has identified 10 accused. He has not stated the name of present accused in the application. There is contradiction from where and how he has seen the accused in the statement dated 10.03.2002 and 10.05.2008. This witness has not identified any of Ashwinbhai Baldevbhai in the Court. Therefore, simply in his deposition about the presence of Ashvin Baldev Botham in the mob we cannot conclude the involvement of any of both these accused in the incident and that is too, in a circumstances where there is contradictions from where and how the witness had seen the accused. P.W.68 – Shaikh Gulamali Akbarmiya has deposed on oath naming the accused in respect of incident dated 01.03.2002 that he was present in the mob. He took 12 minutes time in identifying the accused. He has identified 19 accused in the Court. Identification took place after due verification whether witness could see the persons

sitting in the Court. He has not stated the name of this accused in his statement dated 10.03.2002 and 10.05.2008 but in his application dated 09.05.2008 from where and how he has seen the accused is contradictory mentioned. Thus considering the evidence of this witness no doubt he has identified Ashvin Baldev Botham but in earlier statements not stated the involvement of present accused in the incident and that is too, in a circumstances where in the application from where and how he has seen the accused, there is contradiction about it. Thus, under above circumstances there is no sufficient evidence to the satisfaction of the court for involvement of any of these two accused in the incident.

P.W.47 – Shaikh Ibrahimbhai Rasulbhai has deposed in respect of incident dated 01.03.2002 and has named the present accused. He has identified Ashvinbhai Baldevbhai Joitabhai Patel in the Court and in the Complaint name of Ashvinbhai Baldevbhai is mentioned. In the application 01.06.2002 and statement dated 01.06.2002 he has stated Ashvin Baldev Joita Gadivala. Thus from the evidence of the complainant, it is not clear whether accused No.55 of Sessions Case No.275 of 2002 or accused No.6 of Sessions Case No.120 of 2008 was involved in the incident. Thus

from the evidence of complainant it is not clear. Prosecution has to establish the involvement of the accused specifically. Thus, on the strength of this evidence no one of these two accused can be considered as involved in the incident and benefit of doubt is required to be given to both under above circumstances. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed in his deposition naming the present accused in the mob in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has identified 14 accused in the Court. before identification, it was verified whether he was able to see the persons sitting in the Court and after satisfying identification was carried out. there is contradiction from where and how he has seen the accused in his statement dated 06.03.2002. He has not stated the name of present accused in his statement before S.I.T. dated 10.05.2008. Thus from the evidence of this witness also it is not clear whether Ashvin Baldev Botham was in the mob or Ashvin Baldev Joita Patel was in the mob. Therefore, both are required to be given benefit of doubt under above circumstances. P.W.54 – Shaikh Sharifmiya Bhikhumiya has deposed on oath the name of the present accused in the mob with Tin. He has identified the accused in the Court and in his statement dated 06.03.2002 from

where and how he has seen the accused there is contradiction. In his affidavit dated 06.11.2003 and statement dated 22.05.2008 not stated name of present accused. Thus from the evidence of this witness also it is not clear whether Ashvin Baldev Botham was in the mob or Ashvin Baldev Joita was in the mob. Both these accused are the residents of Village Sardarpur. Witness has not made it clear specifically therefore, on the strength of the evidence of this witness we cannot conclude the involvement of any of these two accused. P.W.55 – Shaikh Aashiqhusen Bachumiya has deposed the name of this accused in the incident dated 01.03.2002 with Tin. He has not identified the accused in the Court. He has identified Gordhan Reva as Ashvin Baldev. In his statement dated 19.05.2008 before S.I.T. he has stated that, he has not given the name of this accused in statement dated 02.03.2002. He has not stated the name of present accused in his affidavit dated 06.11.2003 while in his statement dated 02.03.2002 there is contradiction from where and how he has seen the accused. Considering the above evidence in the circumstances when the witness is unable to identify any of both these accused, involvement of any of these accused cannot be considered. P.W. 69 –

Shaikh Mahemudmiya Husenmiya has deposed on oath about the involvement of this accused in respect of incident dated 01.03.2002 with Kerosene Tin. He has identified the accused in the Court. He took 20 minutes for identifying the accused. He has identified 5 accused in the Court. Court had verified from the witness whether, he could see the persons present in the Court and after due satisfaction identification was performed. No doubt witness is handicapped but in the Court it was properly arranged so that, the witness can see the person sitting in the Court. He has not stated the name of the present accused in his statement dated 06.03.2002 and has stated that, his statement dated 22.05.2008 was not recorded. Thus from the evidence of this witness also it is not clear which of these two accused or both were present in the mob. P.W.73 – Faridabibi Aashikhusen Shaikh has not stated the name of this accused in her statement dated 02.03.2002 and 11.06.2008 and has not named in her deposition but she has identified the accused in the Court for the first time by face only. In her statement dated 02.03.2002 she has stated that, she has identified the accused by voice. There is contradiction from where and how she has seen the accused and has not stated the name of present accused in

his statement dated 11.06.2008. Thus, from this evidence also it is not clear which of these two or both accused was involved in the incident. Thus, from the above evidence there are two possibilities about the involvement of either of the accused or innocence of the accused in that circumstances benefit goes in favour of both the accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused are the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witnesses. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show their involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate

to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, their involvement in the offence is established in the absence of anybody pointing out towards them in the Court as a person who were in the mob requires acquittal.

124. **Accused No.7 – PATEL DAHYABHAI VANABHAI**
(Sessions Case No.120/2008)

P.W.47 – Shaikh Ibrahimbhai Rasulbhai has deposed in respect of incident dated 01.03.2002 and has named the present accused. He has not identified the accused in the Court though sufficient time was given to him and it was verified whether he is able to see all the persons sitting in the Court room or not. He has not named the present accused in his complaint as well as has not named in his statement dated 10.03.2002, 01.06.2002, application dated 01.06.2002, affidavit dated 06.11.2003 and statement before S.I.T. dated 11.06.2008 and in the application and statement before S.I.T. dated 09.05.2008. P.W.73 – Faridabibi Aashikhusen Shaikh has not stated the name of this accused in her statement dated 02.03.2002 and 11.06.2008 and has not named in her deposition but she

has identified the accused in the Court for the first time by face only. P.W. 78 – Shaikh Basirabibi Bachumiya has deposed the name of the present accused in the mob. She has identified the accused in the Court. She took 12 minutes for identification of the accused. She has stated that, about the involvement of the accused in the incident and has identified 8 accused. before identification, it was verified by the Court whether the witness can see the persons sitting in the court and after due satisfaction identification was carried out in the Court. As per her deposition when she went to the Shop of Dahyabhai Vanabhai to purchase gram floor, she was told by Dahyabhai Vanabhai "to-day you eat Bhajiya, tomorrow will be the last day for you people". This fact is not stated in her statement dated 17.04.2002 and 11.06.2008. She has further deposed the presence of the present accused in the mob in the night incident and she has identified the present accused but she has not named the present accused in respect of night incident in her statement dated 17.04.2002 and 11.06.2008 however, there is contradiction in her statement dated 22.05.2008 in respect of from where and how she has seen the accused. P.W.80 – Shaikh Ruksanabanu Ibrahimmiya has not named present accused

but identified the accused first time in the court by face only. She took 7 minutes time for identifying the accused in the Court. In her statement dated 10.03.2002 she has named other accused stating that, she saw them but she has not stated that, she can identify them by face. She has not stated the name of the accused in her statement dated 22.05.2005. Considering the above evidence complainant though identifying the accused in the Court but not named in the Complaint nor in any of the statements. P.W.73 identifying the accused by face but in none of her statement involvement of this accused is shown while P.W.78 is telling the involvement of this accused in respect of incident of Gram Floor Bhajiya and she has stated the presence of this accused in the mob in the night incident. Further, present accused is well known by this witness as she went to his shop in the evening and some conversation took place between them. In that circumstances if she is identifying the accused in the mob and stating this fact in her statement dated 22.05.2008 and identifying him in Court is sufficient to support the say of the prosecution case that, present accused was present in the mob. She was very much present in Shaikh Maholla. Her presence in Shaikh Maholla as discussed earlier cannot be doubted. P.W.80

though not naming in any of her statement but identifying the accused by face. Evidence of P.W.78 is supported by the evidence of P.W.47 and P.W.80 about the presence of this accused in the mob. Thus, there is sufficient evidence for believing the presence of this accused in the night incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and that he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not

arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section 313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false

implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

125. **Accused No.8 – PATEL JOITABHAI RAMABHAI**
(Sessions Case No.120/2008)

