Before the Special Designated Court at Ahmedabad

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Sessions Case No.152 of 2002 with Sessions Case No.167 of 2003 with Sessions Case No.279 of 2003 with Sessions Case No.190 of 2009 with Sessions Case No.191 of 2009 with Sessions Case No.193 of 2009 with Sessions Case No.194 of 2009 with Sessions Case No.195 of 2009 with Sessions Case No.279 of 2009

Complainant : State of Gujarat

versus

Accused :

Sessions Case No.152 of 2002

- 1) KAILAS LALCHAND DHOBI (IN JUDICIAL CUSTODY)
- 2) YOGENDRASINH @ LALO MOHANSINH SEKHAWAT
- 3) SURENDRASINH @ VAKIL DIGVIJAYSINH CHAUHAN
- 4) MANGAJI POKARJI MARWADI
- 5) JAYESH RAMUBHAI PATNIN
- 6) KISHORBHAI MANGABHAI PATNI
- 7) SHAILESH KALUBHAI PATNI
- 8) KANAIYA @ BABLU CHAICHAU
- 9) KANTIBHAI POPATBHAI PATNI
- 10) SAKRABHAI SENDHABHAI PATNI
- 11) MANOJKUMAR PREMJIBHAI PARMAR
- 12) DEEPAKKUMAR SOMABHAI SOLANKI
- 13) VINODBHAI ARVINDBHAI SOLANKI
- 14) JAYESHKUMAR @ GABBAR MAGANLAL JINGER (MOCHI) (IN JUDICIAL CUSTODY)
- 15) AJAY SOMABHAI PANCHAL
- 16) DILIP @ KALU CHATURBHAI PARMAR

- 17) RATILAL GANESHJI KUMBHAR (Abated)
- 18) SANJAYKUMAR SHANKARBHAI PATNI
- 19) SHAILESH NATWARLAL PATNI
- 20) NARESH @ NARIYO BANSILAL PRAJAPATI

Sessions Case No.167 of 2003

- 21) SANDEEP @ SONU RAMPRAKASH MEHRA PUNJABI (IN JUDICIAL CUSTODY)
- 22) BABUBHAI MOHANBHAI PATNI
- 23) BABUBHAI MANJIBHAI PATNI (Abated)

Sessions Case No.279 of 2003

- 24) SHANKARJI HAKAJI MALI 25) MANGILAL DHUPCHAND JAIN
- 26) PANNALAL @ PRABHU MOCHI PREMCHAND SISODIYA
- 27) GOPALDAS MANDAS VAISHNAV (Abated)
- 28) PRAHLADJI RAJUJI ASORI
- 29) MUKESH PUKHRAJ SANKHLA (MOCHI)
- 30) MADANLAL DHANRAJ RAVAL
- 31) MAHENDRA MULCHANDBHAI PARMAR
- 32) AMBESH KANTILAL JINGAR (MOCHI)
- 33) PRAHLAD OMPRAKASH SONGARA
- 34) KRISHNAKUMAR @ KRISHNA (SON OF CHAMPABEN)
- 35) ASOK @ ASLO DHARSINH THAKOR (Abated)
- 36) CHIRAG DILIP SHAH
- 37) PRAKASH @ KALI KHENGARJI PADHIYAR

Sessions Case No.190 of 2009

- 38) MANISH PRABHULAL JAIN
- 39) MUKESH ATMARAM THAKOR

Sessions Case No.191 of 2009

40) PARBATSINH TARSANSING @ DARSHANSINH DARPANSINH

Sessions Case No.193 of 2009

41) JAYESH RAMJIBHAI PARMAR (IN JUDICIAL CUSTODY)

Sessions Case No.194 of 2009

- 42) RAJU @ MAMO KANIYO RAMAVTAR TIWARI (IN JUDICIAL CUSTODY)
- 43) NARAYAN SITARAM TANK @ NARAN CHENALWALO @ NARAN KODHIYO (IN JUDICIAL CUSTODY)

- 44) NAGIN HASMUKHBHAI PATNI
- 45) DASRATH @ GETTING JIVANBHAI PATNI (Abated)
- 46) LAKHANSINH @ LAKHIYO BHURIYO LALUBHA CHUDASAMA
- 47) DHARMESH PRAHLADBHAI SHUKLA
- 48) JITENDRA @ JITU PRATAPJI THAKOR
- 49) MAHESH @ PAPPU PRATAPJI THAKOR
- 50) KAPILDEV NARAYAR @ MUNNABHAI MISHRA
- 51) MAHESH RAMJIBHAI NATH
- 52) SURESH KALI DAHYABHAI DHOBI
- 53) SUSHIL BRIJMOHAN SHARMA
- 54) BHARAT @ BHARAT TELLI SHITLAPRASAD BALODIYA
- 55) BHARAT LAXMANSINH GOD RAJPUT

Sessions Case No.195 of 2009

- 56) PRADIP KHANABHAI PARMAR
- 57) KIRITKUMAR GOVINDJI ERDA
- 58) MEGHSING DHUPSING CHAUDHARI
- 59) ATUL INDRAVADAN VAIDH
- 60) BIPIN AMBALAL PATEL
- 61) CHUNILAL JETHALAL PRAJAPATI (Abated)
- 62) DILIP KANTILAL JINGAR
- 63) DINESH PRABHUDAS SHARMA (IN JUDICIAL CUSTODY)

Sessions Case No.279 of 2009

- 64) SHIVCHARAN @ JITENDRA @ LALLO RAMJIRAI (IN JUDICIAL CUSTODY)
- 65) RAJESH DAYARAM JINGAR
- 66) BABU HASTIMAL MARWADI

<u>Appearances</u>

- 1) Shri R.C.Kodekar, learned Spl.P.P. for the State.
- Shri S.M.Vora, learned advocate for the original complainants/victims.
- 3) Shri Abhay Bhardwaj, Shri Rajendra Trivedi, Shri T.R. Bajpai and Shri H.L.Jani, learned advocates for the concerned accused.
- <u>CORAM:</u> Mr.P.B.Desai, Principal Judge, City Civil & Sessions Court and Special Judge, Designated Court for riot cases (Gulbarg <u>Society Massacre Case)</u>

JUDGMENT

1. All the present proceedings relate to and arise out of what has been recognized as one of the most heinous incidents of a communal riot, where no less than 69 victims of a particular community were done to death by a mob of large number of persons, of whom the present accused are, in terms of the Prosecution case, involved therein and the present proceedings are known and referred to as the The "Gulbarq Society Massacre Case". horrific incident in question took place on 28/02/2002. The subsequent sessions are on account of the subsequent arrest of accused and filinq of supplementary chargesheet which qave rise to separate proceedings. However, since all these cases arose out of the same incident, vide order dated 23/07/2009 passed below Exh.97, the proceedings were ordered stand consolidated to and even а consolidated charge has been framed herein.

2. It is required to be noted that there were initially 66 accused facing trial, of whom accused Nos.17, 23, 27, 35, 45 and 61 have passed away during the pendency of the present proceedings and therefore, the trial has stood abated against such six of the accused. The trial has thus continued to proceed against total 60 accused and such trial has ultimately led to the present judgment. SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

3. For the sake of convenience, the present judgment has been divided into four integral parts as per the following details:-

Part - I	Fact	s,	deta	ails	wit	h regard	to
	docu	ments	, -	list	of	witnesses	and
	rele	vant	exhi	bits.			
Part - II	Argu	ments	on	behal	f of:	-	
	(a)	Prose	ecuti	lon			
	(b)	Victi	lms				
Part - III	(a)	Argum	lents	on be	half	of Defence	
	(b)	Rejoi	nder	argume	nts by	,	
		Prosec	cution	n			
	(c)	Rejoi	nder	argum	ents	by Defence	
Part - IV	Reas	ons,	find	ings,	fina	l order and	
	judg	ment					

PART - I

4. The accused are attributed to have committed offences punishable under Secs.120(B), 143, 147, 148, 153(A)(1)(a),(b), 153(A)(2), 186, 188, 201, 217, 218, 295, 302, 307, 323, 324, 332, 337, 376(2)(g), 396, 397, 398, 435, 436, 447, 449 and 452, read together with Secs.34 and 149 of the Indian Penal Code and under Sec.135(1) of the Bombay Police Act, and of the 60 accused, accused Nos.1, 3, 14, 21, 41, 42, 43, 63 and 64 are denied bail all

throughout the proceedings and are in judicial custody for more than 12 years. Some of the accused have been enlarged on bail pending trial and some of the have accused been arraigned as accused consequent to applications tendered by the victims who have been permitted by the Hon'ble Supreme Court to play a proactive role in the present proceedings and in furtherance thereof, such victims preferred applications under Sec.319 of the Cr.P.C. for arraignment of persons as accused herein, which has resulted incidentally in the original complainant who was a Police Officer holding the rank of Inspector of Police (P.I.) to be arraigned as an accused herein. It is required to be noted that the injured victims and surviving family members of persons who had lost their lives in the present incident, have even moved the Hon'ble Apex Court from time to time which has resulted in a Special Investigation Team (to be referred to herein after "the SIT" for short) being formed, with as directions given by the Hon'ble Supreme Court from time to time. The Hon'ble Supreme Court even appointed an Amicus Curiae to oversee the Special Investigation Team and functioning of the in fact the investigation of the SIT into the present offence as also seven other related incidents of communal carnages in Gujarat in the 2002 were being actively monitored by the year Hon'ble Supreme Court from time to time and finally vide Hon'ble Supreme Court order the dated 14/11/2014, came to the conclusion that there was no

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further need to monitor the investigation any further and the Hon'ble Supreme Court has issued a direction to the trial Court to conclude the trial in its entirety leading to the present judgment. It is also required to be noted that in such circumstances, the present proceedings can be said to be belonging to a very different class of proceedings where the present incident has admittedly come into scrutiny of the international community at large. It is in the background of such facts and circumstances that the Prosecution case in a nutshell, is required to be narrated briefly as herein after follows.

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5. Tt is the Prosecution case that а horrific incident took place at the Godhra Railway Station on 27/02/2002 when a train carrying 'Karsevaks' returning from Ayodhya, was allegedly attacked by members of the minority community and coaches of the train were set afire and the Karsevaks travelling in such train coaches were not permitted to get out of such burning coaches and were ultimately set afire and burnt alive. It is the case of the Prosecution that in response to such incident, a number of Organizations/Institutions gave a Bandh call and it is also the case of the Prosecution that the charred and burnt bodies of such Karsevaks were being brought to Ahmedabad for being handed over to their relatives after due process for their final rites, on 28/02/2002. Incidentally, according to the Prosecution, the

Bandh call was also given for 28/02/2002. It is the case of the Prosecution that in furtherance of the said Bandh call, various localities came under heavy Police bandobast since there were perceived to be communally sensitive localities of Ahmedabad. On the other hand, the Police Station within whose jurisdiction fell, the Gulbarq Society was Meghaninagar Police Station which was not perceived to be a very communally sensitive locality. It is the case of the Prosecution that in furtherance of and in an effort to rigidly enforce the Bandh call, mobs started gathering in the present locality where the present incident has taken place and incidents of stone throwing, arson, looting and setting afire of vehicles belonging to the minority community as also forcing down the shopkeepers to shut shops, had commenced right since the morning of the fateful day. It is the case of the Prosecution that a number of incidents took place surrounding Gulbarg Society (which would be narrated at length and in great detail in the course of the present judgment) which resulted in heightening of tension in the vicinity of Gulbarq Society and its surrounding neighbourhood. is the Prosecution case that It Gulbarg Society was occupied by members of the minority community, of whom an elected Member of Parliament (ex-MP) Shri Ehsan Jafri was one of the residents of the said Gulbarg Society. It is the case of the Prosecution that the members of the minority community were also residing in houses and chawls which were inhabited by members of both the

communities but on account of the atmosphere so created on the fateful day i.e. on 28/02/2002, the members of the minority community residing in the chawls and nearby houses, took shelter in Gulbarg Society since it was perceived by them that Shri Ehsan Jafri on account of his political stature and status and on account of his being thought to be and accepted to be a leading member of the community, would be in a position to provide shelter and protection to such families. It is the case of the Prosecution that after the incidents took place outside Gulbarg Society, a mob comprising of initially 10 to 15 persons had gathered, and as time progressed, the mob swelled in numbers and surrounded the Society from all sides and started pelting stones at the residents of the Society. It is the case of the Prosecution that such stone pelting by the mob resulted in a response from the residents of Gulbarg Society who admittedly in turn pelted stones at the mob. It is the case of the Prosecution that consequent thereto, the situation spiralled out of control and the mob started making efforts to break open the gates as also the compound wall of the Gulbarg Society which resulted in a large number of residents of Gulbarg Society rushing to the Bunglow of Shri Ehsan Jafri with a view to take shelter. It is the case of the Prosecution that at about 11 o'clock, senior Police Officers visited the site of Gulbarg Society with a view to ensure that due protection was offerred to the members of the minority community residing in and/or taking

shelter in Gulbarg Society and the mob was dispersed for a short while. However, no sooner did such Police force go away to other areas and other localities of Ahmedabad which were also similarly being impacted and affected by the Bandh call as also similar incidents of arson and rioting, that the mob gathered in large numbers and some amongst the present accused according to the Prosecution, who were armed with deadly weapons like swords, knives, trishools as also inflammable material, started inciting the mob to commit further and more gruesome atrocities on the members of the minority community who had taken shelter within the residence of Shri Ehsan Jafri. Ιt is the case of the Prosecution that a series of incidents took place, beginning from about 11:00 a.m. and went on till about 04;30 p.m., the details of which would be provided at length herein after, which ultimately resulted in the deceased Shri Ehsan Jafri to open fire on the mob with his licensed shotgun, causing grave and serious injuries to a number of members of the mob and also resulted in the death of one of the persons of the mob. Ιt is the case of the Prosecution that this resulted in the mob being enraged and incited beyond control and despite the efforts of the Police officers posted at the scene the incident, despite the Police resorting to of repeated firing of teargas shells and also firing from their weapons in an effort to control the mob, the enraged mob could not be controlled and it is the case of the Prosecution that the mob comprising

of, as perceived by the witnesses as also the Police Officers and as per the complaint, comprised of 5000 to 10000 persons who broke open gates of Gulbarg demolished the wall of Society, rear Gulbarg Society, entered into the Society and caused mayhem resulting in a carnage which resulted in turn in the large number of death of а innocent persons women and children and in such including men, fashion, no less than 69 persons belonging to the minority community were done away in a most gruesome fashion, properties in Gulbarg Society were set on fire and a number of victims appeared to have been burnt alive by the mob. It is the case of the Prosecution that the Police force finally responded by about 04:30 p.m. in reaching the site of the incident i.e. at Gulbarg Society and were finally successful in dispersing the mob. It is the case of the Prosecution that the Police at that stage were equipped with even enough vehicles whereby the survivors of the massacre could be shifted to safety and thus the survivors were transported in Police vehicles firstly to the Shahibaug Police Station and were thereafter taken away to safety and provided shelters in a refugee shelter immediately set up and which was known as "Dariakhan Ghummat Shelter". It is the case of the Prosecution that even when such survivors were being escorted to safety by the Police, the mob regrouped and attempted to prevent the Police from escorting such survivors to safety. It is the case of the Prosecution that the Police had to yet again resort to firing teargas shells as

also live bullets upon the mob which resulted in injuries being caused and death being caused to number of persons of the mob and finally with great difficulty, the Police could escort the survivors to safety. It is the case of the Prosecution that admittedly, a large number of residents of Gulbarg Society were done to death and their bodies were finally identified by their surviving near and dear ones and a large number of persons including Shri Ehsan Jafri, were and are till date missing and not traceable and are, therefore, required to be presumed dead in light of the statutory provisions since they have been missing for more than seven years. It is the case of the Prosecution that in such circumstances, P.I. Shri K.G.Erda who was in charge of the Meghaninagar Police Station at that point of time and thus was primarily responsible in providing security and protection to members of the minority community within the locality and who incidentally was found to be negligent in discharge of his duties, and was prima facie found criminally negligent, which resulted in his being arraigned as an accused herein, and thus incidentally is accused No.57 herein, however, at that stage, lodged his complaint with regard to the incident and an offence came to be registered at I-C.R.No.67/2002 with the Meghaninagar Police Station. It is the case of the Prosecution that the investigation into the present offence was handed over to said PI Shri K.G.Erda initially who carried out such investigation from 28/02/2002 to 08/03/2002, and thereafter, the

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investigation was handed over to various officers time to time viz. Shri from P.N.Barot, Shri S.S.Chudasama, Shri H.P.Agrawat, Shri G.L.Singhal etc., who all in the course of their investigation, arrested some of the accused, recorded statements of the witnesses and the victims. It is the case of the Prosecution that the first chargesheet against 23 of filed herein the accused came to be before Metropolitan Magistrate, Court No.11 on 03/06/2002 which culminated in Criminal Case No.915/2002. The proceedings in terms of the opinion of the learned Magistrate, involved commission Metropolitan of offences which were beyond the jurisdiction of the Metropolitan Magistrate's Court and were triable only by Sessions Court and therefore, vide order dated 08/07/2002, the learned Metropolitan Magistrate committed the proceedings to the Court of Sessions being the City Civil & Sessions Court at Ahmedabad, which culminated in the first Session being Sessions Case No.152/2002. It is the case of the Prosecution that subsequent thereto, number of accused were arrested from time to time and chargesheets were filed against such accused on 30/08/2002, 26/02/2003, 18/10/2004, 14/07/2008, 08/06/2004, 12/12/2008, 16/05/2009 and 27/08/2009. It is the case of the Prosecution that the learned Metropolitan Magistrate dealing with such chargesheets in Criminal Cases Nos.296/2003, 1720/2002, 1902/2004, 190/2008, 1142/2004, 296/2008, 150/2009 and 262/2009 respectively, came to the conclusion that it was only the Sessions Court that

was vested with the jurisdiction to hear and decide the fate of the present proceedings and therefore, vide committal orders dated 02/05/2003, 20/06/2003, 30/05/2009 (05 committal orders) and 28/08/2009, the proceedings were committed to the Court of Sessions and culminated in Sessions Cases Nos.167/2003, 279/2003, 190/2009, 191/2009, 193/2009, 194/2009, 195/2009 and 279/2009 respectively.

6. It is the case of the Prosecution that the victims of the present proceedings and the survivors who were aggrieved by the fact of the State machinery as also the investigating agency not making due and satisfactory efforts to bring the book, made number real perpetrators to of applications through Advocates, NGOs and concerned members of the society, which resulted in ultimately the victims preferring a Special Writ Petition (Criminal) No.109/2003 before the Hon'ble Supreme Court which covered eight separate incidents of riots/massacres, all of which took place in Gujarat 28/02/2002 and which resulted State on in the Hon'ble Supreme Court initially staying the further proceedings in Sessions Cases arising out of all such incidents. As has been stated herein before, the Hon'ble Supreme Court also appointed the SIT to further investigate into the proceedings with regard to the role of senior Police Officers and politicians in the carnage. It is the case of the Prosecution that in the instant proceedings also, there was further investigation by the SIT which

resulted in a large number of arrests of accused taking place nearly six years after the incident i.e. in the year 2008-2009 and it is the case of the Prosecution that subsequently the Hon'ble Supreme Court ordered the vacation of the stay on proceedings and ordered the setting up of specially designated Courts to take the present proceedings to their logical conclusion. It is the case of the Prosecution that initially Additional Sessions Judge, Court No.13, City Civil & Sessions Court, Ahmedabad i.e. Shri B.U.Joshi was appointed as the specially designated Court to try the present offence relating to Gulbarg Society massacre (it is made clear that the present incident would herein after be referred to as either 'the Gulbarg Society case' or 'the present incident' as and where the context requires). It is the case of the Prosecution that the designated Court proceeded to frame charges against 64 of the accused on 11/08/2009. The same designated Court in furtherance of orders passed under Sec.319 of the Cr.P.C., whereby accused Nos.65 and 66 were arraigned, proceeded to frame charge against accused No.65 on 25/01/2010 and against accused No.66 on 10/02/2010. It is required to be noted that the said designated Court Shri B.U.Joshi thereafter proceeded to record the evidence of a large number of witnesses in the trial, but however, was not in a position to complete the trial since the said Presiding Officer was transferred during the pendency of the proceedings. It is an admitted position that Additional Sessions Judge, City Civil

Sessions Court No.8 Shri B.J.Dhandha came to be appointed as the specially designated Court conduct and conclude the present proceedings and amended charge was framed by the said Presiding Officer Shri B.J.Dhandha on 22/03/2011. Tt.

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required to be noted that the initial charge framed was framed at Exh.109, additional charge came to be framed vide Exhs.860, 934 and 1553 respectively.

7. All the charges referred to above, were individually read over and explained to each of the accused and it is required to be noted that the accused pleaded not guilty to the charges framed and claimed to be tried. Even in the course of recording further statements of of the the accused as prescribed under Sec.313 of the Cr.P.C., the accused maintained their innocence and claimed that they were falsely implicated in the present offence and sought for a clean acquittal. It is required to be noted that consequent thereto, the then specially designated Court No.8 Shri B.J.Dhandha proceeded to hear the arguments in the present proceedings in their entirety but was unable to deliver the judqment since he attained superannuation. The proceedings thereafter were placed for the consideration of the Principal Sessions Judge Shri K.K.Bhatt, but no progress could be achieved since the proceedings were stayed by the Hon'ble Supreme Court. The proceedings were thereafter placed for the consideration of the present Principal Judge of the City Civil & Sessions Court, Ahmedabad i.e. the

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8. It is in the background of such facts and circumstances that the following points have arisen for determination by this Court:-

1) the Prosecution prove beyond Does reasonable doubt that the accused, any one or more of them or all of them, had entered into a pre-planned conspiracy to form an unlawful assembly and thereafter perpetrate the carnage at Gulbarg Society on 28/02/2002 which resulted in the deaths of 69 persons and resulted in attempts to murder, cause grave and serious injuries to other residents of Gulbarg Society and also cause damage and destruction of vehicles and property at Gulbarg Society and thereby, the accused or any one or more of them, have committed an offence punishable under Sec.120B, 143, 147, 148, 149, 153(a)(1)(, 153(a)(b), 153(a)(1)(b), 186, 188, 295, 302, 307, 323, 324, 332, 337, 395, 396, 397, 398, 427, 435, 436, 447, 449, 452 of the Indian Penal Code?

2) Does the Prosecution prove beyond reasonable doubt that in furtherance to the carnage and killing of persons, the accused or any one or more of them, had burnt the dead

bodies of the victims in such a fashion so as to destroy any evidence that could be used against them and had thereby committed an offence punishable under Sec.120B read together with Sec.201 of the Indian Penal Code?

3) Does the Prosecution prove beyond reasonable doubt that the accused Nos.2, 46 and 63 had by committing the act of rape upon Sajedabanu and one unknown woman and thereby killing the said two women victims, as also by committing the act of killing of Sadabkhan, had thereby committed an offence punishable under Sec.143, 147, 148, 149, 153(a)(1), 153(a)(b), 153(a)(1)(b), 186, 188, 201, 295, 302, 307, 323, 324, 332, 337, 376(2)(g), 395, 396, 397, 398, 427, 435, 436, 447, 449, 452 of the Indian Penal Code?

4) the Prosecution prove beyond Does reasonable doubt that the accused No.57 bv being a part of the conspiracy and in furtherance thereof, was criminally negligent in preventing the co-accused from perpetrating the offence and had further conducted the investigation in such manner as would result in destruction of material evidence and had thereby committed offence punishable under Secs.201, 217, 218 of the Indian Penal Code?

reasonable doubt that the accused or any one or more of them, on account of they being armed with lethal weapons, had committed offence punishable under Sec.135(1) of the Bombay Police Act?

6) Does the Prosecution prove beyond reasonable doubt that the accused or any one or more of them or all of them had committed any other offence punishable under any law for the time being in force in India?

7) What final order? What judgment?

9. My findings on each of the points for determination, are as follows:-

- 1) Partly in the affirmative.
- 2) Partly in the affirmative.
- 3) Partly in the affirmative.
- 4) In the negative.
- 5) Partly in the affirmative.
- 6) In the negative.
- 7) As per final order and judgment.

10. Before ascribing my reasons for arriving at the findings stated above on the points of determination framed, it is required to be noted that this has been a trial of almost unprecedented proportions, the oral evidence as well as documentary evidence required to be considered for

deciding the fate of the present accused is also on an unprecedented scale and since the trial of the present proceedings was not conducted by the present Presiding Officer, it is required to be noted that the trial could be concluded and judgment was in a position of being dictated only on account of the exceptional efforts of the learned Special P.P., the learned Advocates for the defence as also the cooperation of the learned Advocate appearing on behalf of the victims who have also referred to themselves while filing various applications, as witnesses in the present proceedings. Ιt is required to be noted that even the learned Special P.P. was appointed only at the fag end of the trial proceedings, replacing the earlier Spl.P.P., the learned advocates appearing on behalf of the various accused have appeared only at the fag end of the proceedings and that too during the last six months approximately and all of them are required to be commended and it would be required to make a special note with regard to the spirit of cooperation in which the present trial was conducted and concluded before the present court. It is also required to be noted that in light of the voluminous evidence required to be appreciated and referred to, the present Court with agreement of all the parties concerned, has directly dictated in the Court the submissions made and arguments canvassed by each of the parties, the parties have also provided tabulations and material compilations, as also judicial precedents considered relevant the by

respective parties contesting the present proceedings, all of which has been placed for the consideration of the Court and therefore, it is required to be noted that there are no formal handwritten notes of submissions but only dictated portions of the submissions which are accepted by all the parties to have been dictated in the open Court and in the presence of all parties concerned.

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11. It would be necessary at this juncture to state that in an effort to prove the charges against the accused, the Prosecution has relied upon both - oral and documentary evidence which is required to be elaborated and is hereby done so as herein after follows.

