

MHCC020169792014



Presented on 20.11.2004  
Registered on 20.11.2004  
Decided on 13.06..2023  
Duration 18 Y 06 M. 24 Days

**Exh.107**

**IN THE COURT OF SESSION FOR GR. BOMBAY AT MUMBAI**  
**SESSIONS CASE NO. 315 OF 2004**

**The State of Gujarat**

(At the instance of PI D.C.B.  
Police Station, Vadodara  
City, Gujarat State. C.R.  
No.82/2002 of Panigate  
Police Station

... Prosecution

Versus

**1. Rajubhai Dhamirbhai Baria.**

Hanuman Tekdi, Daboi Road,  
Vadodara, State-Gujarat.  
(conviction confirmed by the Hon'ble High Court)

**2. Mahendra @ Langdo**

**Vishwasrao Jadhav.**

Hanuman Tekdi, Daboi Road,  
Behind Naikpura Woodland,  
Vadodara, State-Gujarat.  
(Acquitted)

**3. Haresh @ Tino Virendragir  
Gosai.**

Hanuman Tekdi, Daboi Road,  
Vadodara, State-Gujarat.  
(Acquitted)

**4. Pankaj Virendragir Gosai.**

Hanuman Tekdi, Daboi Road,  
Vadodara, State-Gujarat.  
(Acquitted by the Hon'ble High Court)

**5. Yogesh @ Painter**

**Laxmansinh Varma.**

Behind Vihar Theatre,  
Near Jain Temple,  
Pratapnagar, Vadodara,  
State-Gujarat.  
(Acquitted)

**6. Pratapsinh Ravjibhai  
Chauhan.**

Hanuman Tekdi, Daboi Road  
Vadodara, State-Gujarat.  
(Acquitted)

**7. Sanjay @ Bhopo Ratilal  
Thakkar.**

Mahesh Mangal Society,  
Waghodia Road, Vadodara,  
State-Gujarat.  
(Conviction confirmed by the Hon'ble High Court)

**8. Bahadursinh @ Jitu  
Chandrasinh Chauhan.**

Behind Bhabha Plan,  
C. Ramnagar Road,  
Sainathnagar, Mohd. Talao  
Vadodara, State-Gujarat.  
(Conviction confirmed by the Hon'ble High Court)

**9. Yasin Alibhai Khokhar.**

Hanuman Tekdi, Daboi Road  
Vadodara,  
State-Gujarat.  
(Acquitted)

**10. Jagdish Chunilal Rajput.**

Ranmukteshwar Road,  
Tejab Mill Chawl,  
Pratap Nagar,  
Opp. Bhataji Temple,  
Vadodara, State-Gujarat.  
(Acquitted)

**11. Dinesh Phulchand Rajbhar.**

Daboi Road, Ansuya Nagar,  
Opp. Bhataji Temple,  
Vadodara, State-Gujarat.  
(Conviction confirmed by the Hon'ble High Court)

**12. Shanabhai Chimanbhai Baria.**

Soma Talao, Daboi Road,  
Zopadpatti, Vadodara,  
State-Gujarat.  
(Conviction confirmed by the Hon'ble High Court)

**13. Tulsi Bhikabai Tadvi.**

Hanuman Tekdi, Daboi Road,  
Vadodara,  
State-Gujarat.  
(Acquitted)

**14. Shailesh Anupbhai Tadvi.**

Hanuman Tekdi, Daboi Road,  
Vadodara, State-Gujarat.  
(Acquitted by the Hon'ble High Court)

**15. Kamlesh Bhikabhai Tadvi.**

Hanuman Tekdi, Daboi Road,  
Pratap Nagar Road,  
Vadodara, State-Gujarat.  
(Acquitted)

**16. Suresh @ Lalo Devjibhai  
Vasava.**

Daboi Road, Ansuya Nagar  
Pratap Nagar, Vadodara,  
State-Gujarat.  
(Acquitted by the Hon'ble High Court)

**17. Ravi Rajaram Chauhan.**

Yamuna Mill, Juna Jakat  
Naka, Daboi Road,  
Anusaya Nagar,  
Vadodara, State-Gujarat.  
(Acquitted)

**INITIALLY ABSCONDING AND NOW TRIED AS  
PER SECTION 299 OF CR.P.CODE.**

**1. Jayantibhai Jamsing Gohil**

Near Tadam Talav, Behind Sewage pumping  
station, Gajarawadi, Vadodara

**(Died during this trial, hence case abated against him)**

**2. Ramesh Alias Rinku Jayantibhai Gohil**

Near Tadam Talav, Behind Sewage pumping  
station, Gajarawadi, Vadodara

**(Died during this trial, hence case abated against him)**

**3. Harshad Alias Munno Ravjibhai Solanki**

R/a : Hanuman Tekari, Opp. Saimohammad House,  
Vadodara.

**(UTP, Tried as per Sec.299 of Cr.P.C)**

**4. Mafat Alias Mahesh Manilal Gohil**

Near Tadam Talav, Behind Sewage pumping  
station, Gajarawadi, Vadodara

**(UTP, Tried as per Sec.299 of Cr.P.C) .... Accused**

**CHARGE:** Under Ss. 144,147,148,149, Sec.436 r.w.  
Sec.149, Sec.395 r.w. Sec.397, Sec.342  
r.w.Sec.149, Sec.442 p.u.Sec.448, Sec.448  
r.w. Sec.149, Sec.449 r.w. Sec. 149, Sec.  
450 r.w. Sec.149, Sec.451 r.w. Sec.149,  
Sec.324 r.w. Sec.149, Sec.326 r.w.  
Sec.149, Sec.302 r.w. Sec.149 and  
Sec.188 of The Indian Penal Code.

**Appearance:**

Smt. Manjula Rao, Ld.S.P.P.

Mr. Ranjeet Nair along with Mr. Sanjeev Punalekar, Ld.Advs. for  
Accused No.3.

Mr. Prakash J. Salsingikar along with Mr. Virendra Ichalkaranjkar and  
Adv. Anthony Reddy, Ld. Advs. for the accused No.4.

**CORAM :** HIS HONOUR ADDITIONAL SESSIONS  
JUDGE SHRI. M. G. DESHPANDE  
(C.R.No.16)  
**DATED :** JUNE 13, 2023.

**JUDGMENT**

1. Initially, above named accused persons were tried by the Ld. Additional Sessions Judge, First Fast Track Court, Vadodara, State of Gujarat, in Sessions Case No.248 of 2002 and they were acquitted. The said acquittal was confirmed by the Hon'ble Gujarat High Court. Thereafter, the Hon'ble Supreme Court directed the retrial, hence the case was tried before the then Hon'ble Additional Sessions Judge, Mumbai and judgment thereof was delivered on 24.02.2006. Some accused were convicted and some were acquitted.

2. Subsequently, Appeals No.583/2006, 584/2006, 585/2006, 571/2011, 572/2011, 573/2011, 198/2012, 199/2012 and 200/2012 were preferred before the Hon'ble Bombay High Court by the convicted accused persons as well as victims/relatives of victims. In all 9 accused persons were convicted by the Hon'ble Additional Sessions Judge, Mumbai and 8 were acquitted. The Hon'ble High Court confirmed conviction of 4 accused persons and acquitted 5 accused who preferred appeal against conviction.

3. Initially the Hon'ble Additional Sessions Judge, Mumbai vide the judgment dt. 24.02.2006 convicted accused (i) Rajubhai Dhamirbhai Baria, (ii) Pankaj Virendragir Gosai, (iii) Dinesh Phulchand Rajbhar, (iv) Shanabhai Chimanbhai Baria, (v) Shailesh Anupbhai Tadvi, (vi) Jagdish Chunilal Rajput, (vii) Suresh @ Lalo Devjibhai Vasava, (viii) Bahadursinh @ Jitu Chandrasinh Chauhan and (ix)

Sanjay @ Bhopo Ratilal Thakkar. Whereas, acquitted accused (i) Mahendra @ Langdo Vishwasrao Jadhav, (ii) Haresh @ Tino Virendragir Gosai, (iii) Yogesh @ Painter Laxmansinh Varma, (iv) Jagdish Chunilal Rajput, (v) Tulsi Bhikabai Tadvi, (vi) Kamlesh Bhikabhai Tadvi, (vii) Ravi Rajaram Chauhan and (viii) Yasin Alibhai Khokhar.

4. The Hon'ble Bombay High Court upheld conviction of Sanjay Thakkar, Bahadursinh @ Jitu Chandrasinh Chauhan, Shanabhai Chimanbhai Baria, Dinesh Phulchand Rajbhar; and acquitted Rajubhai Dhamirbhai Baria, Pankaj Virendragir Gosai, Jagdish Chunilal Rajput, Suresh @ Lalo Devjibhai Vasava and Shailesh Anupbhai Tadvi. Accused Jayanti Jamsinh Gohil (A1), Ramesh @ Rinku J. Gohil (A2), Harshad Alias Munno Ravjibhai Solanki (A3) and Mafat @ Mahesh M. Gohil (A4) were initially absconding. Therefore, their trial was separated and this is noted in the record of previous case and also in Paragraph 143, page No. 54 of the Judgment dt.24.02.2006, by following procedure as contemplated under Sec.299 (1) of Cr.P.C. It was also declared that the evidence of the witnesses recorded for Sessions Case No. 315 of 2004 would be treated as the record of evidence against these absconding accused persons, who were on bail during the previous trial at Vadodara. Subsequently all of them (A1 to A4) were arrested and tried as under-trial prisoners by my number of Ld. Predecessors. However, during the pendency, Jayanti Jamsinh Gohil (A1), Ramesh @ Rinku J. Gohil (A2), passed away and case stood abated against them and continued only against A3 and A4.

5. Initially, this case was pending in various other Courts and recently it was transferred to this Court vide order of the Hon'ble

Principal Judge. Prior to it, my Ld. Predecessor (C.R No.27) who was conducting this trial specifically recorded in the roznama dt. 04.09.2019 that Advocates for both accused (A3,A4) filed pursis Exh.56 pointing out that Charge dt.22.09.2004 was framed earlier in this case was read over to A3, A4 and the same was marked as Exh.36 and defence had no objection if the same was marked with Exhibit Number and in this way the Charge dt. 22.09.2004 was marked as Exh.36 against these accused (A3, A4). Admittedly, neither prosecution nor Ld. SPP nor accused No. 3 and 4 challenged the same before the Hon'ble High Court. In this way the Charge was framed against both accused (A3, A4) vide Exh.36. In this background trial against them began and earlier evidence led in this case has been considered. In addition to it the Ld. Special Public Prosecutor (SPP) Smt. Manjula Rao re-examined in all ten witnesses and thereafter, filed Purshish (Exh.6) informing closure of the evidence. Statements of Harshad Solanki (A3) and Mafatlal Gohil(A4) were recorded under Sec.313 Cr.P.C. Their defence is of total denial. They contended their innocence and further alleged that they have been falsely implicated in this case.

6. Heard Ld. S.P.P. Smt. Manjula Rao, Ld. Adv. Mr. Ranjeet Nair along with Ld. Adv. Sanjeev Punalekar for the accused No. 3 and Ld. Adv. Mr. Prakash Salsingikar along with Ld. Adv. Virendra Ichalkaranjekar for accused No. 4 at length. Ld. SPP Smt. Manjula Rao also submitted her written notes of argument at Exh.103. I carefully read the same. Also, I carefully read and studied earlier judgment dt.24.02.2006 in this case and the judgment dt.10.07.2012 of the Hon'ble Bombay High Court. Also, I read voluminous bulky evidence lead by prosecution in previous as well as this trial. Following points arise for my determination. I am recording following findings thereon

for the reasons discussed below :-

	POINTS	FINDINGS
1.	Whether the death of 14 people in the said incident took place at Best Bakery was homicidal?	<b>In the affirmative but involvement of A3 and A4 herein, is not proved.</b>
2.	Whether in the night of 01.03.2002 and in the morning of 02.03.2002 the incident of riot, arsenen looting of the Best Bakery had taken place, as alleged by the prosecution?	<b>In the affirmative but involvement of A3 and A4 herein, is not proved.</b>
3.	Whether a mob of 1000 to 1200 people had come to the Best Bakery from all directions and had set the Bakery on fire and had caused death of women and children viz. Jainabibi Hasanbhai, Shabnambibi @ Rukhsana Salam, Sabira Habibulla, Cipli @ Saili Aslam Shaikh, Babli Aslam Shaikh, Mantasha and Subhan?	<b>In the affirmative but involvement of A3 and A4 herein, is not proved.</b>
4.	Whether the mob of 1000 to 1200 people thrown stones, soda water bottles and bottles filled with kerosene which were set on fire and were thrown as missiles on the terrace of the said Bakery?	<b>In the affirmative but involvement of A3 and A4 herein, is not proved.</b>
5.	Whether the victims Taufel (PW26), Raees (PW27), Shehzad (PW28), Yasmin (PW29) and Sailum (PW32) and the grandmother of Nafitulla were made to get down from the terrace with the help of ladder ?	<b>In the affirmative but involvement of A3 and A4 herein, is not proved.</b>
6.	Whether after the victims viz. Taufel (PW26),	<b>In the</b>



	Raees (PW27), Shehzad (PW28), Yasmin (PW29) and Sailum (PW32) and the grandmother of Nafitulla were brought down from the terrace, women folk were taken behind bushes with intention to commit rape on them by the accused?	<b>negative as not proved against A3 and A4 herein.</b>
7.	Whether the hands and feet of Taufel (PW26), Raees (PW27), Shehzad (PW28), Yasmin (PW29) and Sailum (PW32) and Ramesh, Baliram and Prakash were tied by the accused and kerosene was poured on them and they were set on fire and also assaulted with sword, sticks and iron rods?	<b>In the negative against A3 and A4 herein.</b>
8.	Whether the present accused persons Harshad (A3) Mafat (A4) were members of unlawful assembly and were responsible for the death of 14 people viz. (1) Jainabibi Hasanbhai, (2) Shabnambibi @ Rukhsana Aslam, (3) Sabira Habibulla, (4) Cipil @ Saili Aslam Shaikh, (5) Babil Aslam Shaikh, (6) Mantasha Firoz Aslam Shaikh, (7) Subhan Firoz Aslam Shaikh, 8. Baliram Shamlal Verma, 9. Prakash Ugroo Dhobi, 10. Raju @ Ramesh Baijnath, 11. Kausarali Shaikh, 12. Arshad @ Lulla Hasanbhai Shaikh, 13. Firoz Pathan and 14. Nasroo Hasan Khan Pathan and were also responsible for causing grievous injuries to Taufel (PW26), Raees (PW27), Shehzad (PW28), Sailum (PW32), Nasibulla (PW30) and Nafitulla (PW31) ?	<b>In the negative.</b>
9.	Whether the present accused had committed said offences, which had taken place at night of setting the Best Bakery on fire?	<b>In the negative.</b>
10.	Whether it is proved that the appellants/accused were members of the unlawful assembly and had caused injuries to Taufel (PW26), Raees (PW27), Shehzad (PW28), Sailum (PW32), Nasibulla (PW30) and Nafitulla (PW31) and had assaulted Baliram Shamlal Verma, Prakash Ugroo Dhobi and Raju @ Ramesh Baijnath?	<b>In the negative as nothing proved against A3 and A4 herein.</b>

**REASONS****ALL POINTS****FACTS**

7. Previous trials relating to this case in Gujarat as well as at City Sessions Court, Mumbai are known as “Best Bakery Case Trials”. It relates to the incident which took place at Best Bakery in Vadodara. It was a fallout of an earlier incident which had taken place on 27.02.2002. On that day, i.e. 27.02.2002, Sabaramati Express was returning to Vadodara and in one or two of the bogies of the said Train, number of ‘Kar Sevaks’ including men and women and number of children were travelling. The train was stopped near Godhara, a town situated at 80-90 kilometers from Vadodara. A mob of Muslim men burnt the entire boggie and did not permit innocent Kar Sevaks, who were mostly men, women and number of children, to get out of the train. Since the people could not get down of the boggie, hence 56 people were died and another 46 people were seriously injured. After the news of this unfortunate incident was spread, it resulted into a back-clash and riots spread throughout the State of Gujarat. A mob of Hindu men came on the street and riots irrupted at several places in Vadodara and other parts of Gujarat.