P.W.47 – Ibrahimmiya Rasulmiya Shaikh, who is the complainant has deposed in his deposition that, when the mob had burned the houses in Shaikh Maholla at that time he saw the accused in the mob. In his deposition he has identified the accused in the Court. But in the complaint, he has not mentioned the name of the accused. He has also not mentioned the name of present accused in his statement dated 10.03.2002, 01.06.2002 and application dated 01.06.2002 and affidavit dated 06.11.2003 and in the Statement dated 11.06.2008 before the S.I.T. His name is also not mentioned in the application and statement dated 09.05.2008 before S.I.T. P.W.51 – Shaikh Nazirmohammad Akbarmiya has deposed about the presence of this accused in the mob in the incident dated 01.03.2002 and has deposed that, the present accused was in the mob. He has identified the accused in the Court. P.W.58 – Shaikh

Sabirhusen Imamsha has stated the name of the present accused in respect of incident dated 01.03.2002. He has stated that, accused is not present in the Court in fact accused was very much present in the Court at the relevant point of time. He has not stated the name of the present accused in the statement dated 03.03.2002 and 22.05.2008. P.W.62 – Shaikh Rafikmiya Mahmadsen has deposed the name of this accused in his deposition in respect of incident dated 01.03.2002. He has deposed that, this witness was very much present in the mob with Tin. He has not identified the accused in the Court. He took 15 minutes time for identification of accused and during 15 minutes he identified 9 accused including the present accused. After due verification by the Court that, he can see all the persons sitting in the Court. As the height of this witness is 5'3" he could see all the persons sitting in the court and it was managed in the Court that, the witness could see the persons therefore, there was no necessity to permit the witness to step down from the witness box and to identify the accused from very near. He has not stated the name of this accused in his statement dated 10.03.2002 and 10.05.2008. Considering above evidence, P.W.47 has not stated the name of present accused in any

of his statement nor in complaint but identifying. P.W. 51 is also identifying the accused but not stating the name of present accused in the mob. P.W. 58 and P.W.62 are not identifying the accused. Simply naming the accused in the mob. Thus, considering above all there is no sufficient evidence to believe the involvement of present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the

evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

126. So far as explanation given by the accused No.1, 2, 3, 4, 5, 6 and 8 of Sessions Case No.120/2008 in respect of Further Statement recorded under Section 313 of Cr.P.C. is concerned there is no necessity for considering the explanation as the involvement of these accused are not proved by the prosecution. So far as explanation given by accused No.7 of Sessions Case No.120/2008 is concerned, he has stated that, he is having his shop just in front of Shaikh Maholla, therefore, they know him very well hence, after 6 years, he has falsely been involved in the incident. It is not satisfactorily satisfied by the accused by producing or adducing any evidence of the level of preponderance of probabilities hence not accepted.

127. **Accused No.1 – PATEL KANTIBHAI PRABHUDAS**
(Sessions Case No.7/2009)

Abated as accused died during the pendency of trial.

128. **Accused No.2 – PATEL LAXMAN DHULABHAI**
(Sessions Case No.7/2009)

P.W.57 – Shaikh Mustufamiya Rasulmiya has named the accused in his deposition in respect of incident dated 01.03.2002 and has identified the accused in the Court. He took 15 minutes time for identification. He has not stated the name of the accused in the statement dated 10.03.2002. In the statement dated 19.05.2008 and 05.08.2008 there is contradiction in the statements from where and how has seen the accused and that is already discussed in earlier part of the judgement at the time of appreciating the evidence. In his affidavit dated 06.11.2003 he has stated that, accused was present in the mob. Except this witness there is no other evidence supporting the say of present witness. Further, in his first statement this witness is silent about the presence of this accused and in other statements there is contradiction about from where he has seen the accused and in that circumstances it is rather risky to accept the involvement of the present accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the

presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

129. **Accused No.3 – PATEL MAHESH JIVANBHAI**
(Sessions Case No.7/2009)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W. 59 – Shaikh Mohmad Sattar Bachumiya has stated the name of the present accused in respect of incident dated 01.03.2002 about cabin fire incident at 09.30 PM and main incident about 11.30 to 12.00 P.M. It is deposed by the witness that, accused was present in the mob with stone. He has identified the accused in the Court. He took 15 minutes time for identifying the accused in the Court. He has identified about 20 accused in the Court. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. This witness has not stated the name of the present accused in his statement dated 02.03.2002, affidavit dated 06.11.2003. In his statement before S.I.T. dated 19.05.2008 he has stated that, in his statement dated 02.03.2002

Police has written the name of the present accused. P.W.60 – Shaikh Bachumiya Imammiya has stated the name of the present accused in his deposition in respect of incident dated 01.03.2002. He has deposed about the incident dated 28.02.2002 in respect of closing cabins incident and also named in respect of incident dated 01.03.2002 in night. This witness has not stated the incident of closing of cabins in his statement dated 02.03.2002 and also not stated the late night incident dated 01.03.2002. He has not identified the present accused. He took 12 minutes for identification of accused. During 12 minutes he has identified about 21 accused. P.W.65 – Shaikh Akbarmiya Nathumiya has not named the accused in his deposition but identified the accused in the mob and has identified Ramanbhai Jivanbhai as Mahesh Jivan. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 stating therein that, the accused was present in the mob. He has not identified the present accused in the Court. 12 minutes time has been taken by him for identification of the accused. before identification, it was verified by the Court whether this witness is able to see the persons sitting in the Court. Height of the witness is 5'2". He has not stated the name of

present accused in the statement dated 10.03.2002, application dated 09.05.2008 and statement dated 10.05.2008. Considering above evidence, P.W.46 is not naming the accused in any of his statement but taking name in the court and identifying the accused. P.W.59 not naming the present accused in any of his statement but identifying the accused in the Court and deposing the presence of accused with stone while P.W.60, P.W.65 and P.W.68 though naming the accused in the mob not identifying. Thus, simply on identification by P.W.59 and 46 we cannot conclude the involvement of present accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by

the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

130. **Accused No.4 – PATEL MATHURDAS DHWARKADAS**
(DAVABHAI) (DOCTOR)
(Sessions Case No.7/2009)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

131. **Accused No.5 – PRAJAPATI PRAHADBHAI VARVABHAI**
(Sessions Case No.7/2009)

P.W.52 – Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. He has deposed that present accused was instigating the mob. He has identified Mathur Trikam as Prahlad Varva. He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused persons. He has not stated the name of present accused in his statement dated 10.03.2002, 11.06.2008 and 05.08.2008 and affidavit dated 06.11.2003. P.W.82 – Fakir Sabirabibi Sabirhusen has named present accused in her deposition in respect of incident dated 01.03.2002. She has not identified present accused before the Court though sufficient opportunities were given to her. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She is having height about 5'. She has not stated the name of present accused in her statement dated 03.03.2002 and 22.05.2008. P.W.83 – Fakir Sharifabanu Sabirhusen has named the present accused in her deposition in respect of incident dated 01.03.2002 but has not identified the

accused in the Court though sufficient opportunities were given to her. before identification, it was verified and satisfied whether the witness could see the persons sitting in the Court room. She has not stated the name of present accused in her statements dated 03.03.2002 and 24.06.2008. But there is contradiction from how and where she has seen the accused in the statement dated 24.06.2008. Considering the above evidence, P.W.52 has deposed the name of this accused in instigation of the mob. P.W.82 and P.W.83 have also named the present accused in the mob but none of the witness have identified the present accused. Therefore, we cannot conclude the involvement of present accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the

accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

132. **Accused No.6 – PATEL JAGABHAI JIVANBHAI**
(Sessions Case No.7/2009)