12. The Prosecution has examined no less than 338 witnesses as per the following details:-

PW NO.	Status	Name of Witness	Exh. No.
1	Panch	Anup Mangatram Sukhwani	259
2	Police	Nathusinh Naharsinh Chauhan	263
3	Police	Babuji Chhaguji Dabhi	266
4	Police	Rajendrasinh Kallusinh Rajput	269
5	Police	Indrasinh Himmatsinh Gohil	270
6	Police	Lalitkumar Ramanbhai Patni	271
7	Police	Arvindsinh Shankersinh Vaghela	273
8	Doctor	Harshadkumar Kantilal Rathod	274
9	Panch	Jagdish Vanaji Mali	277
10	Panch	Popatbhai Shantibhai Thakor	296
11	Police	Rameshbhai Nagjibhai Pandor	314

PW NO.	Status	Name of Witness	Exh. No.
12	Police	Sajjansinh Jorubha Jhala	315
13	Police	Dhanesinh Becharsinh Kumpawat	316
14	Panch	Dipakbhai Somnath Panchal	318
15	Panch	Mohanji Piraji Vanzara	319
16	Panch	Ishwerlal Devilal Solanki	327
17	Panch	Velaji Mafaji Thakor	329
18	Panch	Ramanbhai Bhikhabhai Prajapati	330
19	Panch	Sohanji Vaghaji Thakor	332
20	Police	Indrasinh Mansinh Solanki	334
21	Police	Motibhai Dahyabhai Vaghela	335
22	Police	Shailendrasinh Kalusinh Jadeja	336
23	Panch	Trilochansinh Dayalsinh Saluja	340
24	Panch	Maheshkumar Rameshchandra Makwana	341
25	Panch	Dharmeshkumar Bhikhabhai Bharwad	343
26	Panch	Ratilal Ladhabhai Sumera	345
27	Panch	Sendhabhai Lalabhai Dholawala	347
28	Police	Pradipsinh Shetansinh Rathod	349
29	Police	Dhananjay Bhaskerrao Bhagwat	351
30	Police	Dharmabhai Ramjibhai Bodat	352
31	Panch	Maheshbhai Ratnabhai Patel	354
32	Panch	Premaram Umedji Vanjara	356
33	Panch	Indrapalsinh Nawabsinh Rathod	358
34	Doctor	Upendrabhai M. Jadhav	359
35	Doctor	Jayendra R. Modi	363
36	Panch	Prabhatbhai Sankabhai Desai	380
37	Police	Kavaji Rupaji Asari	385
38	Police	Dolatsinh Padamsinh Rathod	386
39	Police	Chandubhai Vashrambhai Rami	387
40	Police	Pasabhai Galabhai Solanki	388

PW NO.	Status	Name of Witness	Exh. No.
41	Police	Rameshbhai Somabhai Solanki	391
42	Panch	Kamleshbhai Ambalal Thakker	393
43	Panch	Kantibhai Shankerbhai Patni	395
44	Panch	Ramprakash Gulabsinh Bhadoria	397
45	Police	Rajeshbhai Kuberbhai Parmar	399
46	Police	Mavjibhai Hakshibhai Bodar	400
47	Police	Ranchhodbhai Ramjibhai Malavia	401
48	Police	Jagatsinh Mulsinh Bhati	402
49	Doctor	Kiritbhai R.Shah	403
50	Doctor	Bhavin S.Shah	408
51	Panch	Girishbhai Jayantilal Patel	411
52	Panch	Bharat Chimanlal Thakor	413
53	Panch	Bharat Sohanlal Prajapati	414
54	Panch	Mahendrasinh Baburam Rathod	416
55	Police	Balubhai Nathabhai Ninama	418
56	Doctor	Gitanjali L. Fukan	419
57	Doctor	Mitesh B.Patel	422
58	Doctor	Rakesh S.Bhavsar	425
59	Doctor	Govindbhai D. Patel	427
60	Panch	Ghanshyam Bhavanifer Tiwari	431
61	Police	Kanjibhai Veljibhai Damor	433
62	Doctor	Jayeshkumar M.Joshi	434
63	Doctor	Kalpesh H.parikh	448
64	Doctor	Pravinbhai L. Desai	451
65	Panch	Santosh Ramachal Pathak	454
66	Panch	Hitendrasinh Manubha Jadeja	455
67	Panch	Sanjaybhai Kantibhai Patni	458
68	Panch	Ramtirath Sahdevsinh Patel	459
69	Doctor	Madansinh D. Jhala	464
70	Doctor	Jayesh B. Rupal	467

PW NO.	Status	Name of Witness	Exh. No.
71	Panch	Digpal hariharprasad Dubey	469
72	Panch	Rambhai Ukabhai Patel	470
73	Panch	Suresh Lalchand Dhobi	471
74	Panch	Pavankumar Hiralal Samodia	472
75	Police	Puransinh Ramsinh Tomar	473
76	Panch	Kishanbhai Jorjibhai Purohit	479
77	Panch	Dineshbhai Mohanbhai Vora	481
78	Panch	Champaklal Mohanlal Darji	486
79	Panch	Dinesh Jayantilal Od	487
80	Police	Laxmanbhai Ramabhai Solanki	489
81	Police	Babubhai Harjibhai Pandor	490
82	Police	Manubhai Karsanbhai Desai	491
83	Panch	Bhupendra Kantilal patel	494
84	Panch	Himanshu Jayantilal Vyas	496
85	Panch	Divyesh Ramanlal Shah	497
86	Panch	Jitusinh Kalusinh chauhan	498
87	Panch	Chimanbhai Gamjibhai patni	500
88	Panch	Pankajbhai Manishbhai Khatri	501
89	Police	Ganpatsinh Bhawansinh Solanki	502
90	Police	Hemubhai Somabhai Parmar	503
91	Police	Gautambhai Amrutlal Shrimali	504
92	Police	Baldevbhai Jivabhai Chavda	505
93	Doctor	Dharitri B. Jadhav	511
94	Doctor	Hemant D. Patel	518
95	Panch	Rameshbhai Jayantilal Doshi	522
96	Panch	Narendrasinh Rajbahadursinh Chauhan	523
97	Panch	Jivanbhai Tribhovandas Solanki	525
98	Panch	Omkarbhai Shafuaji Diya	526
99	Panch	Ghanshyambhai Shankerlal Rana	528

PW NO.	Status	Name of Witness	Exh. No.
100	Panch	Munawarali Mohammadismail Shaikh	529
101	Panch	Narendra Becharbhai Kahar	531
102	Panch	Jignesh Rajubhai Shah	534
103	Panch	Salimuddin Mohammadmiya Saiyed	536
104	Panch	Aliyarkhan Afsarkhan Pathan	538
105	Panch	Halubhai Ramjibhai Patni	539
106	Victim	Imtiyazkhan Saeedkhan Pathan	542
107	Victim	Roopa @ Tanaz Daraminu Modi	548
108	Doctor	Chandrakantbhai K. Tanna	549
109	Doctor	Dharmesh A. Silajiya	554
110	Doctor	Kishanlal R. Solanki	570
111	Panch	Shantilal Govindbhai Parmar	575
112	Panch	Yakubbhai Musabhai Qureshi	577
113	Panch	Suresh Punamchand Raypure	579
114	Panch	Keshabhai Bhikhabhai Thakor	580
115	Police	Shridharan Narayan Nair	582
116	Victim	Saeedkhan Ahmedkhan Pathan	584
117	Victim	Ayubkhan Habibkhan Pathan	588
118	Doctor	Gautam V. Nayak	593
119	Doctor	Narendra gunvantrai Joshi	595
120	Doctor	Kuldeep J. Joshi	597
121	Doctor	Rajesh D.Patel	599
122	Doctor	Vikram K. Pardhi	610
123	Doctor	Jayantbhai s. Kanoria	612
124	Witness having sufferred damage	Hafizrehman Islamuddin Ansari	629
125	Witness having sufferred damage	Zahirahmed Yousufbhai Ansari	630
126	Witness having sufferred damage	Rasidbaksh Gulabkhan Shaikh	631
127	Witness having sufferred damage	Abdulbhai Gulfarozkhan Pathan	632
128	Victim	Mohammadrafiq Abubakar Pathan	633

PW NO.	Status	Name of Witness	Exh. No.
129	Victim	Firozmohammad Gulzarmohammad Pathan	635
130	Witness having sufferred damage	Kabirkhan Nasirkhan Pathan	639
131	Panch	Jayeshbhai Vasantlal Shah	640
132	Panch	Amarsinh Sundersinh Bhadoria	641
133	Panch	Abdulaziz Abdul Khalid Shaikh	643
134	Witness having sufferred damage	Zulfikar Mohammadkhan Pathan	645
135	Witness having sufferred damage	Shabbirkhan Nasirkhan Pathan	646
136	Witness having sufferred damage	Kafilahmed Ajgarhussain Ansari	647
137	Witness having sufferred damage	Aslamkhan nasirkhan Pathan	648
138	Witness having sufferred damage	Aminkhan Fozdarkhan Pathan	649
139	Witness having sufferred damage	Riyazkhan Yakubkhan Pathan	650
140	Witness having sufferred damage	Shamsulhaq Ahdulhaq pathan	651
141	Witness having sufferred damage	Akhilahmed Ajgarhussain Ansari	652
142	Victim	Ashraf Sikanderbhai Sandhi	654
143	Victim	Altafkhan Gulabkhan Pathan	655
144	Doctor	Himmatbhai F. Patel	664
145	Panch	Salimkhan Achhankhan Pathan	670
146	Panch	Jeparam Devaji Mali	672
147	Panch	Mayurkumar Govindbhai parmar	674
148	Witness having sufferred damage	Fakirmohammad Ismailbhai Pathan	677
149	Witness having sufferred damage	Asif Jehangirbhai Sandhi	678
150	Witness having sufferred damage	Bhurabhai Bandealibhai Shaikh	679
151	Witness having sufferred damage	Nadirkhan Bashirkhan Pathan	680

PW NO.	Status	Name of Witness	Exh. No.
152	Victim	Yousufbhai Badarbhai Pathan	681
153	Witness having sufferred damage	Azizkhan Yasinkhan Pathan	682
154	Witness having sufferred damage	Hamidkhan Nasirkhan Pathan	683
155	Witness having sufferred damage	Mohammadbhai Kheratibhai Kazi	684
156	Witness having sufferred damage	Haroon Shakurbhai Ghanchi	685
157	Witness having sufferred damage	Mohammadazad Nanhekhan Shaikh	686
158	Witness having sufferred damage	Pirmohammad Ganibhai Momin	687
159	Victim	Gulubhai Sulemanbhai Sandhi	690
160	Witness having sufferred damage	Abdulbhai gafurbhai Mansuri	691
161	Witness having sufferred damage	Amjadkhan Abdulkadar Pathan	692
162	Witness having sufferred damage	Firoz Sattarbhai Shaikh	693
163	Witness having sufferred damage	Azimuddin Majidkhan Pathan	694
164	Panch	Jitendra Chandubhai Makwana	695
165	Witness having sufferred damage	Iqbalbhai Alibhai Shaikh	696
166	Victim	Sharifkhan Sikanderkhan Pathan	697
167	Witness having sufferred damage	Mohammadjanif Sidiqbhai Sandhi	698
168	Police	Kishorkumar Sanjabhai Baleria	700
169	Witness having sufferred damage	Ramzanbhai Inayatrasul Silawat	701
170	Police	Govaji Kanjibhai Chavda	702
171	Witness having sufferred damage	Ismailbhai Ibrahimbhai Pathan	703
172	Witness having sufferred damage	Samsuddin Ibrahimbhai Shaikh	704
173	Panch	Jagdishbhai Sakharam Habale	705
174	Panch	Amin Usmangani Shaikh	706
175	Witness having sufferred damage	Mohammadumer Abdulhamid Pathan	707

PW NO.	Status	Name of Witness	Exh. No.
176	Witness having sufferred damage	Rafiqkhan Yasinkhan Pathan	709
177	Victim	Sairaben Salimbhai Sandhi	711
178	Doctor	Dipak Champaklal Jagani	713
179	Victim	Ezajali Fakirmohammad Shaikh	720
180	Witness having sufferred damage	Mariamben Noormohammad Sandhi	721
181	Witness having sufferred damage	Riyazuddin Siyazuddin Saiyed	722
182	Witness having sufferred damage	Noorjehanben Mehmudkhan Pathan	724
183	Witness having sufferred damage	Hussainabibi Gulabbhai Malek	725
184	Witness having sufferred damage	Afsana Rafiqbhai Malek	726
185	Victim	Rasidabanu Rafiqbhai Shaikh	727
186	Victim	Mohammadiliyas Usmanbhai Shaikh	728
187	Witness having sufferred damage	Yunus Valibhai Patel	729
188	Witness having sufferred damage	Rafiqahmed Usmanbhai Malek	730
189	Witness having sufferred damage	Yousufbhai Malekbhai Patel	731
190	Witness having sufferred damage	Kabiralam Ramzanali Mansuri	732
191	Victim	Salimbhai Noormohammad Sandhi	734
192	Victim	Mohammadali Shahjadali Saiyed	736
193	Witness having sufferred damage	Sikander Noormohammad Sandhi	737
194	Witness having sufferred damage	Habibkhan Bhurekhan Pathan	739
195	Witness having sufferred damage	Gulabkhan Mankhan Pathan	740
196	Witness having sufferred damage	Ibrahim Nazirbhai Chandel	741
197	Witness having sufferred damage	Balvirkhan Allauddinkhan Pathan	742
198	Witness having sufferred damage	Ibrahim Noormohammad Sandhi	743
199	Witness having sufferred damage	Mohammadbhai Aslambhai Mansuri	744

PW NO.	Status	Name of Witness	Exh. No.
200	Panch	Rafiqkhan Gulabkhan Pathan	745
201	Victim	Rafiqbhai Usmanbhai Shilavat	748
202	Witness having sufferred damage	Kalim Abdulbhai Mansuri	750
203	Witness having sufferred damage	Farid Abubakar pathan	751
204	Witness having sufferred damage	Wahidkhan Gafurkhan Pathan	752
205	Witness having sufferred damage	Kasambhai Allanoor Mansuri	753
206	Witness having sufferred damage	Salmuddin Bashiruddin Shaikh	754
207	Witness having sufferred damage	Mahebubkhan Noorkhan Chandel	755
208	Witness having sufferred damage	Akbarhussain Abdulbhai Mansuri	756
209	Witness having sufferred damage	Kamruddin Gulabbhai Ansari	757
210	Witness having sufferred damage	Mubarak Nazirkhan Chandel	758
211	Witness having sufferred damage	Mohammad Shabbir Abdulsattar Shaikh	759
212	Witness having sufferred damage	Abbasbhai Ayubbhai kadir	760
213	Victim	Tasadduk Hussain Mulla Tahir Surohi	763
214	Witness having sufferred damage	Mohsin Aslam Pathan	766
215	Witness having sufferred damage	Majid Nathhubhai Saiyed	767
216	Victim	Ismailbhai Yasinkhan Pathan	772
217	Witness having sufferred damage	Nooriben Abdulbhai Mansuri	773
218	Panch	Kanubhai Kalabhai Bharwad	774
219	Witness having sufferred damage	Banobibi Hussainkhan Maniyar	776
220	Witness having sufferred damage	Yunusbhai Fakirbhai Mansuri	777
221	Witness having sufferred damage	Mukhtarbhai Abdulrahim Ansari	778

PW NO.	Status	Name of Witness	Exh. No.
222	Victim	Sarfaraz Abdulkadir Munshi	779
223	Victim	Alihussain Ibrahimbhai Shaikh	780
224	Doctor	Mukund M. Prabhakar	784
225	Doctor	Sumanlal B. Shrimali	786
226	Doctor	Jaymish P. Gajjar	790
227	Panch	Sureshbhai Ambalal Parmar	793
228	Doctor	Rajnish R. Patel	795
229	Witness having sufferred damage	Razakbhai Abdulbhai Shaikh	800
230	Witness having sufferred damage	Ayeshabibi Shakurbhai Ghanchi	801
231	Witness having sufferred damage	Sultankhan Amitkhan Pathan	802
232	Doctor	Jayantilal V. Satapara	803
233	Other Witness	Pradyumansinh Dharmendrasinh Chudasama	810
234	Witness having sufferred damage	Anis Fatima Tasadduk Hussain Surohi	813
235	Witness having sufferred damage	Abedabanu Munnakhan Pathan	814
236	Witness having sufferred damage	Safdarhussain Fazlehussain Ankleswaria	815
237	Doctor	Parul R. Waghela	818
238	Witness having sufferred damage	Mobina Yousuf Rangwala	827
239	Witness having sufferred damage	Khatija Yousufbhai Khambhati	828
240	Witness having sufferred damage	Aslam Kasambhai Mansuri	829
241	Witness having sufferred damage	Firoz Dilawer Shaikh	831
242	Witness having sufferred damage	Salim Abdulbhai Mansuri	834
243	Police	Pratapji Siraji Waghela	838
244	Police	Chinusinh Kesrisinh Jhala	839
245	Police	Udesinh Pratapsinh Baraiya	840

PW NO.	Status	Name of Witness	Exh. No.
246	Other witness	Jayeshkumar A. Yadav	842
247	Police	Laljibhai Kalaji Asari	843
248	Police	Takaji Takhuji Chavda	845
249	Police	Motisinh Habisinh Bariya	849
250	Police	Vijaysinh Vikramsinh Rajput	853
251	Police	Prataprai Chhaganlal Joshi	854
252	Police	Karansinh Bhawansinh Vaghela	867
253	Other witness	Mohammadnizir Chhote Ansari	869
254	Police	Prahladji Mangalji Barot	876
255	Panch	Manzir Ahmed Abdulaziz Shaikh	877
256	Panch	Rameshkumar Madanlal Jinger	883
257	Panch	Haroonbhai Shakhurbhai Ghanchi	885
258	Other witness	Tejpalsinh J. Bist	897
259	Other witness	Mahavirsinh S. Shekhawat	899
260	Other witness	Rajeshbhai V. Bhagat	902
261	Other witness	Purshottambhai N. Patel	906
262	Witness having sufferred damage	Maulana Yakub Akbar Vijapura	909
263	Victim	Mohammad Salim Ahmedbhai Shaikh	910
264	Victim	Firozbhai Bandeali Shaikh	918
265	Witness having sufferred damage	Karimabanu Mohammadbhai Shaikh	919
266	Victim	Noormohammad Valisha Tiwari	920
267	Police	Varvaji Ishwerji Waghela	921
268	Police	Tarunkumar Amrutlal Barot	926
269	Police	Natwarji Jawanji Bhati	927
270	Other witness	Anwermiya Y. Shaikh	938
271	Other witness	Himmatsinh B. Sisodiya	940
272	Other witness	Shevabhai K. Rathod	943

PW NO.	Status	Name of Witness	Exh. No.
273	Doctor	Mansukh M. Mawani	944
274	Police	Ramaji Gangaji Katara	946
275	Other witness	Balwantsinh Rampraveshsinh	952
276	Other witness	Pravinkumar N. Barot	954
277	Other witness	Sharadkumar B. Trivedi	962
278	Other witness	Ratansinh B. Chavda	963
279	Other witness	Maharaj K. Tandon	965
280	Other witness	Rameshkumar B. Joshi	969
281	Other witness	Pravin B. Gondiya	952
282	Victim	Dilawerbhai Sikanderbhai Shaikh	978
283	Victim	Aslamkhan Anwarkhan Pathan	981
284	Victim	Mohammadsharif Nasiruddin Shaikh	987
285	Police	Bhanjibhai Jivanbhai Sadawrati	988
286	Police	Jagdishsinh Temubha Chudasama	991
287	Police	Dhananjaisinh Surendrasinh Waghela	992
288	Police	Kishorsinh Motisinh Waghela	994
289	Victim	Nadim Tasaddukhussain Surohi	995
290	Witness having sufferred damage	Mohammadarif Kamaluddin Ansari	1023
291	Witness having sufferred damage	Kamaruddin Jalaluddin Saiyed	1024
292	Witness having sufferred damage	Jamalbhai Fakirbhai Mansuri	1025
293	Witness having sufferred damage	Abdulbhai Allanoorbhai Mansuri	1029
294	Witness having sufferred damage	Rajubhai Bandeali Rajasaheb Shaikh	1030
295	Witness having sufferred damage	Sabidkhan Gulabkhan Pathan	1031
296	Witness having sufferred damage	Rafiqmohammad Nekmohammad Saiyed	1033
297	Witness having sufferred damage	Ayubkhan Ishaqkhan pathan	1034

PW NO.	Status	Name of Witness	Exh. No.
298	Witness having sufferred damage	Shanazbanu Mohammadumerkhan Pathan	1038
299	Witness having sufferred damage	Khatunbibi Abdulkadir	1039
300	Witness having sufferred damage	Yousuf Taiyebbhai Khambhati	1040
301	Victim	Rasidabanu Dilawar Shaikh	1046
302	Witness having sufferred damage	Roshanbibi Usmanbhai Silawat	1047
303	Witness having sufferred damage	Saberabibi Ismailbhai Shaikh	1048
304	Victim	Noorjehan Lalsha Shaikh	1049
305	Police	Bhupendrasinh Karansinh Sisodiya	1052
306	Police	Ramvilas Ramlakhan Pathak	1059
307	Panch	Altafkhan Shahjadkhan Pathan	1061
308	Police	Kiranpuri Gangapuri Goswami	1062
309	Other witness	Laxman K. Pardhi	1064
310	I.O.	Hareshkumar P. Agrawat	1069
311	Police	Jagatsinh Ramsinh Parmar	1075
312	Police	Babubhai Mohanbhai Parmar	1077
313	Other witness	Ashish Sureshchandra Khetan	1091
314	Victim	Faqirmohammad Nasirali Saiyed	1098
315	Police	Anantsinh Kalyansinh Rathod	1133
316	Police	Ramkubhai Nagbhai Vala	1134
317	Police	Navalsinh Ramsinh Bariya	1135
318	Other witness	Dhiren Jayantilal Lariya	1137
319	Police	Kumarrai Jagdishrai Chandna	1139
320	Police	Jogdas Suryanarayanprasad Gedam	1140
321	Police	Harisinh Chhatrasinh Gohil	1141
322	Police	Raiskhan Mohammadkhan Pathan	1144
323	Panch	Nitinkumar Narandas Sheth	1147
324	Police	Nisarmohammad Sultankhan Malek	1149

PW NO.	Status	Name of Witness	Exh. No.
325	Police	Bhikhusinh Khatusinh Rathod	1158
326	Police	Shailesh Anilkumar Vyas	1161
327	Police	Sanjaykumar Ramjibhai Patni	1162
328	I.O.	Narottam D. Parmar	1164
329	I.O.	Harish R. Muliyana	1211
330	I.O.	Rahul Nanheshwar Sharma	1213
331	I.O.	Girishkumar L. Singhal	1217
332	I.O.	Sukhdevsinh S. Chudasama	1226
333	Doctor	Mukeshbhai V. Kapadiya	1281
334	Doctor	Chandrakant K. Goswami	1284
335	I.O.	Jayantilal M. Suthar	1289
336	I.O.	Nirmalsinh S. Raju	1377
337	Victim	Zakianasim Ahsan Jafri	1463
338	Other witness	Dr.Shailendra Ramkishor Jha	1492

13. The Prosecution has also relied upon documentary evidence which is extremely voluminous and detailed hereto as herein after follows:-

Sr. No.	Particulars	Exh. No.
1	Forwarding letter regarding muddamal having been sent to F.S.L.	176
2	Three acknowledgment receipts regarding FSL having received the muddamal	177
3	Opinion of FSL	178
4	Opinion of FSL	179
5	Forwarding letter regarding muddamal having been sent to F.S.L.	180
6	Acknowledgment receipts regarding FSL having received the muddamal	181
7	Opinion of FSL	182

Sr. No.	Particulars	Exh. No.
8	Forwarding letter regarding muddamal having been sent to F.S.L.	183
9	Acknowledgment receipts regarding FSL having received the muddamal	184
10	Opinion of FSL	185
11	Forwarding letter regarding muddamal having been sent to F.S.L.	186
12	04 acknowledgment receipts regarding FSL having received the muddamal	187
13	Opinion of FSL	188
14	Panchnama of Gulbarg Society	260
15	Panchnama of Gulbarg Society	261
16	Panchnama regarding recovery of gun	262
17	Complaint of Mr.K.G.Erda	267
18	Report made by Mr.K.G.Erda to P.S.O.	268
19	04 papers produced with PM report No.409	275
20	PM Report – Dineshbhai Kalabhai	276
21	Inquest Panchnama of dead body of Zarinaben Sandhi	278
22	Inquest Panchnama – Asmin Rafiqbhai	279
23	Inquest Panchnama - unidentified	280
24	Inquest Panchnama - Faridaben Shakilbhai Mansuri	281
25	Inquest Panchnama - Kherunbibi Sikanderkhan Pathan	282
26	Inquest Panchnama - Nazmaben Kasambhai Mansuri	283
27	Inquest Panchnama - Mumtaz Sikanderbhai Sandhi	284
28	Inquest Panchnama – unidentified	285
29	Inquest Panchnama - Nasim @ Zebun Aslambhai Shaikh	286
30	Inquest Panchnama – Asmatben Abdulbhai Mansuri	287

Sr. No.	Particulars	Exh. No.
31	Inquest Panchnama – Mehmuda Aslam Kasambhai	288
32	Inquest Panchnama – Sharifaben Munirsha	289
33	Inquest Panchnama - Ahmedali Faqirmohammad Saiyed	290
34	Inquest Panchnama - Anwarkhan Ahmedkhan pathan	291
35	Inquest Panchnama - Salimkhan Sikanderkhan Pathan	292
36	Inquest Panchnama - Mohammadshafi Mohammadmunavar Shaikh	293
37	Inquest Panchnama - unidentified	294
38	Inquest Panchnama - unidentified	295
39	Inquest Panchnama - Mohammad Imran Gulzar	297
40	Inquest Panchnama - Mohammadyousuf Mehmud Hussain	298
41	Inquest Panchnama - Irfan Aslambhai Mansuri	299
42	Inquest Panchnama - unidentified	300
43	Inquest Panchnama - Nilofar Mohammadsharif Shaikh	301
44	Inquest Panchnama - Muskan Aslam	302
45	Inquest Panchnama – Shahir Asimbhai Mansuri	303
46	Inquest Panchnama - Jehrunisha Saiyedkhan Ahmedkhan	304
47	Inquest Panchnama - Mariambibi Gulzar Mohammad Pathan	305
48	Inquest Panchnama – unidentified	306
49	Inquest Panchnama - Irfan Mohammad Gulzar Mohammad Pathan	307
50	Inquest Panchnama – unidentified	308
51	Inquest Panchnama – unidentified	309
52	Inquest Panchnama – unidentified	310

Sr. No.	Particulars	Exh. No.
53	Panchnama of shop of primus repairing	320
54	Panchnama of Ashiyana Bakery	321
55	Panchnama of Honest Mutton Centre	322
56	Panchnama of Gulshan Bakery	323
57	Panchnama of Chiku Chicken	324
58	Panchnama of shop of Naeembhai Nasirbhai - mutton	325
59	Panchnama of Rajasthan Mutton Centre	326
60	Panchnama of damage	328
61	Panchnama of the building of Shakeelahmed Ajgarali	331
62	Panchnama of building of Salimbhai Nathhubhai Saiyed	333
63	Panchnama of damage	342
64	Panchnama of damage	344
65	Inquest Panchnama – dead body of Dinesh Kalabhai	346
66	Panchnama of dead body of Tarun Jayantibhai	348
67	Panchnama of dead body of Prakash Ramanbhai	355
68	Panchnama of dead body of Shravan Ladhuji	357
69	Papers produced with PM report No.800/2002	360
70	Certificate of Medical officer	361
71	PM Report – Rameshbhai Naranbhai Marathi	362
72	Papers produced with PM Report No.432/2002	364
73	Certificate of Medical officer	365
74	PM Report – Tarunkumar Jayantilal Patni	366
75	PM Report No.646 - Shamim Abubaker Bashir	367
76	Copy of Exh.367 brought by the doctor	368
77	Papers along with PM report	369

Sr. No.	Particulars	Exh. No.
78	PM report – Shamshad Abubakar Bashir Ahmed	370
79	Papers along with PM report	371
80	Papers produced along with PM report No.648	372
81	PM report – Mohsin Mehbubbhai Allanoor	373
82	Three papers produced with PM report	374
83	PM report No.649 - Samim Kalimbhai	375
84	Copy of forwarding letter	376
85	Copy of forwarding letter	377
86	Copy of forwarding letter	378
87	Copy of forwarding letter	379
88	Panchnama of scene of offence	381
89	Panchnama of clothes recovered by Police	394
90	Panchnama of burst cartridges	396
91	Panchnama of recovery of clothes of the injured in private firing	398
92	Report regarding non-receipt of PM Report No.444 and 477/2	404
93	PM report - Mohammad Pathan	405
94	Papers along with PM report	406
95	PM report - Nasrinbanu Mohammad Sharif	407
96	Report regarding non-receipt of PM Report	409
97	PM Report - Wasim @ Sonu Mehmood Mansuri	410
98	Panchnama of recovery of pieces of 12- bore cartridge	412
99	Panchnama of three persons injured in private firing, police firing and police stone pelting	415
100	Panchnama of damage	417
101	Total three papers along with PM report	420
102	PM report – Mariambibi Gulzar Mohammad	421
103	Papers along with PM report No.423	423

Sr. No.	Particulars	Exh. No.
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398	Arrest memo of accused Krishnakumar @ Krishna, letter informing relatives and District Magistrate	1251
399	Arrest memo of accused Ambesh Kantilal Jinger, letter informing relatives and letter written to District Magistrate	
400	Panchnama of physical condition of accused Ashok @ Aslo	1253
401	Arrest memo of accused Ashok @ Aslo, report informing relatives and letter written to District Magistrate	
402	Panchnama of physical condition of accused Chirag Dilipbhai Shah and Prakash @ Kali Khengarji	1255
403	Arrest memo of accused Chirag Dilipbhai Shah, letter informing relatives and letter to District Magistrate	1256
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405	Panchnama regarding accused Prakash having traced out knife	1258
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407	'C' Summary in connection with Meghaninagar I-C.R.No.67/02 filed before Metropolitan Magistrate, Court No.11	
408	'C' Summary in connection with Meghaninagar I-C.R.No.74/02 filed before Metropolitan Magistrate, Court No.11	1261
409	'C' Summary in connection with Meghaninagar I-C.R.No.79/02 filed before Metropolitan Magistrate, Court No.11	

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410	'C' Summary in connection with Meghaninagar I-C.R.No.78/02 filed before Metropolitan Magistrate, Court No.11	
411	Arrest memo of accused Pannalal and letter informing relatives	1264
412	Arrest memo of accused Gopal Mandas, letter informing relatives and letter informing District Magistrate	
413	Arrest memo of accused Mukesh Pukhraj, letter informing relatives and letter informing District Magistrate	
414	Arrest memo of accused Prahlad Rajuji, letter informing relatives and letter informing District Magistrate	
415	Arrest memo of accused Madanlal Dhanraj, letter informing relatives and letter informing District Magistrate	1268
416	Work procedure of the General Administration Department of Govt. of Gujarat	
417	Papers of treatment given to Faqir Mohammad	1282
418	Certificate given to Faqir Mohammad	1283
419	Certificate given to Faqir Mohammad Nasirali	1285
420	Narco report of accused Parbatsing	1290
421	Regarding getting samples of voice for voice for	1291
422	Summons issued to accused Madanlal Dhanraj for having samples of voice for voice spectography	1
423	Summons issued to Mangilal for having samples of voice for voice spectography	1293
424	Summons issued to Prahlad Rajuji for having samples of voice for voice spectography	