8. One of the incidents which took place was at the Best Bakery, which is situated within the area and jurisdiction of Pani Gate Police Station. On 01.03.2003 at about 08.00 p.m. to 8.30 p.m. and 9.30 p.m. members of the family who were running the Best Bakery after completing their evening prayers had their food and, at that time, a mob of 1000-1200 people marched towards the Best Bakery from all directions. This mob was carrying torches (Mashals) and swords, iron rods, sticks and other lethal weapons and the persons from this mob

were giving slogans that, the properties of the Muslims should be ablazed and they should be killed and burnt. As per prosecution witnesses, some of witnesses were sitting on a cot which was kept outside the Bakery and when they saw this mob, all of them went inside and rushed to the terrace. Some of the women and children went to the first floor and bolted the door from outside and others went to the terrace. Some of the members of the said mob directed other members to set the Bakery on fire. Some of the members of the said mob took away some of the articles in the Best Bakery viz.- Ghee, Flour (Maida) and other articles and then set the timber which was stalked in the basement on fire. After that, the said mob started throwing stones, soda-water bottles, the bottles which were filled with kerosene and which were set on fire, on the terrace. The said incident continued for some time and, according to the prosecution, two persons left behind and they were assaulted with swords and other lethal weapons. In this way, when they were assaulted, they all came out and dragged these two people to the first floor. Police jeep came near the scene of offence between 09.00 p.m. to 10.00 p.m. At that time all rioters fled and disappeared. However, the victims were not rescued and, as a result, saga of stone throwing and throwing of bottles filled with kerosene continued till morning. Two other people were tied and were set on fire during night and, in the morning, at about 09.00 to 09.30 a.m. approximately, these victims trapped on the terrace pleaded to the mob on the ground floor that they should be allowed to go away. The mob informed them that, they would allow them to get down, but after giving few slaps and beating them a little, they would be allowed to go. In view of the assurance given by the mob and the accused, initially women were brought down on a ladder. Some of the witnesses used the term, “double sidhi” and some of them have said that, “it was a

bamboo ladder". After women brought down, the servants and other family members of Habbibulla family were brought down and, thereafter, an old lady who was the owner of the Bakery, was finally brought down alongwith a small goat. The said Best Bakery was owned by one Habbibulla, who had passed away few months before the incident had taken place and, after his death, the bakery was run by one Nafitulla Habbibulla Shaikh (PW31). After the death of Habbibulla his family consisted of his wife Saherunnisa Habbibulla Shaikh (PW40), his son Nafitulla Habbibulla Shaikh (PW31), three sisters viz- Zahira Bibi Habbibulla Shaikh (PW41), Saherabanu Habbibulla Shaikh (PW35) and Sabira Habbibulla Shaikh and also one another son Nasibulla Habbibulla Shaikh (Exh.3). Alongwith the said family members, servants who were working in the bakery and who also stayed in the said Best bakery were also there viz.- Taufel Ahmed Habbibulla Siddiqui (PW26), Raees Khan Nankau Khan (PW27), Shezad Khan Hasan Khan Pathan (PW28), Baliram, Raju and Prakash alongwith son of Nafitulla, his wife Yasmin (PW29) and their daughter child almost about 2-3 months old, also resided there. On the date of incident, alongwith these people, family members of Aslam viz. his wife and two children aged between 3-8 also had taken refuge in their house, were present.

9. After the men were brought down, they were tied and assaulted with sticks, swords and other lethal weapons and attempt was also made to set them on fire. It is further alleged that females were taken to bushes with an intention to commit rape on them. Pani Gate Police Station received the information about the incident at Best Bakery during 09.45 p.m. o 10.00 p.m. and, initially, Police Inspector Himmat Singh Baria (PW72) asked PSI Rathod (PW63) to go to the scene alongwith constable and other officers. Accordingly, PSI Rathod

was the first police officer who reached the scene alongwith ambulance and the prosecution case is that, three women and other people narrated him the incident. Soon thereafter, Baria arrived at the scene and took over the investigation. Soon thereafter, another Police Officer Piyush Purshottamdas Patel (PW67) of the rank of D.C.P. also arrived there. His statement was recorded on 24.03.2022. The victims, who were assaulted and who were alive, were taken to the hospital alongwith Zahira and other injured woman. Statement of Raees Khan (PW27) was recorded and in the trial the Honourable Additional Sessions Court treated the same as an FIR. Also the statement Exh.... given by Zahirabibi (PW41) was also considered as FIR. The three servants who were on the terrace alongwith PW26, PW27, PW28 and PW32 succumbed to the injuries before they were admitted in the hospital. These three persons were Baliram, Prakash and Raju, who were Hindu servants working with Habibulla. The injured witness Taufel (PW26), Raees Khan (PW27), Shehzad Khan Hasan Khan Pathan (PW28) and Sailum Khan Hasan Khan Pathan (PW32) were treated in the hospital. Two doctors examined these patients were Dr. Dilip Choksi (PW62) and Dr. Meena Robin (PW46). According to them, Raees Khan was the only person who was conscious and others were unconscious, who regained consciousness after few days. The statements of these five injured persons who were working as servants with Habibbula were recorded by police officer Baria (PW72) and after they were discharged, they left Vadodara and went to their native places in Uttar Pradesh.

10. After the fire brigade came at the scene, the fire was extinguished and the team went to the first floor and found the dead bodies of women and children. They found two bodies on the ground

floor in the bushes and in all 14 people died in the said incident. Postmortem was performed of all the people who had died in the said incident and doctor concern issued postmortem report. Mr. Baria, who was initially appointed as Investigating Officer, conducted the investigation till 10.03.2002 and later on it was transferred to police inspector Kanani (PW74). Mr. Kanani was working with CID, Gujarat and was a senior officer. PI Mr. Baria had recorded the statements of most of the injured witnesses and other persons including Zahira (PW41). PI Kanani thereafter took over the investigation. According to the prosecution investigation was promptly carried out by PI Baria, and, PI Kanani and efforts were made to trace the accused. However, those efforts were futile since accused were not found at their residence. Ultimately, on 27.02.2002 accused No.1 to 5 were arrested. Thereafter on 01.04.2022 accused No.6 to 12 surrendered. On 15.04.2002 accused No.13 to 16 were arrested and on 17.04.2002 accused No.17 to 19 were arrested. Accused No.20 was arrested on 19.05.2002. Accused No.21 was arrested on 21.05.2002. After statements of all the witnesses were recorded chargesheet was filed and initially the accused persons were tried before the Ld Additional Sessions Judge, Vadodara, Gujarat State. At that time injured servant, who were examined in the trial at Mumbai, i.e. PW26, PW27 and PW32 were not examined. Even all members of Habibulla family turned hostile. Amongst other witnesses namely panch witnesses also turned hostile, therefore, the trial at Gujarat turned into acquittal.

11. The Hon'ble Gujarat High Court confirmed the judgment and order passed by the Ld. Additional Sessions Court, Gujarat. However, the Hon'ble Supreme Court directed retrial in the Sessions Court at Mumbai. In the Sessions Court at Mumbai, the prosecution,

apart from examining four injured servants who were working in the Best Bakery, also examined Yasmin Nafitulla Habibulla Shaikh (PW29), who is the wife of Nafitulla Habibulla Shaikh (PW31). Yasmin, admittedly was not examined by the prosecution in the Sessions Court, Gujarat. Previously during the trial, one person Pankaj Shankar Sharma (PW73) appeared in person and informed the then Hon'ble Sessions Judge that he had taken interviews of several persons after the incident had taken place and further contended that he would like to produce the CD in support of the prosecution case. Then the Hon'ble Court accepted his application but directed the prosecution to record his statement and further that, he should be asked as prosecution witness and the CD which was taken by him interviewing the members of Habibulla family was brought on record. After retrial as directed by the Hon'ble Supreme Court and prosecution was asked to appoint any new Investigating Officer, yet the prosecution relied on the same chargesheet which was filed alongwith the documents. These are the facts relating to the incident as well as history of the case at the relevant time and subsequent examination of witnesses, who were not chargesheeted. Accordingly, the charge was framed at the relevant time.

**ARGUMENT OF LD. SPP SMT. MANJULA RAO**

12. Ld. SPP Smt. Manjula Rao filed her written submissions at Exh.103 and initially referred facts involved in the prosecution case, the history of the matter including the judgment of the Hon'ble High Court dt.10.07.2012 in Appeals No.583/2006, 584/2006, 585/2006, 571/2011, 572/2011, 573/2011, 198/2012, 199/2012 and 200/2012. Skipping the said part in order to avoid repetition, it is her argument that, accused persons herein have not challenged the deaths and injuries of the victims, therefore, the medical evidence led by the

Doctors who treated the injured and also performed Post Mortem has to be accepted for confirming the incident occurred during 1<sup>st</sup> and 2<sup>nd</sup> March, 2002. Prosecution has proved the cause of death having its roots in the alleged incident on the strength of unchallenged medical evidence. Hence, the medical evidence has to be accepted without any doubt.

13. It is further argued that, evidence of Manharibhai Purshottam Varia (PW1), retired ASI, Vadodara, proved entries made at Panigate Police Station being Exhibits 273 to 278, 278A. FIR was recorded when he was on duty from 08.00 a.m. 02.00 p.m. both the dates i.e. 1<sup>st</sup> and 2<sup>nd</sup> March, 2002. He has deposed the facts and circumstances of transaction which had taken place at the relevant time when the information relating to the incidents received by Panigate Police Station. He is the person who received phone call at 11.45 a.m. from Iqbalbhai Bakeriwala and further deputed police staff to Hanuman Tekdi. At 01.00 p.m. he received Vardi (Note) from SSG Hospital, Vadoara and took its entry in the Station Diary and further forwarded it to Mr. Baria (PW2).

14. Ld. SPP Smt. Manjula Rao further referred the evidence of Jagdishbhai Diwanjibhai Choudhary (PW2/PW70), ASI, Panigate Police Station, and further submitted that, his evidence proved the entries made in the Station Diary and the facts of lodging FIR by Zahirabibi (PW41) at 15.50 hours vide Exh.276, 277 and 278. Those entries are proved as the same were in his handwriting and the FIR was also lodged on the same day. He has deposed the method carried out while making the entries of FIR and how it has been forwarded to the superior officers. He confirmed how the copy of FIR was given to the First



Informant i.e. Zahira (PW41). On the basis of his evidence Ld. SPP Smt. Manjula Rao further submitted that, facts relating to the manner in which FIR at the instance of Zahirabano was recorded, are proved. According to him the original FIR included 10 persons, however, in the translated copy names of three persons were added. Ld. SPP Smt. Majula Rao fairly submitted in paragraph 36 of written submissions that, the evidence of this witness shows admissions that, he did not know the names of 13 accused as he had no personal knowledge of the incident and he was a part of the investigation only at the later stage after the FIR was recorded in which the name of the accused was mentioned. Prosecution case is that, accused No.4 Mafat was named in the FIR being one of the persons present in the crowd/mob which had attacked the Best Bakery.

15. Ld. SPP Smt. Majula Rao further argued that, Taufel Ahmed Habbibulla (PW7/PW26) identified the accused Marfatio by colour of his shirt stating that, he was wearing “Khakhi brown shirt”, but he could not give his name. Therefore, the prosecution has established and proved the presence of accused No.4 i.e. Mafat Manilal Ghohil being one of the rioters having participated the unlawful assembly committing riot. In the FIR the name of accused No.4 is mentioned as 'Marfatio' and hence, the prosecution has established his identity beyond reasonable doubt and he (A4) has to be convicted for the alleged offences charged against him. In this way the prosecution has proved presence of accused No.4 on the spot at the time of incident in the night of 1<sup>st</sup> and 2<sup>nd</sup> March, 2002 among the mob surrounding the Best Bakery.

16 Ld. SPP Smt. Manjula Rao further argued that, testimony of Gautam Chouhan (PW3/PW69), a photographer, who snapped photographs after the Best Bakery was burnt with the inmates, is not challenged by the defence. Evidence of Piyush Patel (PW4/PW67) proves that he reached the spot immediately. Presence of this witness (PW4/PW67) soon after the incident is proved as well as his conversation with three women is also brought on record, which supports the case of the prosecution. Ld. SPP Smt. Manjula Rao further fairly submitted in paragraph 40 of the written submissions (Exh.103) about, Kamlesh Darji (PW5/PW24) and Jagdish Desai (PW6/PW8) that they are the witnesses on recovery of weapons, yet not supported the prosecution case. It is further argued that, the Investigating Officer Mr. Himmatsinh Gamabhai Baria (PW72) when present in the Court was not cross-examined, but he passed away subsequently; hence his evidence has to be treated under Sec.32 and 33 of the Indian Evidence Act. Post Mortem reports of seven dead persons indicate 100% burns. Prosecution has proved Panchanama of scene of offence (Exh.13), cassette recorded by the police photographer Gautam Narendra Chauhan (PW3/PW69) vide Exh.283 and the CD on the basis thereof produced in the Court has not been challenged by the accused herein. All injured witnesses were hospitalized at the relevant time, hence test identification parade for the accused could not be undertaken.

17. It is further argued that, prosecution has proved beyond reasonable doubt the motive of the riot dt.01.03.2002 by the mob near Hanumant Tekdi, wherein Best Bakery exists and the same was set on fire. It was owned by Habbibulla, father of Zahirabibi (PW41) and the said family. It is also proved beyond reasonable doubt that, 14 persons died in the said incident. Five out of them were the workers in the

Bakery. Police Officials Mr. Manharbhai Purshottam Waria (PW1/PW68), ASI Mr. Jagdishbhai Diwanjibhai Choudhary (PW2/PW70) proved the real circumstances of transaction occurred at the time of incident, its information to the police, recording FIR, referring the injured to the hospital and deceased for their Post Mortem etc.