P.W.50 – Shaikh Zakirhusen Kadarmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his say this accused was instigating the mob. He has not identified the accused in the Court. He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused persons. He has not stated the name of present accused in

his statement dated 06.03.2002 and there is contradiction in his statement dated 11.06.2008 from where and how he has seen the accused. P.W.52 - Shaikh Hizbulmiya Husenmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. And as per his deposition present accused was present in the mob with Acid Bottle. He has identified Jaga Jivan as Dahya Varva, He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused persons. He has not stated the name of present accused in his statement dated 10.03.2002. Considering the evidence of above witnesses, no witness has identified the present accused. Considering the above evidence, P.W.50 and P.W.52 though involving the present accused in the instigation the mob and having Acid Bottle with him but none of both have identified the accused in the Court. Thus, simply on naming the accused in the Court, we cannot come to the conclusion about the involvement of present accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the

prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

133.

Accused No.7 – PATEL UPENDRA MANILAL
(Sessions Case No.7/2009)

P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed

the name of this accused in the incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of this accused in his statement dated 06.03.2002. P.W.50 – Shaikh Zakirhusen Kadarmiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his say this accused was instigating the mob. He has not identified the accused in the Court. He took 15 minutes time for identification of accused. During 15 minutes he has identified 5 accused persons. He has not stated the name of present accused in his statement dated 06.03.2002 and there is contradiction in his statement dated 11.06.2008 from where and how he has seen the accused. Considering the above evidence, P.W.48 and P.W.50 have taken the name of present accused in their respective deposition. P.W.50 is not identifying the accused while P.W.48 has identified the accused in the Court but has not stated the name of this accused in any of his statement. Therefore, simply on identification before the Court we cannot conclude the involvement of present accused. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob.

Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

134. **Accused No.8 – PATEL SANJAY AMBALAL**
(Sessions Case No.7/2009)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident

dated 01.03.2002 as well as in respect of incident dated 28.02.2002. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has deposed the name of this accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. He has not stated the name of this accused in his statement dated 06.03.2002. Considering the above evidence, P.W.46 and P.W.48 both have identified the accused in the Court and have deposed about the involvement of accused in the mob in respect of incident dated 01.03.2002 but in none of their statements they have stated the name of present accused. Thus, it is rather risky to accept the involvement of present accused in the incident simply on identification before the Court. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

135.

Accused No.9 – PATEL KALABHAI BHIKHABHAI

(Sessions Case No.7/2009)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002. This witness has identified the accused in the

Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.48 – Shaikh Sabirhusen Kadarmiya has not named this accused in respect of incident dated 01.03.2002. He has identified the accused in the Court. There is contradiction in respect of statement dated 06.03.2002 from where and how he has seen the accused. P.W.55 – Shaikh Aashiqhusen Bachumiya has named the present accused in his deposition in respect of incident dated 01.03.2002. As per his deposition the present accused was throwing Stone in the mob. He has identified the accused in the Court. He took 15 minutes for identification. He has not stated the name of present accused in the statement dated 02.03.2002, affidavit 06.11.2003 and statement before S.I.T. dated 19.05.2008. P.W.62 – Shaikh Rafikmiya Mahmadhusen has named this accused in his deposition in respect of incident dated 01.03.2002 and has identified the accused in the Court. He took 15 minutes time for identifying the accused. He has not stated the name of the present accused in his statement dated 10.03.2002 and 10.05.2008. Identification was carried out after due satisfaction that witness could see the persons sitting in

the Court and in 15 minutes, he has identified 9 accused. He has not stated the name of present accused in the statement dated 10.03.2002 and 10.05.2008. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 that, this accused was present in the mob. This witness has identified the present accused in the Court. He took 12 minutes time for identification and he has identified 19 accused in 12 minutes. His height is about 5”2” and it was verified whether he could see the persons sitting in the Court and after due satisfaction identification was carried out. This witness has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated 10.05.2008. P.W.71 – Rawal Mangabhai Ramabhai has stated the name of the present accused in respect of incident dated 01.03.2002. He has not identified the accused in the Court. He took 7 minutes time for identification of the accused in the Court and in 7 minutes he has identified four accused. This witness is having 5' Height and it was satisfied by the Court and he could see the persons sitting in the Court. He has not stated the name of present accused in the statement dated 20.05.2008. This witness is regarding the collection

of Kerosene from Tractor on 01.03.2002 at 09.00 PM. He is not the eye witness of the incident of Shaikh Maholla. Considering the above evidence P.W.46, P.W.48, P.W.55, P.W.62 and P.W.68 have identified the accused in the Court as well as named the accused in respect of his involvement in the incident. Further, P.W.48, P.W.68 have stated the name of present accused in their statement dated 06.03.2002 and application dated 09.05.2008 respectively, which supports the presence of this accused in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is satisfactorily proved by the Prosecution and he was in the mob. Thus, it is proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witnesses are also resident of Village Sardarpur. They are known to each other since previously hence evidence of witnesses can safely be accepted as regards to the involvement of this accused and evidence of witnesses as discussed earlier having seen the accused in the mob cannot be doubted at all. Once it is established

and accepted that, witness and accused are resident of same locality, well known to each other, only question requires about falsely implication of the accused. The question of making any mistake in that regard does not arise. It does not possible to hold false implication of accused. Here, in the present case entering in Shaikh Maholla at the time of incident itself suggest the common object of the mob as well as specific role attributed to the accused. There was no reason to enter in Shaikh Maholla at that time. Therefore by becoming a member of unlawful assembly accused entered in Shaikh Maholla and incident of burning of cabins, houses in Shaikh Maholla as well as incident in Mahemudmiya's house occurred. Further there was incident of pelting of stones also occurred. This fact itself suggest overt act in connection with common object of the mob. Meaning thereby accused had participated in furtherance of common object of the mob. Therefore involvement of accused is well established from the above circumstances. But no weapon is connected with the offence in the evidence of witnesses. But much importance cannot be given to this aspect as the evidence of identification of accused is established. Therefore, the basic defence of the accused in his examination under Section

313 of Cr.P.C. that he has falsely been implicated and he is innocent and that he was not present at the time of incident is not acceptable. Simply witnesses and accused know each other is not sufficient to accept the false implication on this ground. There is no previous enmity between them. There is no reason to falsely implicate the accused. No one would falsely involve an innocent person, keeping aside the real culprit. Therefore, the defence of the accused is not acceptable.

136.

Accused No.10 – PATEL GOVINDBHAI MOHANBHAI

(Sessions Case No.7/2009)

P.W.46 – Pathan Sabirmiya Akumiya has deposed on oath the name of present accused in respect of incident dated 01.03.2002 as well as in respect of incident dated 28.02.2002. This witness has identified the accused in the Court. In his application dated 06.05.2008 he has stated the name of the present accused but has not stated the name in his statement dated 20.05.2008. P.W.62 – Shaikh Rafikmiya Mahmadsusen has named this accused in his deposition in respect of incident dated 01.03.2002 and has identified the accused in the Court. He took 15 minutes time for identifying the accused. He has not stated the

name of the present accused in his statement dated 10.03.2002 and 10.05.2008. Identification was carried out after due satisfaction that witness could see the persons sitting in the Court and in 15 minutes he has identified 9 accused. P.W.68 – Shaikh Gulamali Akbarmiya has deposed the name of the present accused in respect of incident dated 01.03.2002 that, this accused was present in the mob. This witness has identified the present accused in the Court. He took 12 minutes time for identification and he has identified 19 accused in 12 minutes. His height is about 5”2” and it was verified whether he could see the persons sitting in the Court and after due satisfaction identification was carried out. This witness has not stated the name of present accused in his statement dated 10.03.2002, application dated 09.05.2008 and statement dated 10.05.2008. P.W.80 - Shaikh Ruksanabanu Ibrahimmiya has not named present accused but identified the accused first time in the court by face only. She took 7 minutes time for identifying the accused in the Court. In her statement dated 10.03.2002 she has named other accused stating that, she saw them but she has not stated that, she can identify them by face. She has not stated the name of the accused in her statement dated 22.05.2005.