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426	Muddamal Pavti No.21/2010	1296
427	Letter sent to F.S.L., Jaipur	1297
428	Opinion regarding call details of BSNL No.2129266	1298
429	Letter in respect of call details of Telephone Nos.2125166 and 2681019	1299
430	Letter for obtaining CD of mobile	1300
431	Letter written to FSL, Gandhinagar and report	1301
432	Call details of Cell Phone No.98250 48303 of Police Commissioner Mr.P.C.Pandey	1302
433	Cell Phone No.98250 48316 of Mr.M.K.Tandon	1303
434	Cell Phone No.98250 49197 of Mr.P.B.Gondiya	1304
435	Cell Phone No.98251 16221 of Mr.K.G.Erda	1305
436	Cell Phone No.98251 16221 of Mr.K.G.Erda dated 28/2/02	1306
437	Cell Phone No.98250 48316 of Mr.M.K.Tandon dated 28/2/02	1307
438	Call details of Cell Phone No.98250 48303 of Police Commissioner Mr.P.C.Pandey, dated 28/2/2002	1308
439	Cell Phone No.98252 89048 of Atul Vaidya	1309
440	Letter of BSNL	1310
441	Details of Idea Cell Phone No.98240 92698	1311
442	Opinion of BSNL regarding call details	1312
443	Letter regarding address of holder of Vodafone Cell Phone Nos.9825030424, 9825035000, 9898596355	1313
444	Letter regarding address of Reliance Cell Phone holders	1314

Sr. No.	Particulars	Exh. No.
445	Arrest memo of Raju @ Mamu Kaniyo Ramavatar Tiwari, letter informing relatives	1315
446	Arrest memo of Naran Sitaram Channelwala and letter informing relatives	1316
447	Arrest memo of Naginbhai Hasmukhbhai Patni and letter informing relatives	1317
448	Arrest memo of Dashrath Gatting Jivanbhai Patni and letter informing relatives	1318
449	Arrest memo of Lakhansinh @ Lakhiyo @ Bhuriyo and letter informing relatives	1319
450	Arrest memo of Dharmesh Prahladbhai and letter informing relatives	1320
451	Arrest memo of Jitendra @ Jitu Pratapji and letter informing relatives	1321
452	Arrest memo of Mahesh Pappu Pratapji Thakor and letter informing relatives	1322
453	Arrest memo of Kapil Munnabhai Devnarayan and letter informing relatives	1323
454	Arrest memo of Mahesh Ramjilal Nath and letter informing relatives	1324
455	Arrest memo of Suresh @ Kali and letter informing relatives	1325
456	Arrest memo of Sushil Brijmohan Sharma and letter informing relatives	1326
457	Arrest memo of Bharatbhai @ Bharat Teli and letter informing relatives	1327
458	Arrest memo of Bharatsinh Laxmansinh Gaud and letter informing relatives	1328
459	Panchnama of physical condition of Pradip Khanabhai Parmar	1329
460	Arrest memo of Kiritkumar Govindji Erda and letter informing relatives	1330
461	Arrest memo of Atul Indravadan Vaidya and letter informing relatives	1331

Sr. No.	Particulars	Exh. No.
462	Arrest memo of Meghsinh Dhupsinh Chaudhary and letter informing relatives	1332
463	Arrest memo of Chunilal Jethaji Prajapati and letter informing relatives	1333
464	Arrest memo of Bipinbhai Ambalal Patel and letter informing relatives	1334
465	Arrest memo of Dilip Kantilal Jinger and letter informing relatives	1335
466	Arrest memo of Dinesh Dahyabhai Sharma and letter informing relatives	1336
467	Arrest memo of Shivcharan @ Jitendra Lallo and letter informing relatives	1337
468	Panchnama of physical condition of Raju @ Mamo Kaniyo	1338
469	Panchnama of physical condition of Bharat Teli	1339
470	Panchnamas of physical condition of Kailash Dhobi, Yogendrasinh @ Lalo and Surendra @ Vakil	1340
471	Arrest Memo of Kailash Dhobi, Yogendrasinh @ Lalo and Surendra @ Vakil	1341
472	Arrest memo of Mangaji Pokhraj Prajapati	1342
473	Arrest memo of Jayesh Ramubhai Patni	1343
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475	Arrest memo of Shailesh @ Kalu Patni	1345
476	Arrest memo of Kanaiya @ Bablu Chaichau	1346
477	Arrest memo of Kantibhai Popatbhai Patni	1347
478	Arrest memo of Shakrabhai Sendhabhai Patni	1348
479	Arrest memo of Manojkumar Premjibhai Parmar	1349
480	Panchnama of physical condition of Dipakkumar Somabhai Solanki	1350
481	Arrest memo of Dipakkumar Somabhai Solanki	1351

Sr. No.	Particulars	Exh. No.
482	Arrest memo of Vinodkumar Arvindbhai Solanki	1352
483	Arrest memo of Jayeshkumar @ Gabbar Madanlal and letter informing relatives	1353
484	Arrest memo of Ajay Somabhai Panchal	1354
485	Arrest memo of Ratilal Ganeshji Kumbhar and letter informing relatives, and yaadi written to District Magistrate	1355
486	Arrest memo of Parbatsinh @ Darpansinh Tarsansinh and letter informing relatives	1356
487	Arrest memo of Jayesh Ramjibhai Parmar and letter informing relatives	1357
488	Riot scheme pages No.1 to 49	1358
489	Form-F of Rajasthan FSL	1364
490	Letter written by SIT to Rajasthan FSL	1365
491	Acknowledgment receipt of Jaipur FSL regarding muddamal having received	1366
492	Report of the Investigating officer of SIT	1367
493	Letter of FSL, Jaipur	1368
494	Letter written to Akashwani	1369
495	Letter received by Akashwani	1370
496	Letter written to FSL, Jaipur	1371
497	Letter written by SIT to CBI	1372
498	Panchnama of house of Mohammadali Shaikh	1373
499	Panchnama of damage caused to Ismailbhai Ibrahim Pathan	1374
500	Panchnama of damage	1375
501	Panchnama of damage	1376
502	Letter written by CBI to National Human Rights	1378
503	Letter of CBI	1379
504	Report under Sec.293 of Cr.P.C. of FSL, Jaipur	1380

Sr. No.	Particulars	Exh. No.
505	Forwarding letter of CBI	1381
506	Copy of taking over memo	1382
507	Letter regarding CBI, Mumbai having produced sealed parcel	1383
508	Letter to IO regarding CD	1384
509	Xerox copy of Slip page No.173 received by Police Control	1386
510	Xerox copy of message of page No.145 received by Police Control	1387
511	Xerox copy of Message Slip of page No.147 of Police Control, Ahmedabad city	1388
512	Xerox copy of Message Slip of Ahmedabad City Police Control	1391
513	Message Slip of Ahmedabad City Police Control	1393
514	Message Slip of Ahmedabad City Police Control	1394
515	Message Slip of Ahmedabad City Police Control	1395
516	Message Slip of Ahmedabad City Police Control	1396
517	Message Slip of Ahmedabad City Police Control	1397
518	Message Slip of Ahmedabad City Police Control	1398
519	Message Slip of Ahmedabad City Police Control	1399
520	Message Slip of Ahmedabad City Police Control	1400
521	Message Slip of Ahmedabad City Police Control	1401
522	Message Slip of Ahmedabad City Police Control	1402
523	Message Slip of Ahmedabad City Police Control	1403

Sr. No.		Exh. No.					
524	Message Control	Slip	of	Ahmedabad	City	Police	1404
525	Message Control	Slip	of	Ahmedabad	City	Police	1405
526	Message Control	Slip	of	Ahmedabad	City	Police	1406
527	Message Control	Slip	of	Ahmedabad	City	Police	1407
528	Message Control	Slip	of	Ahmedabad	City	Police	1408
529	Message Control	Slip	of	Ahmedabad	City	Police	1409
530	Message Control	Slip	of	Ahmedabad	City	Police	1410
531	Message Control	Slip	of	Ahmedabad	City	Police	1411
532	Message Control	Slip	of	Ahmedabad	City	Police	1412
533	Message Control	Slip	of	Ahmedabad	City	Police	1413
534	Message Control	Slip	of	Ahmedabad	City	Police	1414
535	Fax Mess Control	age Sl	ip d	of Ahmedabao	d City	Police	1415
536	Message Sl	lip of Z	Ahmec	labad City Pol	lice Con	ıtrol	1416
537	Message Control	Slip	of	Ahmedabad	City	Police	1417
538	Message Control	Slip	of	Ahmedabad	City	Police	1418
539	Message Control	Slip	of	Ahmedabad	City	Police	1419
540	Message Control	Slip	of	Ahmedabad	City	Police	1420
541	Message Control	Slip	of	Ahmedabad	City	Police	1421

Sr. No.			Pai	cticulars			Exh. No.
542	Message Control	Slip	of	Ahmedabad	City	Police	1422
543	Message Control	Slip	of	Ahmedabad	City	Police	1423
544	Message Control	Slip	of	Ahmedabad	City	Police	1424
545	Message Control	Slip	of	Ahmedabad	City	Police	1425
546	Message Control	Slip	of	Ahmedabad	City	Police	1426
547	Message Control	Slip	of	Ahmedabad	City	Police	1427
548	Message Control	Slip	of	Ahmedabad	City	Police	1428
549	Message Control	Slip	of	Ahmedabad	City	Police	1429
550	Message Control	Slip	of	Ahmedabad	City	Police	1430
551	Message Control	Slip	of	Ahmedabad	City	Police	1431
552	Message Control	Slip	of	Ahmedabad	City	Police	1432
553	Message Control	Slip	of	Ahmedabad	City	Police	1433
554	Message S	lip of Z	Ahmec	labad City Pol	lice Cor	ntrol	1434
555	Message Control	Slip	of	Ahmedabad	City	Police	1435
556	Message Control	Slip	of	Ahmedabad	City	Police	1436
557		at Cr t	ime	witnesses Branch to Sandhi Sal	give	further	1437
558	Sandhi Sairaben Salimbhai – letter				1438		
559	59 Ashraf Sikanderbhai Sandhi – letter				1439		

Sr.	Particulars	Exh. No.
No.	Particulars	EXII. NO.
560	Taiyabali Faqir Mohammad Saiyed – letter	1440
561	Faqir Mohammad nasirali Asiyed – letter	1441
562	Mohammadali Sehjadali Saiyed – letter	1442
563	Imtiyaz Sayeedkhan Pathan - letter	1443
564	Sayeedkhan Ahmedkhan Pathan - letter	1444
565	Rupa @ tanaz Daraminu Modi – letter	1445
566	Firoz Mohammad Gulzar Mohammad Pathan - letter	1446
567	Rashidkhan Ahmedkhan Pathan - letter	1447
568	Mohammad Rafiq Abubakkar Pathan – letter	1448
569	Letter written by witnesses for postponing the procedure of recording reply	1449
570	Letter of Deputy Commissioner of Police, Crime Branch	1450
571	Letter written by Faqir Mohammad Nasirali to City Crime	1451
572	Acknowledgment of Faqir Mohammad's letter having been faxed	1452
573	Certified photocopy of message book reduced in writing of Meghaninagar Police Station one Gaadi of date 28/02/2002	
574	Photocopy of vardhi book for the period period from 27/02/2002 to 04/03/2002 of Meghaninagar Police Station	1471
575	Photocopy of log book reduced in writing of the DCP, Zone-IV	1472
576	Photocopy of vardhi book from 27/02/2002 to 01/03/2002 of ACP, 'G' Division	1473
577	Letter regarding vehicle message and vardhi book of ACP, 'G' Division having been destroyed	
578	Letter regarding mobile No.9426001148 of BSNL and letter of mobile connection holder	

Sr. No.	Particulars	Exh. No.
579	Letter of Airtel with respect to mobile No.9898596355	1476
580	Letter of BSNL with respect to mobile No.23134445	1477
581	Photocopy of letter of JCP, Sector-2 regarding message books kept in Control Room having been destroyed	1478
582	Photocopy of letter of JCP, Control Room regarding message slips, vardhi messages, location register having been destroyed	1479
583	Photocopy of letter of JCP, Control Room regarding destruction of original message book of the vehicle of JCP, Sector-2	
584	Report of FSL, Jaipur	1493
585	Forwarding letter of FSL, Jaipur (Rajasthan)	1494
586	Original transcript produced by PW-338 in his deposition	1495
587	Report of SIT, Gandhinagar in compliance of order dated 03/11/2010 passed by the Court on the application of Raiskhan Pathan	
588	Letter of the Sub-divisional office	1609
589	Report of the I.O. regarding muddamal pavti	1610
590	Report of the I.O. regarding panchnama muddamal pavti	1611
591	Panchnama of scene of offence	1612
592	Panchnama of scene of offence	1613
593	Forwarding letter regarding muddamal having been sent to FSL	1614
594	Panchnama regarding muddamal having been opened in presence of the FSL officer	
595	Letter of I.O. regarding examination by FSL	1616

Sr. No.	Particulars	Exh. No.
596	Forwarding letter regarding muddamal having been sent to FSL	1617
597	Forwarding letter regarding muddamal having been sent to FSL	1618
598	Report of FSL regarding central inve-van	1619
599	Acknowledgment regarding muddamal received in FSL	1620
600	Acknowledgment regarding muddamal received in FSL	1621
601	Acknowledgment regarding muddamal received in FSL	1622
602	Acknowledgment regarding muddamal received in FSL	1623
603	Acknowledgment regarding muddamal received in FSL	1624
604	Acknowledgment regarding muddamal received in FSL	1625
605	Acknowledgment regarding muddamal received in FSL	1626
606	Acknowledgment regarding muddamal received in FSL	1627
607	Forwarding letter of FSL	1628
608	Report of Physiology Department of FSL	1629
609	Forwarding letter and report of FSL	1630
610	Forwarding letter of FSL	1631
611	Report of FSL	1632
612	Forwarding letter of FSL	1633
613	Report of FSL	1634
614	Forwarding letter of FSL regarding DNA	1635
615	Report of FSL	1636
616	Forwarding letter of FSL	1637
617	Report of FSL	1638
618	Forwarding letter of FSL	1639

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Sr. No.	Particulars	Exh. No.
619	Report of FSL	1640
620	Forwarding letter of FSL	1641
621	Report of FSL	1642
622	Report of FSL	1643
623	Report of Serology Department of FSL	1644
624	Letter of FSL regarding opinion in respect of examination	1645

Points for determination Nos.1 to 6

Since the points for determination are 14. interconnected and interwoven and since the evidence - both oral as well as documentary, is common and germane to all such points for determination, they are being dealt with simultaneously herein after for the sake of convenience. The submissions/arguments advanced followed by the State are by the submissions made by the concerned Advocates appearing for the concerned accused in defence, submissions made by the learned Advocate appearing for the victims who has been permitted under these exceptional circumstances to make submissions dehors and separate from those made by the learned Spl.P.P. and rejoinder of the learned Spl.P.P., are the order of arguments advanced before this Court which in turn are required to be duly considered to decide the fate of the present proceedings.

<u>PART - II</u>

Arguments by learned Spl.P.P. Shri R.C.Kodekar on behalf of the Prosecution.

15. In an effort to establish the case of the Prosecution beyond reasonable doubt, Shri Kodekar, learned Spl.P.P. has submitted that at the very outset of his arguments, he would want to rely the depositions of the star witnesses who on naturally are the eye-witnesses to the incident. Shri Kodekar has submitted that the witnesses herein can be classified as eye-witnesses, corroborative witnesses, Investigating officials such as medical Experts who have conducted the post-mortem and various Police Officials who have brought the investigation to its logical conclusion. Shri Kodekar has also submitted that only relevant portions of the testimony of such witnesses would be referred to and read out with a view to establish the corroboration and truthfulness of the eyewitnesses.

16. It is submitted by Shri Kodekar that there are about 24 eye-witnesses who, Shri Kodekar refers as star witnesses, who according to Shri Kodekar, have testified in a manner as is truthful, believable and according to him, a combined weight of the testimony of such witnesses would prove beyond reasonable doubt the Prosecution case. The list of such 24 star witnesses particularized is as follows:-

Sr. No.	Witness No.	Name of Witness	Exh. No.
1	106	Imtiyazkhan Saeedkhan Pathan	542
2	107	Roopa @ Tanaz Daraminu Modi	548
3	116	Saeedkhan Ahmedkhan Pathan	584
4	128	Mohammadrafiq Abubakar Pathan	633
5	129	Firozmohammad Gulzarmohammad Pathan	635
6	142	Ashraf Sikanderbhai Sandhi	654
7	143	Altafkhan Gulabkhan Pathan	655
8	177	Sairaben Salimbhai Sandhi	711
9	179	Ezajali Fakirmohammad Shaikh	720
10	191	Salimbhai Noormohammad Sandhi	734
11	192	Mohammadali Shahjadali Saiyed	736
12	241	Firoz Dilawer Shaikh	831
13	276	Pravinkumar N. Barot	954
14	283	Aslamkhan Anwarkhan Pathan	981
15	284	Mohammadsharif Nasiruddin Shaikh	987
16	289	Nadim Tasaddukhussain Surohi	995
17	301	Rasidabanu Dilawar Shaikh	1046
18	310	Hareshkumar P. Agrawat	1069
19	313	Ashish Sureshchandra Khetan	1091
20	314	Faqirmohammad Nasirali Saiyed	1098
21	328	Narottam D. Parmar	1164
22	330	Rahul Nanheshwar Sharma	1213
23	332	Sukhdevsinh S. Chudasama	1226
24	335	Jayantilal M. Suthar	1289

17. The first witness to which Shri Kodekar refers to, is PW-106 being one Imtiyazkhan Sayeedkhan Pathan whose testimony is on the record of the proceedings at Exh.542 which runs into 115 long pages. The witness, according to Shri Kodekar, was a resident of Bunglow No.18 at Gulbarg Society

at the time of the incident. It is pointed out by Shri Kodekar that the residence of Shri Ehsan Jafri was Bunglow No.19 of Gulbarg Society and therefore, could be said that the present witness was it residing adjacent to the residence of Shri Ehsan Jafri where the main thrust of the incident has taken place. According to Shri Kodekar, the witness has further in his testimony, described in detail the topography of Gulbarg Society and has described in his deposition as to how there are two gates of the Society, one of which being the main gate which was adjacent to Bunglow No.2 and a small gate which was near the residence of Shri Ehsan Jafri. It is also pointed out that at the rear end of the Society, there is a huge concrete wall which was at the relevant point of time and prior to the incident, embedded with sharp glass pieces so as to discourage persons from climbing over the wall and on conclusion of the boundaries of the Society which is encompassed by the boundary wall, as is pointed out, there is railway line passing parallel to the Society. It is pointed out by Shri Kodekar that the State would point out and establish at a later stage material evidence through cogent that the perpetrators i.e. the accused did not attempt to cross over the wall but in fact demolished the entire wall so that it would have facilitated them in the commission of the ghastly offence. It is pointed out that the witness has further testified Bunglow No.19 in which Shri that Ehsan Jafri resided, had a ground floor and a first floor. It is

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pointed out by Shri Kodekar that the witness has further testified that the three Bunglows i.e. Bunglows No.17, 18 and 19 were located on the South-West of the Society and after Bunglow No.17 which belonged to the aunt of the present witness, there is some vacant land after which there is compound wall of the Society beyond which there is a railway track. It is pointed out that immediately after the end of the Society, there is a property which is commonly known as "Dr.Gandhi's Chawl" which is also pointed out by the witness PW-106 during the course of his deposition. It is pointed out by Shri Kodekar that the witness has further testified that the property known as "Dr.Gandhi's Chawl" is an open piece of land which has no surrounding boundary walls and everybody and everybody can access the said Chawl and it is also pointed out by the witness that the Chawl abuts to the main road and beyond the same, one can have access to the railway line.

18. Shri Kodekar has pointed out that this witness has lost a large number of members of his family, some of whom are positively stated to have been killed in the incident and a number of whom are missing, not traceable and therefore, since the period of seven years has elapsed, they are required to be presumed to be legally dead. Shri Kodekar has drawn my attention to paragraph-3 of the deposition of this witness, more particularly on page-3 (reproduced verbatim herein below), wherein it is inter alia stated that on the ground floor, the

uncle of the witness being one Anwarkhan Ahmedkhan Pathan was residing with his family together with the grandmother of the present witness, being one Kherunnisa as also another uncle of the witness being one Rashidkhan Ahmedkhan and also his wife. It is submitted that thus, in all, five persons resided on the ground floor of bunglow No.18. It is pointed out by Shri Kodekar that the witness has deposed that the uncle Anwarkhan Ahmedkhan is established to have been done away with in the incident. It is pointed out that the wife of the deceased Anwarkhan being one Zebunbibi is also not traceable till date and is therefore, required to be legally presumed to be dead. It is also pointed out by Shri Kodekar that similarly the grandmother of the witness being one Kherunnisa is also missing and therefore, is required to be presumed as dead. It is pointed out Shri Kodekar that the witness has further by testified that on the first floor of the property, a cousin of the witness being one Aslamkhan together with his wife Asmabibi Aslamkhan and another son Akhtarkhan together with his wife Sajedabanu together with their son Sadabkhan and daughter Afrin, were residing. It is pointed out that of such residents, Akhtarkhan, Sajedabanu and their son Sadabkhan are missing and therefore, presumed dead and other persons are alive. It is pointed out that on the second floor of the said building, the witness, his mother Zamrunnisa, father Sayeedkhan, brother Firozkhan were residing together. Ιt is pointed out that the mother of the witness i.e.

Zamrunnisa was killed as was established at the time of the incident itself.

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"3. મારા મકાનમાં ભોંચતળ ના ભાગે મારા મોટા બાપા અહમદખાન અનવરખાન પઠાણ તેમના કુટુંબ મા તેમની સાથે તેમની સાથે તેમના પત્ની જેબુનબીબી રહેતા. ભોંચતળના ભાગે મારા દાદી ખેરુનીશા એહદમઅલી પઠાણ તથા મારા કાકા રસીદ ખાન એહમદખાન તથા તેમના પત્ની રહેતા હતા. તે રીતે ભોંચતળ ના ભાગે મારા કુટુંબ મા પાંચ વ્યકિત રહેતા હતા. પ્રથમ માળે મારા મોટાબાપુના દીકરા અસલમખાન અનવરખાન તથા તથા તેમના પત્ની અશ્માબીબી અસલમખાન તથા બીજા દીકરા અખ્તરખાન તેમના પત્ની સાજેદા બાનુ અને તેમનો એક છોકરા સાદાબખાન અને દીકરી આફરીન રહેતા હતા. મકાન ના બીજા મજલે હુ, મારી માતા જવરુનીશા મારા પિતા સાઈદખાન મારો ભાઈ ફીરોઝખાન અમે બધા સાથે રહેતા હતા. હુ બનાવ સમયે ઈલે. નુ કામકાજ કરતો હતો. મારાભાઈ ફીરોઝખાન નોકરી કરતા હતા.

19. Shri Kodekar has read the deposition of the present witness, more particularly paragraphs 5, 6 and 7 (reproduced verbatim herein below) where the background is provided about the Godhra Train burning incident on 27/02/2002 and the Bandh call given by the Vishwa Hindu Parishad. It is also pointed out by Shri Kodekar that on 27/02/2002, the witness has testified to have met Shri Ehsan Jafri and some other residents of Gulbarg Society where they discussed about the Bandh call on the next day and it is pointed out by Shri Kodekar that the witness has further testified that Shri Ehsan Jafri

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had informed him with regard to the fact of an application being made to the Meghaninagar Police Station by Shri Ehsan Jafri for Police bandobast and it is further testified by the witness that Shri Ehsan Jafri thus assured the residents of Gulbarg Society that they had nothing to worry about since adequate Police bandobast would be available on the day of bandh.

"પ. હુ મારા ઘરે ગયો ત્યારે ઘરમાં ટી.વી.ચાલુ હતુ અને મારા બા ટી.વી. જોતા હતા. મે જોયુ તથા મારી બા એ પણ જણાવેલ કે, ગોધરા ખાતે ટ્રેન બાળી નાખેલ છે. મારા પિતાજી મીલે ગયેલા જે આવેલ ન હતા અને મારો ભાઈ સુરત ગયેલ હતો. પછી હુ નીચે મારા ફોઈ ના દીકરા ની દુકાને ગયેલ. ત્યાં પણ ટી.વી. ચાલુ હતો. ત્યાં ટી.વી. મા મે સાંભળેલ કે, વિશ્વ હિન્દે પરીષદ અને બજરંગ દળ ઘ્વારા તા. ૨૮/૨/૦૨ ના રોજ ગુજરાત બંધનુ એલાન આપવામા આવેલ છે. તેને ભા.જ.પે. ટેકો જાહેર કરેલ છે. મારા ફોઈ ના દીકરા શરીફભાઈ એ મને જણાવેલ કે, તેમની દીકરી મધુરમ ટોકીઝ પાસે પરીક્ષા આપવા ગયેલ છે. તે ૨૭ મી તારીખે સાંજના છ વાગે મને જણાવેલ. તેમણે મને કહેલ કે, આપણે મારી દીકરી ને લઈ આવીએ. જેથી તેમની મારુતીકાર માં અમે મધુરમ સીનેમા પાસે સ્કુલે ગયેલા અને ત્યાંથી તેમની દીકરી ને લઈ ને પાછા આવ્યા.

9. અમે પરત આવતા હતા ત્યારે વચ્ચે ચમનપુરા ચકલા પાસે અમુક માણસો ના ટોળા ગાડીઓને રોકી ને ચોક થી લખાણ લખતા હતા. તેઓ ગાડી ઓના કાચ પર વિ.હિ.પ. અને બજરંગદળ ઘ્વારા ગુજરાત બંધ નુ એલાન તેમ લખતા હતા. આવુ લખાણ અમારી ગાડી પર પણ કરવામાં આવેલ. પછી અમે ત્યાંથી અમારા ઘરે ગયેલા. પછી સાંજના સાડા

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આઠ વાગે જમીને હુ નીચે બેસવા માટે આવેલ. તે વખતે જાફરી સાઠેબ અને તેમની સાથે બીજા સોસા. ના બે ત્રણ માણસો બેઠેલા હતા. તે લોકો બંધના એલાન ની ચર્ચા કરતા હતા. જાફરી સાઠેબે અમને કહેલ કે, તેમણે મેઘાણીનગર પો.સ્ટે. મા બંદોબસ્ત માટે જણાવી દીધેલ છે. જેથી તમો ચીંતા કરશો નહી કાલે પોલીસ આવી જશે. પછી સોસા. ના માણસો પોતપોતાના ઘરે જતા રહેલા અને હુ અને બીજા છોકરા ઓ મોડી રાત સુધી ત્યાં જાગતા બેસી રહેલા. અને તે બાદ મોડી રાત્રે ઘરે જઈ સુઈ ગયેલા.

૭. તા. ૨૮/૨/૦૨ ના રોજ સવાર ના આઠ વાગે હુ મારા ઘરે દાજર દતો ત્યારે ડો.ગાંધી ની ચાલી ના નાકે પંડચાજી ના ગલ્લાપર ગલ્લાવાળા નો છોકરો મને ઘેર બોલાવવા આવેલ. તેમને ત્યાં ધાબા નુ કામ ચાલુ દતુ અને લાઈટ ના પોઈન્ટ મુકવાના દતા તે માટે મને બોલાવવા આવેલ. જેથી દું ત્યાં ગયેલ. પંડચાજી ના ગલ્લેથી તેમના ઘરે જઈ લાઈટ ની પોઈન્ટ ના કામ કરી એક થી દોઢ કલાક મા ઘરે પરત આવેલ. "

20. Shri Kodekar submits that the the testimony of vital aspects of the witness emerged from paragraph-8 (reproduced verbatim herein below) of his evidence on page-7 and it is pointed out that the background as to what transpired on the fateful day, is provided by the witness as to how the witness did some electrical work in the morning and thereafter how he stood on the terrace of his residence when he saw four to five persons enforcing a shut-down of the shops that could be seen from the terrace of the residence of the witness. The witness has positively named Bharat Rajput (A-55), Girish

(absconding accused), Prabhudas Sharma Bharat Talodiya (A-54), Ramesh Pandey (absconding accused) and Kapil Munna (A-50). The witness, according to Shri Kodekar, has further stated that after shops, enforcing the shut-down of such such perpetrators went towards Omnagar and came back in a short while when they started raising slogans of "JAI SHREE RAM" and ".....NE MAARO, KAAPO." It is pointed out by Shri Kodekar that the witness has further deposed that thereafter such persons went over to the shop together with some other persons, being one Ankur Cycle Shop and there, such perpetrators started beating up one Ayub and Yusuf who were the sons of the owner of the said shop. It is positively pointed out by the witness, according to Shri Kodekar, that Bharat Rajput (A-55), absconding accused Girish Sharma, Bharat Teli (A-54) and Kapil Munna (A-50) and absconding accused Ramesh Pandey started beating up the two boys stated above. The witness has further deposed that all such accused persons could be identified positively by the witness on account of the fact that such persons were residents of nearby Chawls and they were fairly well known to the witness and that on occasions, the witness and such together with the persons absconding accused, had sat down and talked to each other. It is pointed out by Shri Kodekar that the witness has further testified that two victims being Yusuf and Ayub tried to run away from the scene of incident and more particularly Ayub, when he the tried to run away into his house, he was stabbed in SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

the back at least two or three times by Bharat Rajput (A-55). It pointed out by Shri Kodekar that the witness further deposes that other persons started damaging the rickshaw of one Gulam Master and thereafter, set the autorickshaw on fire. Such perpetrators are identified as Kapil Munna (A-50), Dharmesh Prahlad (A-47), Mukesh Pukhraj (A-29) and Ambesh Kantilal (A-32). The witness has further testified that he can positively identify all such persons named by him.