18. It is further argued that, Taufel Ahmed Habibulla (PW7/PW26) identified the accused No.4 in the Court by pointing out colour of his shirt with his inability to state the name of accused No.4. Accused were absconding for so many years, therefore such identification is relevant and proves the identity of the accused. Even it is proved that, Marfatio (A4) was present in the mob and actually participated the act alleged against him. Raees Khan (PW8/PW27) and Shehzad Khan (PW9/PW28) have not identified this accused in the Court while their evidence. FIR (Exh.136) recorded on the basis of facts stated by Zahirabibi (PW41) immediately after the incident has to be considered as most important document. The prosecution witness identified the signature of Zahirabibi (PW41). Mr. Baria (PW72), the Investigating Officer, deposed how the names of persons mentioned in the FIR (Exh.136) were recorded as disclosed by the said informant Zahirabibi (PW41). Zahirabibi (PW41) in the said FIR (Exh.136) mentioned the name of Mafat (A4) and his cousin. Zahirabibi (PW41) in her evidence admitted that, she had used FIR (Exh.136) to claim insurance for the loss incurred to her due to burning damage of the Bakery. On the basis of contents of FIR (Exh.136) it is proved that, name of accused Mafat is mentioned therein and his presence in the riot is proved. Further his identification by the witness in the Court proves his involvement. This is in detailed the written argument of Ld. SPP

Smt. Manjula Rao.

**ARGUMENT OF LD. ADVOCATES FOR THE ACCUSED.**

19. There is no substantive evidence to prove presence of both accused being member of the said unlawfully assembly committing riot, burning Best Bakery and killing 14 persons therein. The reference of Mafat made by some witnesses is based on the knowledge of someone else and not as per their own knowledge. Zahirabibi, at whose instance the Hon'ble Supreme Court directed re-trial by transferring the case from Vadodara, Gujarat to Mumbai, again turned hostile. Noting her conduct, the Hon'ble Supreme Court sentenced her for Perjury. The Hon'ble High Court in Appeals against the judgment convicting some of the accused persons also discarded her evidence. Same is the situation with Yasmin (PW29) who for the first time insisted the Hon'ble High Court for directing the re-trial of the case once again, is not a trustworthy witness and the Hon'ble High Court has not given any weightage to her testimony. Even the evidence of injured witnesses on the basis of which the Hon'ble High Court confirmed the sentence of some of the accused persons, is not helpful as the identity of both the accused(A3,A4) is not proved when those witnesses were recalled and reexamined in the present trial. With this, Ld. Advocates for both accused in addition to their written submissions, submitted to give benefit of doubt by presuming innocence of both accused. I carefully examined these arguments with respective written submissions made by the Ld. SPP Smt. Manjula Rao and Ld. Advocates for both accused.

20. In previous trial accused No.2,3,5,10,13,17,19 and 21 were acquitted, whereas accused No.1,4,12,14,15,16,18 and 20 were convicted. I have already noted above that four accused persons were

absconding. Therefore, previous trial was separated and evidence recorded therein has to be considered under Sec.299 Cr.P.C. In the meantime they were arrested, however, two out of them passed away and the present two accused persons i.e. Harshad (A3) and Mafat (A4) are being tried. After their trial as such, my Ld. Predecessor and myself recorded evidence of 10 witnesses after they were recalled. It is, therefore necessary to refer entire evidence led by the witnesses in the earlier as well as the present trial.

**PROSECUTION WITNESSES EXAMINED DURING  
PREVIOUS TRIAL**

- PW1 Ratilal Dudhabhai Wariya**  
For proving the site plan and map, prepared by him vide **Exh.7**.
- PW-2 Chandrakant Kesurbhai Patel**  
Signatory of the said plan (**Exh.7**) in the capacity as Nayab-Mamaltdar.
- PW-3 Mohd. Hanif Himmatbhai Shaikh**  
Panch of spot panchanama (**Exh.13**) dt.**03.03.2002**.
- PW4 Kalumiya Aminmiya Shaikh**  
Co-panch of the spot panchanama (**Exh.13**)
- PW-5 Vijaybhai Thakurbhai Waghela**  
Inquest panch dt.**02.03.2002** vide inquest panchanama (**Exh.22**), Exhs. 16 to 21 and 48 to 53, in respect of bodies of various victims.
- PW-6 Mukhtiyar Mohd. Hussain Shaikh**  
Panch of the panchanama dt.**22.03.2002** in respect of bones which were found near the Best Bakery vide panchanamas **Exh.24** and **25**.
- PW-7 Hanif Mehboob Miya Sayyed**  
Panch of panchanama (**Exh.37**) dt.**04.03.2022** in respect of two dead bodies which were tied with rassi and wire

- PW-8 Jagdish Muljibhai Desai**  
Panch for **panchanamas (Exh.39 and 40)** regarding recovery from Mafatiya (A8).
- PW9 Dayaram Ramnivaj Pal**  
Fire Brigade Leading person arrived at Best Bakery on 02.03.2002 and stated the steps taken by him after he reached there.
- PW10 Kiritbhai Dayabhai Patel**  
Fire Brigade Team person deposed about the action taken by them when the team reached at the site of the incident.
- PW11 Ishwarbhai Mohanlal Suthar**  
Fire Brigade Team person deposed about the action taken by them when the team reached at the site of the incident.
- PW12 Satish Hirala Rawal**  
Driver of Fire Brigade and carried the dead bodies of Firoze and Nasru
- PW13 Karimbahi Ibrahimbhai Panter**  
Panch of **panchanama (Exh.46) dt.04.03.2002** regarding the place where two dead bodies were found on **03.03.2002**.
- PW14 Shabbir Abdul Karim Kurawala**  
Panch of **Inquests (Exh.48 to 53 and 16 to 19) dt.02.03.2002**.
- PW15 Fakirbhai Punabhai Patil**  
ASI assisted PI Kanani (PW74) and assisted as per his instruction. Brought on record a **letter (Exh.55)** written to PW71 and a **receipt (Exh.58)**.
- PW16 Rameshbhai Vajubhai Rathwa**  
ASI attached to the S.S.G Hospital who had given Vardi at S.S.G. Hospital and further passed on the Vardi as per the dictation given by Dr. Meean (PW46) vide **Exhs.57/1/2/3**, entries in the casualty police register.
- PW17 Gordhanbhai Mithabhai Maqwana**  
ASI who also gave Vardi pursuant to the dictation given by Dr. Meean (Exh.46) which is at **Exh.60**.
- PW18 Dinubhai Ambalal Patel**  
Chief Fire Officer and produced registers maintained

by Fire Brigade Department and brought on record at Exhs.62 to 64 i.e. entries in X-7 Fire Register, X-8 dead body log book and X-9 vehicles register.

- PW19 Ashokkumar Ramjibhai Waghela**  
Expert in the Forensic Science Laboratory visited the site and submitted Report Exh.24.
- PW20 Dr. Sayyid Shabbir Ali Shamshad Ali**  
Expert and working as Profession of Anatomy and given his opinion in respect of bones of the deceased and also the letter written to him by the DCP vide Exh.69, Exh.70 – the list, Exh.71 the certificate with contents of portion marked Exh.72.
- PW21 Maheshchandra Chabbildas Champaneria**  
Asstt. Director Forensic Science Laboratory examined as an expert to give opinion about hydro carbon about petroleum and the articles R-1, R-6, which are at Exh.74, the letter Exh.75 and letter with opinion Exh.76 and the letter dt.12.06.2002 from Kanani, a reply to Exh.77 and Exh.78.
- PW22 Devendra Ranmasalsingh Thakor**  
Recovery Panch for recovery of sword and iron rod, paper slip (Exh.80), sword and iron rod recovery panchanama (Exh.81), paper slips (Exh.83) signed by panchas.
- PW23 Avdhoot Rajendra Nagarkar**  
Recovery panch of discovery panchanama Exh.85 dt.22.05.2002 and bamboo stick (R-20) recovery panchanama (Exh.85), slip signature (X-13) ( Exh.86)
- PW24 Kamlesh Himmatbhai Darji**  
Recovery panch in respect of recovery panchanamas (Exh.88, 89 and 90) dt.04.04.2002
- PW25 Sureshchandra Vitthaldas Sitpuria**  
Forensic Expert given opinion regarding blood stains vide documents Exhs.93 to 102, wherein Exh.95, 96, 99 and 102 are Reports.
- PW26 Taufel Ahmed Habibulla Siddiqui**  
Injured Eye Witness.
- PW27 Raees Khan Nankau Khan**

**Injured Eye Witness**

- PW28 Shehzad Khan Hasan Khan Pathan**  
**Injured Eye Witness**  
PW26 and PW28 were working in Best Bakery.
- PW29 Yasmin Nafitulla Habibulla Shaikh**  
**Eye Witness,**  
wife of Nafitulla, owner of the Best Bakery, first time examined in the Sessions Court, Mumbai.
- PW30 Naseebulla Habibulla Shaikh**  
Son of Habibulla and brother of Nafitulla co-owner of the Best Bakery. **Eye witness turned hostile.**
- PW31 Nafitulla Habibulla Shaikh**  
The owner of Best Bakery and **an eyewitness turned hostile**
- PW32 Sailum Hasan Khan Pathan**  
**Injured Eye Witness,** worker in the bakery alongwithPW26 to PW28.
- PW33 Mohd. Ashraf Mohd. Harun Shaikh**  
Brother of Aslam, relative of the victims present at the Bakery at 07.30 p.m. given evidence, which is mostly in the nature of **hearsay evidence.**
- PW34 Sharjanhan Kausarali Shaikh**  
Wife of Kashar Mama, who died in the incident and her evidence **is hearsay.**
- PW35 Saherabanu Habibulla Shaikh**  
**Sister of Zahira** and examined as **eyewitness, but turned hostile.**
- PW36 Lal Mohammad Khuda Baksh Shaikh**  
Owner of godown which was burnt and he was present in the locality in the residents of the accused.
- PW37 Abdul Samin Abdul Gani Mansuri**  
Second panch of recovery of Bamboo sticks panchanama (Exh.85) dt.22.05.2002.
- PW38 Abdul Rehman Gulam Mohd. Kadiwala**  
Sword (R23) recovery **panchanama (Exh.130), from A6** and also regarding recovery of Sura (R24), Pipe (R25) from A7 and witness on Exh.129 and Exh.128, slip of panchanama signed by him.



- PW39 Iqbal Ahmed Ali Ahmed Ansari**  
Bakery businessman and leader of Muslim community and his **evidence is hearsay.**
- PW40 Saherunnisa Habibulla Shaikh**  
Mother of Zahirbibi and wife of late Habibulla examined as **eyewitness, but turned hostile** and not support the case of the prosecution.
- PW41 Zahirabibi Habibulla Shaikh**  
She is a witness whose statement was treated as FIR, she is sister of Nafitull (PW31) and examined as **eyewitness, turned hostile and did not support the case of prosecution.**
- PW42 Aslambhai Harunbhai Shaikh**  
Relative of the victim whose wife and children died on the first floor of the Best Bakery.
- PW43 Jyotsnaben Maheshchadra Bhatt**  
Neighbour of Nafitulla, examined as an **eyewitness but turned hostile.**
- PW44 Kanchanbhai Punjabhai Mali**  
Neighbour of Nafitulla (Exh.31), examined as an **eyewitness but did not support the case of prosecution.**
- PW45 Veersingh Chandrasingh Zala**  
Neighbour of Nafitulla (Exh.31), examined as an **eyewitness but turned hostile and did not support the case of prosecution.**
- PW46 Dr. Smt. Meena Robin**  
Attached to S.G. Hospital, Vadodara, who issued injury certificate and has given history in the Vardi vide **Exhs.163, 167, 169 and 171.**
- PW47 Dr. Smt. Sutapa Basu**  
Attached to S.G. Hospital, Vadodara, carried out postmortem of Zahirabai, Subhau and Ramesh and given opinion at **Exh.4, 192, 193, 194, 195, which is correction made in Exh.193.**
- PW48 Dr. Bijaysinh G. Rathod**  
Attached to S.G. Hospital, Vadodara, performed postmortem, gave opinion on the PM notes in respect of **Sabira at Exh.198, Shabnam at Exh.19, Prakash**

at Exh.201, Firoz at Exh.202 and 203, Narsu at Exh.204 and 205. He also gave Yadi at Exhs.200 and 199, which contains PM Notes in respect of Ruksana, wife of Firoz.

**PW49 Dr. Kishore P. Desai**

Attached to S.S.G. Hospital, performed PM and given opinion regarding the cause of death in respect of Babli and Baliram vide Exhs.207 and 208.

**PW50 Paresh Tribhuvan Brahmbhatt**

Arrest panch of arrest panchanama dt.27.03.2002 in respect of A1 to A5 vide Exh.210.

**PW51 Habibbhai Dawoodbhai Arab**

Panch of arrest panchanama dt.01.04.2002 in respect of A6 to A12 vide Exh.212.

**PW52 Razakbhai Noorbhai Hora**

Panch of arrest panchanama dt.17.04.2002 in respect of A17 and A18 Exh.214.

**PW53 Rajesh Shantilal Rana**

Panch of arrest panchanama dt.17.04.2002 in respect of A9 Exh.214.

**PW54 Dr. K.H. Chavale**

Attached to S.S.G. Hospital, performed postmortem in respect of Sipli and Mantasha, daughters of Firoze and his opinion is at Exhs.218, 219 and 220.

**PW55 Arvindbhai Somabhai Rana**

Panch of arrest panchanama (Exh.222) dt.19.05.2002 in respect of A20.

**PW56 Abdul Rehman Allauddin Pathan**

Panch of arrest panchanama (Exh.224) dt.15.04.2002 in respect of A13 to A16.

**PW57 Gulam Modh. Usmanbhai Memon**

Panch of arrest panchanama dt.21.05.2002 vide Exh.226 in respect of A21.

**PW58 Chandrakant Ramchandra Shrivastav**

Corporator of the said area and examined in respect of Telephone call made by him to Panigate Police Station on 02.03.2002 at 10.30 a.m.

**PW59 PI Rajendra K. Chavan**

PI Santacruz Police Station, who recorded statement of Zahirabibi in Mumbai after Vadodara Trial.

**PW60 Dr. Jagdish Sitaram Soni**

Asstt. Professor of Anatomy, gave opinion about the bones.

**PW61 Bhimsinh Somsinh Solanki**

PHC attached to Vadi Police Station, Mobile-I unit on 01.03.2002.

**PW62 Dr. Dilip Bhalchandra Choksi**

Attached to SSG Hospital, who examined victims.

**PW63 Balwantsinh Udesinh Rathod**

PO, attached to Panigate PS. and particularly Mobile-I unit and the first police officer in point of time to reach the Best Bakery site on 02.03.2002 before Baria (PW72)

**PW64 Prakash Bansidhar Pathak**

ASI, Spl. Branch, examined on the point of notification in respect of arrest pertaining to curfew vide Exh.253, 254 and 255.

**PW65 Parimal Keshabhai Velera**

D.C.P, of State Intelligence, who sanctioned bill for video shooting done at the site and other places where riots took place.

**PW66 Abhaysinh Fatabhai Patel**

ASI, who recorded the police statement of PW-27 Raees Khan.