Considering the above evidence, P.W.46, P.W.62, P.W.68 stating about the involvement of present accused in the mob and have identified the accused but none of the witness have stated in their statements about the presence of this accused and therefore, simply by naming and identifying the accused, it cannot be concluded that the accused was involved in the mob. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the

evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

137. **Accused No.11 – PATEL BABUBHAI GOKALDAS**
(Sessions Case No.7/2009)

P.W.49 – Shaikh Iqbalmiya Rasulmiya has deposed on oath naming the present accused in the mob instigating the mob. He has identified the present accused. He has not stated the name of present accused in the statement dated 10.03.2002 and statement before S.I.T. dated 11.06.2008. Considering the above evidence, only P.W.49 is identifying and deposing about the accused in his deposition but has not stated the name of present accused in any of his statement. There is no other evidence to support the say of present witness about the involvement of present accused in the incident. Thus, considering the appreciation of evidence as discussed while discussing the evidence of witnesses the presence of this accused in the mob is not

satisfactorily proved by the Prosecution and that he was not in the mob. Thus, it is not proved by the prosecution beyond reasonable doubt that, present accused was the member of unlawful assembly.

It is not in dispute that, the accused is the resident of Village Sardarpur and witness is also resident of Village Sardarpur. No specific role has been attributed to the accused by any witness. Further accused not identified by the witness. Therefore, the facts remains that, it is not safe to hold accused guilty on the basis of general allegations. There is no other material on record against the present accused to show his involvement in the alleged offence. It would be hazardous to base a conviction only on the evidence of general allegations. It would be appropriate to give benefit of doubt and acquit the accused. In my opinion though their exist strong suspicion against the accused it is not possible to hold that, his involvement in the offence is established in the absence of anybody pointing out towards him in the Court as a person who was in the mob requires acquittal.

138.

Accused No.12 – PATEL RAMESHBHAI TRIBHOVANDAS
(Sessions Case No.7/2009)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

139. So far as explanation given by the accused No.2, 3, 4, 5, 6, 7, 8 and 10 of Sessions Case No.7/2009 in respect of Further Statement recorded under Section 313 of Cr.P.C. is concerned there is no necessity for considering the explanation as the involvement of these accused are not proved by the prosecution. So far as explanation given by accused No.9 of Sessions Case No.7/2009 has stated that, his house is just adjacent to Shaikh Maholla therefore, the witnesses know him well hence he has falsely been added as an accused after 7 years. His father is also taken as accused from the very beginning. He is very eminent person of the village and connected with different societies and being son of Ambalal Maganbhai, he has falsely been implicated as an accused after 7 years. It is not

satisfactorily satisfied by the accused by producing or adducing any evidence of the level of preponderance of probabilities hence not accepted.

140. **Accused – PATEL ARVINDBHAI KASHIRAM**
(Sessions Case No.72/2010)

So far as involvement of this accused in the incident is concerned, none of the witness has deposed about the involvement of this accused in the incident. No role has been attributed by any witness to this accused. Nor this accused is identified by any witness. Thus, prosecution failed to establish that, this accused was involved in the incident as alleged by the prosecution.

141. In order to ascertain what offences have been committed by the accused who are found to have been the members of an unlawful assembly at the time when the offences were committed, the accused would be guilty in respect of those offences by virtue of the provisions of Section 149 of I.P.C. Here those accused who are held guilty had formed an unlawful assembly for causing hurt, grievous hurt, burning and thereby causing damage to the properties of Muslim of Shaikh Maholla in Sardarpur during the night between 21.30 hours to 02.30 hours and thereby committed offence

falling under section 143 of I.P.C. Further, those accused have also committed an offence being a member of unlawful assembly of 1000 persons and in prosecution of the common object of such assembly, for overt act. Further accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009 have committed offences by having deadly weapons like sword, iron pipes, dharia, stones with them and in furtherance of common object of such assembly for overt act committed the offence of rioting punishable under Section 144 and 148 of I.P.C. and they have also committed offence in furtherance of the common object of such assembly for overt act of burning alive and murdering by intentionally causing death of Ziadabanu Ibrahimmiya Shaikh (by mistake Ziadabanu was identified as Ruksanabanu and therefore, it is subsequently rectified), Sayarabanu Abbasmiya Shaikh, Yunushusen Sherumiya Shaikh, Arifhusen Manubhai Shaikh, Sultan Maheubmiya Shaikh, Javedmiya Mustumiya Shaikh, Rasidabanu Jamalmiya Shaikh, Idrishbhai Akbarmiya Shaikh, Mehmudabibi Sherumiya Shaikh, Vahidabanu

Nazirbhai Shaikh, Banubibi Babumiya Shaikh, Faridabanu Maheubmiya Shaikh, Mumtazbanu Makbulhusen Shaikh, Mumtazbanu Sherumiya Shaikh, Parvinabanu Ibrahimbhai Shaikh, Saminabanu Muftumiya Shaikh, Sakkarbanu Mahemubmiya Shaikh, Husenabibi Hibzulmiya Shaikh, Abbasmiya Kesarmiya Shaikh, Raziabanu Ibrahimmiya Shaikh, Bismillabanu Bhikumiya Shaikh, Ruksanabanu Abbasmiya Shaikh, Zohrabanu Manubhai Shaikh, Manubhai Husenbhai Shaikh, Rifakathusen Hizbulmiya Shaikh, Irfanhusen Mahemudmiya Shaikh, Bachumiya Nathumiya Shaikh, Sherumiya Rasulmiya Shaikh, Asiyanabanu Ashikhusen Bachumiya Shaikh, Firoz Makbulhusen Shaikh, Rafik Manubhai Shaikh, Abedabanu Manubhai Shaikh, Suhanabanu Safikmiya Shaikh and thereby committed offence under Section 302 read with Section 149 of I.P.C. Further, they did an act of burning alive, assaulting Muslim men, women and children with an intention to cause death of those persons if Suhanabanu Ayubbhai, Basirbhai and Ilyasbhai died due to injuries. The said act of accused would have been guilty of murder under Section 302 of I.P.C. as they received immediate medical treatment they were survived. Thus, by causing such offence the accused have committed offence

punishable under Section 307 read with Section 149 of I.P.C. Further, the accused who are held liable for the offences by forming an unlawful assembly of 1000 persons and in furtherance of the common object of such assembly voluntarily caused hurt and grievous hurt to Faridabanu Ashiqhusen Shaikh, Imtiyaz Mahmadsen Shaikh, Bhikhumiya Kalumiya Shaikh, Shayanabanu Ayubmiya, Aminabanu Achhumiya, Mustufamiya Rasulmiya, Hizbulmiya Husenmiya, Iqbalmiya Rasulmiya, Akbarmiya Rasulmiya, Nazirmahmad Akbarmiya, Gulamali Akbarmiya, Ruksanabanu Ibrahimmiya, Maqbulmiya Kesarmiya, Rafikmiya Mahmadsen, Hamidabibi Akbarmiya, Basirabibi Bachumiya, Khatijabibi Dosmahmad Shaikh, Shayanabanu Aashiqhusen, Saidabibi Hizbulmiya Shaikh and thereby committed the offence punishable under section 323, 324 and 325 read with Section 149 of the Indian Penal Code. While offences as alleged by the prosecution in respect of dacoity with deadly weapons, pelting stones, causing hurt and grievous hurt to the complainant as well as Faridabanu Ashiqhusen Shaikh, Imtiyaz Mahmadsen Shaikh, Bhikhumiya Kalumiya Shaikh, Shayanabanu Ayubmiya, Aminabanu Achhumiya, Mustufamiya Rasulmiya, Hizbulmiya Husenmiya, Iqbalmiya