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ઘરે આવ્યા બાદ મે નાસ્તો પાણી કરેલ. હુ અને મારા "ζ. પિતાજી સવાર ના દસ વાગે અમારા ઘરની અગાશી પર ઉભા હતા. ત્યારે રોડ પર ચાર થી પાંચ છોકરા ઓ દુકાનો બંધ કરાવતા કરાવતા આવતા હતા. તે છોકરા ઓ ઓમનગર તરફ ગયેલા. તે છોકરા ઓ માં , ૧. ભરત રાજપુત, ર. ગીરીશ પ્રભુદાસ શર્મા, ૩. ભરત તલોદીયા, ૪. રમેશ પાન્ડે, ૫. કપીલ મુન્ના હતા. તે પછી તે ઓમ નગર થી થોડીવારમાં પરત આવ્યા ત્યારે તેમની સાથે બીજા દસેક છોકરા ઓ હતા. તે લોકો ' જય શ્રી રામ ' ના નારા લગાવતા હતા. ' મીચા ઓ ને મારો કાપો' તેમ બોલતા હતા. આ લોકો એ સંતોક બાઈ ની ચાલી ના નાકે આવેલ અંકુર સાયકલ વાળા ના છોકરા ઓ નામે અયુબ અને યુસુફ બહાર ઉભેલા હતા. તેમને આ લોકો મારવા લાગેલા. આ બે જણ ને, ભરત રાજપુત, ગીરીશ શર્મા અને ભરત તેલી અને રમેશ પાન્ડે મારવા લાગેલા. આ લોકો અમારી સોસા. ની આજુબાજુ ની ચાલી ઓ મા રદે છે અને અમારી સાથે બેસતા ઉઠતા તેથી દુ આ તમામ ને ઓળખુ છુ. ભરત તલોદીયા અને ભરત રાજપુત ગીરીશ પ્રભુદાસ શર્મા ને અવાર નવાર મળવા આવતા હતા તેથી હુ ઓળખુ છુ. યુસુફ અમારી સોસા. મા ભાગી

મુન્ના, ધર્મેશ પ્રદલાદ, મુકેશ પુખરાજ અને અંબેશ કાંતીલાલ દતા. મે જેના

ને આવી ગચેલ અને અચુબ તેના ઘરમાં ભાગવા જતા ભરત રાજપુતે તેના હાથમાં રહેલ ગુપ્તી થી અચુબ ને પીઠ ના ભાગે બે થી ત્રણ ઘા મારેલા. ત્યાં ઉભેલા બીજા છોકરાઓ એ બાજુમાં આવેલ ગુલાબ માસ્ટર ની રીક્ષા ને તોડફોડ કરેલ અને તેને આગ લગાડેલ. તે આગ લગાડનાર મા કપીલ

નામ આપ્યા તેમને આજે હ ઓળખી શકુ."

21. attention is drawn Mv to para-9 (reproduced verbatim herein below) of the deposition whereby the witness has identified A-55, A-54, A-50, A-47, A-29 and A-32. All the accused, as is noted in the deposition, have been positively identified by the witness and upon the Court asking the names of such persons, they have disclosed that they are indeed the persons identified by the witness. The further positively stated that witness has the absconding accused Ramesh Pandey and Girish Sharma are not present in the Court. An explanation is further offered that this witness could easily identify the accused on account of his having regularly played Cricket with such accused. It is pointed out that the witness has further deposed that in the meanwhile, a Police Jeep came over to the scene of the incident and in the circumstances, some of the perpetrators tried to pour water on the burning autorickshaw and others ran away towards Santokben Ni Chali. Shri Kodekar reminds this Court that such incidents took place at about 10:00 A.M.

દુ કોર્ટ સમક્ષ દાજર આરોપી ઓ પૈકી ભરત રાજપુત "€. ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા ભરત રાજપુત હોવાનુ જણાવે છે. દુ ભરત તલોદીચા ને ઓળખી બતાવુ છુ આરોપી ને પુછતા પોતાનુ નામ ભરત તલોદીયા હોવાનુ જણાવે છે. દુ આરોપી કપીલ ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા, કપીલ ઉ. મુન્નાભાઈ દેવનારાયણ મીશ્રા હોવાનુ જણાવે છે. દુ આરોપી ધર્મેશ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ધર્મેશ હોવાનુ કબુલ કરે છે. હુ આરોપી મુકેશ પુખરાજ ને ઓળખી બતાવુ છુ. આરોપી પોતનુ નામ મુકેશ પોખરાજ ઠોવાનુ જણાવે છુ. દુ આરોપી અંબેશ કાંતીલાલ ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા અંબેશ હોવાનુ જણાવે છે. આરોપી ઓ માં ગીરીશ અને રમેશ પાન્ડે હાજર નથી. હુ આરોપી કપીલ, ધર્મેશ, મુકેશ અને અંબેશ, જે અવાર નવાર મારી સાથે ક્રિકેટ રમતા અને મારી ઉંમર ના છે તેથી હુ તેમને ઓળખુ છુ. આ દરમ્યાન પોલીસ ની એક જીપ આવેલી. જે ઓમ નગર તરફ થી આવેલ. આ જીપ નામ માણસો એ બાજુ મા આવેલ ધોબી ની દુકાન માથી પાણી લઈ રીક્ષા ની આગ ઓલવી નાખેલ અને જીપ આવતા આ બધા લોકો સંતોકબાઈ ની ચાલી તરફ ભાગી ગયેલ. "

22. Drawing my attention to the narrative contents in paragraphs 10 to 15 (all reproduced verbatim herein below relevant intervals) of at the deposition of this witness, Shri Kodekar has pointed out that this is how the horrendous incident unfolded in the day. is pointed out by Shri Ιt Kodekar that the witness has testified that about four to five vehicles of the Police Force came towards the small gate which was abutting on the property of Shri Ehsan Jafri and Shri Ehsan Jafri

and some others went out and talked to such Police officials inside such vehicles and it is pointed out that thereafter, some person questioned about which of the officers were present in the Police vehicles when Shri Ehsan Jafri in the hearing of the present witness, according to Shri Kodekar, pointed out that within the vehicles were present the Police Commissioner, Ahmedabad City being Shri P.C.Pandey, P.I. of Meghaninagar Police Station Shri K.G.Erda and other Police officers promised Police bandobast thereafter went and away towards Omnagar. The witness further indicates that after a short while, the witness together with one Shakil Kasambhai Mansuri (missing and presumed dead), Irfan Gulzar (killed in the incident), Firoz Bandeali (Witness), Aktarkhan Anwarkhan (missing and presumed dead), were all standing near the small gate of the Society which at that point of time was open. This case of the Prosecution is supported by the deposition of this witness that at that point of time, a mob of about 4000 to 5000 persons came towards Chamanpura and started destroying vehicles belonging to the minority community and also started damaging and looting shops of persons belonging to such community. The mob also started attacking the houses of persons of the minority community which were falling outside the Gulbarg Society and in order to escape, such residents ran into Gulbarg Society for shelter. The witness has further pointed out that thereafter the mob started pelting stones, burning rags towards the Society and upon seeing such things

happening, PW-106 together with other persons narrated above, ran into Gulbarg Society and closed the small gate of the Society. At this point of time, according to the deposition of the witness, residents of bunglows located at the rear side of Gulbarg Society, came over towards Shri Ehsan Jafri's residence and indicated that even from the rear side of the Society there was stone throwing and throwing of burning rags. The PW-106 thereafter claims to have gone at the rear side of the Society and climbed upon the terraces of one of the bunglows located thereafter. It is further deposed by the PW-106 that on his climbing the terrace of such property, he saw that a mob of at least 10000 to 15000 persons had gathered on the rear side of the Society and it is pointed out that the mob contained therein Atul Vaidya (A-59), Mahendra Pukhraj (absconding accused), Mangilal Jain (A-25), Nagin Patni (A-44), Lalamohansing Darbar (A-2), Dinesh Sharma (A-63), Ramesh Pandey (absconding accused), Kapil Munna (A-50), Manish Jain (A-58) who were in the forefront of such mob. The witness has further testified that Atul Vaidya (A-59) is known to him on account of the fact that the said accused frequently came over to meet accused Girish Sharma and the witness PW-106 further identifies A-59 as President of the Meghaninagar Branch of the the Vishwa Hindu Parishad. The other accused identified by the witness herein above, are identified according to the witness on account of their being the residents of nearby Chawls and with whom the

witness used to frequently socialize and meet. The witness has further testified that such persons as stated above, were throwing stones, burning rags towards Gulbarg Society.

The witness has further testified that he then 23. went over to the residence of Shri Ehsan Jafri and requested him to call for the Police. Shri Ehsan Jafri, according to the witness PW-106, informed him that he was already trying to contact the Police as also some other political leaders in an effort to contain the situation. It is pointed out by the witness that at that point of time, Gulbarg Society was completely surrounded on all sides by the mob which was pelting stones, burning rags towards the residences of Gulbarg Society and in an effort to retaliate, the witness and others also started pelting stones at the mob, and in such fashion, stone pelting from both sides continued. Ιt is further deposed by the witness that when at a point of the incident he was standing near his residence, he saw that from the terrace of a shop close to his residence, somebody had started firing from а weapon. The witness has further pointed out that his cousin Sharifbhai (PW-284) was present with him at that time and they saw that two persons being one Mahesh Daruwala (A-51) and his brother Lallu (A-64) were indulging in the firing. The witness claims to have gone away from the scene of the incident and has further testified that the stone pelting from both sides continued for about two hours. The

witness PW-106 has thereafter identified A-51 and A-64 in the Court.

તે બાદ પોલીસ ની ચાર થી પાચ ગાડી ઓ સોસા. ના "१०. નાના ઝાંપા બાજુ આવી ને ઉભી રહેલી. જેથી હુ અને મારા પિતાજી નીચે ઉતરેલા. અને જાફરી સાહેબ ના ઘર પાસે આવેલ નાના દરવાજા પાસે ઉભા રહેલા. પછી જાફરી સાહેબ , ફકીર મહમદસૈયદ અને તસદદુક હુસેન બહાર રોડ પર ગયેલા. અને બહાર રોડ પર પોલીસ ઓફીસર ને મળી ને પાછા આવેલા. તેઓ પાછા આવતા સોસા. ના માણસો એ પોલીસ ગાડી ઓ મા કયા પોલીસ ઓફીસર આવેલ તેમ પુછેલ. ત્યારે જાફરી સાદેબે જવાબ આપેલ કે, અમદાવાદ શહેર પો. કમી. શ્રી પી.સી.પાન્ડે, મેઘાણીનગર પો.સ્ટે. ના પી.આઈ શ્રી કે.જી. એરડા આવેલા હતા અને મે તેમને પોલીસ બંદોબસ્ત આપવા જણાવેલ છે. અને તેઓ એ જાફરી સાદેબ ને કદેલ કે, થોડીવાર મા પોલીસ બંદોબસ્ત આવી જશે. ત્યાં આવેલ પોલીસ ની પાચ ગાડી ઓ તે પછી ઓમનગર તરફ ગયેલ. તે બાદ દુ નાના ઝાંપા પાસે બહાર ના ભાગે ઉભેલ અને મારી સાથે શકીલ કાસમ મનસુરી, ઈરફાન ગુલઝાર, ફીરોઝ બંદેઅલી, પાસે ઉભેલા હતા. આ નાનો ખાવ મારી અખ્વરખાન અનવર ઝાંપો તે વખતે ખુલ્લો હતો અને અમે બહાર ના રોડ તરફ ની સાઈડે ઉભા હતા. તે વખતે ચમનપુરા તરફ રોડ પર ચાર થી પાંચ હજાર માણસો નુ ટોળુ ભેગુ થચેલ. એ લોકો એ ત્યાં પડેલા મુસ્લીમો ના વાઠનો ની તોડફોડ ચાલુ કરેલ અને દુકાનો મા લુટફાટ શરૂ કરેલ. તથા મકાનો જે મુસ્લીમના હતા તે રોડ પર ના મકાનો માં લુટફાટ શરુ કરેલ. જેથી રોડ પર ના મકાનો માં રહેતા મુસ્લીમો બચવા માટે ગુલબર્ગ સોસા. મા આવી ગયેલા. તે પછી ટોળા એ અમારી પર પથ્થરમારો શરૂ કરી દીધેલ. તેની સાથે સળગતા કાકડા અમારી પર ફેંકતા

હતા. જેથી અમે સોસા. ની અંદર આવી ગયેલા અને નાનો ઝાંપો બંધ કરી દીધેલ. અમે અંદર આવ્યા ત્યારે સોસા. ની પાછળ ના ભાગે આવેલા મકાનો વાળા એ આવી ને અમને જણાવેલ કે, સોસા. ની પાછળ થી પથ્થરમારો શરૂ થઈ ગયચેલ છે અને સળગતા કાકડા ફેકવામા આવે છે. જેથી દુ સોસા. ના પાછળ ના ભાગ ગયેલ અને તે તરફ ના મકાન ના ધાબા પર ચડી ગયેલ. મે ધાબા પર થી જોયૂ તો સોસા. ના પાછળ ના ભાગ તરફ રેલવે લાઈન તરફ દસ થી પંદર હજાર માણસો નુ ટોળુ હતુ. તે ટોળા માં અતુલ વૈદ, મહેન્દ્ પુખરાજ, માંગીલાલ જૈન, નગીન પટણી, લાલ મોઠનસીંઠ દરબાર, દીનેશ શર્મા, રમેશ પાન્ડે, કપીલ મુન્ના, મનીષ પ્રભુલાલ જૈન ને જોચેલ હતા. તે ટોળામાં આગળ ના ભાગે હતા. અતુલ વૈદ ગીરીશ શર્મા ને અવાર નવાર મળવા આવતો અને તે મેઘાણીનગર વિ.હિ.પ. ના પ્રમુખ છે તેથી હુ ઓળખુ છુ. બાકીના બીજા અમારી સોસા. ની આજુબાજુ માં આવેલી ચાલી ઓ મા રદે છે અને અમારી સાથે બેસતા ઉઠતા તેથી દુ તેમને ઓળખુ છુ. આ લોકો પથ્થરો , સળગતા કાકડા અને ટાયરો અમારી સોસા. તરફ ફેકતા હતા. હુ ત્યાંથી નીકળી ને જાફરી સાહેબ ના ઘર તરફ ગયેલ.

૧૧. મેં જાફરી સાઠેબ ને પોલીસ બોલાવવા ફોન કરવા જણાવેલ. ત્યારે જાફરી સાઠેબ ફોન પર જ હતા અને મને જણાવેલ કે, હુ પોલીસ ને અને બીજા નેતા ઓ ને મદદ માટે ફોન જ કરી રહ્યો છુ. એ સમયે ચારે બાજુ થી ઘેરાઈ ગયેલા હતા. સોસા. પર ચારે તરફ થી પથ્થરમારો થતો હતો. સળગતા કાકડા ફેકાતા હતા. જેથી અમે જીવ બચાવવા જે પથ્થરો આવતા હતા તે પાછા અમે ટોળા પર ફેકતા હતા. સામાસામો પથ્થરમારો થતો હતો અને હુ મારા ઘર ની બાજુ મા નીચે ઉભો હતો ત્યારે બહાર ની દુકાન ના ઘાબા પર થી અમારી તરફ ફાયરીંગ થતુ હતુ. તે સમયેં મારી ફોઈ નો દીકરી

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શરીફભાઈ જે મારી સાથે હતો અમે જોચેલ તો ધાબા પર મહેશ દારુવાળો અને તેનો ભાઈ લલ્લુ અમારી પર અને અમારી સોસા. તરફ ફાચરીંગ કરતા હતા. તેઓ ફાચરીંગ કરતા હતા તેથી હુ ખસી ગચેલ. આ પથ્થરમારો સામસામે બે કલાક સુધી ચાલેલ.

૧૨. દુ મદેશ દારુવાળા અને તેના ભાઈ લલ્લુ ને ઓળખુ છુ. દુ કોર્ટ મા દાજર આરોપી પૈકી મદેશ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા મદેશ શાંતીલાલ દોવાનુ જણાવે છે. દુ તેના ભાઈ લલ્લુ ને ઓળખી બતાવુ છુ. દુ લલ્લુ ઉ. દીપશરણ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા દીપશરણ દોવાનુ જણાવે છે."

24. Drawing my attention to paragraph-13 herein below) of (reproduced verbatim the deposition, Shri Kodekar has pointed out that the witness has further testified inter alia to the effect that from amongst the mob at the rear side of the Society, the witness identified Atul Vaidya (Ain the Court and has clearly disclosed that 51) absconding accused Mahendra Pukhraj is not present in the Court. He has further identified Mangilal Jain (A-25), Nagin Patni (A-44) and Lalamohansing (A-2) in the Court. The witness has further identified Dinesh Prabhudas Sharma (A-63) also in the Court.

"૧૩. મેં પાછળ ના ભાગે ટોળા મા જોચેલ માણસો ને ઓળખુ છુ. દુ કોર્ટ મા દાજર આરોપી ઓ પૈકી અતુલ વૈદ ને ઓળખી બતાવુ છુ આરોપી

ને તેનુ નામ પુછતા અતુલ ઈન્દ્રવદન વેદ દોવાનુ જણાવુ છે. આરોપી ઓ મા મદેન્દ્ર પુખરાજ નથી. હું આરોપી માંગીલાલ ને ઓળખી બતાવુ છુ તેનુ નામ પુછતા માંગીલાલ જૈન દોવાનુ જણાવે છે. હુ આરોપી ઓ પૈકી નગીનભાઈ પટણી ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા નગીનભાઈ પટણી દોવાનુ જણાવે છે. હુ આરોપી લાલાલ મોદન ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ચોગેન્દ્રસીંદ ઉ. લાલા મોદન દોવાનુ જણાવે છે. હુ

આરોપી દીનેશ પ્રભુદાસ શર્મા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા પોતાનુ નામ દીનેશ પ્રભુદાસ શર્મા હોવાનુ જણાવે છે."

Drawing my attention to the testimony 25. of the witness, more particularly paragraph-14 (reproduced verbatim herein below), it is pointed out by Shri Kodekar that the witness has deposed that at about 1:30 P.M., the mob climbed on to the terrace of Bunglow No.1 in Gulbarg Society which was of the ownership of one Dayaram Jinger, and started pelting stones on the Society. Of such persons who had climbed on to the terrace of bunglow No.1, the witness has identified Jayesh @ Gabbar Madanlal (A-14) who has been positively identified in the Court by the said witness. The witness has further testified that at that point of time, the witness accompanied by Irfan Gulzar (killed in the was incident), Shakil Mansuri (missing and presumed dead), Firoz Bandeali (PW-262), Rafiq Abubakkar Pathan (PW-128). It is the specific case emerging from the testimony of this witness PW-106 that at that point of time, A-14 threw a large brick which

struck Irfan Gulzar in the chest which rendered him unconscious and in the circumstances, PW-106 as also the other eye-witnesses mentioned above, pulled away the injured Irfan Gulzar into the residence of Shri Ehsan Jafri. The witness has further pointed out that at that stage, he saw a large number of injured persons sitting in the residence of Shri Ehsan Jafri.

આશરે બપોર પછી "૧૪. A ച દોઢ વાગ્યા ના સુમારે ગુલબર્ગ સોસા. ના મકાન નં. ૧ જે દયારામ જીંગર નુ આવેલ છે તેના પર ટોળા ના માણસો ચડી ગયેલ અને અમારી સોસા. પર પથ્થરમારો કરી બહાર ના ભાગે આવેલ ટોળા ને સોસા. ની અંદર ઘુસી જવા જણાવતા હતા. તે મકાન નં. ૧ પર આવેલા માણસો પૈકી મેં ગબ્બર મદનલાલ ને ઓળખેલ. દુ કોર્ટમાં દાજર આરોપીઓ પૈકી ગબ્બર મદનલાલ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પૂછતા તે પોતાનુ નામ જચેશ ઉ. ગબ્બર મદનલાલ होपान જણाવે છે. में આ લોકો ने જોયા તે સમયે મારી સાથે ઈરફાન ગુલઝારભાઈ, શકીલ કાસમ મનસુરી, ફીરોઝ બંદેઅલી, રફીક અબુબકકર પઠાણ હતા. મકાન પર થી ગબ્બર મદનલાલે છુટી ઈંટ ફેકતા ઈરફાન ગુલઝાર ને છાતી ના ભાગે તે ઈંટ વાગેલી જેથી તે બેભાન થઈ ને નીચે ઢળી પડેલ. જેથી અમે બાકીના ઓ તેને ઉચકી ને જાફરી સાહેબ ના ઘરમાં લઈ ગચેલા. ત્યાં બીજા ઘણા બધા માણસો ઈજાગ્રસ્ત હાલતમાં બેઠેલા હતા."

26. According to Shri Kodekar, the witness has further deposed that consequent to such events taking place, the witness came out of Shri Ehsan Jafri's residence when he heard a loud explosion near the main gate of the Society. The witness has deposed that the wall near the main gate was blown out by exploding a gas cylinder and therefrom a large mob entered the Society and it is the case of the Prosecution that the witness has further deposed that the mob was armed with deadly weapons such as sword, gupti, pipe, sticks and were also possessed of cans of kerosene. The mob after entering into the premises, according to the witness, set afire an Eicsher Tempo vehicle after damaging the same. The witness thereafter ran away towards Shri Ehsan Jafri's residence and when he was nearing the residence of Shri Ehsan Jafri, he heard another loud explosion on the rear side of the Society and there also, according to the witness, a gas cylinder was exploded to damage the walls and even from such back side of the Society, a large mob entered into the Society and even such mob was armed with deadly weapons like sword, gupti, pipe as well as petrol kerosene cans. The mob, according to and the witness, had started damaging the vehicles parked outside the residences and the witness has further categorically stated that from amongst the mob which entered from the back side, he could identify Atul Vaidya (A-59), one Mahendra Pukhraj (who is not an accused in the proceedings), Mangilal Jain (A-25), Nagin Patni (A-44), Kapil Munna (A-50), Dharmesh Prahlad (A-47), Lala Darbar (A-2), Dinesh Sharma (A-63), Manish Prabhudas Jain (A-38) and Ramesh Pandey (absconding accused). On seeing the wholesale damage being caused by the mob, the witness rushed

into the house of Shri Ehsan Jafri and there he saw that his elder uncle Anwarkhan Ahmedalikhan who was invalid and crippled when he was caught hold of by the mob of whom one Kailash Dhobi (A-1) and two others attacked the uncle of the witness and Kailash Dhobi (A-1) gave a sword blow to the said Anwarkhan. At this moment, according to the witness, he saw the son of said Anwarkhan i.e. Aslam (PW-283) to tried to intervene and save the life of his father and caught hold of the sword which caused injuries to the fingers on the left hand and at that moment, the said Aslam was dragged to safety by somebody inside the bunglow. The witness has further specifically deposed that the said Anwarkhan was hacked to pieces by accused No.1 Kailash Dhobi and two others. This witness PW-106 has categorically stated in para-15 (reproduced verbatim herein below) on page-16 of his testimony that he saw this incident from the room of Shri Ehsan Jafri's residence. It is further testified by the witness, according to Shri Kodekar, that he also saw Mangilal Jain (A-25) and Nagin Patni (A-44) pouring kerosene and petrol over the residence of Shri Ehsan Jafri. is the testimony of this witness that some Ιt kerosene was also splattered on the body of the witness. Thereafter, a burning rag was thrown and thus the residence of Shri Ehsan Jafri was set afire. It is further deposed by the witness that due to such fire, some o the persons inside the bunglow of Shri Ehsan Jafri ran out in the open as also did the women and children who were taking shelter

therein. It is further deposed by the witness that when such persons rushed out, the mob standing outside and of whom Bharat Rajput (A-55), Bharat Teli (A-54), Girish Prabhudas Sharma (absconding accused) attacked and killed the mother of the witness, the grandmother of the witness and one other lady of the Society being one Zebunben Mansuri who was also hacked to pieces and killed by the mob. It is further deposed by the witness in para-16 (reproduced verbatim herein below) of his testimony inter alia to the effect that one Salim Abubakkar Pathan was also dragged by the mob and hacked to pieces of which mob the witness has identified Atul Vaidya (A-59), Gabbar Madanlal (A-14), Kapil Munna (A-50), Dharmesh Prahlad (A-47) and Mukesh Pukhraj (A-29). It is also testified by the witness that one Gulzarbhai was killed by Manish Prabhulal Jain (A-39), Manish Somabhai Patel (not an accused) and it is specifically mentioned by the witness that he was killed by giving sword blows and thereafter set afire by pouring some inflammable liquid. This incident was also witnessed by the PW-106 from the room of Shri Ehsan Jafri's residence. The witness has further deposed that he also heard Shri Jafri talking to somebody on the telephone when the witness informed Shri Jafri that the Police has still not arrived. Shri Jafri informed the witness that he was calling up Narendra Modi and further said that he had sought for help and protection but only insults and abuses were thrown to Shri Ehsan Jafri according to PW-106 as to what he heard Shri

Jafri say. The witness has further testified that thereafter, he went towards the kitchen of Shri Jafri where he saw a mob of persons standing in the garden outside such kitchen and they were throwing burning rags into the residence of Shri Ehsan Jafri. It is further deposed by the witness that at this point of time, Shri Jafri came into the kitchen and tried to persuade the mob to stop this and the witness has further testified that Shri Jafri informed the mob that if you would be satisfied by killing him (Shri Jafri), then he would come out. The witness has deposed that upon seeing Shri Ehsan Jafri, the mob started hurling abuses. Shri Ehsan Jafri was advised by the father (PW-116) of this witness and one Rupaben (PW-107) not to go out and they apprehended that Shri Jafri would be killed if he went out. Shri Ehsan Jafri went out of the kitchen and the witness saw a mob of whom he has identified specifically Naran Channelwala (A-43), Krishna - son of Champaben (A-34), Manish Prabhulal Jain (A-39) and Ramesh Pandey (absconding accused) who caught hold of Shri Ehsan Jafri and dragged him towards the road and at the same time they were beating up Shri Jafri. The accused being Naran Channelwala (A-43), Krishna - son of Champaben (A-34) are identified by the witness in the Court. The witness further identifies Kailash Dhobi (A-1) in the Court. Shri Kodekar submits that this narrative is required to be given in detail as it would give a real glimpse of the incident that happened in the Society and therefore, the same is being done so in

such detail.