**PW67 Piyush Purshottamdas Patel,**

D.C.P, at the relevant time, South Zone, who arrived at the scene of offence at Best Bakery immediately on 02.03.2002 after Rathod and Baria reached there.

**PW68 Manharbhai Purshottambhai Waria**

ASI, Panigate PS. recorded entries in the station diary and received telephonic message from Chandrakant (PW58) and telephonic message from the hospital and entries made by him in the station diary are marked as X-19 and Exhs.273 to 279.

**PW69 Gautam Narendrabhai Chauhan**

A videographer who did the video shooting at the Best Bakery on 02.03.2002, came alongwith police,

identified number of cassettes which are at **Exh.283**.

**PW70 Jagdishbhai Diwanjibhai Choudhari**

PSO, attached to Panigate PS made entries in the station diary about the FIR.

**PW71 Dr. Hiren N. Judal**

Resident doctor attached to SSG Hospital, proved endorsement at **Exh.262**, which is a letter recording statement of Raees. He had given opinion that, Raees Khan was not fit to give his dying declaration.

**PW72 Himmatsinh Gamabhai Baria**

Investigating Officer attached to Panigate PS, carried out initial investigation from 02.03.2002 to 10.03.2002

**PW73 Pankaj Shankar Sharma**

A journalist who suo-motu appeared before the trial in Mumbai and claimed to have taken interview of Zahirabai in April, 2022, he produced CD of the interview, which is marked as **Exh.389**.

**PW74 Popatlal Purshottambhai Kanani**

Investigating Officer and PI attached to DCB Crime Branch, Gujarat, who was appointed as Investigating Officer to investigate the said incident from 10.03.2002 to 01.12.2002.

**PW75 R.C. Dave**

Another PSI attached to DCB, Gujarat who was assisting PW-74 Kanani and was a junior IO, acted on instructions of Kanani and drew a **panchanama (Exj.22) dt.22.03.2002 in respect of Wakhars**, which were burnt in the riot.

### DEFENCE WITNESSES

**DW1 Kumarswami**

He was at the relevant time working as Joint Commissioner of Police (Law & Order), Vadodara, examined for the purpose of proveing contradiction in the statement of Yasmin (PW29)

**DW2 Deepak Swaroop**

Commissioner of Police, examined for the purpose of lock up register.

**DW3 Ramjibhai Jagjibhai Pargi**

ACP, at the relevant time examined to prove omissions and contradictions in the statements of Yasmin (PW29).

**DW4 Mrs. Khyati Pandya**

CEO in News Plus Channel and she has produced a **CD (Exh.38) and transcript of the CD (Exh.504 colly.)**.

**DW5 Ajay Jasubhai Patil**

A Videographer, who had taken shooting and interview of Yasmin (PW29), **vide CD Exh.515 and CDs Exh.380 colly.** when she had returned to reside at Best Bakery after the accused in Gujarat trial was acquitted.

21. These witnesses were examined when the trial was separated from these accused persons. It is also necessary to note that, when the hearing of the trial of these two (four, as two of them are deceased) accused persons began, the Ld. SPP Smt. Manjula Rao filed list of witnesses (Exh.40) and prayed to issue witness summons to in all 15 prosecution witnesses for their further examination. Accordingly, following 10 witnesses were examined, rather further re-examined in addition to their earlier evidence.

<b>PW1</b>	<b>PW68</b>	Manharbhai Purshottambhai Waria
<b>PW2</b>	<b>PW70</b>	Jagdishbhai Diwanjibhai Choudhari
<b>PW3</b>	<b>PW69</b>	Gautam Narendrabhai Chauhan
<b>PW4</b>	<b>PW67</b>	Piyush Purshottamdas Patel
<b>PW5</b>	<b>PW24</b>	Kamlesh Himmatbhai Darji
<b>PW6</b>	<b>PW8</b>	Jagdish Muljibhai Desai
<b>PW7</b>	<b>PW26</b>	Taufel Ahmed Habibulla Siddiqui
<b>PW8</b>	<b>PW27</b>	Raees Nanku Khan.
<b>PW9</b>	<b>PW28</b>	Shehzad Khan Hasan Khan Pathan
<b>PW10</b>	<b>PW74</b>	Popatlal Purshottambhai Kanani

22. Accused herein admitted panchanama for recovery of weapon (Exh.130) in the presence of Panch PW38 Abdul Rehman

Gulam Mohd. Kadiwala. Accused persons filed Exh.39A and admitted following panchanamas, PM Reports as follows,

	Inquest panchanama of Feroz and Nasru
	Panchanama of the place where the dead bodies were found.
	Panchanama of articles found on the terrace
	Panchanama of sample of Wall scrapping and earth.
Exh.130	Recovery Panchanama at the instance of A6 and regarding recovery of Sura (R24), Pipe (R25) from A7.
Exh.90	Panchanama.
Exh.81	Panchanama in respect of recovery of sword and iron rod recovery panchanama.
Exh.83	Recovery of Paper slip (Exh.83) signed by panchas.
Exh.85	Discovery panchanama of bamboo stick (R20).
Exh.148	Panchanama
Exh.216	Panchanama.
Exh.222	Arrest panchanama of A20, dt.19.05.2022.
Exh.226	Arrest panchanama of A21 dt.21.05.2002.
Exh.192 to 194,198, 199,201, 202,204, 207,208, 218and 219	Postmortem Reports
1	Previous Evidence of Dr. Smt. Sutapa Basu (PW47)
2	Previous Evidence of Dr. Bijaysinh Rathod (PW48)
3	Previous Evidence of Dr. K.P. Desai (PW49)
4	Previous Evidence of Dr. K.H. Chavle (PW54)

23. Ld. Adv. for the accused Mr.Salsingkar admitted above documents, panchanamas and evidence.

24. When the matter was heard in the appeal before the Hon'ble High Court, it was candidly submitted on behalf of Appellants therein that, they (appellants) were not challenging the incidents which took place on 01.03.2002 and 02.03.2002 at night or in the morning. But they (accused) challenged their involvement in the said incidents. Similar situation is here, wherein the accused persons have challenged their involvement in the said incidents.

25. Careful study of the judgment in Criminal Appeals No.583/2006, 584/2006, 585/2006, 571/2011, 572/2011, 573/2011, 198/2012, 199/2012 and 200/2012 indicates that, the Hon'ble High Court has specifically noted submissions made by the Ld. Advocates for appellants therein, in paragraph 26 as follows,

Mr. Adhik Shirodkar, the learned Senior Counsel appearing on behalf of the appellants candidly submitted that the appellants are not challenging the incidents which took place on 01.03.2002 and 02.03.2002 at night or in the morning. He submitted that the appellants, however, have challenged their involvement in the said incidents.

26. Similar situation is here, wherein Harshad Ravajibhai Solanki (A3) and Mafat @ Manoj Gohil (A4) have not much disputed occurrence of incident, but denied their presence in the said unlawful assembly causing riot, setting Best Bakery at fire and killing 14 persons therein. However, these two accused persons heavily contended that, they were not present when the incident took place nor any role is

attributed to them nor they had committed any offence as alleged. Whatever mentioned in Exh.136 by Zahirabibi (PW41) as “Marfatio” has no nexus with Mafat @ Manoj (A3) herein Zahirabibi's evidence is not credit-worthy as she has undergone Perjury sentence. It has to be noted that, accused persons who were convicted by the then Hon'ble Additional Sessions Court, challenged the said judgment before the Hon'ble High Court in the above referred appeals. These two accused persons though strongly disputed their identities and presence on the spot at the time of incident, yet not much disputed cause of death of 14 victims in the said incident. Therefore, re-appreciation of evidence and law laid down by the Hon'ble High Court in the judgment in those appeals, is a 'Precedent' and 'Law' for this case in respect of remaining two accused.

27. Even the Hon'ble High Court after thorough scanning of medical evidence i.e. testimonies of Doctors, who treated the injured and also conducted Post Mortems of the dead bodies, conclusively arrived at finding that death of victims was homicidal and unnatural and recorded as such in paragraph 71 page 103 of the judgment dt.04.07.2012 in appeals, as follows,

“After having heard both, the learned Senior Counsel appearing on behalf of the appellants and the learned Special Public Prosecutor appearing on behalf of the prosecution and having perused the record and proceedings, we are of the view that the point as to whether death of 14 people was homicidal or not is not disputed and, as such, in view of the evidence of doctors who have performed the postmortem and have given opinion on the death of these victims, it is clear that their death was homicidal and unnatural. This fact has not been seriously disputed by the defence also. The said point is, therefore, answered accordingly”.



Therefore, it is proved that, death of 14 victims was homicidal and unnatural. Whether Harshad (A3) and Mafat (A4) had any involvement therein ? Will be discussed afterwards.

28. It is necessary to examine whether prosecution proves incidents in question. Also the Hon'ble High Court arrived at a conclusive finding about the same in the affirmative. Admittedly, none of the accused persons, who preferred the appeals before the Hon'ble High Court, has challenged this finding of the Hon'ble High Court regarding occurrence of incident, hence this Court is not permitted to take any other view even if the two accused persons herein are being tried subsequently. In this background it has to be noted that, incidents in question took place in the evening of 01.03.2002 at about 08.00 p.m. to 08.30 p.m which finally ended after arrival of police at the scene in the morning of 02.03.2002 at 10.40 a.m. The Hon'ble High Court noted the submissions made by Ld. Sr. Counsel Mr. Adhik Shirodkar that, the incident is not much disputed. Hence, the Hon'ble High Court arrived at its affirmative finding.

29. Apart from this, careful examination of evidence of various prosecution witnesses, it is proved that after the incident of burning of Karsevaks at Godhara, who were travelling in one of the coaches of Sabarmati Express on 27.02.2002, there was wide spread of riots throughout the Gujarat State and Vadodara City. On 01.03.2002 in the evening around 08.00 p.m. to 08.30 p.m. a mob of 1000-1200 people rushed towards the Best Bakery armed with torches (मशाल) and lethal weapons such as – swords, guptis, iron rods, sticks and set on fire the Warehouse of one Lal Mohd. and Vakhar, which were near the Best Bakery and Best Bakery itself including residential house of the

members of Habibulla family.

30. It is not seriously disputed that, in all 14 people viz. - (1) Jainabibi Hasanbhai, (2) Shabnambibi @ Rukhsana Aslam, (3) Sabira Habibulla, (4) Cipli @ Saili Aslam Shaikh, (5) Babli Aslam Shaikh, (6) Mantasha Firoz Aslam Shaikh, (7) Subhan Firoz Aslam Shaikh, (8) Baliram Shamlal Verma, (9) Prakash Ugroo Dhobi, (10) Raju @ Ramesh Baijnath, (11) Kausarali Shaikh, (12) Arshad @ Lulla Hasanbhai Shaikh, (13) Firoz Pathan and (14) Nasroo Hasan Khan Pathan, died in the said incident. It is not in dispute that three women viz. Jainabibi Hasanbhai, Shabnambibi @ Rukhsana Aslam, Sabira Habibulla, and four children viz Cipli @ Saili Aslam Shaikh, Babli Aslam Shaikh, Mantasha Firoz Aslam Shaikh, Subhan Firoz Aslam Shaikh, died on the first floor of the residential house of the family members of late Habibulla. Out of these 7, a wife and two children of Aslam Khan were there and wife of Firoze and his two children and Sister of Zahirabibi viz Sabira also died. Next day all the people who were on the terrace and survived the attack by the mob, who were throwing stones and other missiles, were asked to come down after the assurance was given to them that they would be let off after little beating was given to them and thereafter, women members were taken towards bushes and hands and legs of the men were tied and they were assaulted with sword and sticks on their heads and an attempt was made to set them on fire. The prosecution has established and proved these facts. However whether A3 and A4 herein were involved in it, will be discussed afterwards.

31. Prosecution has further proved that, two dead bodies were found in the bushes at a little distance from the Best Bakery. Their hands and legs were tied and they were practically burnt. The bodies of

Kausarali Shaikh and Arshad @ Lulla Hasanbhai Shaikh were not found, though the bones were found. It could not be proved that these bones were of Kausarali Shaikh and Arshad @ Lulla Hasanbhai Shaikh. The bodies of Firoz Pathan and Nasroo Hasan Khan Pathan were also found on the backside of the Best Bakery. They were found in the burnt condition. Amongst the people who were brought down, Prakash Ugroo Dhobi, Baliram Shamlal Verma and Raju @ Ramesh Baijnath were dead and Baliram died before he was admitted in the hospital. Prosecution has established this fact.

32. Prosecution has also proved that, Taufel (PW26), Raees (PW27), Shehzad (PW28), Nasibulla (PW30), Nafitulla (PW31) and Sailum (PW32) had received grievous injuries. In her evidence Dr. Meena (PW46) who had examined Raees (PW27) deposed that, he (PW27) was conscious and had following injuries,

- i. First to second degree burns on right upper limb, left arm and on back,
- ii. C.L.W. (Contused Lacerated Wound) on right parieto occipital region, size 10cm X 2cm X scalp deep.
- iii. 2 C.L.W.s on occipital region – out of these, one was 5cm X 0.5cm X 0.5 cm and the other was 2 cm X 0.5 cm X 0.5 cm,

33. Dr. Meena further deposed that, she examined Sailum Hasan Pathan (PW32) and found him to be unconscious with following injuries on his person,

- i. Incise Wound (I.W.) on left parietal region, size was 10 cm X 2 cm X scalp deep,
- ii. 2 C.L.W. On left parietal – the first of 2 cm X 0.5 cm X 0.5

- cm and the second of 1cm X 0.5cm X 0.5 cm,
- iii. C.L.W. On the left ear, size was 1 cm X 0.5cm X 0.5 cm.

Her diagnosis was that of head injury with small haemorrhagic contusion in left temporal region with sub-arachnoid haemorrhage. Silum (PW32) was discharged on 01.04.2002. Initially he was unconscious, but regained consciousness on 12.03.2002.

34. Dr. Meena (PW46) further deposed that she examined Shehzad Khan (PW28) and diagnosed head injury i.e. multiple linear fractures on the left side of skull. According to her the patient regained consciousness on 03.03.2002 at 4.00 p.m. and was discharged on 16.03.2002. He had following injuries.

- i. I.W. on left fronto parietal, size 10cm X 2cm X 1cm,
- ii. I.W on left post auricular region, size 5 cm X 1 cm X 0.5 cm,
- iii. I.W on behind injury at sr. no. ii) above, size 2 cm X 1 cm X 0.5 cm,
- iv. I.W behind injury at sr. no. iii) above, size 2 cm X 0.5cm X 0.5cm,
- v. 2 C.L.W.s on right temporal occipital region, size 2 cm X 1cm X 0.5 cm,
- vi. C.L.W on chin, size 2 cm X 0.5cm X 0.5 cm.

35. Dr. Meena (PW46) further deposed having examined Nasibulla Habibulla (PW30) who was unconscious having head injury and three I.W.S. on left occipital parietal region as follows,

- i. Size – 15cm X 2 cm X scalp deep,
- ii. Size – 10cm X 2 cm X scalp deep,
- iii. Size – 8cm X 2 cm X scalp deep

According to her he had burn injuries on both lower limbs and he was unconscious till 03.00 p.m. and was diagnosed as head injury with depressed occipital fracture with 6 to 8 percent second to third degree flame burns on both lower legs and was discharged on 30.03.2002.