Rasulmiya, Akbarmiya Rasulmiya, Nazirmahmad
Akbarmiya, Gulamali Akbarmiya, Ruksanabanu
Ibrahimmiya, Maqbulmiya Kesarmiya, Rafikmiya
Mahmadhusen, Hamidabibi Akbarmiya, Basirabibi
Bachumiya, Khatijabii Dosmahmad Shaikh, Shayanabanu
Aashiqhusen, Saidabibi Hizbulmiya Shaikh and thereby
committed offence punishable under Section 395, 397 of
I.P.C. are not proved by the prosecution by producing
cogent and reliable evidence though it is alleged that, a
dacoity of ornaments worth of Rs.60,000/- to Rs.70,000/-
was caused from the house of Bachumiya Imammiya but
considering whole evidence there is no evidence to prove
beyond reasonable doubt the offence of committing dacoity.
Thus, none of the accused can be held liable for dacoity or
robbery along with deadly weapons and pelting stones
causing hurt and grievous hurt under section 395, 397,
396 of I.P.C. So far as offence falling under section 435, 436
read with Section 149 of I.P.C. as alleged is concerned, it is
evident from the evidence of prosecution side that, persons
from the mob of unlawful assembly had committed mischief
by fire intending thereby to cause the damage to the
property of Muslims to the amount of Rs.85,87,500/- along
with the destruction of 19 houses, 3 shops, 5 pavements, 1

hut, 1 Jeep, 1 Scooter and thereby have committed offence falling under Section 435, 436 read with Section 149 of I.P.C. and for that they are liable. Further, it is also proved by the prosecution that, the accused who are held liable have committed trespass by entering into religious place of Muslims as well as grave yard of Muslims with an intent to commit an offence or to intimidate insults or annoy the possession of Muslim people property and thereby have committed offence punishable under section 447, 448 read with Section 149 of I.P.C. Further, they have committed offence by forming an unlawful assembly of 1000 persons and thereby cause hurt, grievous hurt to the complainant and witnesses so as to endanger human life and thereby committed offence punishable under section 336, 337 of I.P.C. Further, the accused who are held involved in the mob have committed offence by insulting the religion of Muslims as well as by insulting the feelings of Muslims by uttering "sala bandiyao ne maro" and by using those words with deliberate and malicious intention to outrage the religious feelings of Muslim community and thereby have committed offence punishable under Section 295-A of I.P.C. Further, those accused have also committed offence by prompting the feeling of enmity between Muslims and

Hindu and thereby committed offence falling under Section 153-A of I.P.C. Further, those accused have also committed offence by entering into the graveyard of Muslim community with an intent to hurt the feelings of Muslims or insulting the religion of Muslims and thereby committed trespass in place of set a part for the performance of funeral rights or as a depository for the remains of the dead and thereby committed offence punishable under Section 297 of I.P.C. While prosecution has failed to establish the charges against accused falling under Section 120-B of I.P.C. Further, the accused who were armed with deadly weapons have committed breach of notification issued by District Magistrate and thereby committed offence punishable under Section 135 of the Bombay Police Act. As a result of aforesaid discussion it is clear that, the accused whose presence in the unlawful assembly is proved, are liable for the offence committed by the members of the unlawful assembly. So far as charges in respect of damages to the Muslims properties is concerned, much damages have been caused to the properties of Muslims by burning the houses in Shaikh Maholla as well as by burning the cabins of Muslims at the entrance of Shakih Maholla. Burning of houses and cabins is proved from the panchnama, map as

well as from the evidence of witnesses, police witnesses etc. and for that, the accused who are member of unlawful assembly and have taken part in the offence are liable for the said offences. However, for alternate charges such as 302, 307, 323, 324, 325, 435, 436, 447, 448, 336, 337 none of the accused is liable independently and therefore, I answer accordingly.

Considering above all I answer **Point Nos.2, 3, 5, 6, 8, 9, 11, 12, 13, 14, 15** in the affirmative for Accused Nos.1, 2, 5, 6, 11, 14, 16, 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 54 of Sessions Case No.275/2002, Accused No.7 of Sessions Case No.120/2008, Accused No.9 of Sessions Case No.7/2009. For accused Nos.3, 7, 13, 15, 23, 24, 30, 45, 55 of Sessions Case No.275/2002, Accused Nos.4 and 12 of Sessions Case No.7/2009 and Accused of Sessions Case No.72/2010 there is no evidence adduced or produced against them therefore, they are to be set at liberty while Accused Nos.4, 8, 12, 17, 20, 21, 22, 25, 26, 29, 36, 39, 47, 51, 53 of Sessions Case No.275/2002, Accused Nos.1 to 6 and 8 of Sessions Case No.120/2008, and Accused No.2, 3, 5, 6, 7, 8, 10, 11 of Sessions Case No.7/2009 are required to be given benefit of

doubt as prosecution could not establish their case against above accused beyond reasonable doubt and therefore, **Point Nos.2 to 16** are decided in the negative against said accused persons. I answer **Point No.7** as independently in the negative while I answer **Point Nos.4 and 17** in the affirmative for accused Nos.28, 32, 33, 34, 44, 52 of Sessions Case No.275/2002 and in the negative for other accused. I answer **Point No.10 and 16** in the negative.

POINT NO.18 & 19 :

142. In view of above discussion and decision, I pass following final order :-

-:: FINAL ORDER :-



charges of offences punishable under Section 143, 147, 144, 148, 302 read with Section 149 in alternate Section 302, 307 read with Section 149, in alternate Section 307, 323, 324, 325 read with Section 149, in alternate Section 323, 324, 325, 395, 397, 396, 435, 436 read with Section 149, in alternate 435, 436, 447, 448 read with Section 149 in alternate 447, 448,

336, 337 read with Section 149 in alternate 336, 337, 295-A, 153-A, 297, 120-B of I.P.C. and Section 135 of Bombay Police Act :-

| Sr. No. | Name of Accused | Age | Address |
|----------------------------------|---|-----|-----------|
| SESSIONS CASE NO.275/2002 | | | |
| 3 | Patel Karshanbhai Tribhovanbhai | 56 | Sardarpur |
| 7 | Prajapati Babubhai Lavjibhai | 35 | Sardarpur |
| 13 | Prajapati Bharatbhai Rameshbhai | 18 | Sardarpur |
| 15 | Patel Jayantibhai Baldevbhai | 30 | Sardarpur |
| 23 | Patel Vishnubhai Gopalbhai | 37 | Sardarpur |
| 24 | Patel Kanubhai Karshanbhai | 22 | Sardarpur |
| 45 | Patel Kalabhai alias Kanaiyalal Nathabhai | 30 | Sardarpur |
| 55 | Patel Ashvinbhai Baldevbhai Joitabhai | 30 | Sardarpur |
| SESSIONS CASE NO.7/2009 | | | |
| 4 | Patel Mathurdas Dhwarkadas (Davabhai) (Doctor) | 63 | Sardarpur |
| 12 | Patel Rameshbhai Tribhovandas | 42 | Sardarpur |
| SESSIONS CASE NO.72/2010 | | | |
| 1 | Patel Arvind Kashiram | 33 | Sardarpur |