તે બાદ હુ જાફરી સાઠેબ ના દરવાજા પાસેથી બહાર "૧૫. નીકળેલ અને હુ મોટા દરવાજા તરફ મારી સાથે ના છોકરાઓ સાથે હુ જતો હતો. ત્યારે અમે આગળની બાજુ એ મોટા દરવાજાની પાસે જોરદાર ધડાકા નો અવાજ સાંભળેલ. અમે જોતા મોટા દરવાજા પાસેની દીવાલ રાંધણગેસ ના બાટલા થી તોડી અને સોસા. મા ઘુસુલ. આ ટોળા ના હાથમાં ઘાતક હથીચારો જેવા કે, તલવારો, ગુપ્તીઓ, પાઈપો, લાકડીઓ કેરોસીન ના કેરબા વગેરે હતા. આ ટોળા એ ઘુસી ને તરત ત્યાં આગળ પડેલ આઈશર ટેમ્પો ને તોડફોડ કરી સળગાવી દીધેલ. તે ટેમ્પો અસલમ કાસમ મનસુરી નો હતો. ટોળુ આવતા અમે પાછા જાફરી સાહેબ ના ઘર તરફ દોડેલા. જાફરી સાહેબ ના ઘર પાસે હુ આવ્યો તે સમયે સોસા. ની પાછળ ની બાજુ એ ધડાકાનો જોરદાર અવાજ આવેલ. અવાજ આવતા અમે તે તરફ ગચેલ. ત્યાં જોયૂતો ટોળા ના માણસો એ રાધણગેસ ના બાટલા થી તે તરફ ની દીવાલ તોડી પાડેલ અને ટોળુ સોસા. મા ઘુસી ગયેલ. એ દીવાલ તોડી તે તરફ ગુલઝારભાઈ, સોનાબેન મનસુરી ના મકાન આવેલા હતા. ત્યાંથી આગળ ટોળા ના માણસો પાસે ઘાતક હથીચારો, તલવાર ગુપ્તી, પાઈપો, પેટ્રોલ કેરોસન ના કેરબા વગેરે હતુ. એ લોકો એ પાછળ ના મકાનો આગળ પડેલા વાહનો ની તોડફોડ કરી તેને આગ લગાડી દીધેલ. પાછળથી ઘુસેલા ટોળા મા મે અતુલ વૈઘ, મહેન્દ્ર પુખરાજ, માંગીલાલ જૈન, નગીન પટણી, કપીલ મુન્નાભાઈ, ધર્કેશ પ્ર હલાદ, લાલા મોઠનસીંઠ દરબાર, દીનેશ શર્મા, મનીષ પ્રભુદાસ જૈન, અને રમશે પાન્ડે ને ઓળખેલા. હુ કોર્ટમાં દાજર આરોપી ઓ પૈકી મનીષ પ્ર ભુલાલ જૈન ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા મનીષ પ્ર ભુલાલ જૈન हોવાનુ જણાવે છે. આ ટોળા એ અંદર ઘુસી આવી વાદનો ની

તોડફોડ કરી એટલે દે સીધો જાફરી સાદેબ ના ઘરમાં ઘુસી ગચેલ. દુ જાફરી સાદેબ ના મકાન મા ઘુસ્યો ત્યારે મારા ઓટલા પર મારા મોટા બાપુ અનવરખાન એઠમદઅલીખાન કે જે પગે અપંગ ઠતા તેઓ પણ મકાન મા આવવા પ્રયત્ન કરતા હતા. ત્યારે ટોળામાના એક કૈલાશ ધોબી અને બીજા બે માણસો એ મળી કૈલાશ ધોબી એ મારા મોટા બાપુ ને તલવાર મારવા જતા મારા મોટા બાપુ ના દીકરા અસલમે તેમને બચાવવા તલવાર પકડતાં તેના ડાબા હાથ ની આંગળી ઓ પર ઈજા થયેલ. તે સમયે મકાન ની અંદર થી કોઈ એ અસલમ ને મકાન ની અંદર તરફ ખેચી લીધેલ. તે સમચે જાફરી સાઠેબ ના મકાન ના તે રુમ માુ ઘણા બધા માણસો હતા. જયારે મારા મોટાબાપા અનવરખાન ને કૈલાશધોબી અને તેની સાથે ના માણસો એ કાપી ને મારી નાખેલ. જે મે રૂમ ની બારી માંથી જોચેલ. રુમની બારીમાંથી બીજુ જોતા, માંગીલાલ જૈન, નગીન પટણી જાફરી સાહેબ ના મકાન પર કેરોસીન અને પેટ્રોલ છાંટતા હતા. તેના છાંટા મારા શરીર પર પણ પડેલા અને દરમ્યાન કોઈ એ કાકડો ફેકતા ત્યાં આગ લાગેલી. જેથી ઘરની અંદર ના માણસો પૈકી કેટલીક સ્ત્રી ઓ અને બાળકો બહાર તરફ દોડવા લાગેલા. ત્યારે બહાર ઉભેલા ટોળા ના માણસો એ જેમા, ભરત રાજપુત, ભરત તૈલી, ગીરીશ y ભુદાસ શર્મા ના ઓ એ મારી બા, જવરૂનીશા, મારા દાદી ખેહરૂનીશા અને સોસા. ના એક બહેન જેહબુન કાસમ મનસુરી ને કાપી ને મારી નાખેલા.

૧૬. આ ટોળા ના બીજા માણસો સલીમ અબુકકર પઠાણ ને ખેચી લાવેલા અને તેમને ત્યાંજ કાપી નાખેલ અને તે ટોળા માં અતુલ વૈદ, ગબ્બર મદનલાલ, કપીલ મુન્ના , ધર્મેશ પ્રહલાદભાઈ, મુકેશ પુખરાજને મે જોયેલ. આ ઉપરાંત બીજા એક ગુલઝારભાઈ ને મનીષ પ્રભુલાલ

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જૈન, મનીષ સોમાભાઈ પટેલ ઉ. મનીષ સ્પ્લેન્ડર ના ઓએ મારી નાખેલા. જે તેમણે તલવાર થી મારી નાખેલા. તેમની પર કોઈ પ્રવાહી છાંટતા તે બળી ગચેલા. મે આ દશ્ય જાફરી સાદેબ ના મકાન ના આગળ ના રૂમમાંથી જોચેલ. તે પછી હુ જાફરી સાદેબ ના મકાન ના બીજા રુમમાં ગયેલ. જાફરી સાદેબ ફોન પર વાત કરતા હતા. જેથી અમો એ તેમને પોલીસ હજુ સુધી આવી નથી તો શુ કરવુ છે તેમ જણાવતા તેમણે, દુ નરેન્દ્ર મોદી ને ફોન કરૂ છુ તેમ જણાવેલ तेमल महह नी मागणी डर् छू तेम लणापु छु. में तेमने नरेन्द्र मोही शु કઠે છે તેમ પુછતા તેમણે એમ જણાવેલ કે, મદદ તો નઠી પણ તેઓ અપશબ્દો બોલે છે તેમ જણાવેલ. તે પછી હુ તેમના રસોડા તરફ ગયેલ. ટોળા ના માણસો રસોડા તરફ આવેલ બગીચા પાસે ઉભા હતા. તે માણસો સળગતા કાકડા મકાન ની અંદર ફેકતા હતા. તે વખતે ત્યારે જાફરી સાહેબ રસોડા તરફ આવેલા અને ટોળા ના માણસો ને સમજાવવાનો પ્રચત્ન કરેલ અને તેમણે જણાવેલ કે, ' મને મારવાથી તમને સંતોષ થતો હોય તો હ બહાર આવુ છુ.' ટોળા એ તેમને જોઈને ગંદી ગાળો બોલેલા તેમજ બુમો પાડવા લાગેલા. જયારે જાફરી સાહેબ માન્યા નહી અને વજુ બનાવી ને જાળી પાસ ે ગયા ત્યાં મારા પિતા ઉભા હતા અને રૂપાબેન ઉભા હતા તેમણે જાફરી સાહેબ ને બહાર ન જવા જણાવેલ. અને જણાવેલ કે, ટોળૂ તમને મારી નાખશે. પણ જાફરી સાહેબે જાળી ખોલેલ. ત્યા ટોળા ના માણસો ઉભા હતા જેમા નારણ ચેનલવાળા, ક્રિષ્ના ચંપાબેન નો છોકરો, મનીષ પ્રભુલાલ જૈન, રમેશ પાન્ડે ના ઓ જાફરી સાહેબ ને પકડી ને મારતા મારત રોડ તરફ લઈ ગયેલા. આ લોકો જાફરી મળી ગયો છે તેને મારી નાખો તેવી બુમાો પાડતા હતા. હ કોર્ટ માં હાજર આરોપી ઓ પૈકી, નારણ ચેનલવાળા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા નારણભાઈ ચેનલવાળો હોવાનુ જણાવે છે.

દે આરોપી ક્રિષ્નાને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા તે ક્રિષ્ના ચંપાબેનનો છોકરો દોવાનુ જણાવે છે. મારા મોટા બાપા ને મારવામાુ કૈલાશ ધોબી દતો તેમ મે જે જણાવ્યુ તે કોર્ટમાં દાજર આરોપી ઓ પૈકી કૈલાશ ધોબી ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા કૈલાશ ધોબી દોવાનુ જણાવે છે."

27. Shri Kodekar submits that the witness PW-106 vide para-16(a) [reproduced verbatim herein below] of his deposition, has further narrated the incident that the kitchen portion of Shri Ehsan Jafri's residence was also set afire and which led to number of persons standing in the kitchen running therefrom. The witness has categorically away testified that when he looked out of the kitchen window, he saw Lala Darbar (A-2), Dinesh Sharma (A-63) and Lakhia Bhuria (A-46) and also saw that these three persons had caught hold of two women of whom one was his sister-in-law Sajedabanu and another was an unidentified lady. Ιt is the case of the prosecution and pointed out by Shri Kodekar that the witness has clearly testified that the clothes of these two women were torn apart and the women were raped thereafter. It is further testified by the witness that after being raped, both the women were killed by inflicting sword blows on The them. witness has thereafter identified Lakhia Bhuria (A-46).

"૧૬(a). જાફરી સાહેબ ના મકાન ના રસોડામાં આગ લાગવા લાગેલી. રસોડા ની અંદર જેઓ હતા તેઓ અંદર ભાગવા લાગેલા.

મેં રસોડા ની બારી માથી બગીચા મા જોયુ તો, લાલામોઠનસીંઠ દરબાર, દીનેશ શર્મા, લાખીયા ભુરીયા જેઓ એ બે સ્ત્રી ઓ ને પકડી રાખેલ. જે 5 ત્રીઓ પૈકી એક મારી ભાભી સાજેદા બાનુ અને બીજી સ્ત્રી કોણ હતી તેની મને ખબર નથી. તે સ્ત્રીઓ ના આ લોકો એ કપડા ફાડી નાખેલ. અને તેમને નીચે પાડી ને તેમની પર બળાત્કાર ગુજારેલ. અને તેમને તલવાર ના ઘા મારી ને મારી નાખેલ. હુ લાખીયા ભુરીયા ને ઓળખુ છુ કોર્ટ માં હાજર આરોપી ઓ પૈકી લાખીયા ભુરીયા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા લાખન સીંગ ઉ. લાખીયા हોવાનુ જણાવે છે. આ સમયે મારો ભત્રીજો સાદાબખાન અને યુસુફ જે બાજુમાં હતા તેમને દીનેશ શર્માએ તલવાર વડે કાપી નાખેલા. આ યુસુફખાન તે અંકુર સાયકલવાળા નો દીકરો. અંકુર સાચકલ વાળા નુ નામ દબીબખાન ભુરેખાન છે જે ચુસુક્ના પિતા છે. આ દરમ્યાન મેં મકાન ની સીડી ઉપર થઈ ઉપર ના ભાગે જવાનો પ્રયત્ન કરેલ. આ મકાન ની સીડી જાફરી સાદેબ ના બેડરુમ તથા બદાર ની સાઇડે આવેલી છે જે તરફ જાળી લગાવેલ છે અને તે સીડી પર બહાર થી તેમજ અંદર ના ભાગે દરવાજા માથી જઈ શકાય છે. મે જાફરી સાહેબ ના રુમ માથી ઉપર તરફ જતી સીડી મા જવાનો પ્રયત્ન કરેલ. તે વખતે ટોળુ પથ્થર મારો કરતુ હતુ અને લાકડી ના ગોદા મારવાનો પ્રયત્ન કરતુ હતુ. હુ ઉપર ગયો ત્યારે ત્યાં જાફરી સાહેબ ના પત્ની અને સોસા. ના બીજા ઘણા માણસો ત્યાં બેઠા હતા. ્દુ ખુબ ગભરાઈ ગયેલ હતો. જેથી ત્યાં એક રુમ માું જઈ ખુણામાં બેસી ગયેલ. અમે ત્યાં સાંજના સાડાચાર પોણાચાર સુધી બેસી રહેલ. હુ ત્યાં આશરે દોઢ થી બે કલાક બેસી રહેલ. તે દરમ્યાન બહાર ના ભાગે ફાયરીંગ થતુ હોવાના અવાજ સાંભળેલા તેમજ ટીચર ગેસ સેલ કુટવાના પોલીસ ની વ્હીસલો વાગવા ના અવાજ સાંભળેલા. આ સાંજના સાડા ચાર થી પોણા પાંચ ના અરસામાં

સાંભળેલા. તે પછી વાતા વરણ એકદમ શાંત થઈ ગયેલ. ત્યાંથી અમે બહાર

ના ભાગે જોતા દુકાન ના ધાબા ખાલી થઈ ગયેલ અને નીચેના ભાગે બહાર તેમજ સોસા. મા પોલીસ ના માણસો કરતા હતા. જેથી અમે મકાનો માંથી નીચે ઉતરી સોસા. માં અંદર જાકરી સાહેબ ના બગીચા પાસે આવેલા. ત્યાં મે યુસુફ દબીબખાન તથા મારા ભત્રીજા સાદાબખાન ની લાશો જોયેલ. તે ઉપરાંત મારી ભાભી સાજીદાબાનુ અને એક બીજી સ્ત્રી ની લાશ નગ્ન ઠાલતમાં જોચેલ. ત્યાંથી દુ જાફરી સાઠેબ ના મકાન ના મુખ્ય દરવાજા બાજુ આવેલ. ત્યાં મે મારા મોટા બાપુષ્ઠી અનવર ખાન એહમદખાન તથા સેજાજભાઈ ફકીર મઠમદ સૈયદ, ઝરીના કાકી, જેઠબૂનબેન તથા મુમતાઝકાકી, ની લાશો મે જોચેલ. એ લાશો બળેલી હતી પરંતુ તે સમચે ઓળખાય તેવી હાલતમાં હતી. મેં તે સમચે કુલ આઠ લાશો ઓળખેતી."

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28. The witness has further deposed that at that stage, the nephew of the witness Sadabkhan and one Yusuf were also killed by giving them sword blows and the person inflicting such blows is positively identified by the witness as one Dinesh Sharma (A-63). witness has further testified The that thereafter the witness ran to the first floor of the residence of Shri Ehsan Jafri and sat down and the witness has testified that all throughout, there was stone pelting by the mob. The witness has further testified that this went on till about 4:30 PM and 4:45 PM approximately and thereafter, the witness started hearing sounds of firing, teargas shells being fired and Police whistles being blown. The witness has further testified that thereafter there

silence and he saw lot of Police personnel was present outside the premises at that point of time. The witness claims to have gone out of the bunglow of Shri Ehsan Jafri and he saw the dead bodies of Yusuf Habibkhan, Sadabkhan and naked bodies of Sajedabanu and another lady. The witness came to the main gate of the Society where he saw the dead body of his uncle and also the dead bodies of one Zebunben, Shehjad Faqir Ahmed, one Zarinaben and one Mumtazben. All the dead bodies were charred, but identified and in this manner the witness has testified that he saw eight such dead bodies.

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29. Drawing my attention to the further testimony of the witness, Shri Kodekar has pointed out that in para-16(b) [reproduced verbatim herein below] of the testimony, the witness has testified that of the Police officers present after the incident, he saw Shri M.K.Tandon and Shri K.G.Erda (A-57) and found that such Police officers were making inquiries about the residents of the Society. The survivors were made to stand on one side by the Police Officers and the witness has stated that at that point of time, he saw one Jagrupsing Rajput standing near the railway line with two other persons and accused No.57 looking that was at them and exchanging smiles. The witness has further testified that all the survivors of the incident were ordered to be taken away to safety by making them sit in the Police vehicles available for that purpose and all the victims i.e. the survivors according to the

testimony of this witness, were taken over to the refugee camp at Dariakhan Ghummat. The witness has thereafter identified Mr.K.G.Erda (A-57) in the court.

તે સમયે ત્યાં પોલીસ ઓકીસરો ત્યાં આવેલા "99(b). હતા જેમાં એમ.કે.ટંડન સાહેબ અને કે.જી.એરડા સાહેબ અને બાકી ના બીજા ઓકીસરો હતા. તે લોકો મકાનો અને તેમાં રહેનાર માણસો અંગે ની અમો ને પુછપરછ કરતા હતા. તેમણે અમો બધાને એક બાજુમાં ઉભા રાખેલા. તે સમચે રેલવે લાઈન તરફ મેં જગુરૂપસીંદ રાજપુત અને બીજા બે માણસો ને જોયેલ. કે.જી.એરડા સાઠેબ તેમની તરક જોઈને ઠસતા ઠતા. ð સમયે પોલીસે ત્રણ મોટી ગાડી ઓ મંગાવેલ અમે તેઓ ને અમો ને સહી સલામત બચાવવા જણાવેલ. અમે તેમને અમારા મરણ ગયેલા માણસો ની લાશો સાથે લઈ જવાનુ જણાવેલ. ત્યારે એમ.કે.ટંડન સાદેબે અમારા બચવાની ચીંતા કરવાનુ જણાવેલ અને લાશો ની ચીંતા નહી કરવાનુ જણાવેલ. અમે આશરે સો થી દોઢસો માણસો હતા તે બધા પોલીસે મંગાવેલા આ વાઠનો માં બેસી ગયેલ. અમને વાઠનો માં બેસાડી ને લઈ જતા ઠતા ત્યારે ત્યાં ટોળૂ ભેગૂ થઈ ગયેલ અને ટોળા એ અમો ને નઠી લઈ જવા દેવા માટે પોલીસ ની ગાડી ઓ પર તથા અમો ને બેસાડેલા વાઠનો પર પથ્થરમારો કરેલ.

તે વખતે પોલીસે ટીચર ગેસ ના સેલ છોડેલા અને ફાયરીંગ કરેલ."

30. The witness has further testified that on 02/03/2002, an announcement was made at the refugee camp that the dead bodies of the victims of the Gulbarg Society incident were brought to Kalandari Masjid for their final rites and the witness was informed by the Police that if he could, he was required to identify the dead bodies. My SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

attention is paragraph-18 drawn to (reproduced verbatim herein below) where the witness has deposed that the bodies were beyond recognition and could not, therefore, be identified and the witness could mother Zehrunnisa identify his and could not identify any other members of his family. The same sequence was repeated on 03/03/2002 according to the witness, when last rites were performed on further dead bodies of Gulbarg Society victims, but none could be identified.

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"૧૮. અમે રાહત કેમ્પમા ગયા તે બાદ તા. ર/૩/૦૨ ના રોજ કલંદરી મસ્જીદ ના કબ્રસ્તાન પર જાહેરાત થયેલ કે, ત્યાં ગુલબર્ગ સોસા. મા મરણ ગયેલ વ્યકિત ઓ ની લાશો લાવવામાં આવી રહેલ છે. હુ ત્યાં કબ્રસ્તાનમાં લાશો જોવા ગયેલ. ત્યાં પોલીસે મને કહેલ કે, આ લાશો તમારા ગુલબર્ગ સોસા. ની છે જેને તમે ઓળખી બતાવો. મેં લાશો જોતા તે એટલી હદે વિકૃત થયેલ હતી કે, તે ઓળખી શકાય તેમ ન હતી. પોલીસે મને મારા કુટુંબ ના માણસો ની લાશો ઓળખી બતાવવા જણાવેલ અને જો તેમ ઓળખી ન બતાવુ તો તે લાશો પોલીસ પરત લઈ જશે અને ગુમ થયેલ વ્યકિતઓ તરીકે ઓળખ આપશે. ત્યાં મે મારી બા જહરૂનીશા ની લાશ ઓળખી બતાવેલ. બીજી લાશોમાં મારા કુટુંબ ના કોઈ માણસ ની લાશ નહતી જેથી મે ઓળખેલ નહી. તે લાશો બીજા માણસો હતા તેમણે ઓળખી બતાવેલ. ત્યાં કબ્રસ્તાનમાં ઉડા ખાડા કરી લાશો ની દફનવિધી કરવામાં આવી."

31. It is pointed out by Shri Kodekar that the witness has specified in para-20 (reproduced verbatim herein below) of his deposition

the Police visited the refuqee that camp on 05/03/2002 and the P.I. Shri N.D.Parmar came over and directed the survivors to record their statements before the Police. The witness and other witnesses were taken over to the Dudheshwar Police Station and the witness an others were interrogated at that place.

"૨૦. તા. ૫/૩/૦૨ ના રોજ પોલીસ રાહત કેમ્પમાં આવેલી અને અમને જણાવેલ કે, તમારા જવાબ લખવાના છે. તે પો.ઈ. શ્રી એન.ડી.પરમાર આવેલા હતા. તેઓ અમને દુધેશ્વર પોલીસ ચોકી લઈ ગયેલા અને ત્યાં અમારી પુછ પરછ કરેલી."

31. It is pointed out that the witness has further deposed that when on 05/03/2002, the witness gave the full details and disclosed identifies of the perpetrators of the offence, Shri Parmar, P.I. did not write down what was narrated by the witness. In the circumstances, the witness and others engaged the services of an Advocate who called upon them to file an affidavit. An affidavit dated 18/11/2002 and an application dated 25/11/2002 were given by the Commissioner, present witness to the Police Ahmedabad City and copies thereof were endorsed to the Meghaninagar Police Station. The witness, according to Shri Kodekar, was summoned to the Crime Branch on 05/03/2002, but he did not go to the office of the Crime Branch and had forwarded an affidavit which contained the details of the incident as it took place and as further testified SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

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by the witness, the Advocate of the survivors advised them to approach the Hon'ble Supreme Court which they did so. Shri Kodekar points out that it was on an application tendered by such victims before the Hon'ble Supreme Court being Writ Petition No.109/2003 that the Hon'ble Supreme Court directed constitution of a Special Investigation Team. The witness has stated that thus he was an eye-witness to the entire incident and it is pointed out by Shri Kodekar that this witness in the course of his deposition has identified а number of accused referred to herein above. According to Shri Kodekar, the witness has faithfully, accurately and correctly attributed each overt act on the part of each accused identified by him. It is submitted that the cross examination of such witness which runs into nearly 100 pages has not been able to bring out any anomalies or inaccuracies which would make one come to the conclusion that the witness is not reliable. It is pointed out that the testimony of this witness is required to be believed, accepted and it goes to a great extent in establishing the Prosecution case as also the charges levelled against the accused.

32. It is submitted by Shri Kodekar that PW-106 is a natural eye-witness. Shri Kodekar submits that the common intention of the mob is established through the testimony of PW-106 inasmuch as, in the course of his testimony, at the very initial incident in the morning, the witness has clearly testified that the mob had gathered and had SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

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shouted inciting slogans which indicates common object and intention to kill the members of the minority community. It is pointed out that in the circumstances, the testimony of the witness has clearly established ingredients the of the provisions contained in Sections 143, 147 and 149 of the Indian Penal Code. It is pointed out by Shri Kodekar that all the incidents which began from 10:00 AM and ended at 4:45 PM are faithfully and correctly reproduced by the witness, giving details of the presence of the concerned accused, the weapons used by the concerned accused and specific overt act committed by each of them, all of which is testified in a manner which is believable and is required to be accepted as a truthful and reliable piece of evidence. It is further submitted that the shouting of the slogans falls within the provisions contained in Sec.153(1)(a) of the Indian Penal Code. The witness PW-106, according to Shri Kodekar, has also established the commission of an offence punishable under Sec.324 of the Indian Penal Code by accused No.55 who has been established in the course of the testimony of this witness to have inflicted qupti blows on the said Ayub. Setting afire the vehicles, as testified to by the witness, also satisfies the ingredients of Sec.435 of the Indian Penal Code.

33. According to Shri Kodekar, the next witness who is providing ample corroboration and support to the testimony of PW-106 is PW-116 i.e.

Sayeedkhan Ahmedkhan Pathan, who vide his testimony Exh.584, has also established that he too was an eye-witness to the entire incident and this witness PW-116 has largely supported and corroborated the Prosecution version and also led credibility an support to the testimony of PW-106. It is pointed out by Shri Kodekar that since this witness too is vital to the establishing of charges against the accused, his testimony is required to be dealt with and referred to at length and the testimony of this witness would also, according to Shri Kodekar, show that the Prosecution evidence is consistent, corroborating the oral evidence and documentary evidence and goes a long way to establish beyond reasonable doubt the charges against the accused. It is submitted that therefore, some latitude is required to be given to permit the State to read verbatim the entire chief examination of this witness. I agree with what is urged by Shri Kodekar this juncture and looking to the gravity, at enormity and extent of the incident, it would be, in my opinion, necessary to minutely scrutinize in detail in the present judgment the testimonies of witnesses who are, in the words of the Prosecution, star witnesses. It is pointed out by Shri Kodekar that the present witness PW-116 is the father of PW-106 and at the relevant point of time i.e. at the time of the incident, the said witness was also residing together with PW-106 in Bunglow No.18 of Gulbarg Society.

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33. Shri Kodekar has pointed out that during course of his testimony, the witness PW-116 has largely supported the testimony of PW-106. The background as to the Godhra Train burning incident on 27/02/2002 and the bandh call given by Vishwa Hindu Parishad on 28/02/2002 which led the residents of Gulbarg Society meeting Shri Ehsan Jafri and Shri Ehsan Jafri having assured them of arranging for Police bandobast, is emerging from para-2 (reproduced verbatim herein below) of the testimony of this witness.

"૨. સને ૨૦૦૨માં હુ બ્લોક નં. ૧૮, ગુલબર્ગ સોસા. ચમનપુરા મેઘાણી નગર ખાતે રહેતો હતો જે હુ બીજા માળે રહેતો હતો. તે સમચે ઇમ્તીયાઝખાન મારો દીકરો મારી સાથે રહેતો હતો. તા. ૨૭/૨/૦૨ ના રોજ ગોધરાકાંડ નો બનાછ બનેલો તેના અનુસંધાને વિ.હિ.પ અને બજરંગ દળે તા. ૨૮/૨/૦૨ ના રોજ બંધનુ એલાન આપેલ હતુ તેને ભા.જ.પ ટેકો આપેલ હતો. જેથી તા.૨૭/૨/૦૨ ના રાત થી વાતાવરણ ભયંકર થયેલ હતુ. જેથી અમે અમારી સોસા. ના એહસાન જાફરી સાહેબ પાસે ગયેલા અને તેમને જણાવેલ કે, કાલે બંધનુ એલાન છે જેથી બંદોબસ્ત ની વ્યવસ્થા કરો. જાફરી સાહેબે અમને એમ કહેલ કે, મેં પોલીસ ને ફોન કરેલા છે. અને કાલે બંદોબસ્ત ની વ્યવસ્થા થઈ જશે. તમે ચીંતા કરશો નહી. તે પછી

34. It is pointed by Shri Kodekar that the incident as it started at 10:30 AM on 28/02/2002 is clearly narrated by the witness in para-3 (reproduced verbatim herein below) of his testimony

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and the witness has clearly testified that he and his son i.e. PW-106 were standing on the terrace of the residence with they saw the incident happening at 10:30 AM. The witness, according to Shri Kodekar, has clearly testified that a group of about four to five men was roaming the streets and chanting and of *"JAI* shouting slogans SHRT RAM" and were enforcing the bandh by ordering the shutting down of shops. It is also testified that thereafter 10 to 12 persons came over to the place known as Ankur Cycle shop which is situated opposite the residence of the witness, and this mob was armed with weapons such as guptis as is testified to by this witness. It is pointed out by Shri Kodekar that the witness has further stated that the of such persons group started quarreling with Yusufkhan and Ayub who were standing outside the said Cycle Shop and started threatening them and beating them up when said Yusufkhan ran away into Gulbarg Society whereas the brother of Yousufkhan being Ayubkhan attempted to go towards his own residence when, according to this witness, accused Bharat Rajput (A-55) gave two to three blows of gupti on the back of the said Ayubkhan.

"3. તા.૨૮/૨/૦૨ ના રોજ સવાર ના દસ સાડા દસ વાગ્યા ના સુમારે હુ અને મારો દીકરો નાસ્તો કરી અમારા ઘરની પાસે અગાશીમાં ઉભા હતા. તે સમયે ચાલીમાંથી પાંચ છ છોકરા નીકળેલા તેઓ જય શ્રી રામ ના નારા લગાવતા હતા અને દુકાનો બંધ કરાવતા કરાવતા ઓમ નગર તરફ જતાં રહેલા. તે પછી થોડીવારે દસબાર છોકરાનુ ટોળુ ફરી પાછુ આવેલુ. મારા ઘરની સામે અંકુર સાચકલ સ્ટોર્સ નામની દુકાન છે. તેના બે છોકરા અચુબ અને ચુસુફખાન ત્યાં દુકાન આગળ બહાર ઉભા હતા. જે દસ બાર છોકરાઓ આવેલા તેમની પાસે હથીચારો હતા ગુપ્તીઓ હતી. એ લોકો ચુસુફખાન સાથે બોલાચાલી કરતાં હતા. આ દસ પંદર છોકરાઓ મા ગીરીશ પ્ર ભુદાસ શર્મા, ભરત તલોદીચા ઉ. ભરત તૈલી, ભરત રાજપુત, રમેશ ચોટી હતા. આ લોકો એ ચુસુફ ને માર મારતા ચુસુફ ભાગીને ગુલબર્ગ સોસા. માં ભરાઈ ગચેલ. ચુસુફના ભાઈ અચુબ ખાન ઘરમાં જતો હતો. ત્યારે પાછળ થી ભરત રાજપુતે તેને પીઠ ના ભાગે ગુપ્તીઓ મારેલી. તેણે બે ત્રણ ઘા મારેલા.