36. Dr. Meena (PW46) further deposed that, she examined Taufel Ahmed (PW26) and noted the history of assault by unknown object by public at 10.00 a.m. at Bakery. He was unconscious and regained the consciousness at 01.00 p.m. On taking X-ray no abnormality in Cervical spine was detected. CT Scan was taken and ultimately he was discharged on 19.03.2002. Following injuries were found on his person,

- i. I.W. on left occipital region, size 10cm X 2 cm X 0.5cm,
- ii. I.W on parietal occipital region – ie the back of the head -, size 15cm X 2 cm X 0.5cm,
- iii. Burns on both lower limbs.

37. Dr. Meena (PW46) further deposed having examined Nafitulla (PW31) and history was recorded as, “Assault by unknown weapon (very sharp cutting) by unknown persons at 10.00 a.m. at Daboi Road Bakery”. According to her, the said patient was discharged on 08.03.2002 at 05.00 p.m. and the injuries sustained by him were simple. He was conscious at 01.00 p.m. having following injuries,

- i. I.W. from left side occipital to the mandibular region, size 15cm X 2cm X 1cm,
- ii. I.W. on occipital region, size 4 cm X 2 cm X 0.5 cm,
- iii. I.W. on right leg, size 3 cm X 1 cm X 0.5cm.

38. Already the Hon'ble High Court discussed medical evidence and appreciation thereof. Even the Hon'ble High Court arrived at conclusion that deaths were homicidal and injuries caused to the injured persons were also caused by the attack made on the Best Bakery, particularly in the second incident which took place in the morning of 02.03.2002. In the previous trial the then Hon'ble Court held that the statement (Exh.136) of Zahirabibi (PW41) recorded at 1.00 p.m. is the FIR, however, the Hon'ble High Court judgment in Appeals, paragraphs 164 (last three lines) and 165 held about the same as follows,

The Court further erred after treating the said statement in the FIR by relying on the said FIR as a corroboration to the testimony of witnesses by stating that it would fall under section 6 of the Evidence Act by treating it as res gestae. **In our view, Trial Court committed serious error in treating the statement made by the witness as res gestae and relying on the said statement in the FIR as a corroboration to the testimony of the eye witnesses. Even assuming that the said statement was correctly treated as an FIR even then the approach of the Trial Court is erroneous.**

Considering the hostility of Zahirbibi (PW41) and the observations of the Hon'ble High Court referred above much emphasis and importance cannot be given to her testimony and statement Exh.139 made by her about 'Marfatio' therein.

39. Another crucial aspect which needs to be considered is regarding the testimony given by Yasmin (PW29), who filed applications before the Hon'ble High Court stating that, she was compelled to give evidence at the instance of certain persons and

further claimed/requested the Hon'ble High Court that, there may be fresh re-trial and that, her evidence may again be recorded. It has to be noted that, the Hon'ble High Court dismissed all the three applications filed by Yasmin Shaikh (PW29) holding that, there is no substance in the allegations made by her against the prosecution (paragraph 66 of the judgment of the Hon'ble High Court). Similarly the Hon'ble High Court regarding evidence of Yasmin (PW29) who claimed that she was present at the time of incident and also sustained injuries alongwith her daughter, made observations in paragraph 161 of the judgment in Appeals as follows,

**“In our view, even without taking into consideration the affidavit which has now been filed, it is difficult to rely on the testimony of this witness (PW29). It is surprising that, this witness has not received injury in the entire incident and she has made improvement that her daughter was also injured as a result of stones which were thrown and the said omission has been brought on record. This witness has not been examined by the prosecution in the trial court at Gujarat.”**

40. Therefore in view of above observations made by the Hon'ble High Court much emphasis and importance cannot be given to the testimony of Yasmin (PW29) who claimed that she was present in the Best Bakery when the incident took place. Basically, the Hon'ble High Court discarded evidence of Zahirabibi (PW41) noting her conduct and the consequent/sentence she had undergone by the order of the Hon'ble Supreme Court for Perjury. Same is the situation with Yasmin (PW29) whose presence in the premises of Best Bakery is doubtful to witness both the incidents. She has made improvements that she and her daughter were injured, which is not proved beyond reasonable doubt.

41. In Appeals the Hon'ble High Court confirmed conviction of 5 accused on the basis of evidence of injured witnesses and identification of those accused persons made by them in their evidence coupled with role attributed by them to those accused persons. This aspect will be discussed afterwards, but it is necessary to refer evidence of other witnesses and conclusive observations made by the Hon'ble High Court in the judgment of Appeals for the said evidence. In paragraph 82 of the judgment in Appeals the Hon'ble High Court discussed appreciation of evidence of witnesses who became hostile in this case, based on a copy of statements of hostile witnesses showing a particular portion tendered by the Ld. Special Prosecutor on which reliance is sought to be placed by the prosecution. It was held that, "Perusal of the said statements does not in any manner further the case of the prosecution and, apart from that it cannot be said that these statements are in the form of admissions. These statements are not concerning the identity of the accused in commission of the said offence and, therefore, even assuming that they are admissions, they do not support the case of the prosecution". I have already noted above, how the Hon'ble High Court discarded entire testimony of Zahirabibi Shaikh (PW41) being not trustworthy.

42. Pankaj Shankar Sharma (PW73) whose name was not mentioned in the chargesheet, either before the Ld. Trial Court in Gujarat or the chargesheet filed before the Mumbai Trial Court. This witness suddenly popped up his head in the midst of the trial and told the Court that he had material evidence in support of the prosecution case, which would establish the guilt of the accused and also filed an application Exh.386 on 10.05.2005. The Hon'ble High Court referred



the manner in which the then Hon'ble Trial Court, Mumbai entertained his appearance and application, and, further allowed the cassettes produced by him and specifically laid down as follows,

“If such type of applications are allowed in a casual manner, it cannot lead to serious miscarriage of justice. We would therefore, like to point out that the procedure followed by the Trial Court in respect of this witness (PW73) is in derogation of the sound principles laid down by the Hon'ble Apex Court in respect of the provisions of Sec.311.”

In paragraph 90 the Hon'ble High Court held as, “Though this evidence of PW73 has come on record, the prosecution has not laid much stress on this evidence, which was direction given by the Court.” While concluding the appreciation of evidence of PW73, Video Recorder, the Hon'ble High Court held as, “In our view, since no emphasis has been put by the prosecution on the evidence of this witness (PW73), no reliance can be placed on the contents of CD which has been produced by this witness. The interviews taken by him (PW73) after the incident are not relevant”. It is further held that when the prosecution itself very reluctant to treat him (PW73) as their own witness, the trial court should have been more circumspect and cautious before direction the prosecution to examine the said witness (PW73) as prosecution witness. The trial court, in fact, has clearly erred in permitting this witness (PW73) who is obviously a person from media, who has tried to use the Court as a forum for the purpose for advocating his view, which should not have been permitted by the trial court without first ascertaining the authenticity of the cassette and without finding out the antecedents and intention of this persons (PW73).

Therefore, much discussion is not required to discard testimony of Pankaj Sharma (PW73) who had tried to give colour of media trial to the present trial in this Court. So his testimony is not helpful to the prosecution to prove its case against A3 and A4 herein.

43. Jyotsnaben Bhatt (PW43) is the next witness which was

declared as hostile witness and was permitted to be cross-examined. She admitted how from her residence she cannot see the Best Bakery. The Hon'ble High Court in the judgment of Appeals clearly held that, testimony of this witness (PW43) does not assist the prosecution case in any manner.

44. Kanchanbhai Punjabhai Mali (PW44) deposed that, a mob of 1000-1200 persons was slowly moving towards the Bakery and they were shouting slogans. Hearing those slogans, he was frightened, hence he went inside the house alongwith the children. He clearly deposed having not personally seen anything, but came to know on the next day as to what had happened. His testimony is not helpful to prove the identities of both the accused persons (A3 and A4) herein.

45. Veersingh Chandersingh Zala (PW45) is the Tempo driver residing in the said locality of the Best Bakery. He is hostile witness and the Hon'ble High Court while appreciating his evidence held that, this witness does not help the prosecution for establishing the identity of the accused and, therefore, no reliance can be placed on his testimony. In his cross-examination he (PW45) has admitted that from his house, Best Bakery cannot be seen and that, there is no terrace to his house as it has tin sheet roof and that, his house is not situated on the main road, but in the lane which is inside from where Best Bakery cannot be seen. The Hon'ble High Court clearly held that, this witness does not take case of the prosecution any further, so far as establishing the identity of the accused is concerned. The present two accused persons (A3, A4) have also vehemently disputed their identity and prosecution herein has not re-examined this witness in the background of these observations of the Hon'ble High Court.

46. Lal Mohd. Khuda Baksh Shaikh (PW36) is the next witness deposed that his godown and Best Bakery were burnt in the said incident. He and his family members escaped from the rear door of their house at 12.30 midnight and then went ahead when 'Munna' and 'his mother' took them to their house and they were there till 05.30 a.m. He deposed that, all the accused who were present in the Court at the relevant time were from their locality and further admitted that, 'Munna and his family' protected all of them throughout the night and his mother has given milk to his grandchildren and that the rioters had not come towards Munna's house. It is material to note that, he is the witness who referred a person as Mafat in his evidence, but deposed that neither Jayanti, nor his son – Rinku – nor his nephew Mafat nor Munna attacked him or the persons with him. Who said/referred Munna, has not been explained by the prosecution with cogent evidence. Similarly, the role attributed by this witness to Munna and Mafat is not that of 'Rioters' but he referred them being their 'Saviours'. The Hon'ble High Court while appreciating his evidence held that, testimony of this witness, at the highest mentions about the presence of Dinesh Phulchand Rajbhar (A15) at the scene of offence. No role has been attributed by him to Dinesh Rajbhar (A15). The Hon'ble High Court further noted as to how he has surprisingly stated that Munna (A9) who was then absconding, in fact, had helped him and his family members and other Muslim persons by protecting them in his house and his mother also had served his grandchildren and had given them food. Therefore, even the reference of name Mafat made by him does not prove the identities of Harshad (A3) and Mafat (A4) herein are not proved being Rioters. nor any role is attributed to said Mafat, in order to attract all offences levelled against them (A3,A4) herein. Even the

Hon'ble High Court has clearly held as, **“This witness is not of any assistance to the prosecution for identifying all other accused, nor has he attributed any role to the accused in commission of the said offence”**. Reference of name Mafat and Munna made by him as such, cannot be an exception for appreciation of his evidence deviating the finding given by the Hon'ble High Court as above.

47. Mohammad Ahraf Mohammad Harun Shaikh (PW33) is the next eyewitness relied on by the prosecution. He deposed that, he left Vadodara because his own family was killed. He further deposed that on the date of the incident he had seen rioters with swords, rods etc. and realized that if he went to Best Bakery, he would be killed. He has given a brief description about the incident which transpired at night on 01.03.2002. However, he has not given description of the names of the members of the mob. After scanning his evidence the Hon'ble High Court in paragraph 98, page 143 of the Judgment in Appeals, held as follows,

“In our view, the testimony of this witness (PW33) does not assist the prosecution case in any manner whatsoever, apart from stating that, Sanju was not there but his elder brother Dinesh was there and **he has not attributed any role whatsoever to them**. In the cross-examination he admitted that, he has not mentioned to the police that Dinesh was also present there.

48. Admittedly, like erstwhile accused persons the present two accused (A3 and A4) have vehemently disputed their identity and presence in the mob. Stepping ahead it is their contention that even if the presence is referred by any of the witnesses, no role was attributed to them in order to attract law relating to unlawful assembly and nexus

of their act with the alleged incident of killing 14 persons and even in respect of the incident occurred next day morning. Previously tried accused had also disputed their identities and the Hon'ble High Court further clearly held as, **“Since the defence has disputed the identity of the accused in respect of commission of the offence, it is not necessary to go through the evidence of panch witnesses who have proved various panchanamas such as, inquest panchanama, seizure panchanama, recovery panchanama and C.A. reports in respect of opinion given by the experts on the bones and other relevant matters”**. These observations are squarely applicable to the case of the present accused (A3 and A4) who have also vehemently disputed their identities, presence on the spot being a part of unlawful assembly and further any role attributed to them contending that, there is absolutely no evidence to prove the same.

49. In the background of such discussion in respect of various prosecution witnesses, the Hon'ble High Court in the Judgment of Appeals clearly held as follows,

**“The crucial aspect, therefore, is : Whether the injured eyewitnesses who have been examined by the prosecution have proved beyond doubt the identity of the accused and whether the accused (appellants) who have filed these appeals are the persons who have been identified by the eyewitnesses or whether reliance can be placed on their testimony”**.

50. In my opinion, the same test is applicable to the present accused persons (A3, A4). The Hon'ble High Court further laid down that, keeping in view the well settled position as laid down by the various judgments of the Hon'ble Apex Court, it is necessary to examine

the statements of the injured eyewitnesses Taufel (PW26), Raees (PW27), Sailum (PW32) so also the eyewitness Yasmin (PW29). The same would be applicable to the case of the present accused persons. I have already noted how the testimony of Zahirabibi (PW41) and Yasmin (PW29) has been discarded by the Hon'ble High Court being not trustworthy. These tests and parameters about their evidence discussed by the Hon'ble High Court in the Judgment of the Appeals would not change in respect of the present accused persons (A3, A4).

51. Nasibulla (PW30) and Nafitulla (PW31) are also injured eyewitnesses. However, both these witnesses have turned hostile and, therefore, the Hon'ble High Court in the Judgment of Appeals has clearly held (para 102) as, **“In our view, their testimony is not relevant for the purpose of establishing identity of the accused”**. For deciding the question relating to identity of the present accused persons (A3 and A4), this conclusion drawn by Hon'ble High Court is binding and this Court cannot form any opinion contrary to what has been held by Hon'ble High Court as above when both of them are not recalled and re-examined by prosecution herein. There is nothing to prove that these two injured witnesses (PW30, PW31) had made any reference to show the presence of these two accused persons (A3 and A4) nor any role is attributed to them by these two witnesses (PW30 and PW31). Hence, their hostile testimony as held by Hon'ble High Court cannot form any basis to prove identify of both the accused persons herein. At the cost of repetition though Yasmin Nafitulla Haibibulla Shaikh (PW29), has claimed herself being injured witness and was on the terrace alongwith other witnesses, and, also alleged that, she had seen the incident, particularly the incident in the morning and also identified number of assailants, I have already noted above how the Hon'ble High Court held

about her evidence as, **“In our view, so far as evidence of PW29 is concerned, it will not be possible to rely on her testimony (para 103 page 145).** In this way the testimony of this alleged injured eyewitness is of no use to prove identity of the present two accused persons (A3, A4). The Hon'ble High Court at length discussed testimonies of injured eyewitnesses by noting contradictions, omissions, omissions amounting to contradictions and arrived at conclusion in the Judgment of Appeals. This aspect will be discussed afterwards.