2. The following accused are **acquitted by giving benefit of doubt** for the charges of offences punishable under Section 143, 147, 144, 148, 302 read with Section 149 in alternate Section 302, 307

read with Section 149, in alternate Section 307, 323, 324, 325 read with Section 149, in alternate Section 323, 324, 325, 395, 397, 396, 435, 436 read with Section 149, in alternate 435, 436, 447, 448 read with Section 149 in alternate 447, 448, 336, 337 read with Section 149 in alternate 336, 337, 295-A, 153-A, 297, 120-B of I.P.C. and Section 135 of Bombay Police Act :-

| Sr. No. | Name of Accused | Age | Address |
|----------------------------------|--|-----|-----------|
| SESSIONS CASE NO.275/2002 | | | |
| 4 | Lakhvara Narayanlal Shitalmal | 18 | Sardarpur |
| 8 | Prajapati Rajeshkumar Amrutbhai | 18 | Sardarpur |
| 9 | Patel Bhaveshkumar Kanubhai | 18 | Sardarpur |
| 12 | Patel Prahladbhai Somabhai | 32 | Sardarpur |
| 17 | Prajapati Gordhanbhai Revabhai | 36 | Sardarpur |
| 20 | Prajapati Ravikumar Amratbhai | 18 | Sardarpur |
| 21 | Patel Babubhai Kantibhai | 25 | Sardarpur |
| 22 | Patel Dineshkumar Baldevbhai | 22 | Sardarpur |
| 25 | Prajapati Dahyabhai Varvabhai | 35 | Sardarpur |
| 26 | Patel Raghubhai Revabhai | 51 | Sardarpur |
| 29 | Patel Chaturbhai Kanabhai Girdharbhai | 31 | Sardarpur |
| 36 | Patel Dashrathbhai Ambalal Dhwarkadas | 26 | Sardarpur |
| 39 | Patel Baldevbhai Ranchhodhbhai | 40 | Sardarpur |

| | | | |
|----------------------------------|---|----|-----------|
| | Dhwarkadas | | |
| 47 | Patel Jivanbhai Dhwarkadas | 42 | Sardarpur |
| 51 | Marvadi Aashutosh alias Pavankumar Murlidhar | 21 | Sardarpur |
| 53 | Patel Rameshbhai Baldevbhai | 37 | Sardarpur |
| SESSIONS CASE NO.120/2008 | | | |
| 1 | Patel Babubhai Vanabhai | 45 | Sardarpur |
| 2 | Patel Rameshbhai Kacharabhai | 35 | Sardarpur |
| 3 | Patel Babubhai Kanjibhai | 35 | Sardarpur |
| 4 | Patel Kanubhai Revabhai | 38 | Sardarpur |
| 5 | Patel Natvarbhai Kacharabhai | 50 | Sardarpur |
| 6 | Patel (Nagar) Ashvinbhai Baldevbhai | 48 | Sardarpur |
| 8 | Patel Joitaram Ramabhai | 48 | Sardarpur |
| SESSIONS CASE NO.7/2009 | | | |
| 2 | Patel Laxmanbhai Dhulabhai | 54 | Sardarpur |
| 3 | Patel Maheshbhai Jivanbhai | 33 | Sardarpur |
| 5 | Prajapati Prahladbhai Varvabhai | 49 | Sardarpur |
| 6 | Patel Jagabhai Jivanbhai | 42 | Sardarpur |
| 7 | Patel Upendra Manilal | 26 | Sardarpur |
| 8 | Patel Sanjay Ambalal | 28 | Sardarpur |
| 10 | Patel Govindbhai Mohanbhai | 51 | Sardarpur |
| 11 | Patel Babubhai Gokaldas | 47 | Sardarpur |

3. However, the above named accused persons who are acquitted, are hereby ordered to execute **PERSONAL BOND of Rs.25,000/-** (Rupees twenty five thousand only) with **ONE SOLVENT SURETY** of like amount,

by EACH ONE, to the satisfaction of this Court, till appeal period is over, with a condition that they shall not leave the Country without permission of this Court till the appeal period is over.

The acquitted accused Nos.1 to 6 and 8 of Sessions Case No.120/2008 who are in judicial custody be set at liberty forthwith, unless required to be detained in some other case.

4. The following accused are **acquitted** for the charges of offences punishable under Section 120-B, 395, 397, 396 of I.P.C. while they are **held guilty** for the charges of offences punishable under Section 143, 147, 144, 148, 302 read with Section 149, 307 read with Section 149, 323, 324, 325 read with Section 149, 435, 436 read with Section 149, Section 447, 448 read with Section 149, Section 336, 337 read with Section 149, 295-A, 153-A, 297 of I.P.C. and Section 135 of Bombay Police Act :-

| Sr. | Name of Accused | Age | Address |
|-----|-----------------|-----|---------|
|-----|-----------------|-----|---------|

| No. | | | |
|----------------------------------|--|----|-----------|
| SESSIONS CASE NO.275/2002 | | | |
| 1 | Patel Rameshbhai Kanjibhai | 23 | Sardarpur |
| 2 | Patel Chaturbhai alias Bhurio Vitthalbhai | 28 | Sardarpur |
| 5 | Patel Jayantibhai Mangalbhai | 21 | Sardarpur |
| 6 | Patel Amratbhai Somabhai | 25 | Sardarpur |
| 11 | Patel Jagabhai Davabhai | 55 | Sardarpur |
| 14 | Patel Kacharabhai Tribhovandas | 55 | Sardarpur |
| 16 | Patel Mangalbhai Mathurbhai | 65 | Sardarpur |
| 18 | Patel Bhikhabhai Joitabhai | 50 | Sardarpur |
| 27 | Patel Mathurbhai Ramabhai | 52 | Sardarpur |
| 28 | Patel Sureshbhai Ranchhodbhai | 22 | Sardarpur |
| 30 | Patel Tulsibhai Girdharbhai | 34 | Sardarpur |
| 31 | Patel Ramanbhai Jivanbhai Vanabhai | 29 | Sardarpur |
| 32 | Patel Rajeshbhai Karshanbhai | 22 | Sardarpur |
| 33 | Patel Rameshbhai Kantibhai | 24 | Sardarpur |
| 34 | Patel Madhabhai Vitthalbhai | 33 | Sardarpur |
| 35 | Patel Sureshkumar Baldevbhai | 20 | Sardarpur |
| 37 | Patel Vishnubhai Prahladbhai | 23 | Sardarpur |
| 38 | Patel Rajendrakumar alias Rajesh Punjabhai Tribhovandas | 28 | Sardarpur |
| 40 | Patel Prahladbhai Jagabhai | 23 | Sardarpur |
| 41 | Patel Rameshbhai Ramabhai | 35 | Sardarpur |
| 42 | Patel Parshottambhai alias Pashabhai Mohanbhai | 45 | Sardarpur |
| 43 | Patel Ashvinbhai Jagabhai | 21 | Sardarpur |
| 44 | Patel Ambalal Maganbhai Kapoor | 54 | Sardarpur |

| | | | |
|----------------------------------|--|----|-----------|
| 46 | Patel Rameshbhai Prabhabhai Gopalbhai | 36 | Sardarpur |
| 48 | Patel Jayantibhai Ambalal | 43 | Sardarpur |
| 49 | Patel Kanubhai Joitaram | 43 | Sardarpur |
| 50 | Prajapati Ramanbhai Ganeshbhai | 51 | Sardarpur |
| 52 | Patel Dahyabhai Kacharabhai | 36 | Sardarpur |
| 54 | Patel Mathurbhai Trikamdas | 46 | Sardarpur |
| SESSIONS CASE NO.120/2008 | | | |
| 7 | Patel Dahyabhai Vanabhai | 51 | Sardarpur |
| SESSIONS CASE NO.7/2009 | | | |
| 9 | Patel Kalabhai Bhikhabhai | 37 | Sardarpur |

They shall be heard on the point of punishment.

Pronounced in the open Court on this 9th Day of
November, 2011, at Mahesana.

Place : Mahesana.

[Kum. S.C.Srivastava]

Sessions Judge

Date : 09.11.2011.

Designated Court

Mahesana.