અયુબ તે પછી ઘરમાં ઘુસી ગયેલ. ''

35. Ιt is further pointed out that the witness has further testified that of the 10 to 15 in that group, he could identify Girish persons Prabhudas Sharma (absconding accused), Bharat Teli Rajput (A-54), Bharat (A-55) and Ramesh Choti (absconding accused). The witness, according to Shri Kodekar, has further supported the testimony of PW-106 by stating that these persons thereafter overturned the rickshaw of one Gulam Master and poured kerosene thereupon and set the same afire. who had perpetrated such are The persons act identified by the witness to be Kapil Munna (A-50), Dharmesh Prahlad (A-47), Ambesh Kantilal (A-32) and Mukesh Pukhraj (A-29). The witness has further testified that at that point of time, the Police had arrived at the scene and upon such arrival of the Police, those persons ran away from the scene of the incident and the Police poured water on the burning

autorickshaw and thereafter the Police car went away towards Chamanpura. The witness has in paragraph-5 (reproduced verbatim herein below) of his testimony, more particularly the concluding line, clearly stated that he was standing upon his terrace and could see the entire incident.

"પ. તે પછી આ છોકરાઓ એ બાજુમાં ગુલામ માસ્ટર ની રીક્ષા પડેલ હતી તેને ઉદ્યી પાડી દઈ તેમાંથી પેટ્રોલ કાઢી તે પેટ્રોલ રીક્ષા પર છાંટી રીક્ષા ને આગ લગાડી દીધેલ. આ રીક્ષા ને આગ લગાડવામાં કપીલ મુન્ના, ધર્મેશ પ્રહલાદ, અંબેશ કાંતીલાલ અને મુકેશ પુખરાજ હતા. રીક્ષા ને આગ લગાડી તે સમચે પોલીસ આવી જતાં આ છોકરાઓ ભાગી ને ચાલીમાં જતા રહેલા. પોલીસે બાજુમાં આવેલ ધોબી ની દુકાનમાંથી પાણી લાવી ને આગ ઓલવી નાખેલી. તે પછી પોલીસ ની ગાડી ચમનપુરા ચકલા તરફ જતી રહેલી. તે સમચે હુ મારા ઘરની અગાશીમાં ઉભેલો હતો."

36. Shri Kodekar on this point of time, has drawn my attention to paragraph-6 (reproduced verbatim herein below) of the testimony of the witness wherein an attempt is made by the witness to identify such perpetrators in the Court from amongst the accused.

"૬. મેં નામ આપ્યા તેમને ઓળખી શકુ. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી ભરત રાજપુત ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતાં બાબુભાઈ મનજી જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ભરત તૈલી ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતાં ભરત તૈલી દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપીઓ પૈકી કપીલ મુન્નાને ઓળખી

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શકતો નથી. હુ હાજર આરોપી ઓ પૈકી ધર્મેશ પ્રહલાદ ને ઓળખી શકતો નથી. હુ હાજર આરોપી ઓપૈકી મુકેશ પુખરાજ ને ઓળખી શકતો નથી. હું હાજર આરોપી ઓ પૈકી અંબેશ કાંતીલાલ ને ઓળખી ને ઓળખી શકતો નથી."

37. It is pointed out that accused Bharat Rajput is wrongly identified by the witness and in fact one Babu Manji is wrongly identified as accused Bharat Rajput. However, Bharat Teli (A-54) has been positively identified by this witness in the court also. However, the witness has categorically stated that he cannot identify accused Kapil Munna (A-50), Dharmesh Prahlad (A-47), Mukesh Pukhraj (A-29) and Ambesh Kantilal (A-32), and these accused are not identified by the present witness. It is pointed out by Shri Kodekar that further narrating the incident, the witness has testified that after the Police further five to six vehicle went away, Police vehicles came over to Gulbarg Society from towards Chamanpura and the vehicles were parked at the small gate of the Society. The witness claims to have seen from his terrace Shri Ehsan Jafri and two to three others going out to meet the officers in such Police vehicles and such talk, according to the witness, went on for about five minutes after which all such persons returned to Gulbarg Society. The witness claims to have questioned Shri Ehsan Jafri as to who were the Police officials who had come to the Society at which point of time, Shri Ehsan Jafri had categorically stated that Police Commissioner Shri P.C.Pandey and Meghaninagar P.I. Shri K.G.Erda had

come over and assured them i.e. the residents of the Gulbarg Society of more Police protection. Drawing my attention to paragraph-8 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness has further stated that in a short time after such Police vehicles left, a mob of about gathered outside Gulbarg 5000 to 10000 persons Society and such mob was armed with swords, guptis, and also armed with cans of petrol and kerosene. according to the witness, chanting They were, of *``JAI* SHRI RAM" as well as inciting sloqans slogans "KILL THE MEMBERS OF THE MINORITY COMMUNITY" or the words to that effect were uttered in Gujarati. It is testified by the witness, according to Shri Kodekar, that the mob thereafter started damaging and destroying vehicles belonging to the minority community and started pouring petrol on the vehicles and set them afire. In the circumstances, some persons belonging to the minority community who were residing in the Gulbarg Society, ran away and took shelter in the said Gulbarg Society and the mob thereafter started pelting stones on the Society. The witness has testified that at this stage, Shri Ehsan Jafri came out near the small gate of the Society and requested the mob with folded hands not to do so, but the mob did not pay heed to Shri Ehsan Jafri and continued the pelting of stones.

"૮. તે પછી થોડીવારે રોડ પર પાંચ દસ હજાર માણસોનુ ટોળુ દથીચાર સાથે આવેલ. તેમના દાથમાં તલવારો, ગુપ્તી, પેટ્રોલ ના કેરબા, કેરોસીન ના કેરબા દતા. તે લોકો જય શ્રી રામ ના નારા લગાવતા દતા અને મીચા ને મારો કાપો તેવી બુમો પાડતા હતા. તે લોકો એ બહાર રોડ પર મુસલમાનો ની વાનો પડી હતી તેને પાડી દઈ પેટ્રોલ છંાટી આગ લગાડેલી. એ લોકો એ મુસલમાનો ની દુકાનો માં તોડફોડ કરી તેનો સામાન બહાર રોડ પર કાઢી તે સામાન ને પણ આગ લગાડેલી. બહાર ની ચાલીઓમાં રહેતા થોડા ઘણા મુસ્લીમ ના માણસો અમારી સોસા. મા આવી ગયેલા. ટોળા ના માણસો એ અમારી સોસા. પર પથ્થરમારો શરુ કરેલ. જેથી જાફરી સાઠેબે નાના દરવાજા તરફ જઈ ને તેમને હાથ જોડેલા અને કઠેલ કે, ભાઈ તમે શા માટે આવુ કરો છેા. પણ તે લોકો માનેલા નહી. અને પથ્થરમારો ચાલુ રાખેલ."

38. Drawing my attention to paragraph-(reproduced verbatim herein below) of 9 the testimony of this witness, Shri Kodekar submits that the witness has identified Naran Channelwala (A-43), Chunilal Prajapati (A-61), Bharat Rajput (A-55), (A-63), Dinesh Sharma Lakhia (A-46), Lala Yogendrasing (A-2), Atul Vaidya (A-59), Kailash (A-1), Ramesh Choti (absconding accused), Dhobi Girish Prabhudas Sharma (absconding accused). The witness, according to Shri Kodekar, has identified in the Court Naran Channelwala (A-43), Chunilal Prajapati (A-61), Dinesh Prabhudas Sharma (A-63) and Lalo Yogendrasing (A-2). However, the witness is unable to identify Lakhia (A-46), Dharmesh Prahlad (A-47), Kapil Munna (A-50), Kailash Dhobi (A-1) and Atul Vaidya (A-59).

"૯. આ ટોળામાં મે, નારણ ચેનલવાળો, ચુનીલાલ પ્ર

જાપતિ, ભરત રાજપુત, દીનેશ શર્મા, લાખીયા, લાલા યોગેન્દ્રસીંહ, અતુલ વૈદ, કૈલાશ ધોબી, રમેશચોટી, અને ગીરીશ પ્રભુદાસ શર્મા ને ઓળખેલા. તેમાં ધર્મેશ પણ હતો. કપીલ મુન્ના હતો. બીજા હાલ ચાદ આવતા નથી. મેં જે નામ આપ્યા તેમને દુ ઓળખી શકુ. કોર્ટમાં દાજર આરોપી ઓ પેકી આરોપી નારણ ચેનલવાળા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા નારણ ચેનલવાળો હોવાનુ બતાવે છે. (સાહેદ આરોપી તરફ ના ભાગે જઈ ને ઓળખી શકે તેમ જણાવે છે.સાક્ષી ના પીંજરા થી આરોપી નું અંતર વીસ થી પચીસ કુટ છે સાહેદ ને પરવાનગી આપવામાં આવે છે.) આરોપી ચુનીલાલ પ્રજાપતિ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ચુનીલાલ હોવાનુ જણાવે છે. હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી લાખીયા ને ઓળખી શકતો નથી. કોર્ટમાં ઠાજર આરોપી ઓ પૈકી દીનેશ પ્રભુદાસ શર્મા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતાં દીનેશ પ્રભુદાસ શર્મા હોવાનુ જણાવે છે. હ કોટ્માં દાજર આરોપી ઓ પૈકી લાલો યોગેન્દ્રસીંદ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા લાલો યોગેન્દ્રસીંહ હોવાનુ જણાવે છે. હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી ધર્મેશ ને ઓળખી શકતો નથી.હુ કોર્ટમાં હાજર આરોપી ઓ પેકી કૈલાશ ધોબી ને ઓળખી શકતો નથી. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી અતુલ વૈદ ને ઓળખી શકતો નથી."

39. The witness has further testified in paragraph-10 (reproduced verbatim herein below) of his testimony according to Shri Kodekar, that when the mob did not pay heed to Shri Ehsan Jafri's entreaties, the residents of the Society closed shut the main gate of the Society and at this point of time, even from the rear of the Society i.e. near

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the railway line also, a mob had gathered and started pelting stones. The witness has testified that the residents of the Society thereafter started retaliating by throwing those stones which were being pelted from outside. It is testified by the witness that over and above pelting stones, burning rags and tyres were also thrown into the Society and this lasted for about $1\frac{1}{2}$ to 2 hours.

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"૧૦. જાફરીસાઠેબે કઠેવા છતાં ટોળુ નઠી માનતા અમે સોસા. ના દરવાજા આગળ થી બંધ કરી દીધેલા. તે પછી પાછળ ના ભાગે એટલ ે કે રેલવે લાઈન તરફ થી પણ પથ્થરમારો શરુ થઈ ગયેલ. અમે સોસા. ના માણસો જે પથ્થરો આવતા ઠતા તે પાછા ફેકવાનુ શરુ કરેલ. ટોળા ના માણસો પથ્થરો ઉપરાંત સળગતા કાકડા અને ટાયરો સળગાવી ને ફેંકતા ઠતા. આવુ લગભગ દોઢ થી બે કલાક સંધી ચાલેલ. "

40. Drawing my attention to para-11 (reproduced verbatim herein below) of the testimony, Shri Kodekar points out that the witness has stated that at about 1:30 PM, a mob of persons had climbed on the terrace of bunglow No.1 of Gulbarg Society belonging to one Dayaram Jinger and had started pelting stones as also inciting the mob from such terrace. The witness has identified one Gabbar (A-14) and Rajesh Jinger (A-65) as two persons who had climbed the terrace of bunglow No.1 of the Society. The witness has clearly stated that residents of the Society being Salim Sindhi, Zebunben, Jehangir and Mohammad Sindhi and Irfan were injured in the stone pelting. The witness has categorically testified

Irfan was struck on the chest that and was thereafter lifted by PW-106 Imtiyaz and one Mohammad Rafig and brought to the residence of Shri Ehsan Jafri. The witness has stated that at that point of time, he was facing the main gate of the Society and was in the front portion of the Society when he was informed that even from from the rear side there was enormous stone pelting and throwing of burning rags by the mob. The witness claims to have at that point of time sent away all his family members into the residence of Shri Ehsan Jafri.

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"૧૧. તે પછી દોઢ વાગ્યા ના અરસામાં ટોળા ના માણસો અમારી સોસા. ના એક નંબર ના મકાન ની અગાશીમાં ચડી ગયેલા. તે દયારામ જીજર નું મકાન છે. તેલોકો પથ્થરમારો કરતાં દતા અને બદાર ના લોકો ને ઉશ્કેરણી કરતા દતા. તે અગાશીમાં એક ગબ્બર ને મેં ઓળખેલ તથા રાજેશ જીંગર ને ઓળખેલા. આ બે જણાને દુ આજે ઓળખી શકુ નદી. "

41. Referring to the further evidence and witness, deposition of this Shri Kodekar has submitted that the mob entered into the Society by tearing down portions of wall on the front of the Society and throwing of burning rags from rear side resulted in house of one Gulzar being set on fire and the witness claims that said Gulzar was dousing the fire. The mob, according to the witness, which had broken upon the main gate of the Society, was armed with weapons like swords, guptis, tridents, as also had cans of kerosene and petrol and had rushed into the Society. The mob after entering the Society

in such fashion, started damaging and destroying the vehicles parked outside the residences of the Society and started looting and damaging the residences of Gulbarg Society and setting alight and on fire the household articles which were brought out from the damaged houses.

42. Drawing attention paragraph-14 mγ to (reproduced verbatim herein below) of the testimony, Kodekar points out that the Shri witness has corroborated PW-106 inasmuch as, he too heard a loud explosion on the rear side of the Society and the witness has categorically stated that a gas cylinder was exploded which damaged the rear compound wall of the Society and the witness has further testified, according to Shri Kodekar, that a mob of persons entered into the Society therefrom which mob was also armed with swords, quptis, tridents as also having cans of petrol and kerosene. This mob also started damaging and destroying and setting afire the vehicles parked outside and seeing all such incidents taking place, the present witness also went away into the residence of Shri Ehsan Jafri to seek shelter. The mob, according to this witness, thereafter came at the residence of Shri Ehsan Jafri and at that point of time, the elder brother of the witness being one Anwarkhan who was crippled and was not mobile and was setting on the 'OTAA' of Shri Ehsan Jafri's residence, was attacked by the mob and a sword blow was attempted to be struck by Kailash Dhobi (A-1) which was sought to be prevented by

Aslamkhan being the son of said Anwarkhan and in

doing so, the said Aslamkhan sustained injuries on his fingers and thereafter, the witness has deposed

that such persons dragged away Anwarkhan and killed him. Thereafter, according to the witness, the mob started throwing burning rags into the residence of Shri Ehsan Jafri and started shouting that "drag Ehsan Jafri out". The house of Shri Ehsan Jafri, according to the witness, started catching fire and because of the smoke, the ladies and children taking shelter in the house, started screaming and one lady Firdosbanu together with one Sahejadali and Zebunben, went out of the house and they were dragged away by the mob and killed. The witness, according to Shri Kodekar, has positively named the persons as being the perpetrators of such killings as Kailash Dhobi (A-1), Naran Channelwala (A-43), Ramesh Choti (absconding accused) and Manish Jain (A-38), who killed such above persons.

તે પછી થોડીવારે પાછળ થી બદ્દ મોટો વિસ્ફોટ થયેલ. ગેસ ના "9X બાટલા થી કોટ તોડી નાખેલ. અને ત્યાંથી પણ ટોળુ અંદર ઘુસી ગયેલ. તે લોકોના હાથમાં પણ તલવારો, ગુપ્તી , ત્રિશૂળ પેટ્રોલ ના કેરબા હતા. તે લોકો એ ઘર આગળ પડેલા વાઠનો ઉધા કરી તેને પેટ્રોલ છાટી સળગાવી દીધેલ. હુ આ બધુ જોઈ ગભરાઈજતા જાફરી સાઠેબ ના ઘરમાં જતો રહેલ. આ ટોળુ બધું સળગાવતા જાફરી સાદેબ ના ઘર પાસે આવેલ. તે સમયે મારા મોટાભાઈ અનવરખાન એહસાન જાફરી ના ઘરના ઓટલે બેઠા હતા તે પગે અપંગ હતા અને ચાલી શકતા નહતા. તેમને કૈલાશ ધોબી એ તલવાર મારેલી. મારા ભત્રીજા અસલમ ખાને તે સમયે તલવાર રોકવા જતા તેના હાથ

ની આંગળી ઓ પર તલવાર ની ઈજા ઓ થયેલ.તે પછી મારા ભાઈ ને આ લોકો ખેંચી ગયેલા અને તેમને મારી નાખેલા. તે પછી ટોળા એ સળગતા કાકડા જાફરી સાઠેબ ના ઘરમાં ફેંકેલા. આ લોકો બુમો પાડતા હતા કે, જાફરી સાઠેબ ને બહાર કાઢો. ટોળા એ કાકડા ઘરમાં નાંખતા ઘરમાં આગ લાગવા લાગેલી. આગ લાગી ધુમાડો થઈ જતાં ઘરમાં બૈરા અને છોકરાઓ ગભરાઈ ગયેલા અને ચીસો પાડવા લાગેલા. તે સમયે ઘરમાંથી ફીરદોસ બાનુ નામની છોકરી ઘરની બહાર નીકળી ગયેલ. સાથે સેઠજાદ અલી જેબુનબેન પણ બહાર નીકળ

ેલા જેને ટોળા એ મારી નાખેલા. આ લોકોને મારી નાખવામાં કૈલાશ ધોબી, નારણચેનલવાળો, રમેશ ચોટી, મનીષ જૈન હતા. આ છોકરી ઓ ને મારી નાખેલી. "

43. It is pointed out by Shri Kodekar that the witness has clearly disclosed that he is unable to identify Manish Jain (A-38) and further stated that he was an eye-witness to the incident since he was standing near the window inside the residence of Shri Ehsan Jafri. The witness has further deposed that thereafter, he went away into another room where he saw Shri Ehsan Jafri attempting to call up on telephone the Police as also a Minister (the 'Mantri'). exact words used is The witness has deposed that no assistance came to the help of and rescue of the residents of Gulbarg Society. The witness has further deposed that, that room also catching fire on account of started which the witness went into the kitchen where lot of persons had gathered of whom PW-106 Imtiyaz and Rupaben (PW-

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107) were also present. The witness claims that at that point of time, Shri Ehsan Jafri also came in and started pleading to he mob and requested and begged them not to kill innocent persons. The mob, according to this witness, responded by abusing Shri Ehsan Jafri and telling him to come out and at this point of time, according to the witness, Shri Ehsan Jafri addressed the crowd and said that if by my coming out and by your killing me, you would be satisfied, then you can do so, but please do not kill the others. The witness claims that at that point of time, he (PW-116) and Rupaben (PW-107) pleaded Shri Ehsan Jafri to not go out, but Shri Ehsan Jafri responded by saying that he has no other choice but to go out and upon his going out, the mob dragged away Shri Ehsan Jafri and started beating him up. The witness claims to have heard the mob shout words inter alia to the effect that "We have caught hold of Jafri". The witness has positively Channelwala (A-43), named Naran Ramesh Choti (absconding accused), Manish Jain (A-38) and Krishna, son of Champaben (A-34) as being the persons who dragged away Shri Ehsan Jafri. The present witness has in fact positively identified accused No.34 being Krishna, son of Champaben in the Court also. The witness has deposed that thereafter, the witness and other four to five persons ran away and tried to hide in the toilet of residence of Shri Ehsan Jafri located at the rear portion of the bunglow. The witness claims that at that point of time, the wife of his nephew being one Sajedabanu

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(missing) and her son Sadabkhan (missing) and also one unknown lady together with Yusufkhan being the son of the owner of Ankur Cycle Shop, all tried to hide in the toilet and locked the door from inside. According to the witness, three persons attacked the door with swords but they could not break open the door. The three persons are positively named as Dinesh Prabhudas Sharma (A-63), Lala Yogendrasing (A-2) and Lakhia (A-46) whom the witness claims to have identified and seen from the jaali on top of the toilet. It is the testimony of this witness which further states that these persons caught hold of an axe and using the same, could break open the door of the said toilet. The witness PW-116 has deposed that at that point of time, he went away deep inside the toilet and other persons were dragged away by the mob. Accused No.63, according to the witness, is claimed to have killed Sadabkhan, Yusufkhan whereas accused Nos.46 and 2 are said to have torn open the clothes of the ladies, raped them and thereafter killed them. The witness claims to have seen all these from the jaali of the toilet. The witness thereafter claims to have run inside a toilet in the residence of Shri Ehsan Jafri and claims to have locked the door from within and he remained there till about 5:00 PM when he heard loud explosions and realized that the Police has come over and on account of which he came out and he saw that a large force of Police personnel was present at that point of time. The witness claims that at that point of time, he saw the dead bodies of

Sajedabanu and an unidentified lady, Yusufkhan as also the dead body of Sadabkhan. All the dead bodies were naked according to this witness. The witness further testifies that he covered the naked dead bodies of the ladies and the witness has testified that all the persons were killed by sword blows. On coming out of the by-lane of the Society, the witness claims to have seen the dead bodies of other residents of Gulbarg Society of whom the witness has specifically mentioned the names of Sahejadali and Anwarkhan as also Firdosbanu.

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44. Drawing my attention to paragraph-17 (reproduced verbatim herein below) of the testimony, Shri Kodekar points out that of the Police personnel present at that point of time, the witness has specified that he read the name of Mr.M.K.Tandon on identity badge of the Police officer the and therefore, requested Shri Tandon to call for the Fire Brigade to put out the flames in the house of Shri Ehsan Jafri. He has testified that at this Tandon answered that the whole of Shri stage, Ahmedabad is burning and therefore, no such Fire Brigade can be brought over and the witness has testified that Shri Tandon further said to the witness he should worry about himself and not worry about others.

"૧૭. ત્યાં પોલીસ આવેલી તેમના એક ઓફીસર સાથે મે વાત કરેલ તેમણે પહેરેલ કપડા પર પટી હતી તેમા એમ.કે.ટંડન લખેલ હતુ. મેં ટંડન સાહેબ ને જણાવેલ કે, સાહેબ જાફરી સાહેબ ના ઘરમાં આગ

ચાલુ છે તમે બંબો બોલાવી ઓલવવાની વ્યવસ્થા કરો. ત્યારે ટંડન સાઠેબે એમ જણાવેલ કે, આખુ અમદાવાદ ભડક બળે છે. એટલે કોઈ ફાયર બીગેડ કે લાય બંબો આવશે નઠી. પછી તેમણે કઠેલ કે, તમે તમારી ચીંતા કરો બીજાનુ છોડો."

44. The witness has, according to Shri Kodekar, testified that all the surviving residents of Gulbarg Society were gathered and made to sit in Police vehicles with an intention to take them to safety. The witness has deposed that however, even at such point of time, there was continuous stone pelting and in fact the vehicle in which the witness was seated, also had its window shattered by the stone pelting. The witness claims to have stayed at place of incident till about 6:30 PM and the therefrom they were ferried to the Shahibaug Police Station in the Police vehicles. Shri Kodekar submits it. is significant that the witness that has testified in paragraph-18 (reproduced verbatim herein below) on page-17 of his testimony inter alia to the effect that even at this stage, it was on account of the entreaties of Mr.Pathan to Mr.Tandon to order firing to prevent further stone pelting and killing of survivors and only at this stage, according to the witness, the orders to fire were given. The witness has further testified that the first taken Shahibauq survivors were to Police Station, hour kept there for an or so and thereafter, were taken to refuqee shelter at

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Dariakhan Ghummat.

"૧૮. તે પછી સોસા. માં બધા ભેગા થયેલા. પોલીસ ની ગાડીઓ આવેલી. તેમાં અમને બેસાડેલા. એ વખતે પણ ટોળુ ખુબ હતુ અને ગાડી ઓ પર પથ્થરમારો કરતુ હતુ. હુ જે ગાડીમાં બેઠો હતો તેનો ડ્રાઈવર ગાડીમાંથી નીચે ઉતરી ગયેલ. તે ગાડી નો આગળ નો કાચ પથ્થર વાગવાથી તુટી ગયેલ હતો. અમે ત્યાં સાંજ ના છ સાડા છ સુધી રોકાયેલા હત. ત્યાંથી અમને શાહીબાગ પો.સ્ટે. લઈ ગયેલા. અમે ગાડીઓમાં બેઠા હતા ત્યારે પથ્થરમારો થતો હતો ત્યારે પઠાણ સાહેબે ટંડન સાહેબ ને એમ કહેલ કે, સાહેબ ફાયરીંગ નો ઓર્ડર આપો નહી તો ટોળુ ગાડી ના માણસો ને મારી નાખશે પછી પોલીસે ફાયરીંગ કરેલ. તે પછી ગાડી ઓની બે સાઈડે પોલીસ ચાલતી હતી અને અમારી ગાડી ઓ બહાર કાઢી શાહીબાગ પો.સ્ટે. લઈ ગયેલ. ત્યાં અમને એક કલાક બેસાડી રાખેલા અને તે પછી અમને દરીયાખાન ઘુમટ લઈ ગયેલા. ત્યાં રાહત છાવણી હતી. "

44. It is pointed out that the witness has testified that he lost seven members of his family in the incident and his house suffered considerable damage. The witness has claimed that on 02/03/2002, the dead bodies of the victims of Gulbarg Society were brought over to the refugee camp for the final rites and the witness was asked to identify the dead bodies which he could not do so on account of ill health and he, therefore, sent his son Imtiyaz (PW-106) to identify the dead bodies. The witness has deposed that PW-106 Imtiyaz came back and stated that the dead bodies could not be identified because of deterioration in the condition of the dead

bodies.

45. The witness has further deposed, Shri according to Kodekar, in paragraph-21 (reproduced verbatim herein below) of his testimony, as to how he gave statements at Dudheshwar Police Chowky on 05/03/2002, two further statements on 11/03/2002 and another statement on 09/05/2002. The witness according to Shri Kodekar, has testified that after three four months therefrom, to the witness came to know that the statements were not recorded properly and in fact the names narrated by the witness were not mentioned in his statements and therefore, the witness and others contacted an testified Advocate it is that Advocate and Dawoodbhai Desai was contacted who drafted an affidavit which was sworn by the witness and an forwarded application which the Police was to Commissioner and a copy thereof was endorsed to the Meghaninagar Police Station.

"૨૧. તા.પ/૩/૦૨ ના રોજ અમને દુઘેશ્વરચોકી એ જવાબ લખાવવા બોલાવેલા. ત્યાં અમે પોલીસ ને જવાબ લખાવેલ. તે પછી તા. ૧૧/૩/૦૨ ના રોજ મેં બે વખત જવાબ લખાવેલ. તે પછી તા. ૯ /૫/૦૨ ના રોજ મેં જવાબ લખાવેલ. મને ત્રણચાર મદીના પછી એવી જાણ થચેલ કે, મે જે જવાબ લખાવેલા તે બરાબર દતા નદી. મેં જે નામો લખાવેલા તેની જગ્યા એ બીજા નામો જવાબમાં દતા. પછી અમે ભેગા થઈ ને દાઉદભાઈ વકીલ ની સલાદ લીઘેલ. તેમણે અમને એફીડેવીટ કરવા અને અરજી લખી એક કમીશ્નર ને આપવા અને એક મેઘાણી નગર પી.આઈ. ને આપવા જણાવેલ. જેથી મે નવમા મહીના માં અરજી કરેલ. મેં સોગંધનામુ કરેલ તેની તારીખ મને ચાદ નથી. આ બધુ અમે દાઉદભાઈ વકીલ ને આપેલ તે તેમણે મોકલી દીધેલા. "

46. The witness has further testified, according to Shri Kodekar, that number of NGOs had started visiting the refugee camp and had started advising the survivors and the survivors including the present witness realized that they would not secure justice and therefore, approached the Hon'ble Supreme Court, as deposed by the witness. The witness also claimed to have given two statements to the Crime Branch wherein the fact of the witness being threatened was also disclosed. The witness, according to Shri Kodekar, corroborating the testimony of PW-106, has testified that the Hon'ble Supreme Court ordered the appointment of a Special Investigation Team and the witness claims to have given a number of statements before such S.I.T. The witness also claims to have been interrogated at the office of the S.O.G. at Juhapura but no statement of the witness was recorded in the office of the S.O.G. The witness claims to have signed such statements, more particularly a statement which was computerized and dated 25/11/2002. It is pointed out by Shri Kodekar that the witness has categorically named seven members of his family who had lost their lives in the incident and such names are contained in paragraph-25 (reproduced verbatim herein below) of his deposition. The witness has also claimed that

the residence of the witness has been damaged to the tune of Rs.4,00,000/- to Rs.5,00,000/- and the entire property sustained damages which could be quantified at Rs.15 lakhs.