52. Prosecution case is that there were two incidents. One occurred in the night and another in the morning. In this way the entire incident is in two parts. Case of prosecution in respect of the incident which took place at night, is that mob of 1000-1200 people came there from all directions, burnt Best Bakery and also timber which was lying on the ground floor, on fire and rioters also burnt Wakhar of Lal Mohammad. Other houses and vehicles which were in the compound. While attacking, the mob were throwing soda water bottles and the bottles filled with kerosene, set on fire and also stones were being thrown. They were shouting slogans. While appreciating evidence on this incident the Hon'ble High Court appreciated the submissions advanced by the Ld. Senior Advocate for the appellants/co-accused that if the topography of Best Bakery is taken into consideration and sequence of events as narrated by the witnesses is considered then in such circumstances, it was physically impossible for these witnesses to have seen the faces of assailants. If stones are thrown continuously on the ground floor, the natural conduct of any person would be to go to the safest place on the terrace and it would not be possible to peep either from 'Jaali' or from the terrace wall to see the faces of accused. If evidence of Ratilal Waria (PW1), Chandrakant Patel (PW2) and Gautam

Chauhan (PW69) who is the videographer, that residential quarters of Habibulla and the adjoining Bakery are clearly visible, is considered it has to be noted that once the person goes on the terrace, the only way to look down would be to bend over the terrace wall. The Hon'ble High Court while appreciating this evidence has clearly held that as **“In our view all this is certainly impossible”**.

53. The Hon'ble High Court in paragraph 142 of the judgment in Appeal clearly held as follows;

If the testimony of those witnesses who had stated that there was crowd of 1000-1200 people who were throwing stones, soda water bottles and bottles filled with kerosene and which were put on fire and used as missiles, the testimony of the witnesses who have stated that they were sitting on a cot **will have to be discarded as an afterthought**. The Hon'ble High Court further held as “It is also not probable that these witnesses have also brought KausarAli and Lulla on the first floor after they were assaulted because had their story been true, their clothes would have been stained with blood. It is an admitted position that blood stain clothes of these injured witnesses were not seized by police nor were they sent to C.A. The story of these witnesses having seen the assault on KausarAli and Lulla therefore, cannot be believed and in all probability, soon after hearing shouts of the mob which was approaching the Best Bakery, they all went to terrace and were there till morning.”

54. In respect of the first incident of night there is nothing to prove that both accused persons herein (A3,A4) were the part of the said mob rather unlawful assembly, committed riot and further set Best Bakery to fire. The night incident in this way is not proved also against these two accused persons (A3,A4). Hence, much discussion is not required to hold that involvement of both accused persons (A3,A4)



herein in the night incident is not proved beyond reasonable doubt, even if, homicidal and unnatural death of fourteen people in the said incident is not much disputed. The prosecution is miserably failed to establish and prove nexus of these accused persons (A3,A4) with the said incident.

55. The second incident took place in the morning in broad daylight wherein inmates of Best Bakery who were on the terrace, were asked to come down on a ladder. Witnesses who were injured in the said incident clearly stated that, initially, women folk were brought down and, thereafter they were brought down and after they were brought down their hands and feet were tied and they were assaulted with sticks and swords. All this happened sometime between 08.00 am to 08.30 am in the morning. The Hon'ble High Court while appreciating evidence on this facts held that those witnesses were in a position to closely observe the assailants and, therefore, they were in position to identify the assailants (paragraph No. 143 of Judgment in Appeals). Further careful study of judgment in Appeals indicates that Ld. Advocates for appellants strenuously argued to discard the evidence of those four injured eyewitnesses in toto on account of omissions and contradictions which have been brought on record. However, the Hon'ble High Court in paragraph No. 144 of Judgment in Appeals has not accepted the argument as such. Prior to it the Hon'ble High Court also referred charts indicating proved contradictions and omissions in the evidence of the four injured eyewitnesses.

56. The Hon'ble High Court further noted that the investigating agency has committed serious fault in not making further investigation under Sec. 173 (8) of Cr.PC and further held that in statements of

witnesses recorded by the Police and there description of accused is not given, the evidence of those four eyewitnesses cannot be discarded in toto on that ground, which is a substantive evidence. The Hon'ble High Court further held those contradictions and omissions in the evidence of the said eyewitnesses as minor. It was further held that the fact that all these four eyewitnesses have directly or indirectly mentioned the names of four accused viz A11,'A15',A12 and A16 clearly indicates that the version given by them is truthful and Court will have to accept their testimony so far as those four accused are concerned. In paragraph No. 131, page 177, 178 and 179 of the Judgment in Appeals, the Hon'ble High Court referred the chart showing the identification of accused No. 11, 15, 12,16, 1, 18, 4,14 and 20 by prosecution witnesses No. 26,27,28,29 and 32 along with the role attributed to each of them. The said chart is referred as it is as follows :

Accused Nos.	Identified by	Role attributed
A-11 Sanjay Thakkar	P.W.26	Tied hands and legs.
	P.W.27	No role
	P.W.28	Took Rs 5000/- with sword and tied hands
	P.W.29	No role
	P.W.32	Knew his name
A-15 Dinesh Rajbhar	P.W.26	Seen at night with sword and mashal, shouting and giving slogans
	P.W.27	Person having sword and assembling.
	P.W.28	Had a sword and knew name.
	P.W.29	Identified him, seen in morning.
	P.W.32	Gives name of Dinesh (A-15)

Accused Nos.	Identified by	Role attributed
A-12 – Bahadursinh @ Jitu Chandrasinh Chauhan	P.W.26	Seen him running towards bakery with mashal and sword.
	P.W.27	Nil
	P.W.28	Identified him with sword.
	P.W.29	Seen in morning.
	P.W.32	Attributed role to Jitu and gives his address at Gajrawadi
A-16 Shanabhai Bariya	P.W.26	Made them get down from terrace. Tied hands and legs and assaulted.
	P.W.27	Present there with sword. Does not name the accused.
	P.W.28	Named the accused and said that he had a sword.
	P.W.29	Identifies accused. Seen in morning.
	P.W.32	Nil.

Accused Nos.	Identified by	Role attributed
A-1 – Rajubhai Baria	P.W.26	Nil
	P.W.27	Nil
	P.W.28	Does not know name but points out the accused.
	P.W.29	Present there with sword. Does not name the accused.
	P.W.32	Nil

A-18 Shailesh Tadvi	P.W.26	Nil
	P.W.27	Identifies the accused as person who tied hands and legs.
	P.W.28	Points out the accused. Does not know the name.
	P.W.29	Identifies the accused.
	P.W.32	Nil
A-4 Pankaj Gosai	P.W.26	Nil
	P.W.27	Present there. Does not name the accused.
	P.W.28	Does not name, but points out the accused.
	P.W.29	Identifies the accused.
	P.W.32	Nil.

Accused Nos.	Identified by	Role attributed
A-14 – Jagdish Rajput	P.W.26	Nil
	P.W.27	Nil
	P.W.28	Does not name but points out finger. No role attributed.
	P.W.29	Identifies him.
	P.W.32	Nil.
A-20 Suresh @ Lalo Devjibhai Vasava	P.W.26	Nil.
	P.W.27	Nil

	P.W.28	Does not remember the name but points out.
	P.W.29	Nil.
	P.W.32	Gives names but no role is attributed.

57. Those four injured eyewitnesses stated that they have been residing in the locality for about one and half to two years and Taufel (PW26) and Raees (PW27) have stated that faces of the accused persons referred in the chart were familiar to them. Shehzad Khan (PW28) and Sailum (PW32) stated that they knew those accused persons since they were residing in the locality near the Best Bakery and some of them used to come to the Bakery for purchasing biscuits, toasts and other articles and have also given description and addresses of some of those accused persons. The Hon'ble High Court considered this aspect at Page 184 of the Judgment in Appeals and held that all the witnesses have corroborated each others testimony in respect of assault by four of the accused viz Sanjay Thakkar (A11), Dinesh Rajbhar (A15), Bahadur Singh alias Jitu Chandra Sinh Chauhan (A12) and Shanabhai Baria (A16). The Hon'ble High Court further held that though in respect of others viz Rajubhai Baria (A1), Shailesh Anupbhai Tadvi (A18), Pankaj Virendragir Gosai (A4), Jagdish Chunilal Rajput (A14) and Suresh alias Lalo Devjibhai Vasava (A20) the said corroboration is not complete and **some of the witnesses have only mentioned their presence at the place without attributing any role to them.** The Hon'ble High Court further held that so far as A11, A15, A12 and A16 are concerned, all those witnesses have corroborated each other's testimony to a very large extent in respect of the role attributed to them and also in respect of their presence and their active role in the morning

after witnesses were asked to come down.

58. The Hon'ble High Court further observed that so far as Sanjay Thakkar (A11) is concerned, Taufel (PW26) stated that he tied his hands and legs in the morning. Raees (PW27) has not attributed any particular role to A11 Shehzad (PW28) stated that he took Rs. 5000/- from him and he (A11) was carrying a sword and tied his hands. Yasmin (PW29) has not attributed any role to Sanjay Thakkar (A11) Sailum (PW32) stated that he knew the name of A11 and identified him as Sanju and Dinesh (A15) by name and Lala (A20) – Suresh alias Lalo Devjibhai Vasava. In this way the Hon'ble High Court has referred testimony of every injured eyewitness and further held that those four injured eyewitnesses have given graphic account of the entire episode which had taken place right from evening of 01.03.2002 from 8.00 pm to 8.30 pm onwards with sequence of events and as such there is corroboration of evidence of each of these witnesses. In this way on the basis of evidence of those injured eyewitnesses the Hon'ble High Court confirmed the conviction of some of the accused persons.

59. In this subsequent trial of the present two accused persons i.e. Harshad R. Solanki (A3) and Mafat Gohil (A4), the prosecution has examined in all ten witnesses which are already referred in paragraph No.21 above. Injured eyewitnesses Taufel (PW7/PW26), Raees (PW8/PW27), Shehzad Khan (PW9/PW28) were recalled and re-examined. Careful examination of previous and present evidence of Taufel (PW7/PW26), it appears that he has described the incident and the description so given by him was also considered by the Hon'ble High Court. However, in the previous evidence while describing the incident, referring presence of various people in the said mob/unlawful assembly,

attributing roles to them and also identifying those persons before the Court in the previous trial, he (PW7/PW26) has not made any reference to both accused persons herein (A3, A4) attributing any role to them jointly or individually. It is material to note that further examination-in-chief of this witness Taufel (PW7/PW26) is recorded on video conference from Lucknow. While recording his evidence, utmost care and caution was taken so that both accused persons herein (A3, A4) would be clearly visible to him (Taufel).

60. Prior to beginning his evidence Ld. SPP Smt. Manjula Rao wanted to put two additional questions to the said witness (Taufel) which was heavily objected by Ld. Advocate for accused. At the relevant time the said objection was kept open for its decision as per section 3 of The Indian Evidence Act, when the issue relating to appreciation of evidence would be dealt with. It was contention of Ld. SPP Smt. Manjula Rao that previous evidence of this witness (Taufel) has to be accepted in view of Sec. 299 of Cr.P.C. and she simply wanted to prove the identity of accused persons herein (A3, A4) by putting two questions. However, Ld. Advocates for accused strongly opposed the same. It has to be noted that the Hon'ble High Court considered and relied upon the evidence of injured eyewitnesses to prove identity of accused persons as well as acts attributed to them. Certainly, the prosecution has right to put such questions to the witness who was recalled and re-examined in order to prove identity of these two accused persons. Hence, the contention of Ld. SPP Smt. Manjula Rao was genuine, relevant and permission granted to her accordingly is also essential to meet the ends of justice finally while appreciating evidence under Sec.3 of The Indian Evidence Act. Of course, whether the testimony of this witness (Taufel) proves identity of any of the accused

persons, is altogether different aspect and the same is being discussed afterwards. In this background the objection raised by Ld. Advocates for A3 and A4 deserves to be rejected and the contention of Ld. SPP deserves to be allowed. She was already allowed to put those questions. So the objection as such raised by all Ld. Advocates for A3 and A4 stands rejected.

61. In his evidence before this Court, Taufel (PW7/PW26) stated that both persons on the screen at the time of his evidence were visible. Out of them, he identified only one who was wearing Khakee/brown shirt. He failed to state his name. The Hon'ble High Court in the judgment of Appeals while dealing with evidence of injured eyewitnesses held that if the witness knows the accused persons previously but fails to state their names, does not affect the credibility of his evidence when he identifies such persons in the Court. Non performance of Test Identification Parade cannot have any bearing on the question relating to identity of such persons. It was also held the the second incident took place in broad daylight and injured persons could observe the assailants and also attributed respective roles to them. However, in the present case, after careful examination of previous evidence of Taufel (PW7/PW26) it appears that he had not referred any of these two accused (A3, A4) attributing any role to them by referring them being unknown persons. Therefore, identification of one of the accused persons through Video conference by Taufel (PW7/PW26) as he identified only one who was wearing Khakee/brown shirt, is not sufficient to prove the involvement of the said accused in the alleged incident. It is material to note that Taufel (PW7/PW26) while making identification, has not stated a word as to which act the said accused did at that time.



62. Admittedly, it is not a case of prosecution that Taufel (PW7/PW26) was knowing both or even one of the two accused persons (A3, A4) herein, since prior to the occurrence of incident as he had stated as such for the persons referred in the chart above. Even he Taufel (PW7/PW26) has not attributed any role to both accused persons herein (A3,A4) that they had done any particular act for example tied hands and legs, assaulted any of the injured persons by sword or stick and set them on fire, etc. Therefore, his simple sentence that in the Court he identified a person wearing Khakee/brown shirt, is not sufficient. Admittedly, Ld. SPP has not declared him hostile in his re-examination. Even for the sake of consideration, if it is assumed that Taufel (PW7/PW26) has identified one of the accused persons wearing Khakee/brown shirt presuming his presence in the unlawful assembly of the morning incident, same is not sufficient unless any overt act leading to commission of crime is attributed to him. Even if it is assumed that the said accused wearing Khakee/brown shirt was present on the spot in view of the law laid down by the Hon'ble High Court in the Judgment of Appeals preferred by convicted accused persons, wherein at page 215 paragraph 156 thereof, it is laid down as follows :

**“It is well settled that mere presence in assembly does not make a person member of an unlawful assembly, unless it is shown that he has done something or omitted to do something which would make him a member of an unlawful assembly or unless the case falls under section 142 of the Indian Penal Code. In the present case except the four accused viz A-11, A-15, A-12 and A-16, the other accused cannot be said to be the members of an unlawful assembly and we have satisfied ourselves that the evidence of witnesses so far as viz. A-1, A-18, A-4, A-14 and A-20 are concerned is not sufficient either to prove their presence or even if their presence is established to substantiate that they had played any role. Even if it is established that they were present, we**

**have examined the case of each individual accused to see whether they were mere spectators who had not joined the assembly and who were unaware of its motive.”**

63. These observations are squarely applicable to the way in which Taufel (PW7/PW26) identified one of the accused persons without attributing any role to anyone of them. Even if his testimony is assumed as proved identity of the said accused, mere presence in the assembly without any role for joining the said assembly does not make him liable for conviction. Therefore, evidence of Taufel (PW7/PW26) does not prove identity of any of the accused persons (A3,A4) nor attributes any specific role to them, which is the basic legal requirement and qualification to bring home guilt of accused herein.

