



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

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.			

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

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.

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 Dhawarkadas (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

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

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 occasion. 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.

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.

[Kum. S.C.Srivastava]

Sessions Judge

Date : 09.11.2011.

Designated Court
Mahesana.