"રપ. મારા કુટુંબ ના માણસોનુ આ બનાવ માં મરણ થયેલ તેમના નામ નીચે મુજબ છે.

- ૧. મારી બા ખેરુનીશા એઠમદખાન
- ર. મોટાભાઈ અનવરખાન એઠમદખાન
- મારા પત્ની જોહરૂનીશા સઈદખાન
- જ. મારા નાના ભાઈ ના પત્ની જમીલાબાનુ રસીદખાન
- પ. મારો ભત્રીજો અખ્તરખાન અનવરખાન.
- મારી ભત્રીજા વઠુ સાજેદાબાનુ અખ્તરખાન.

તેનો પુત્ર સાદાબખાન અખ્તર ખાન.

આ સાત જણા ને મેં બનાવ પછી આજદીન સુધી જોચા નથી કે તેમના વીશે કાંઈ સાંભળેલ નથી. મારા મકાન ને રુ. ચાર થી પાંચ લાખ નુ નુકસાન થયેલ છે. અને આખા મકાન નુ થઈ અંદાજે રુ. પંદર લાખ નુ નુકસાન થયેલ છે."

Winding up on the testimony of this 47. witness, Shri Kodekar submits that this witness too deposed in a fashion which is natural, his has presence at the scene of incident was natural and his testimony largely corroborates the testimony of PW-106 and this witness also has neither exaggerated nor has given a colourful version of the incident. It is pointed out that the witness has come out as truthful his testimony is required to and be

is submitted that believed and it even this testimony establishes beyond reasonable doubt the charges against the accused. It is submitted that the present witness also has in the course of his ingredients testimony, established that the of Secs.143, 147, 149 read together with Sec.302 and 324 of the Indian Penal Code are established as also the other relevant provisions of the Indian Penal Code which were established in the course of testimony of PW-106. It is submitted that the combined weight of these two testimonies goes to a great extent in proving the charges against the concerned accused.

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The PW-116 has in the course of his 48. further testimony page-69, paragraph-85 on verbatim (reproduced herein below), positively identified, according to Shri Kodekar, accused No.65 who was arraigned and brought on the record at a later stage and subsequent to the examination-inchief of the said witness. It is, therefore, submitted by Shri Kodekar that such identification cannot be prejudicial to the defence and is required to be treated as a good identification and required to be treated as valid.

"૮૫. દું કોર્ટમાં દાજર આરોપી રાજેશ જીંગરને ઓળખી બતાવુ છુ. આરોપીને તેનુ નામ પુછતા પોતાનુ નામ રાજેશ જીંગર દોવાનુ જણાવે છે."

49. Shri Kodekar now draws my attention to the testimony of PW-283 being one Aslamkhan Anwarkhan Pathan whose testimony is on the record of

the proceedings at Exh.981. It is submitted that this witness is also an injured eye-witness and his testimony is also required to be read and narrated at length as a part of the submissions of the Prosecution so as to enable the Prosecution to bring about the correct picture of the sequences of the incident that took place on the fateful day.

50. This witness, according to Shri Kodekar has testified in his opening lines inter alia to the effect that he was a resident of Bunglow No.18 of Gulbarg Society at the relevant point of time and that he was residing with his mother Jetunbibi, father Anwarkhan grandmother and Kherunnisa as also his uncle Rashidkhan, aunt brother Akhtarkhan, Jamilaben, sister-in-law Sajedabanu and Sadabkhan being the son of Akhtarkhan and Sajedabanu. The witness has further testified that his wife's name was Sairabanu, son Ejaz and daughters Suzane and Sophia, all of whom were residing together at the relevant time in Bunglow No.18 of Gulbarg Society.

51. Shri Kodekar submits that the witness PW-283 has fully corroborated and supported the testimonies of PWs 106 and 116 inasmuch as, the incident regarding Ankur Cycle Works and stabbing of Ayub is concerned. It is submitted that in para-3 (reproduced verbatim herein below) of the testimony, this witness clearly testifies that the owner of said Ankur Cycle Stores Habibkhan and his sons Ayub

and Yusuf were present at the shop when at about 10:30 AM on 28/02/2002, about seven or eight persons came on motorcycles and scooters and started having an altercation with the said Habibkhan and his sons. The witness has testified that one of the sons Yusuf was slapped and he, therefore, ran away towards Gulbarg Society to take shelter whereas the other son Ayub was stabbed by five or six persons with a gupti on is back. The witness claims to have been standing on his terrace and therefore, claims to have seen the entire incident from such position.

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"3. તા.૨૮/૨/૦૨ ના રોજ સવાર ના દસ સાડાદસ વાગ્યાના સુમારે અમારી સોસા. ની સામે અંકુર સાયકલ સ્ટોર્સ આવેલછે તેના માલીક હબીબ ભાઈ અને તેમના દીકરા અયુબ અને યુસુફ દુકાને હાજર હતા ત્યારે સાત થી આઠ માણસો સ્કુટર અને બાઈક પર આવીને તે લોકો સાથે જીભાજોડી કરી હતી તેમાંથી એક જણાએ યુસુફ ને લાફો મારતા યુસુફ દોડીને સોસાં આવી ગયેલ. તે પછી તેના ભાઈ અયુબ ને આ પાંચ છ જણાં પૈકી તેના બરડા ના ભાગે ગુપ્તી ના ઘા મારેલા હતા. તે સમયે હુ મારા ઘરના ધાબા પર હતો અને ત્યાંથી મેં જોયેલ."

52. Reading the testimony of the witness, Shri Kodekar has submitted that the witness has in testimony, the course of his short inter alia supported the versions supplied by PWs 106 and 116 inasmuch as, the witness has given a clear sequence of events as to how the mob entered the Society and how his father was assaulted with a sword and how he i.e. the witness sustained injuries while attempting to protect his father. The loss suffered by the

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witness in terms of death of his family members is also described in detail by the witness in his testimony, according to Shri Kodekar. My attention specifically drawn to paragraph-6 (reproduced is verbatim herein below) of the testimony of the witness, wherein it is testified by the witness *inter alia* to the effect that at about 1:30 PM a mob had gathered and had demolished the rear compound wall of the Society and had also broken open the lock of the front gate of the Society. The mob pelting stones towards the Society and pelting stones more particularly from Bunglow No.1 of the Society is also clearly testified by the witness in paragraph-6 of the deposition.

"૬. તે પછી જોત જોતામા સોસા. પર બે બાજુ થી પથ્થરમારો શરુ થયેલ. તે પછી બપોરના એક દોઢ વાગ્યાના અરસામાં ટોળાએ પાછળનો કોટ તોડવાનુ શરુ કરેલ. જેથી અમે જાફરીસાહેબ ને ટોળુ કોટ તોડવાની કોશીશ કરી રહેલ છે તેમ જાણ કરેલી. તે પછી ટોળાએ સોસા. ના આગળના એક નંબર ના ગેટ ને મારેલ તાળુ તોડી નાંખેલ. ટોળુ પથ્થરમારો કરતું હતુ અને ધાબા નંબર એક પરથી પણ પથ્થરમારો ચાલુ હતુ."

53. Drawing my attention to paragraph-7 (reproduced verbatim herein below), Shri Kodekar has submitted that the witness has in the course of his deposition, narrated the disturbing events that took place at about between 2:00 PM and 2:30 PM when the mob entered into the Society from both sides and it is corroborated that the wife and children as also other relatives of the witness were inside the

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residence of Shri Ehsan Jafri. The witness has clearly testified that the mob was armed with weapons like swords, guptis and sticks. The father of the witness at that stage, was sitting on the 'Otta' of Shri Ehsan Jafri's residence when in terms of testimony of the witness the on page-5, paragraph-7, the witness has clearly testified that Kailash Dhobi (A-1) gave a sword blow on the neck of his father and on receiving such blow, the father of witness fell down. The witness has further the testified that at that stage, the witness and his brother Akhtarkhan had attempted to shift their injured father into the residence of Shri Ehsan Jafri but at that point of time, somebody whom the witness cannot identify, gave a sword blow which inflicted injuries on the hand of the present witness. It is submitted by Shri Kodekar that the person inflicting such injuries is testified as being a part of the mob who was with Kailash Dhobi (A-1) at that point of time. The witness claims to have sustained injuries in the fingers of his left hand and claims to have taken shelter in the residence of Shri Ehsan Jafri at that point of time. તે પછી આશરે બેથી અઢી વાગ્યા ના સુમારે બંને બાજુ "৩. થી ટોળુ સોસા. માં આવી ગયેલ. તે સમયે મારા પત્ની બાળકો વગેરે જાફરીસાદેબ ના ઘરમાં જતા રદેલ અને અમે બહાર ઉભા રદેલ. જે ટોળુ અંદર આવ્યુ તેની પાસે હથીયારોમાં, તલવાર, ગુપ્તી, લાકડીઓ વગેરે હતું. તે સમચે મારા બાપુજી જાફરીસાદેબ ના ઓટલા પાસે બેઠેલા હતા. તે દરમ્યાન ઝપા ઝપીમાં મારા બાપુજી ને કૈલાશ લાલચંદ ધોબી એ તેમના ગળા ના

ભાગે તલવારનો ઘા મારતા મારા બાપુજી પડી ગયેલા. તે પછી હું અને મારો ભાઈ અખ્તરખાન અમે અમારા બાપુજી ને મકાનમાં અંદર ખેંચવા જતાં તે દરમ્યાન જાફરીસાદેબ ના ઘરના બારણા માંથી કોઈ અજાણ્યા શખ્શે મારા દાથ પર ઘા કરેલા. તે ટોળાના માણસો કૈલાશ ધોબી સાથે દતા. મને મારા ડાબા દાથની આંગળી પર તલવારનો આ ઘા વાગેલ. તે પછી હું અને મારો ભાઈ જાફરીસાદેબના મકાનમાં અંદર જતાં રહેલા. તે સમયે મને પાછળથી કોઈએ અંદર ખેંચી લીધેલ."

54. It is pointed out that the witness has testified in paragraph-8 (reproduced verbatim herein below) of his testimony that the dead body of his father was set afire by the mob and the residence of Shri Ehsan Jafri, according to this witness, was surrounded on all sides and the mob started pouring petrol, kerosene and some other inflammable liquid in the residence of Shri Jafri and set the residence on fire. The witness has testified that on account of the ensuing smoke and feeling of suffocation, the grandmother of the witness i.e. Kherunnisa (missing and presumed dead), brother Akhtarkhan (missing and presumed dead), aunt Jamilaben (missing and presumed dead), sister-in-law Sajedabanu (missing and presumed dead) and nephew Sadabkhan (missing and presumed dead), all rushed out of the residence and it is testified by this witness who claims to be an eye-witness, that he saw all such family members being hacked to pieces by the mob and after being brutally killed in such fashion, the dead bodies of such family members of the witness were thrown into

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the garden of Shri Ehsan Jafri's residence.

"૮. પછી આ ટોળાએ જાફરીસાઠેબ ના ઘર આગળ હતા તેમને પણ મારા બાપુજી સાથે જ મારી કાપીને સળગાવી દીધેલા. અને ટોળાએ જાફરીસાઠેબ ના મકાનમાં ચારેબાજુ થી પેટ્રોલ કેરોસીન અને કોઈ પ્રવાઠી છાંટી સળગાવી દીધેલ. આગ લાગતાં ગુંગળામણ થતાં અમો, મારા દાદી ખેરૂનીશા, મારોભાઈ–અખ્તરખાન, મારા કાકી–જમીલાબાનુ, મારાભાભી–સાજીદાબાનુ, મારો ભત્રીજો– સાદાબખાન ના બધા ગુંગળામણ ના લીધે બહાર ભાગવા જતાં ટોળાના માણસોએ તેમને બહાર મારી કાપીને જાફરીસાઠેબ ના બગીચામાં ફેંકી દીધેલા. "

55. It is pointed out that the witness, in terms of his testimony in paragraph No.9 (reproduced verbatim herein below) claims to have taken shelter in the residence and more particularly a small room of the residence of Shri Ehsan Jafri and therefrom gone out to the first floor of the residence and had seen two accused Girish and Jayesh Parmar of whom said Girish is an absconding accused, and Jayesh Parmar is on the record as accused No.41, who, in terms of the testimony of this witness, such two persons were removing the ornaments from the dead bodies of his sister-in-law and mother. The dead body of his mother Jetunbibi was in a charred condition and at that point of time, according to the testimony of the witness, more particularly on page-7, paragraph-9, the son of the witness was able to escape from the scene of the incident. The witness has further testified that thereafter the witness, his wife and children went up on the first

floor of the residence of Shri Ehsan Jafri whereat Shri Ehsan Jafri's wife, her sister and brother-inlaw as also two to three unidentified persons, also came up to the first floor portion of the residence of Shri Ehsan Jafri. The witness claims to have at that point of time seen a number of dead bodies in a charred and semi-charred condition from such portion of the residence of Shri Ehsan Jafri.

"૯. તે પછી જાફરીસાઠેબ ના મકાનના નાના રૂમમાં જઈ પાછળના બારણે થી દાદરા વાટે પઠેલા માળે જતા રઠેલા. તે રીતે અમે દાદરા પર થી જતાં ઠતા ત્યારે ગીરીશ અને જયેશ પરમાર, એ લોકો મારા ભાભીના અને મારા બા ના શરીર પરથી દાગીના કાઢતા ઠતા. તે સમયે મારા બા જેતુનબીબી શરીરે દાઝી ગયેલ ઠતા. તે સમયે મારો બાબો મારા બા સાથે પરંતુ તેનો ઠાથ છુટી જતાં મારો બાબો ત્યાંથી નીકળી ગયેલ. તે પછી અમે જાફરીસાઠેબના મકાનમાં ઉપરના માળે જતાં રઠેલ જેમાં ઠુ, મારા પત્ની, મારા બાળકો ઠતા. જયાં ઉપર જાફરીસાઠેબ ના પત્ની અને તેમના સાળી તથા તેમના સાઢુ ઠાજર ઠતા તદઉપરાંત બીજા બે ત્રણ અજાણ્યા માણસો પર ઉપર આવી ગયેલ. "

56. Drawing my attention to paragraph-11 (reproduced verbatim herein below) of the testimony of the witness, Shri Kodekar submits that the witness claims that at about 3:45 PM and 4:00 PM, the Police came over to the scene of the incident and firing took place as also teargas shells were released by the Police to disburse the mob which ran away and according to the witness at such point of time, the witness claims to have thereafter come

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dead when he the bodies of down saw Yusuf, Sajedababu i.e. sister-in-law of the witness, nephew Sadabkhan and one dead body of an unidentified female. Coming further out of the said property, the witness claims to have seen near a neem tree dead bodies of his aunt Jerunnisa and unidentified bodies of two to three other family victims. The witness has testified that when he came to his residence, he saw Mr.M.K.Tandon standing near his residence and the witness in terms of his testimony on page-8, paragraph-11, claims to have questioned Shri Tandon about the safety of the surviving residents of the Gulbarg Society, when he was assured according to the witness, by Shri Tandon that all of you would be saved and in the circumstances, all survivors who were hiding in the Gulbarg Society were told to come out and were attempted to be escorted to safety in Police vehicles which were brought over for such The Police made them sit in the Police purpose. vehicles and they were escorted to safety.

"૧૧. તે પછી સાંજના પોણાચાર થી ચાર વાગ્યાના સુમારે પોલીસ ત્યાં આવી ગયેલ અને પોલીસે આવીને ફાયરીંગ કરતાં તેમજ ટીયરગેસ ના સેલ છોડતાં ટોળુ નાસી ગયેલ. તે પછી અમે નીચે આવ્યા ત્યારે બગીચામાં અંકુર સાયકલવાળો યુસુફ, મારા ભાભી સાજીદાબાનુ, મારો ભત્રીજો સાદાબ અને એક અજાણી સ્ત્રી ની લાશો ત્યાં પડેલ હતી અને ત્યાંથી બહાર આવતા એક લીમડાના ઝાડ નીચે મારા કાકી જેહ્રુનીશા અને બીજા બે ત્રણ અજાણી સ્ત્રીઓની લાશ પડી હતી. ત્યાંથી અમે અમારા ઘર પાસ આવ્યા ત્યારે ત્યાં એમ.કે.ટંડન સાહેબ મારા ઘર પાસે ઉભેલા હતા. પછી મેં

તેમને અમારા બચેલાઓનું શું તેમ પુછતાં તમે બચી જશો તેમ જણાવેલ. અને મકાનોમાં સંતાચેલા બચેલાઓ બધા બહાર આવ્યા. એટલે પોલીસે અમને લઈ જવા માટે ગાડીઓ બોલાવેલી. ગાડીઓ આવતાં અમને બચેલા તમામને પોલીસે રક્ષણ ઠેઠળ ગાડીઓમાં બેસાડેલા."

57. The witness according to Shri Kodekar, has further testified in paragraph-12 (reproduced verbatim herein below) inter alia to the effect that even such Police vehicles wherein such survivors were being taken to safety, were attacked by the mob and the Police had to resort to firing even at such point of time. The witness claims to have been firstly brought to the Shahibaug Police Station and therefrom to the refugee shelter at Dariakhan Ghummat. The claims his witness that mother Zebunbibi was with him in an unconscious and badly burnt condition. The witness claims that thereafter, the witness, his mother and four to five others were taken over to the V.S.Hospital for treatment of the injuries. The mother of the witness was admitted as an indoor patient and her statement was recorded by the Police officers but at that point of time, the condition of his mother was such that she could not speak or identify any person. The witness claims to have been given treatment at V.S.Hospital for his injured hand and thereafter, he claims to have come back to the refugee shelter.

"૧૨. તે પછી અમને લઈ જતાં હતા ત્યારે આ ગાડીઓ પર પથ્થરમારો કરેલ. જેથી પોલીસે ફાયરીંગ કરેલ. અને પછી

અમોને શાઠીબાગ પો.સ્ટે. લઈ ગયેલા. ત્યાંથી અમને દરીયાખાન ધુમટરાહતકેમ્પમાં લઈ જવામાં આવેલા. આ રાહત કેમ્પમાં મારી સાથે મારા બા–જેતુનબીબી અનવરખાન પઠાણ, દાઝી ગયેલા અને બેઠોશ હાલતમાં હતા. ત્યાંથી હું મારા બા, અને બીજા ચાર પાંચ જણા વી.એસ. હોસ્પી. માં સારવાર માટે ગયેલા. ત્યાં સારવાર માટે મારા બા ને દાખલ કર્ચા ત્યારે ત્યાં પોલીસવાળાએ આવીને મારો બા નો જવાબ લીધેલ. તે સમયે મારા બા કોઈને ઓળખતા ન હતા અને બોલી શકે તેમ ન હતા. મારા હાથ ની સારવાર લઈ પછી અમે સવાર ના ત્રણ ચાર વાગ્યા ના અરસામાં રાહતકેમ્પ પર પાછા કરેલા."

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58. Drawing my attention to paragraph-13 (reproduced verbatim herein below) of the testimony, Shri Kodekar points out that this is significant and vital inasmuch as, the witness has positively identified Kailash Dhobi (A-1) and Jayesh Parmar (A-41) in the court and such identification is positive. According to Shri Kodekar, the witness is witness inasmuch truthful as, since the а absconding accused Girish was not available in the Court, he could not identify him. A third person being Bipin Ambalal Patel (A-60) is also positively identified by the witness in terms of his testimony in paragraph-13 on pages 9 and 10.

"૧૩. હું કૈલાશ ધોબી, ગીરીશ અને જયેશ પરમાર ને ઓળખી શકુ. હું કોર્ટમાં હાજર આરોપીઓ પૈકી આરોપી કૈલાશ ધોબી ને ઓળખી બતાવુ છુ. આરોપીને તેનુ નામ પુછતાં કૈલાશ ધોબી હોવાનુ જણાવે છે. કોર્ટમાં હાજર આરોપીઓમાં ગીરીશ નથી. હું કોર્ટમાં હાજર

આરોપીઓ પૈકી જચેશ પરમાર ને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતાં જચેશ પરમાર દોવાનુ નામ જણાવે છે. મેં તલવાર વાગતાં મને ઈજા થચેલી તે તલવાર મારનાર ને ચદેરાથી ઓળખી શકુ. દું કોર્ટમાં દાજર પૈકી ચદેરાથી જેની તલવાર થી મને ઈજા થચેલ તેને નામથી ઓળખી બતાવુ છુ તેનુ નામ પુછતા બીપીન અંબાલાલ પટેલ દોવાનુ જણાવે છે. બીજા અજાણ્યા માણસને ઓળખી શકતો નથી. "

59. Drawing my attention to paragraph-14 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness has positively stated that in this incident, he saw his grandmother Kherunnisa. father Anwarkhan, aunt Jamilabanu, Akhtarkhan Anwarkhan, sister-in-law Sajedabanu and nephew Sadabkhan as being killed in the carnage. The witness has further testified that the dead body of the father of the witness being one Anwarkhan was identified and given its final resting whereas the dead bodies of other persons stated above, are as yet not traceable.

"૧૪. આ બનાવમાં મારા દાદી ખેરૂનીશા, મારા બાપુજી–અનવરખાન એઠમદખાન, ત્રણ–મારા કાકી– જમીલાબાનુ રસીદખાન, ચાર– મારાભાઈ અખ્તરખાન અનવરખાન, પાંચ–તેના પત્ની સાજીદાબાનુ, મારો ભત્રીજો–સાદાબખાન ના મુત્યુ નીપજેલા. આ પૈકી મારા પિતાજી અનવરખાન એઠમદખાન ની લાશ મળેલી અને બાકીનાઓની લાશ

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on 11/03/2002 as also on 03/04/2002. He has further testified that no statement in Hindi was ever given by the witness on 17/03/2002 or ever at all. The witness claims to have been summoned by the S.I.T. at Juhapura SOG office and he was interrogated with regard to his statements and the witness claims that no such application dated 17/03/2002 was given by him. The statement dated 10/06/2002, according to the witness, was recorded by the Crime Branch and which was admitted. It is submitted that this witness also should be believed, there is no reason to discard his testimony and the witness has provided full corroboration and support to the testimonies of the two injured eye-witnesses and there is no reason to disbelieve this witness. It is pointed out that the injury certificate of the present witness issued by the V.S.Hospital is on the record of proceedings at Exh.603 which also corroborates the entire version of the witness, establishes his presence and his having suffered injuries at the time of incident. It is submitted that the witness has positively identified three incident including Accused perpetrators of the Nos.1, 41 and 60 and therefore, this witness should be believed and should be accepted as having successfully corroborated and supported the Prosecution case.

61. Shri Kodekar draws my attention to the testimony of PW-284 being one Mohammad Sharif Nasiruddin Shaikh whose deposition is on the record

proceedings at Exh.987. The of the witness, according to Shri Kodekar, was a resident of Bunglow No.17 of the Gulbarg Society at the time of the incident residing which his and was mother Ayeshaben, wife Nasrinbanu (killed in the incident), elder daughter Nilofer (killed in the incident), younger daughter Farha (killed in the incident), son Sahil at the relevant point of time. The witness claims to be carrying out repairs of TV and Fridge and electrical items from a shop named as "White House" and another shop opposite Patninagar Society in the name and style of "Diamond House Traders". The shop known as "White House" was located at the Gulbarg Shopping Centre.

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62. Shri Kodekar has pointed out that the witness cannot be exactly construed as an eyewitness with regard to the death of his family members but was an eye-witness upto a relevant point of time in terms of his testimony. It is pointed out by Shri Kodekar that the witness has also lost a large number of members of his family including his wife and two daughters and he has neither distorted his version nor has exaggerated in any manner as would make him a witness whose testimony cannot be relied upon. It is submitted that the testimony is reliable and to a great extent corroborative to the versions of the other eye-witnesses.

63. My attention is pointed out to the testimony of the witness in terms of paragraphs 3

(both reproduced verbatim herein 4 below) and wherein the witness has claimed about the wholesale damage being caused to the vehicles by the mob, a fact which is testified and corroborated by other fact attention is drawn witnesses. My to the contained in paragraphs 3 and 4 of the testimony, when the presence of a Police party is testified to and the fact of the Police party attempting to put out the fire to the vehicles is testified to by the leading such Police witness, person party is identified by the witness who claims that the person identified was so identified by Shri Ehsan Jafri to be the Commissioner of Police. The witness has further stated that he was told by Shri Ehsan Jafri that Police protection was promised.

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"3. બંધના દીવસે સવારના દસ થી સાકાદસ વાગ્યા ના સુમારે રોક પર હોહા થચેલ. જેથી હું જોવા માટે રોક પર ગચેલ. જે અમારી સોસા. ના નાના ઝાંપા પાસે વચમાં જગ્યા છે ત્યાં હું ઉભેલો. મેં જોયુ તો ત્યાં દસ થી પંદર માણસો મોટરસાચકલ પર આવેલા. તેમણે એક રીક્ષા ખેંચી ને બાળેલી. તે પછી એક સ્કુટર ખેંચી ને સળગાવેલ. તે સમયે ત્યાં પોલીસ આવી ગચેલ. પોલીસે ટોળાને ભગાડીને સળગતા વાહનો ને પાણી નાખી ને બુઝાવેલા. ટોળુ ત્યાંથી ભાગીને રામચન્દ્ર કોલોની સામે જતું રહેલ. જે કોલોની પટણીનગર સોસા. ની સામે આવેલ છે. તે ટોળુ ત્યાં બસો થી અઢ ીસો માણસ નુ થયેલ હશે.

૪. ટોળુ તે જગ્યાએ ભેગુ થયુ ત્યારે શેખાવત ની દુકાન સામે પોલીસ ઉભેલી હતી. ટોળુ વધેલ અને મેં દુકાન દુરથી જોયુ મારી ડાયમન્ડહાઉસ નામે આવેલ દુકાન તોડતુ હતુ. મારી દુકાન નો બધો સરસામાન રોડ પર લાવીને બાળી નાખેલ. તે પછી એક ગાડીામાં પોલીસ આવેલ. જે કમીશ્નર હતા. હું સોાસ.માં આવી ગચેલ. જાફરીસાહેબ ને તેમણે બોલાવેલા. તેમની સાથે ત્રણ ચાર માણસો હતા. જાફરીસાહેબ ત્યાં ગચેલા અને પછી સોસા.માં પાછા આવેલા. તેમણે પુછતાં એમ જણાવેલ કે, કમી. સાહેબ અહીં આવેલા અને તેમને પુછતાં તેમણે પોલીસ બંદોબસ્ત મોકલશે તેમ જણાવેલ. તેમણે એમ પણ જણાવેલ કે તમે કોઈ જાતની ફીકર કરતાં નહી પ્રોટેકશન અમે મોકલીએ છીએ."

64. Drawing my attention to paragraphs 5 and 6 (both reproduced verbatim herein below) of the testimony of this witness, again the witness, according to Shri Kodekar, has testified with regard to the gathering of the mob near the Society and the destruction of shops and vehicles by the mob. The witness has more particularly in paragraph-5, page-4, clearly testified that there were some Police personnel present when such destruction took place but no attempts were made by the Police to stop the destruction of the shops. The witness claims to have been advised by the Police to go inside the Society which the witness has testified that he did so and claims that thereafter the Society was pelted by stones by a huge mob from both sides i.e. front side and rear side. In terms of paragraph-6 of the deposition, the witness testifies that the rear compound wall of the Society was being demolished by the mob and consequent thereto, the witness claims to have met Shri Ehsan Jafri when according to the

deposition of the witness in terms of paragraph-7 (reproduced verbatim herein below) of his testimony, the witness claims that Shri Ehsan Jafri specifically told him that he is attempting to call the Police and others but satisfactory up no responses were being made and Shri Ehsan Jafri felt that all the events were pre-planned.

"પ. તે પછી પોલીસ જતી રહેલ. પોલીસ ના ગયા બાદ ફરી થી રોડ પર છેઠા ચાલુ થયેલ. તે પછી હું ફરી બઠાર ગયેલ. ત્યારે મેં જોયેલ તો ત્યાં બે થી અઢી હજાર માણસ નુ ટોળુ થઈ ગયેલ. અને ટોળાએ દુકાનો ની તોડફોડ શરુ કરેલ જેમા કસાઈ ની દુકાન, બેકરી , સાયકલ ની દુકાનો માં તોડફોડ કરેલ. ત્યારે પોલીસ ત્યાં જ ઉભેલ હતી અને તેણે ટોળાને રોકેલ નઠી. તે પછી પોલીસ અમારી પાસે આવેલ અને અમને બધાને અંદર જતાં રઠેવા જણાવેલ. અમે સોસા. ની અંદર ઠતા અને સોસા. નો દરવાજો અંદર થી બંધ કરી દીધેલ. તે પછી ટોળુ રોડ પર વધતુ ગયેલ. પછી રેલવે ના પાટા પરથી પણ ટોળાના માણસો આવી ગયેલા. ટોળાએ પઠેલા પથ્થરમારો શરુ કરેલ. અને આગળ થી પણ પથ્થરમારો શરુ થઈ ગયેલ. આ વખતે સોસા. મા

નાસભાગ થઈ ગચેલ. તેમાં લાંબા સમય સુધી પથ્થરમારો ચાલુ રહેલ. ૬. તે પછી ટોળાએ સોસા.નો પાછળ નો કોટ તોકવાનુ ચાલુ કરેલ. ટોળાએ આગળ નો ઝાંપો પણ તોકેલ અને ત્યાંથી પણ માણસો અંદર ઘુસવા લાગેલા. તે સમયે મારા ઘરના બધા જાફરીસાહેબ ના ઘરમાં જતા રહેલા.