64. Raees Khan Nanku Khan (PW8/PW27) is the next injured eyewitness who was recalled and re-examined by the prosecution specifically for proving identify of accused persons A3, A4 and role attributed to them if any. Same objection was raised by Ld. Advocates for accused which they raised for Taufel and the same is now rejected for the same reasons. His evidence was recorded on Video Conference as he was at Lucknow. In his examination-in-chief he clearly deposed how he remembers his previous evidence relating to the riot tendered by him in Mumbai Court. Thereafter, he has clearly deposed how he can see both persons who were visible on the screen and further minutely observed everyone of them during his examination-in-chief. Only thereafter, he deposed that he was not able to identify both accused persons (A3, A4). Even this witness in his erstwhile evidence has not referred any of the accused persons nor

attributed any role to them being unknown persons. Therefore, his evidence is not helpful to the prosecution to prove identity of accused persons (A3,A4) herein and their role in the alleged incidents. Even the test applied by the Hon'ble High Court for evidence of injured eyewitnesses while confirming the conviction of the appellants in the Judgment of Appeals, if applied to the testimony of this witness (PW8/PW27), same does not prove the case of the prosecution beyond reasonable doubt in respect of accused No. 3 and 4 herein.

65. Shehzad Khan Hassan Khan Pathan (PW9/PW28) is the next injured eyewitness recalled, re-examined and relied on by the prosecution. While examining him, same objection was raised by Ld. Advocates for accused (A3, A4) herein. Same is rejected for the same reasons in respect of Taufel and Raees. In his evidence before this Court he states that he had been called to give evidence in Mumbai Court and he remembers the reason thereof. He further clearly stated that he could watch two persons visible on the screen of video conference. He clearly deposed that he cannot identify any of them. Even if his erstwhile evidence is considered under Sec.299 of Cr.P.C, same does not prove both i.e. identity of these two accused persons (A3,A4) and any role attributed to them leading to set Best Bakery to fire, burning and killing fourteen persons therein and also in the second incident occurred in the next day morning. No offence under Sections 302, 326, etc as alleged is therefore proved against these accused persons. Proof of Identity and specific role attributed to the member of Unlawful assembly are the most important legal requirements, qualifications and consideration to prove the guilt of both accused (A3, A4) but

prosecution is miserably failed to prove the same beyond reasonable doubt.

66. It has to be noted that way back these three injured eyewitnesses Taufel (PW7/PW26), Raees (PW8/PW27) and Shehzad Khan (PW9/PW28) have been shifted to Lucknow from Vadodara. They are not residing in Gujarat and presently there is nothing to show that all of them are still under the pressure of the accused persons. Admittedly, these two accused (A3, A4) have been in Jail since more than 10/11 years and there is absolutely nothing to show that both of them through their relatives or acquaintances have pressurized these three injured eyewitnesses. Nor the prosecution herein requested the Court to declare them hostile when they failed to identify both accused (A3, A4) herein. Raees (PW8/PW27) and Shehzad (PW9/PW28) utterly failed to identify both accused with roles attributed to them, if any. Their evidence is substantive yet of no help to the prosecution to prove its case beyond reasonable doubt against the present accused persons (A3,A4). In these premises based on the previous evidence as per Sec.299 of Cr.P.C coupled with the present evidence led by the prosecution in this case, the observations and conclusions drawn by the Hon'ble High Court in the judgment of Appeals in

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are not applicable to the case of present accused persons (A3, A4). Even careful study of the judgment of the then Hon'ble Additional Sessions Court clearly indicates that nothing was observed against these two accused persons (A3, A4) nor any evidence incriminating and leading to prove the role/part of these accused persons (A3, A4), is discussed therein.

67. Apart from these three injured eyewitnesses prosecution has re-examined Manharbhai Purshottambhai Waria (PW1/PW68), ASI Panigate Police station who recorded entries in the station diary and received telephonic message from Chandrakant (PW58) and telephonic message from the hospital and entries made by him in the station diary vide X-19 and Exh.273 to Exh.279. His evidence nowhere connects these accused persons A3, A4 to the offence and incidents in question.

68. Jagdishbhai Diwanjibhai Choudhary, PSO was attached to Panigate Police Station who made entries in the station diary about the FIR. His evidence is not relevant as his memory is fade up. He clearly deposed that he does not remember from whom he received first message. Even he could not remember whether the persons admitted in the hospital were dead or alive and how many persons were admitted in the hospital as such. He admits how he met Mrs. Teesta Setalwad at Mumbai and had a meeting of one hour with her. He further admits that since his statement was not recorded, he was told to what was to be stated in the Court. He further clearly admits that he deposed in the Court as he was told to do so. The then my Ld. Predecessor reserved his decision whether Ld. SPP was to be permitted to re-

examine him as he referred having met Teesta Setalwad. Surprisingly, when he was under cross-examination on 08.07.2019, he changed his stand and deposed that he had no occasion to see Teesta Setalwad at Vadodara or at Panigate immediately after the incident. Even if his previous evidence is accepted as it is as per Sec.299 of Cr.P.C, the same neither inspires confidence nor helps the case of the prosecution to prove identity and active role of the present accused persons.

69. Prosecution then recalled and re-examined Gautam Narendrabhai Chauhan (PW3/PW69) on the point of cassettes he had submitted in the Court contending that he recorded the same. Even his evidence is not helpful to prove the case of prosecution against the present accused (A3,A4), when substantive evidence of injured eyewitnesses is failed to prove the same against accused (A3,A4). Piyush Patel (PW4/PW67) was the DCP at the relevant time, South Zone, who arrived at the scene of offence at Best Bakery immediately on 02.03.2002 after Rathod and Baria reached there. He could not recollect what he had deposed before the Vadodara Court as well as Mumbai Court in previous two trials of this case. Even if his testimony is accepted as it is the same clearly proves that he has not witnessed actual occurrence of both incidents but reached the spot when the occurrence was over. If his previous evidence is considered as per Sec.299 of Cr.P.C yet the same refers his conversation with two women who were not examined in the present trial. His evidence is based on the facts stated to him by those two women. Apart from this, his evidence indicates that he has not stated any incriminating against both the accused persons (A3, A4) herein.

70. Kamlesh Darji (PW5/PW24) is a recovery Panch in respect of recovery panchanamas Exh.88, Exh.89 and Exh.90 dt. 04.04.2002. He was examined in the previous trial to prove a recovery of weapon from the accused persons herein. In the previous trial he has not taken the name of any of the accused persons herein (A3, A4). In the subsequent, i.e. the instant trial also he has not taken name of any of the accused persons (A3, A4) herein. In the cross-examination on behalf of accused No. 3 and 4 he admits that he didn't see the name plates on house at Hanuman Tekdi, when he went there. In view of his evidence as such I carefully read his earlier evidence recorded on 25.10.2004/ 26.10.2004, in view of Sec.299 of Cr.P.C.

71. In his (PW5/PW24) examination-in-chief, he deposed that on 04.04.2002. He was called at the DCB police Station Vadodara at 10.00 a.m. to 11.00 a.m. to act as Panch. At the police station his signature was taken. Thereafter he was taken to Hanuman Tekdi and the **other person** took them to Hanuman Tekdi. At Hanuman Tekdi he went in a house of a person who was with them. Panchanama was drawn and weapon was seized. Accused showed the weapon. Noting this conduct and attitude of (PW5/PW24) so many Court questions were put to him but he did not disclose who was the said person 'accused'? Who was the 'other person'? Thereafter he deposed that Panchanama was drawn and weapon was wrapped in a cloth but he did not remember what was the weapon. Stepping ahead he further stated that if the weapon is shown to him he will not be able to remember whether it is the same. He then admitted signatures in the panchanama and

accordingly it was marked as Exh.88. Further, weapon was shown to him which was at Sr. No. 17 vide list of Articles Exh.2 in the previous trial. It was already marked as Exh.E in Gujarat trial. (There was a packing and inside it there was sword with three paper slips tied around the handle thereof). The said paper slip was marked as Exh. 89 as the witness pointed out signature on one of those slips and remaining Articles including the paper slips and swords were marked as ArticleR-21 Colly. PW24 could not identify the said weapon having taken charge of under the Panchanama Exh.89.

72. He (PW24) further deposed that after an hour he was taken back to the office of DCB CID. Again he was asked to be a panch in a second panchanama. Accordingly, he gone with other panch to Hanuman Tekdi with one accused, three policemen and one police officer with co-panch. He further deposes that nothing happened at the police station on his return from first panchanama and leaving again for second panchanama. He then referred a house at Hanuman Tekdi and stated that accused took out a weapon from his house but he does not know what was that weapon. He could not explain from which part of his house, the accused took out the weapon. Thereafter, they came back to the DCB Police station. Prior to it panchanama had been drawn at the spot itself and he signed as well as identified the signature therein. Therefore, panchanama was marked as Exh. 90. Again he expressed his inability to identify the said weapon. Then panchanama was read over to him as noted in the “Court Note” in paragraph 8. Even thereafter, he could not follow it saying as “It is because my brain is not working”. Again weapon at Sr. No. 18 was



shown to him which was already marked as Exh.F. By taking it out of the cloth cover. It was an iron pipe with three paper slips bearing signature of PW5/PW24 and on the basis thereof it was marked as Exh. 91 with rest of the Articles i.e. iron pipe, paper slips being Article R/22 Colly. He further expressed his inability to identify the said pipe being taken out from the said house. This is the evidence of Kamlesh Darji (PW5/PW24).

73. I have reproduced this evidence of Kamlesh Darji (PW5/PW24) because he was not declared hostile, though opportunity was available with Ld. SPP at the relevant time. Another reason for reproducing his evidence as above is that he has not stated name of the person whom he referred “other person” or “accused”. Even if his examination-in-chief is accepted as it is, same indicates that he was simply taken for seizure of weapons at Hanuman Tekdi indicating that an aspect of disclosure which is required to be stated by an accused person who should be under the custody of Police, was already made to him and nothing was to be disclosed and recovered as required under Sec.27 of The Indian Evidence Act.

74. Careful examination of Panchanamas Exh.88, Exh.89 and Exh.90 indicates that those were at the instance of Harshad @Munnu Ravjibhai Solanki but there is absolutely no substantive evidence that Harshad was in police custody and expressed his desire to give information about any place or anything. Vague evidence of Kamlesh Darji (PW5/PW24) that “other person”, “accused” even if accepted as it is nowhere proves this basic ingredient and qualification of Sec.27 that a statement was made

by any of the accused persons herein (A3, A4) in respect of a place of the weapons within his special knowledge and consequently such place was discovered and the weapons were recovered therefrom, in order to prove those Panchanamas and recovery of weapons relevant as per Sec.27 of The Indian Evidence Act.

75. Careful scanning of entire evidence further clearly indicates that there is absolutely no substantive evidence against these two accused persons (A3, A4) that they were armed with sword and iron pipe at the time of both incidents i.e. night as well as morning. Even otherwise, with such evidence of Kamlesh Darji (PW5/PW24) discovery and recovery is not proved beyond reasonable doubt as required under Sec.27 of the Indian Evidence Act. In this background, even if it is assumed that sword and iron pipe were recovered at the instance of these two accused persons (A3,A4), there is absolutely no evidence that they were possessing the same at the relevant time and also caused injuries to the injured persons. Apart from this, none of the injured eyewitnesses has referred anything about the identity of these accused persons (A3, A4) that they were authors of the injuries sustained by them which were caused by the sword and iron pipe herein.

76. It has to be noted that evidence of investigating officer is also a substantive evidence in order to prove discoveries and recoveries as per Sec. 27 of The Indian Evidence Act. Papatlal Purshottambhai Kanani (PW10/PW74) was the Investigating Officer who arrested Harshad @ Munno R. Solanki (A3) and Mafat @ Mahesh Gohil (A4) at the relevant time. He was recalled and re-examined in the instant trial. He had a chance to depose and

disclose all the circumstances of transaction in respect of these discoveries. However, he simply deposed that he arrested both accused and they were remanded in Police Custody for seven days and therefore he can identify them. However, he failed to identify and stated different name of the person he identified in the Court being Mafat when he was Harshad. Incident took place long long ago. Even the investigating officer has been retired thereafter and after about 18 to 20 years he came in the court and identified both accused by committing such mistake, which can be considered as a natural conduct. Still the question remains that he had not deposed a word about any statements made by accused persons herein about any place of the weapons and also did not state a word whether such place at Hanuman Tekdi was discovered and weapons were found therein as stated by the accused. Infact, law requires all this in order to bring discovery/recovery under Sec.27 of the Indian Evidence Act.

77. It is a fact on record that when these discoveries and contents of Panchanamas were proved through Darji (PW5), and the panchanamas were exhibited, both these accused were absconding and their trial was separated. Same is the situation with discovery panchanama in respect of Mafat and evidence of Jagdish Muljibhai Desai (PW6) is not relevant to prove any disclosure allegedly made by any of the accused herein. In my opinion, these discoveries vide above referred Memorandums and Panchanamas are not proved beyond reasonable doubt nor the same become relevant to corroborate the substantive evidence, when substantive evidence too is not cogent.

78. Another aspect requires consideration which is the role attributed to the present both accused persons (A3, A4). Admittedly, there is no evidence to prove involvement of both accused persons in first incident which took place in the night. Regarding the second incident which took place next day in the morning, already the chart is reproduced above based on the evidence of four injured eyewitnesses demonstrating the name/number of the accused persons they have referred and also various acts while committing the incident attributed to them. It is material to note that the Hon'ble High Court in the Judgment of Appeals relied upon the same and arrived at conclusion about the injuries sustained by those four injured witnesses and the accused persons at whose instance and by which weapons the said injuries were inflicted.

79. Admittedly, none of those witnesses has referred a word about accused persons (A3, A4) herein. Therefore, I have carefully read the whole voluminous record of this case as well as the record of Gujarat trial and also the observations made by the then Hon'ble Additional Sessions Court, Mumbai. I have already noted above how the disclosure at the instance of any of accused persons herein regarding sword and pipe is not proved beyond reasonable doubt nor qualified as per Sec.27 of the Indian Evidence Act. I have also noted that even after re-examining Popatlal Purshottambhai Kanani (PW10/PW74) he has not stated such details qualifying the said discoveries as per Sec.27 of the Indian Evidence Act.

80. In the aforesaid premises as noted above, I thoroughly

gone through the previous record of the case, the record of erstwhile trial in the Court at Vadodara and also all Judgments including the Judgment delivered in Mumbai Court. Evidence further indicates that Yasmin (PW29) has referred names of Mafat and Munna/Munno. Munna/Munno is alleged alias name of Harshad (A3). For the first time in the Court Yasmin (PW29) deposed that she was threatened to be raped by Jitu, Jagdish, Mafat and Munno. According to her, Jagdish was threatening to rape the women. She further states that Jagdish and Jitu together with Mafat and Munno were saying that they would rape the women one by one. The Hon'ble High Court already noted an aspect regarding the quality of her evidence and appreciate thereof. I have already noted above that none of the accused persons/appellants whose conviction was confirmed by the Hon'ble High Court, has preferred any appeal before the Hon'ble Supreme Court. In these premises, I have further noted how the Judgment in Appeals before the Hon'ble High Court is the law for this case. Therefore, much discussion is not required about the testimony of Yasmin (PW29) in view of appreciation thereof made by the Hon'ble High Court.