143. I have heard the arguments advanced by Shri S.C.Shah, learned Special Prosecutor, who is assisted by Additional Special Prosecutor Shri V.G.Patel, appearing on behalf of the Prosecution as well as I have also heard the learned

advocate Shri Y.B.Shaikh, appearing on behalf of the original complainant. I have also heard the arguments advanced by Shri H.M.Dhruv, Shri B.C.Barot, Shri A.M.Patel, appearing on behalf of the accused persons.

144. It is an admitted fact that, the prescribed punishment for the offences for which the convicted accused persons have been held guilty is either the death penalty or imprisonment for life. Since this is a case of mass murders, it was thought it fit, to give sufficient opportunity of hearing on the point of sentence.

145. This court has heard each accused in person. Most of the accused have said that, they are innocent and they have falsely been implicated in the offence. It is the say of most of the accused that, either they are very young persons or they are very old aged persons, that except them there is no earning person in their family, they have little children and considering all these things they have prayed for mercy.

146. I have heard learned advocate Shri D.M.Dhruv, appearing on behalf of the accused. Mr.Dhruv has argued that, Hon'ble court has convicted all the accused persons under

Section 302, read with Section 149 of the I.P.C. means the Court has not find any evidence against any of the accused for committing any particular act and therefore, instead of held guilty individually under Section 302, Hon'ble Court has held guilty the accused under Section 302, read with Section 149 and when the court has held that, all the accused persons are guilty for committing offences punishable under various provisions of I.P.C. being the member of Unlawful Assembly and therefore, this is not the case in which court has find that, any particular accused has committed any particular act and therefore, in such a situations court should have not to impose capital punishment and should be lineant and should have to impose minimum punishment. Mr.Dhruv has further argued that, this is not the rarest of rare case in which accused may be imposed capital punishment. It is further argued that, there is no case in our country in which when accused held guilty for the offence punishable under section 302 read with Section 149, capital punishment imposed. Mr.Dhruv has further argued that, all the accused are the villagers, they are farmers and most of accused persons are illiterate and therefore, they should be imposed minimum sentence.

147. I have also heard the arguments advanced by learned advocate Shri B.C.Barot, appearing on behalf of the accused. Shri Barot has argued that, when the accused held guilty for various offence punishable under the penal provisions of I.P.C. wherein minimum punishment is imprisonment for life and maximum punishment is capital punishment but while awarding the sentence Hon'ble Court has to consider the circumstances in which said incident took place and this is not the rarest of rare case in which capital punishment be imposed. In support of his say he has cited the case of **DWIJENDRA SHIRISHBHAI MANEK v. STATE OF GUJARAT, reported in 2006(1) G.L.R. 676,** wherein it is held by the Hon'ble Gujarat High Court has held that, while hearing the accused on the question of sentence, Judge must elicit information from accused and inflict a just punishment keeping in mind age, family background, antecedents etc. Shri Barot has cited another case of **STATE OF GUJARAT v. RAGHU @ RAGHAVBHAI VASHRAMBHAI & ORS., reported in 2003 CR. L.R. (GUJ.) 381,** wherein it is held by the Hon'ble High Court of Gujarat that, the provisions of Section 235(2) in Criminal Procedure Code has added a much - needed dimension in

the Indian Criminal jurisprudence. The object and design of such provision is to give a fresh opportunity to the convicted person, to bring the notice of the concerned Court such circumstances as may be help the Court in awarding appropriate sentence, having regard to the personal, financial, social and other circumstances of the case. It is further held by the Hon'ble High Court that, hearing on the question of quantum of punishment is not an empty formality. It is a statutory incumbency upon the Court to provide an opportunity of hearing to the accused on the question of sentence unless the Court proposes to release the accused on good conduct or after admonition as provided under Section 360 of the Cr.P.C. It is further held by the Hon'ble High Court that, the right to be heard on the question of sentence has a beneficial purpose, for a variety of facts and reasons to be heard on, the question and considerations of sentence bearing upon the sentencing process. The social compulsion, the pressure of poverty, the retroactive needs, instinct of the extra legal remedy due to a sense of being wrongs the lack of means to be educated and the difficult are of honest living, the parentage, the heredity, personal and social environments. Shri Barot has also referred the object of Criminal Jurisprudence for the

punishment. Lastly, Shri Barot has argued to impose minimum punishment to the accused who are held guilty by this Court.

148. On the other hand Spl. Public Prosecutor Shri S.C.Shah has argued that, all the accused were the members of unlawful assembly and being the members of unlawful assembly they have committed such a heinous act, in which 33 human lives have lost their lives. Shri Shah has argued that, all the victims were innocent, they were not in a position to protect themselves and therefore, they have taken shelter of one room, in which main incident had taken place and the present accused persons have by arming themselves with deadly weapons poured the inflammable liquid in the house and set on fire and in such a situation to prevent communal riots, taking place in our country, maximum punishment is required to be imposed. Shri Shah has further argued that, Hon'ble Court has held guilty all the 31 accused under Section 302, read with Section 149 and thus it is the rarest of rare case in which capital punishment may be imposed. In support of his say, Shri Shah has cited the case of **MAHESH AND ETC. v. STATE OF MADHYA PRADESH, reported in AIR 1987**

SUPREME COURT 1346, wherein it is held by the Hon'ble Supreme Court of India that, it will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. Shri Shah has also cited a case of **RANJEET SINGH AND ANOTHER v. STATE OF RAJASTHAN, reported in AIR 1998 SUPREME COURT 672**, wherein it is observed by the Hon'ble Supreme Court of India that, the manner in which the entire family was eliminated indicates that the offence was deliberate and diabolical. It was predetermined and cold blooded. It was absolutely devilish and dastardly. The innocent children were done to death with lethal weapons when they were fast asleep. The sentence of death awarded cannot, therefore, said to be inappropriate. Shri Shah has also cited a case of **C.MUNIAPPAN AND OTHER v. STATE OF TAMIL NADU, reported in (2010) 9 SUPREME COURT CASES 567**, wherein it is observed by the Hon'ble Supreme Court of India that, death sentence can be given in rarest of rarest case if the "collective conscience" of a community is so shocked that death penalty is the only alternative. The "rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society, when accused deliberately

indulges in a planned crime without any provocation and meticulously executes it, the death sentence may be the most appropriate punishment. Referring all the cited cases Shri Shah has requested the court to impose capital punishment considering the nature of crime and position of victims.

149. This Court has given its thoughtful consideration on the arguments advanced by both the sides and also considered the law laid down by the Hon'ble Supreme Court of India and Hon'ble High Court of Gujarat as well as by the Hon'ble High Court of Tamil Nadu. Though this indeed is one of the aspects of the matter, it cannot be ignored that the accused are being convicted by virtue of the provisions of section 149 of the Code. The exact role played by each accused in the entire incident is not specifically proved. Though there is no rule that the death sentence can not be awarded where the conviction of an offence punishable under Section 302 of the I.P.C., is recorded with the aid of Section 149 of the I.P.C. considering all the relevant aspects of the matter, I am of the opinion that the extreme penalty of death is not called for in this case.

150. It is established fact that, much damages was caused to the properties. Much destruction of the property was done. As such, I think it proper to impose appropriate sentences of fine also, in addition to the substantive sentences. It would also be appropriate to award compensation to be paid to the victims, keeping in mind the provisions of Section 357 of the Code.
151. Taking into consideration all the relevant aspects of the matter, in my opinion, the following sentences will meet the ends of justice. In the result, the following order is passed.