81. It is also not proved that injured eyewitnesses on whose evidence, the Hon'ble High Court confirmed the Judgment of conviction of Sanjay Thakkar (A11), Dinesh Rajbhar (A15), Bahadursingh Chauhan (A12) and Shanabhai Baria (A16), had referred and attributed any role to A3 and A4 that they had caused injuries to any of them (injured eyewitnesses) and those injuries were inflicted by the weapons sword and iron pipe allegedly discovered at the instance of these two accused (A3, A4). There is

nothing to prove that Harshad (A3) and Mafat (A4) were the authors of any of the injuries sustained by injured eye witnesses that too by the weapons sword and iron pipe. At the cost of repetition, it has to be noted that even if one of such witnesses identified one of the two accused persons herein having worn Khakee/brown shirt, same does not amount an active participation in the unlawful assembly as held by the Hon'ble High Court in the judgment of Appeals.

82. Even if the investigating agency named Harshad (A3) as Munna, there is no cogent evidence that Harshad (A3) has Alias name as Munna and he is known to everyone with the same. I have already referred above how the evidence of witnesses nowhere indicates involvement of Harshad in alleged both incidents. I have also noted above the observations made by the Hon'ble High Court regarding the evidence of Lal Mohammad Khudabaksha Shaikh (PW36) that when the incident was going on in the night Munna and his mother took them to their house and they were there till 5.30 a.m. Stepping ahead he deposed that he (PW36) along with his five sons and two daughters, two daughters-in-laws, three grand children, his nephew, one Sohrab-partner of his son and one Habib- **they all stayed in Munna's house till 5.30 a.m. He (PW36) has given clear admission that Munna and his family protected all of them throughout the night and Munna's mother had given milk to his grandchildren and that the rioters had not come towards Munna's house. He further deposed that from the accused present before the then Court, neither Jayanti nor his son-Rinku – nor his nephew nor Munna attacked him or the persons with him.**

83. The Hon'ble High Court further observed at Page 141 of the Judgment in Appeals that testimony of this witness (Lal Mohammad PW36), at the highest mentions about the presence of Dinesh Phulchand Rajbhar (A15) at the scene of offence. It is also observed by the Hon'ble High Court as “Surprisingly, he (PW36) has stated that Munna who is accused No. 9 in this case, who is now absconding, infact, had helped him (PW36) and his family members and other Muslim persons by protecting them in his house and his mother also had served his grandchildren and had given them food”. In these premises, the Hon'ble High Court held that this witness (PW36) is not of any assistance to the prosecution for identifying all other accused nor he attributed any role to the accused in commission of the said offence. In my opinion, even if said Munna and Mafat were absconding at that time, yet the evidence of prosecution including evidence of Lal Mohammad (PW36) nowhere proves any offence against Munna and Mafat nor proves that said Munna is Harshad (A3) herein. Like other four injured witnesses prosecution could have recalled and re-examined this witness Lal Mohammad (PW36) along with ten other witnesses who have been examined again in this trial. In this way the role attributed by Lal Mohammad (PW36) to Munna and Mafat is not of “Rioters” or 'Assailants' but it is that of 'Protectors', 'Saviours' and 'Shelter givers'.

84. I have also noted above the credibility of evidence of Yasmin (PW29). At the cost of repetition, it has to be noted that even if she states that the threats given by Jagdish and Jitu about rape and that Mafat, Munna, Jitu and Jagdish were discussing

among themselves as to who would rape the women first, and, also Ravi snatched her chain etc have no place in her police statement. Basically, her testimony is not creditworthy and the same is not sufficient to prove identity of Munna being Harshad (A3) and Mafat (A4). I have already noted the remarks passed by the Hon'ble High Court on the then Hon'ble Additional Sessions Court, Mumbai regarding the way in which she was examined in the trial Court. It cannot be ignored that contention of Yasmin (PW29) that the appeals should be remanded and accused should be re-tried, was also rejected by the Hon'ble High Court noting her conduct.

85. It is also necessary to note that whatever deposed by Yasmin (PW29) about threats and expressions made by Munna and Mafat that they would rape women one by one, is canvassed by the prosecution regarding their intention to commit rape. Basically, these are the material omissions. Apart from this the Hon'ble High Court in the Judgment of Appeals noted findings from page No. 249 to 254 thereof. **Point No. 6** deals with women folk who were allegedly taken behind bushes with intention to commit rape on them by the accused. While answering the said point, the Hon'ble High Court has clearly laid down as “**Intention to commit rape is not established.**” Though at that time these two accused persons were not prosecuted and the Hon'ble High Court arrived at such finding in their absence, yet the same is squarely applicable to the case of present two accused persons (A3, A4), Because regarding threats of rape except bald and bare words of Yasmin (PW29) there is absolutely no evidence. Her words as such which are material omissions cannot be believed and reliance



cannot be placed on her testimony, because the Hon'ble High Court appreciated her testimony in paragraphs No. 157 and 161 for the detailed reasons given in the paragraphs in between them, which are reproduced below :

**157.** So far as the evidence of **P.W. 29** – Yasmin Nafitulla Habibulla Shaikh is concerned, in our view, even if the said evidence is considered independently without taking into consideration her applications which have been filed by her in this Court wherein she has sought to resile from the testimony which is given on oath and keeping them aside for a moment, it will be difficult to rely on her testimony for the following reasons.

**161.** In our view, even without taking into consideration the affidavit which has now been filed, it is difficult to rely on the testimony of this witness (P.W. 29). It is surprising that this witness has not received injury in the entire incident and she has made improvement that her daughter was also injured as a result of stones which were thrown and the said omission has been brought on record. This witness has not been examined by the prosecution in the Trial Court at Gujarat.

86. Even the Hon'ble High Court in the Judgment of Appeals clearly held that Zahirabibi's (PW41) statement cannot be treated as FIR and even if treated as FIR cannot be said to have any corroboration to the substantive evidence. Even Hon'ble High Court rejected contention of Prosecution equating Zahirabibi's (PW41) statement with that of FIR under Sec.154 of Cr.P.C. All this demolish the case of prosecution that Zahirabibi (PW41) in her statement/FIR Exh.136, referred Mafat (A4) as Marfatio. All this clearly indicates that the prosecution herein is miserably failed to establish and prove beyond reasonable doubt that both these accused persons (A3, A4) were a part of unlawful assembly, committed riot, set Best Bakery and adjoining premises on fire wherein

fourteen people died. Prosecution is also miserably failed to prove against A3, A4 beyond reasonable doubt the second incident which took place next day morning wherein the people including injured eye witnesses were forced to get down from the terrace with the help of two ladders on promise that they would not be harmed at the hands of the mob but their hands and legs were tied, assaults by swords, iron pipe, sticks were made on them and further some of them were ablazed. In this way the prosecution is miserably failed to prove all the points i.e. Points No.1 to 10 against these accused (A3, A4). Hence those are answered accordingly.

87. It is necessary to note that even if it is a trial in respect of absconding accused (A3,A4), whole evidence led by prosecution in previous trial has to be carefully read and considered as required under Sec.299 of Cr.P.C. Even the previous Hon'ble Court specifically mentioned in the judgment as such that this evidence would have to be considered while trying these two accused. Evidence in previous trial is voluminous. The Judgment itself in previous trial is of 700 pages. The whole record which was to be read for the decision of this case also runs in 8152 pages. This Court is exceptionally over-burden due to voluminous cases under The Prevention of Money Laundering Act which have to be simultaneously tried with multiple exceptionally voluminous cases relating of Scheduled Offences investigated by various agencies like CBI, EOW, ED, Authority under NDPS Act and so on, as per the mandate under Sec. 44 (1) (c) of the PML Act.

88. Apart from this, it has to be noted that when the previous case was tried a separate Court specially for its trial was established and except this case there was no other case in the said Court. The record

itself indicates that trial of the said case began on **27.05.2004**. It was concluded on **16.09.2005**. From **16.09.2005** onwards arguments were heard which ultimately concluded on **25.01.2006** and thereafter Judgment was delivered. When the said Court was conducting of the trial of only this case, it took long time for its conclusion. In view of Sec.299 of Cr.P.C this Court has no exception to go through entire voluminous evidence in addition to further recall and re-examination of 10 witnesses. Therefore, delivery of this Judgment took this some more time. With this following order is passed :

### **ORDER**

1. **Accused No. 3 Harshad Alias Munno Ravjibhai Solanki and Accused No. 4 Mafat Alias Mahesh Manilal Gohil are acquitted** as per Section 235 (1) of The Code of Criminal Procedure, 1973 of the offences punishable under Sections 143, 144, 147, 148, 149, 435, 436 r.w. Sec.149, Sec. 395 r.w. Sec. 397, Section 342 r.w. Sec.149, Sec.442 p.u. Sec.448 r.w. Sec.149, Sec.449 r.w. Sec.149, Sec.450 r.w. Sec. 149, Sec. 451 r.w. Sec. 149, Sec.324 r.w. Sec.149, Sec. 326 r.w. Sec. 149, Sec. 302 r.w. Sec. 149 and Sec. 188 of the Indian Penal Code.
2. **Accused No. 3 Harshad Alias Munno Ravjibhai Solanki and Accused No. 4 Mafat Alias Mahesh Manilal Gohil** are undertrial prisoners, hence they be released forthwith if not required **in the case/cases from where they have been transferred in this crime and also if not required in any other case/cases.**
3. **Accused No. 3 Harshad Alias Munno Ravjibhai Solanki and Accused No. 4 Mafat Alias Mahesh Manilal Gohil** shall comply the provision under Section 437-A of The Code of Criminal Procedure, 1973 by everyone of them furnishing PR Bond of Rs. 15,000/- (Rupees Fifteen Thousand Only Thousand only) and surety bond of like amount alongwith their detail addresses, copies of Identity Cards, Mobile numbers including the numbers of

their parents, names of the persons to be contacted in future if they are untraceable, to appear before the Hon'ble Higher Court.

4. All marked and unmarked Muddemal Articles including the plastic bottle/box together with the inner plastic bag and the cotton swabs (**Art.R-1Colly**), the plastic bottle/box, plastic bag and cotton swab (**Art.R-2Colly**), the plastic bottle/box, plastic bag and cotton swab (**Art.R-3Colly**), the plastic bottle/box, plastic bag and cotton swab (**Art.R-4Colly**), The plastic bottle/box, plastic bag and cotton swab (**Art.R-5Colly**), the plastic bottle/box, plastic bag and burnt pieces of cloth (**Art.R-6Colly**), the plastic bag containing soil and the paper packet (**Art.R-7Colly**), the plastic bag containing soil (**Art.R-8Colly**), the plastic bag containing soil (**Art.R-9 colly**), the plastic bag containing soil (**Art.R-10Colly**), paper/cardboard box containing the plastic bag and the bones (**Art.R-14 colly**), the bundles containing 2 Rassis and one wire (**Art.R15Colly**), outer wrapper and brown paper wrapper (**Art.R15/Acolly**) be preserved till the period of appeal and thereafter, being worthless, be destroyed, if the appeal is not preferred and if the appeal is preferred, subject to the order of the Hon'ble Appellate Court.
5. All marked and unmarked Muddemal Weapons including i.e. Sword (**Art.R-16Colly**), cloth wrapper (**Art.R-16/Acolly**), "Salli" together with cloth wrapper and the paper seal (**Art.R-17Colly**), Sword together with cloth wrapper and the paper seal (**Art.R-18Colly**), Gupti together with cloth wrapper and paper seal (**Art.R-19Colly**), Paper Slips and the bamboo stick (**Art.R-20Colly**), Sword, Paper Slips and cloth bag (**Art.R-21Colly**), Two paper slips, Iron pipe and the cloth bag (**Art.R-22Colly**), Sword, cloth bag and the Paper Slips (**Art.R-23Colly**), Chopper, cloth bag and the Paper slips (**Art. R-24Colly**), Pipe, cloth bag and the Paper slips (**Art. R-25Colly**), Bamboo Stick, cloth bag and the Paper slips (**Art.R-26Colly**), Being deadly weapons; be sent to the Collector (District Magistrate), Mumbai for disposal as per law and rules, after the period of appeal, if the appeal is not preferred by the Prosecution and if

preferred, subject to the order of the Hon'ble Appellate Court.

6. All Marked and Unmarked Muddemal Articles including Video Cassette (Later on marked as Exh.283 vide **Art.R-27 with wrapper**), wrapper on the Cassette **Art.R27 (Art.R27/1)**, Cardboard cover (**Art.R27/2**), True copy of Video Cassette (L.O. Marked as Exh.283/1:**Art.R-28**) , True copy of Video Cassette(L.O Marked as Exh.283/2:**Art.R-29**),CD(L.Omarked as Exh.283/3:**Art.R-30**), Cassette (L. O Marked as Exh.389Colly together with transcript:**Art.R-31**), A Copy of CD (L. O Marked as Exh.389/A: **Art.R-32**), The CD of the programme that was telecast on T.V (L. O Marked as Exh.390: **Art.R-33**), brown paper wrapper, Outer (**Art.R-34**), White plastic paper wrapper, Inside (**Art.R-35**), Handkerchief wrapper (**Art.R-36**), Jewel box with pink colour CD cover combined (**Art.R-37**), CD (**Art.R-38**), CD combined with Exh.518 Colly (Art.X-162/1-A), Relevant part of CD (**Earlier marked as X-162/1-A @ transcript (Exh.518Colly)**), CD of Photo-Clips (**Exh.379**), Three sealed small bottles (Unmarked: Exh.379) be sent to the Commissioner of Police, Mumbai for its disposal as per law and rules, after the period of appeal, if the appeal is not preferred by the Prosecution, and, if preferred, subject to the order of the Hon'ble Appellate Court.
7. Judgment dictated and delivered in the Open Court.

Dt.: 13/06/2023

( M.G. Deshpande )  
Additional Sessions Judge.  
C.R.No.16, Gr.Bombay at Mumbai

Dictated and typed on :

29.03.2023,11.04.2023,11.05.2023,31.05.2023,02.06.2023,08.06.2023,09.06.2023,13.06.2023

Checked: 13.06.2023

Signed on: 13.06.2023

<b>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”</b>	
<b>14.06.2023 at 15.30 hours UPLOAD DATE AND TIME</b>	<b>(Mr. Mohit M. Patange) NAME OF STENOGRAPHER</b>
<b>Name of the Judge</b>	<b>HHJ M. G. DESHPANDE (COURT ROOM NO.16)</b>
<b>Date of pronouncement of judgment/order</b>	<b>13.06.2023</b>
<b>Judgment/order signed by P.O. on</b>	<b>13.06.2023</b>
<b>Judgment/order uploaded on</b>	<b>14.06.2023</b>