-:: ORDER :-

1. The accused persons named below are hereby sentences under Section 235(2) of the Criminal Procedure Code, to undergo the punishment, as mentioned hereunder, for the charges proved against them :-

| Sr. No. | Name of Accused | Age | Address |
|----------------------------------|--|-----|-----------|
| SESSIONS CASE NO.275/2002 | | | |
| 1 | Patel Rameshbhai Kanjibhai | 23 | Sardarpur |
| 2 | Patel Chaturbhai alias Bhurio Vitthalbhai | 28 | Sardarpur |

| | | | |
|----|--|----|-----------|
| 5 | Patel Jayantibhai Mangalbhai | 21 | Sardarpur |
| 6 | Patel Amratbhai Somabhai | 25 | Sardarpur |
| 11 | Patel Jagabhai Davabhai | 55 | Sardarpur |
| 14 | Patel Kacharabhai Tribhovandas | 55 | Sardarpur |
| 16 | Patel Mangalbhai Mathurbhai | 65 | Sardarpur |
| 18 | Patel Bhikhabhai Joitabhai | 50 | Sardarpur |
| 27 | Patel Mathurbhai Ramabhai | 52 | Sardarpur |
| 28 | Patel Sureshbhai Ranchhodbhai | 22 | Sardarpur |
| 30 | Patel Tulsibhai Girdharbhai | 34 | Sardarpur |
| 31 | Patel Ramanbhai Jivanbhai Vanabhai | 29 | Sardarpur |
| 32 | Patel Rajeshbhai Karshanbhai | 22 | Sardarpur |
| 33 | Patel Rameshbhai Kantibhai | 24 | Sardarpur |
| 34 | Patel Madhabhai Vitthalbhai | 33 | Sardarpur |
| 35 | Patel Sureshkumar Baldevbhai | 20 | Sardarpur |
| 37 | Patel Vishnubhai Prahladbhai | 23 | Sardarpur |
| 38 | Patel Rajendrakumar alias Rajesh Punjabhai Tribhovandas | 28 | Sardarpur |
| 40 | Patel Prahladbhai Jagabhai | 23 | Sardarpur |
| 41 | Patel Rameshbhai Ramabhai | 35 | Sardarpur |
| 42 | Patel Parshottambhai alias Pashabhai Mohanbhai | 45 | Sardarpur |
| 43 | Patel Ashvinbhai Jagabhai | 21 | Sardarpur |
| 44 | Patel Ambalal Maganbhai Kapoor | 54 | Sardarpur |
| 46 | Patel Rameshbhai Prabhabhai Gopalbhai | 36 | Sardarpur |
| 48 | Patel Jayantibhai Ambalal | 43 | Sardarpur |
| 49 | Patel Kanubhai Joitaram | 43 | Sardarpur |
| 50 | Prajapati Ramanbhai | 51 | Sardarpur |

| | | | |
|----------------------------------|-----------------------------|----|-----------|
| | Ganeshbhai | | |
| 52 | Patel Dahyabhai Kacharabhai | 36 | Sardarpur |
| 54 | Patel Mathurbhai Trikamdas | 46 | Sardarpur |
| SESSIONS CASE NO.120/2008 | | | |
| 7 | Patel Dahyabhai Vanabhai | 51 | Sardarpur |
| SESSIONS CASE NO.7/2009 | | | |
| 9 | Patel Kalabhai Bhikhabhai | 37 | Sardarpur |

2. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 143** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **6 (Six) Months**, and also to pay a fine of **Rs.500/-** (Rupees five hundred only) each, **in default**, to suffer simple imprisonment for **15 (Fifteen) days**.

3. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 147** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **1 (One) Year**, and also to pay a fine of **Rs.1000/-** (Rupees one thousand only) each, **in default**, to suffer simple imprisonment for **2 (Two) Months**.

4. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 144 and 148** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **2 (Two) Years**, and also to pay a fine of **Rs.2000/-** (Rupees two thousand only) each, **in default**, to suffer simple imprisonment for **4 (Four) Months**.
5. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 302, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer rigorous imprisonment for **Life** and also to pay a fine of **Rs.5000/-** (Rupees five thousand only) each, **in default**, to suffer simple imprisonment for **6 (Six) Months**.
6. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 307, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer

rigorous imprisonment for **10 (Ten) Years**, and also to pay a fine of **Rs.5000/-** (Rupees five thousand only) each, **in default**, to suffer simple imprisonment for **5 (Five) Months**.

7. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 323, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **1 (One) Year**, and also to pay a fine of **Rs.2000/-** (Rupees two thousand only) each, **in default**, to suffer simple imprisonment for **2 (Two) Months**.

8. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 324, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **1 (One) Year**, and also to pay a fine of **Rs.2000/-** (Rupees two thousand only) each, **in default**, to suffer simple imprisonment for **2 (Two) Months**.

9. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 325, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer rigorous imprisonment for **3 (Three) Years**, and also to pay a fine of **Rs.2000/-** (Rupees two thousand only) each, **in default**, to suffer simple imprisonment for **6 (Six) Months**.
10. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 435, r.w. Section 149** and **Section 436, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer rigorous imprisonment for **10 (Ten) Years**, and also to pay a fine of **Rs.3000/-** (Rupees three thousand only) each, **in default**, to suffer simple imprisonment for **6 (Six) Months**.
11. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 447, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer

simple imprisonment for **1 (One) Month**, and also to pay a fine of **Rs.500/-** (Rupees five hundred only) each, **in default**, to suffer simple imprisonment for **15 (Fifteen) days**.

12. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 448, r.w. 149** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **6 (Six) Months**, and also to pay a fine of **Rs.500/-** (Rupees five hundred only) each, **in default**, to suffer simple imprisonment for **15 (Fifteen) days**.

13. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 336, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **1 (One) Month**, and also to pay a fine of **Rs.250/-** (Rupees two hundred fifty only) each, **in default**, to suffer simple imprisonment for **15 (Fifteen) days**.

14. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 337, r.w. Section 149** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **3 (Three) Months**, and also to pay a fine of **Rs.250/-** (Rupees two hundred fifty only) each, **in default**, to suffer simple imprisonment for **10 (ten) days**.
15. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 295-A** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **2 (Two) Years**, and also to pay a fine of **Rs.500/-** (Rupees five hundred only) each, **in default**, to suffer simple imprisonment for **4 (Four) Months**.
16. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 153-A** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **3 (Three) Years**, and also to pay a

fine of **Rs.500/-** (Rupees five hundred only) each, **in default**, to suffer simple imprisonment for **6 (Six) Months**.

17. All the accused whose names are mentioned in Para 1 of this Order are **convicted** for the offence punishable under **Section 297** of the I.P.C. and each of them is sentenced to suffer simple imprisonment for **1 (One) Year**, and also to pay a fine of **Rs.500/-** (Rupees five hundred only) each, **in default**, to suffer simple imprisonment for **2 (two) Months**.
18. No separate order regarding punishment is passed for the offence punishable under Section 135 of the Bombay Police Act.
19. All the accused whose names are mentioned in Para 1 of this Order are hereby ordered to deposit amount of **Rs.50,000/- (Rupees fifty thousand only)** each, in this Court and on deposit of said amount by all the accused, it will be equally paid to the complainant and other victims of this incident as compensation under Section 357(1)(c) of the Code of Criminal

Procedure.

20. All the substantive sentences, except the sentences of imprisonment for life, shall run concurrently.
21. The above named convicted accused persons shall be entitled to get benefit of **set-off**, of the period of their respective detention as an **Under-Trial Prisoner**, during the investigation and trial, as provided in Section 428 of the Code of Criminal Procedure.
22. The sentences of imprisonment for life shall run after the expiration of the concurrent sentences for imprisonment for terms.
23. All the muddamal articles are ordered to be destroyed after appeal period is over.
24. Original Judgement be kept with the records of Main Sessions Case No.275/2002, whereas a copy of the Judgement be kept with the records of remaining each consolidated Sessions Case.
25. Certified Copy of the Judgement be provided to each

convicted accused person, free of cost, as
expeditiously as possible.

Pronounced in the open Court on this 9th Day of
November, 2011, at Mahesana.

Place : Mahesana.

Date : 09.11.2011.

[Kum. S.C.Srivastava]
Sessions Judge
Designated Court
Mahesana.