તે સમચે મારી જાફરીસાઠેબ સાથે મુલાકાત
 થચેલ. તેમણે મને એમ કઠેલ કે, મેં બધાને ફોન કરેલા છે. પરંતુ કોઈ
 જગ્યાએથી મને સંતોષ કારક જવાબ મળતો નથી. અને એવુ લાગે છે કે, આ

બધુ પ્લાન થીથચેલ છે. "

65. Referring to paragraph-8 (reproduced verbatim herein below) of the testimony of the witness, Shri Kodekar submits that the witness saw the mob setting afire bunglows No.2 and 3 of the Society and claims to have seen the mob throwing petrol bombs and burning embers on the Society and claims that there were shouts from the mob that "we shall kill all".

"૮. ટોળાએ અંદર ઘુસીને બે અને ત્રણ નંબર ના મકાન ને આગ ચાંપેલી. કોટ તોડેલ અને ત્યાંથી પણ ટોળુ અંદર ઘુસી ગયેલ. તે પછી તેમણે પેટ્રોલ બોમ્બ, સળગતા કાકડા નાખવાનુ શરુ કરેલ અને મારો

કાપો ની બુમો પાડતા હતા અને કહેતા હતા કે બધાને મારી નાખો. "

66. Drawing my attention to paragraph-9 (reproduced verbatim herein below) of the testimony of the witness, it is submitted that the witness claims that he ran towards bunglows No.18 and 19 of the Society and stood at an area between the two bunglows and he was accompanied at that point of time by his maternal uncle's son Imtiyaz i.e. PW-106 when he saw that two persons were firing from weapons from the terrace of the building wherein the House" of the present witness "White shop was situated. The witness has testified that he cannot identify such persons but has specifically stated that all this took place between 2:00 p.m. and 2:30 The witness in of paragraph-10 p.m. terms (reproduced verbatim herein below) of his testimony, claims to have positively identified accused Girish

Sharma (absconding) and another accused being one Sonu (A-21) who had curly hair. The witness has positively identified A-21 in the Court. According to Shri Kodekar, the witness is a truthful witness inasmuch he has clearly testified as, that thereafter he jumped the compound wall of the Society and made good his escape. The witness in terms of paragraph-11 (reproduced verbatim herein below) of his testimony, clearly admits that he has knowledge what no personal as to transpired thereafter and claims in terms of his testimony that the survivors of Gulbarg Society were given shelter at Dariakhan Ghummat refugee shelter which fact came to his knowledge at about 9:30 p.m. He has claimed to have gone to such refugee shelter where he saw his family members including his brother Imtiyaz, mother and son who had survived the incident where he was informed by his mother that his wife and two daughters were killed at the residence of Shri Ehsan Jafri. The witness also claims that his uncle Anwarkhan Pathan, maternal grandmother Kherunnisa, his wife Sajedabanu, Akhtarkhan, son Sadabkhan, uncle Rashidkhan, wife Jamilabanu and another uncle Shahidkhan's wife were all killed in the incident.

"૯. તે પછી હું દોડીને અઢાર અને ઓગણીસ નંબર ના મકાન ની વચ્ચે આવેલ. તે સમયે મારી સાથે મારા મામા નો દીકરો ઈમ્તીયાઝ હતો. ત્યાં વ્હાઈટહાઉસ ના મકાન ના ધાબા પરથી બે માણસો ફાયરીંગ કરતાં હતા. જે સોસા. તરફ ફાયરીંગ કરતા હતા. હું તેમને ઓળખી શકેલ નહી. આ બધુ બપોર ના બેથી અઢી વાગ્યા ના સમય દરમ્યાન ચાલેલ.

૧૦. મેં ટોળામાં ગીરીશ શર્મા ને જોચેલ તેના હાથમાં કેરબો હતો. બીજા એક સોનુ ઘુંઘરુવાળવાળાને જોચેલ જેના હાથમાં તલવાર હતી. ટોળુ તે પછી અંદર વધી ગચેલ. જેથી હું સોસા. નો કોટ કુદીને બહાર નીકળી ગચેલ. હું ત્યાંથી રેલવે ના પાટે થઈને મીટર ગેજ ગચેલ. જયાં હુ ગીરધર દાસ કમ્પા. માં મારા ઓળખીતા ને ત્યાં ગચેલ.

૧૧. તે સમચે મારા કુટુંબ ના માણસોનું શું થયેલ તે ખબર પડેલ નદી. મને રાત્રે નવ દસ વાગ્યાના અરસામાં ખબર પડેલી કે, ગુલબર્ગ સોસા.માં બચી ગયેલાઓ ને દરીયાખાન ઘુમટ ખાતે રાદત કેમ્પમાં લાવેલા છે. જેથી બીજા દીવસે સવાર ના પાંચ વાગે દું રેલવે ના પાટે પાટે થઈ ને શાદીબાગ પહોંચેલ જ્યાં દરીયાખાન ઘુમટ રાદત કેમ્પમાં ગયેલ. ત્યાં રાદતકેમ્પમાં મને મારા મામા ના છોકરા, મારા બા, મારો નાનો છોકરો તે બધા બચી ગયેલા તે બધા મળેલા. મારા બા ના કદેવાથી મેં જાણેલ કે, મારા પત્ની અને મારી બે દીકરીઓ – નીલોફર અને ફરદા જાફરીસાદેબ ના મકાનમાં મરણ ગયેલા છે. મારા મામા અનવરખાન એદમદખાન પઠાણ એમને મારી નાખવામાં આવેલા. મારા નાની ખેરૂનીશા તેમને પણ મારી નાખવામાં આવેલ. મારા મામાનો છોકરો નામે અખ્તરખાન, તેમના ઘેરથી સાજીદાબાનુ, તેમનો નાનો બાબો, અને મારા બીજા મામા રસીદખાન ના ઘરેથી જમીલાબાનુ મારા

67. Drawing my attention to the testimony of this witness, more particularly paragraphs-12 and 13 (both reproduced verbatim herein below), Shri Kodekar submits that again the recording of the statement of the witness by the Police on 02/03/2002 and 11/03/2002 is clearly narrated. The witness further claims to have identified the dead bodies of

ત્રીજા મામા સઈદખાન ના ઘેર થી ને પણ ખલાસ કરવામાં આવેલ."

three of his family members being his wife Nasreen and two daughters Nilofer and Farhana which were then given their final rites. The witness in terms paragraph-14 of testimony his in (reproduced verbatim herein below), according to Shri Kodekar, was interrogated and his statements were recorded on 06/07/2008 and 13/09/2008 by the S.I.T. Tt. is pointed out by Shri Kodekar that in the circumstances, this witness is also required to be treated as a truthful and believable witness and he too has corroborated the other eye-witnesses to the incident. The witness, according to Shri Kodekar, has identified accused No.21 and in the particularly since circumstances, and more the witness has successfully withstood the test of cross examination, there is no reason to discard the testimony of this witness, which further goes a long way in establishing the charges against the accused.

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"૧૨. તે પછી હું ત્યાં કેમ્પમાં રહેલ. કેમ્પમાં તા.૨/૩/૦૨ ના રોજ પોલીસે મારો જવાબ લીધેલ. તા.૧૧/૩/૦૨ ના રોજ પોલીસે અમને અમારી મીલકત ના નુકસાન બાબતે બોલાવેલા. અને અમને જગ્યા પર જોવા લઈ ગયેલા. અને તે પછી મારુ નીવેદન લીધેલ. મારી બે દુકાનો અને મકાનો મળી અંદાજે રુ. ઓગણીસલાખ નુ નુકસાન થયેલ. પોલીસે આ બાબત મારો જવાબ લીધેલ.

૧૩. બનાવ પછી બીજી કે ત્રીજી તારીખે કલંદરી મસ્જીદ કબ્રસ્તાનમાં બનાવમાં મરણ ગયેલા પંદર જણાની લાશો લાવેલા. જેમાં મેં ત્રણ જણની લાશ જે મારા કુટુંબ ના સભ્યો હતા તેમની લાશો ઓળખી બતાવેલ. તેમા મારી પત્ની નામે નસરીન તથા મારી બે દીકરીઓ – નીલોફર અને ફરહાની લાશો મેં ઓળખી બતાવેલ. લાશો ની ઓળખ બદલ પોલીસે મારૂ નીવેદન લીદ્યેલ.

૧૪. ખાસ તપાસ દળે તા. ૬/૭/૦૮ અને તા. ૧૩/૯/૦૮ ના રોજ એમ બે વખત મળી મારો જવાબ લીધેલ. પહેલો જવાબ મારી બા ના મરણ અંગે લીધેલ. અને તે અંગે પુછપરછ કરેલી. અને બીજો જવાબ તેમાં અઢાર અને ઓગણીસ નંબર પર ફાચરીંગ થયેલ તે બાબત ખાસ તપાસ દળે પુછપરછ કરેલી. "

68. Shri Kodekar now draws my attention to the testimony of PW-177 being one Sairaben Salimbhai Sandhi whose testimony is on the record of the proceedings at Exh.711. It is submitted by Shri Kodekar that the witness also was a resident of Gulbarg Society at the relevant point of time and has herself seen large parts of the incident that took place on the fateful day. It is pointed out that the witness has identified a large number of accused and has attributed specific overt acts to each of these accused. It is pointed out that the testimony of the present witness is natural, truthful and required to be accepted. It is further submitted that testimony corroborates the the versions supplied by other eye-witnesses and thus strengthens the Prosecution case. It is submitted that the accused named by the witness in the course of her testimony, are positively identified in the Court also by such witness and this gives further credibility and support to the Prosecution case

inasmuch as, establishing charges against the accused are concerned. It is pointed out by Shri Kodekar that in the opening remarks made by the witness in her testimony, she has established that she was residing together with her family in bunglow No.6 of the Gulbarg Society at the relevant point of time. It is pointed out that in these circumstances, her presence at Gulbarg Society on the fateful day i.e. on 28/02/2002 was therefore, natural and is not required to be discarded. It is pointed out that the witness has truthfully narrated only those aspects and incidents which she has seen and number of instances are testified to by the witness as being narrated to her by some other eye-witness and therefore, those aspects and narratives emerging from the testimony of this witness, are according to Shri Kodekar, and as is conceded by him, required to be treated as hearsay evidence. It is submitted that however, even such hearsay goes a long way in unfolding of the sequence of events and gives indirect corroboration to the evidence of eyewitnesses who have been examined. It is submitted that there could be however, limited corroboration to the Prosecution version from the testimony of this witness.

69. It is pointed out by Shri Kodekar by drawing my attention to paragraph-4 (reproduced verbatim herein below) of the testimony of this witness, that she has narrated with regard to the Bandh and resultant after effects and the narrative

with regard to the attacks on Ankur Cycle Works and more particularly on Yusuf and Mohammad Hussain are admitted to be hearsay evidence since they were narrated to her by her son. The fact and the incident of the mob torching the vehicle more particularly the autorickshaw of one Gulam Darji which was narrated to her by her son as also the fact of the Police arriving at the scene of incident and putting out the fire is narrated by the witness. The narration of the presence of the senior Police Officials by the witness is admittedly hearsay inasmuch as, the witness in paragraph-5 (reproduced verbatim herein below) has clearly admitted that it was her son that provided such information as to which Police Officer was present at the scene of incident.

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"૪. તા. ૨૮/૨/૦૨ ના રોજ બંધનુ એલાન હોઈ મારા પતિ દીચર વગેરે નોકરી ધંધા પર ગચેલ નહી. અને ઘરના તમામ સભ્યો ઘરમાંજ હાજર હતા. તે દીવસે સવાર ના સાડાનવ દસ વાગ્યાના સુમારે હુ અને મારા દેરાણી ઓ ઘરના ઓટલા પર આવેલ. તે દેરાણીઓ ઝરીનાબેન અને મુમતાઝબેન હતી. તે સમચે દસ સાડાદસ વાગ્યાના સુમારે અમારી સોસા. ની સામે આવેલ અંકુર સાચકલ વાળા હબીબભાઈ નો દીકરો યુસુફ દોકતો દોકતો અમારી સોસા.માં આવેલ. જેથી મેં મારા દીકરા મહમદ હુસ ને ને પુછેલ કે, યુસુફ કેમ દોકતો આપણી સોસા.માં આવેલ છે. ત્યારે મહમદ હુસેને મને જણાવેલ કે, બહાર છોકરાઓ દુકાનો બંધ કરાવવા આવેલ છે તેમણે યુસુફ અને અયુબ પર હુમલો કરેલ છે. બીજુ તેણે એમ પણ કહેલ કે, યુસુફ ના ભાઈ અયુબ ને ગુપ્તી થી પીઠ પર કોઈ એ ત્રણ થી ચાર ઘા પણ

મારેલ છે. જેથી અચુબ જીવ બચાવવા તેના ઘર તરફ જતો રહેલ છે જયારે ચુસુફ આપણી સોસા. મા આવી ગચેલ છે. મારા દીકરા એ એમપણ જણાવેલ કે, બહાર ગુલાબ દરજી ની રીક્ષા પડેલી છે તે પણ આ છોકરાઓ એ સળગાવી દીધેલ છે અને તે પછી પોલીસ આવેલ છે. પોલીસે રીક્ષા ની આગ ઓલવી નાખી છે અને તે પછી પોલીસ જતી રહેલ છે. તે પછી હુ અને મારા દેરાણી ઓ ઘરમાં જતા રહેલા અને મારા પતિ અને મારો દીકરો સોસા. ના ઝાંપે ગચેલા.

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પ. ત્યારબાદ થોડીવારે મારો દીકરો પાછો ઘરે આવેલ
અને જણાવેલ કે, બહાર રોડ પર પો.કમી. પી.સી.પાન્ડે સાહેબ
અને મેઘાણીનગર પી.આઈ. કે.જી.એરડા સાહેબ આવેલા. બીજુ
તેણે જણાવેલ કે, તેમની સાથે સોસા. ના જાફરી સાહેબ અને બીજા બે ત્રણ
માણસો વાતચીત કરવા ગચેલા. જાફરી સાહેબે તેમની પાસે વધારે પોલીસ
બંદોબસ્તની માગણી કરેલી અને પાન્ડે સાહેબે બંદોબસ્ત આપવાની ખાતરી
આપેલી અને ચીંતા નદી કરવા જણાવેલ."

70. It is pointed out by Shri Kodekar that the role of the present witness assumed significance and importance from a reading of her testimony more particularly paragraph-6 (reproduced verbatim herein thereof onwards inasmuch as, the witness below) claims to be an eye-witness who along with her sister-in-law, went the small gate of over to Gulbarg Society where she saw a huge mob having gathered and which mob was engaged in damaging and destroying and torching the vehicles dragged outside and also damaging and looting the shops nearby. The

witness claims to have ran back to her residence and stood near the 'Otta' thereafter.

"૬. ત્યારબાદ થોડીવારે સોસા. ની બહાર થી બુમાબુમ ના ખુબ અવાજો આવવા લાગેલા. જેથી હું અને મારી દેરાણીઓ સાોસા. ના નાના ઝાંપા પાસે જોવા માટે ગયેલા. ત્યાંથી અમે જોયુ તો બહાર રોડ પર બહુ મોટુ ટોળુ ભેગુ થઈ ગયેલ હતુ. આ ટોળુ બહાર વાહનો ને આગ લગાડતુ હતુ અને દુકાનો માં તોડફોડ અને હુટફાટ કરતુ હતુ જેથી અમે ગભરાઈ ને પાછા અમારા મકાન ના ઓટલા પર આવી ગયેલ. "

71. Drawing my attention to paragraph-7 (reproduced verbatim herein below) on page-6, Shri submits that the witness Kodekar present has identified one Meghsing Chaudhary (A-58), wherefrom whose terrace the said accused together with one Jagrupsing Rajput were signalling to the crowd to into the compound of Gulbarg Society. The qet witness claims to know both - accused No.58 and Jagrupsing Rajput inasmuch as, according to Shri Kodekar, she has positively stated that accused No.58 was an Advocate whereas Jagrupsing Rajput was a former Mayor and both, according to the witness, could be identified by her. In fact in terms of paragraph-7 of her testimony, the accused No.58 Meghsing is identified by the witness positively in the Court.

"૭. અમે ઓટલા પર થી જોયુ તો સોસા. ની સામે મેધસીંગ ચૌધરી ની ઓફીસ આવેલી છે તેના ધાબા પર મેધસીંગ ચૌધરી અને જગરૂપસીંદ રાજપુત ઉભા દતા જેઓ દાથના ઈશારા વડે ટોળાને સોસા.

માં ઘુસી જવા માટે ઉશ્કેરણી કરતા હતા. મેઘસીહ ચૌધરી વકીલ છે. જગરૂપસીંહ રાજપૂત ભૂતપૂર્વ મેચર હતા. હું આ બંને જણા ને ઓળખી શકુ. કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી મેઘસીંગ ધુપસીંગ ચૌધરી ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા મેઘસીંહ હોવાનુ જણાવે છે. તે સમચે આજુબાજુ ની ચાલીઓમાંથી ઘણા મુસ્લીમ પરીવારો બચવા

માટે અમારી સોસા.માં આવી ગયેલ."

72. Drawing my attention to paragraph-8 (reproduced verbatim herein below) of the testimony this witness, Shri Kodekar submits of that the witness claims to have seen the mob indulging in stone pelting upon Gulburg Society as also throwing burning rags upon the property. The witness, according to the testimony emerging from paragraphhas clearly stated that thereafter, the 8, mob attempted to enter into the Society and in the event, the residents of the Society started pelting stones at the mob.

"૮. તે પછી આ ટોળા એ અમારી સોસા. પર પથ્થરમારો કરવા લાગેલા તેમજ સળગતા કાકડા ફેંકવા લાગેલા. અમારી સોસા. નો મોટો ઝાંપો તે વખતે બંધ હતો અને નાનો ઝાંપો પથ્થરમારો થયો તે સમયે બંધ કરી દીધેલ. તે પછી ટોળુ સોસા. માં ઘુસવા પ્રયત્ન કરવા લાગેલ. જેથી સોસા. ના માણસો ગભરાઈ ગયેલા અને ટોળા એ ફેંકેલા પથ્થરો સામે ફેંકી સામનો કરવા લાગેલ."

73. The damage caused to the properties of the residences and bunglows located within Gulbarg Society is explicitly stated in paragraph-9 (reproduced verbatim herein below) of the testimony.

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It is pointed out that the burning rags resulted in the property located next to the property of the witness, catching fire inasmuch as, the material stored on the terrace caught fire in such fashion. A scooter belonging to one Mr.Bhatia who was residing in bunglow No.8, as also the bike of his son, catching fire, are narrated by the witness. The terrace of a neighbour Ayubbhai residing in bunglow No.5 catching fire is also narrated by the witness. The witness has further testified that thereafter, even from the railway line side, the mob started pelting stones as also throwing burning rags and bottles into the Society. The witness has testified that point of time, the that Society at was surrounded on all sides by the mob and that there was no Police protection at that point of time. The witness claims to have at that point of time, seen plumes of smoke and having heard the sound of gun shots from the Society. The fact of the same being shot sounds, is according to the qun witness, narrated to her by one Salim, son of Abubakkar who were residents of the Society. The said Salim is claimed to have narrated to the witness that at that stage, the Police appeared to have arrived at the scene of incident and had thrown teargas shells and had fired from their weapons towards the Society but had made no attempts to disperse the mob.

"૯. રેલવે તરફ થી ટોળા એ સળગતા કાકડા ફેંકચા તેનાથી અમારી બાજુ ના મકાનના ધાબા પર પડેલ સરસામાનમાં આગ લાગવા લાગેલ. આ કાકડા થી મકાન નંબર આઠ મા રહેતા ભાટીચા સાહેબ ના સ્કુટર તથા તેમના દીકરા ના બાઈકને પણ આગ લાગેલી. સામાન માં આગ લાગી તે અમારા પડોશી અયુબભાઈ કોઠીવાળાનુ મકાન નંબર પાંચ છે. તે પછી રેલવે લાઈન તરફ આવેલ કોટ પાછળ થી ટોળા એ પથ્થરમારો સળગતા કાકડા અને બાટલીઓ ફેકંવાનુ શરુ કરેલ. આ વખતે અમે ચારે બાજુથી ઘેરાઈ ગયેલ હતા અને પોલીસ ની કે અન્ય કોઈ મદદ આવેલ નહી. આ પથ્થરમારો ચાલતો હતો તે દરમ્યાન સોસા. માં ધુમાડો જોયેલ અને ફાયરીંગનો અવાજ પણ મેં સાંભળેલ. આ ફાયરીંગનુ અમારી સોસા. મા રહેતા અબુબકર ના દીકરા સલીમે મને જણાવેલ. તેણે એમ જણાવેલ કે, બહાર પોલીસ આવેલી તેણે સોસા. ની તરફ ટીયર ગેસ ના સેલ છોડેલ અને ફાયરીંગ કરેલ પણ ટોળા ને ભગાડવા કોઈ પ્રયત્ન કરેલ નથી."

74. Drawing my attention to paragraphs-10 11 (both reproduced verbatim herein below) of and the testimony, Shri Kodekar has submitted that the narrative relates to an incident personally seen by the witness and which clearly establishes that the witness also was injured in the stone pelting that was taking place at that point of time. My attention is drawn to the fact that the witness has clearly testified that the bunglow No.1 of the said Society was owned by one Dayaram Jinger upon whose terrace the mob had climbed and had started pelting stones therefrom. The witness has positively identified Rajesh Jinger (A-65), Gabbar (A-14) and Ambesh (A-32) as being amongst the mob which was indulging in such stone pelting. The Kodekar points out that the present witness has positively identified Gabbar (A-14) and Ambesh (A-32) in the Court in the course of

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testimony, as emerging from paragraph-10 her thereof. The witness has further narrated in paragraph-11 with regard to Irfan sustaining serious injuries on the chest on account of such stone pelting and having collapsed and being brought over to the residence of Shri Ehsan Jafri by other residents of the Society. The witness claims that at that point of time, she was injured on the ankle of her right leg by a stone that was pelted, her husband sustained injuries on his hands and legs and sustained a fracture in his leg on account of the stone throwing. Her son Mohammad Hussain sustained an injury on his shoulder, brother-in-law Jehangir sustained injury on his head and was rendered Ιt is further testified unconscious. that unconscious Jehangir was taken into his residence by the witness, the wife of Jehangir and the sister-inlaw of the present witness, but apprehending that the mob would prevent them from reaching the residence, the injured was taken over the to residence of Shri Ehsan Jafri where water was him and such Jehangir sprinkled on regained consciousness, according to the witness. The witness has clearly testified that when she was standing near Shri Ehsan Jafri's residence, she saw that the mob had broken the front gate of the Society and by exploding a gas cylinder, the mob gained access to the Society from such entrance. It is pointed out that on page-10 of the testimony, it is clearly specified that the mob was armed with swords, guptis, pipes, tridents, sticks as also cans of

petrol and kerosene. It is pointed out that of significance and importance is the fact that the witness has identified Kailash Dhobi (A-1), Ramesh Pandey (absconding accused), Naran Channelwala (A-43), Manish Jain (A-38), Manish Splendour (not an accused herein), Jayesh (A-41) and Chirag Shah (A-36) as being members of the mob at that point of time. The witness has justified identifying Kailash Dhobi (A-1) on account of the fact that he was running a laundry. The absconding accused Ramesh Pandey is attributed to be dealing with in imitation bangles and earrings, Manish, Jayesh and Chirag were studying together with her son and therefore, could be identified by this witness. Manish Jain (A-38) is claimed to be having a Kirana Store near Gulbarg Society and therefore, is identified by the witness. witness, The according to Shri Kodekar, has positively identified Jayesh (A-41) in the Court whereas the witness has wrongly identified accused Chirag Shah (A-36).

"૧૦. સોસા. ના મકાન નંબર એક દયારામ જીંગર નુ આવેલ છે. ત્યાં ટોળાના માણસો ધાબા પર ચડી ગચેલા. ત્યાં ધાબા પર થી ટોળાએ સોસા.માં પથ્થરમારો શરુ કરેલ. મેં તે ટોળામાં રાજેશ જીંજર, ગબ્બર અને અંબેશ ને ઓળખેલા. આ લોકો ટોળાને સોસા. માં ઘુસી જવામાટે ઉશ્કેરણી કરતા હતા. હુ આ ત્રણ જણ ને ઓળખી શકુ. રાજેશ જીંજર પોલીસ ની નોકરી કરતો હતો. કોર્ટમાં હાજર આરોપીઓ પૈકી આરોપી ગબ્બર ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ગબ્બર હોવાનુ જણાવે છે. કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી અંબેશ ને હ ઓળખી

Judgment

બતાવુ છુ. આરોપી ને તેનુ નામ પુછતાં અંબેશ દોવાનુ જણાવે છે. ૧૧. મકાન નંબર એક પરથી થતા પથ્થરમારા થી અમારી સોસા. ના ગુલઝારભાઈ ના દીકરા ઈરફાન ને છાતીમાં પથથર વાગેલ જેથી ત્યાંજ ઢળી પડેલ તેને અમારી સોસા. ના બીજા છોકરાઓ ઉચકી ને જાફરી સાદેબ ના મકાન પાસે લઈ ગયેલ. તે વખતે મારા જમણા પગના ઘુંટણ પર મને પણ પથ્થર ની ઈજા થયેલ. મારા પતિ ને દાથ ના તથા પગના ભાગે પથ્થરવાગતા પગમાં ફ્રેકચર થયેલ. મારા દીકરા મદમદ દુસેન ને ખભા પર એક ઈટ વાગેલ. મારા દીચર જદાંગીર ભાઈ ને માથામાં એક પથ્થર વાગતા તે બેદોશ થઈ ને નીચે ઢળી પડેલા. જદાંગીરભાઈ ને દું તથા તેમના પત્ની મારા દેરાણી એ ભેગા થઈ ઉચકી ને ફલેટ તરફ જવા લાગેલા. પરંતુ ટોુળુ અહીં આવી જશે તેવી બીક લાગતા અમે જાફરી સાદેબ ના ઘર પાસે લઈ ગયેલા. ત્યાં લઈ જઈ તેમના મોં પર પાણી છાંટતા તેઓ દોશમાં આવી ગયેલા."

75. However, Shri Kodekar has pointed out that the witness in the course of her testimony on page-11, paragraph-12 (reproduced verbatim herein below), has positively identified Kailash Dhobi (A-1), Naran Channelwala (A-43) and Manish Prabhudas Jain (A-38) and has conceded that she cannot identify any other accused.

"૧૨. હું જાફરી સાહેબના ઘર આગળ હતી ત્યારે ટોળા એ સોસા. નો આગળ નો ઝાંપો અને દીવાલ ગેસ ના બાટલા નો વિસ્ફોટ કરી ટોળુ સોસા. માં ઘુસી આવેલ. ટોળા પાસે તલવારો, ગુપ્તીઓ, પાઈપો, ત્રિશુળ, લાકડી ઓ તથા પેટ્રોલ કેરોસીન ના કેરબાઓ હતા. આ ટોળામાં મેં કૈલાશ ધોબી, રમેશ પાન્ડે, નારણ ચેનલવાળો, મનીષ પ્રભુદાસ જૈન, મનીષ સ્પેલન્ડર

Judgment

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અને જચેશ અને ચીરાગ શાદ ને ઓળખેલા. કૈલાશધોબી ની ધોબી ની દુકાન છે તેથી ઓળખુ છુ. રમેશ પાન્ડેનો ખોટી બંગડી ઓ અને એરીંગ નો ગલ્લો દતો. મનીષ સ્પ્લેન્ડર જચેશ અને ચીરાગ મારા દીકરા સાથે ભણતા દતા તેથી ઓળખુ છુ. મનીષ પ્રભુદાસ જૈન ને અમારી સોસા. ની બાજુમાં કીરાણા ની દુકાન છે જેથી ઓળખુ છુ. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી જચેશ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતાજચેશ તે દોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ચીરાગ શાદ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા નરેશ બંસીલાલ પ્રજાપતિ તે દોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી નારણ ચેનલવાળા તથા કૈલાશ ધોબી તથા મનીષ પ્રભુદાસ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા નારણ ચેનલવાળો તથા મનીષ પ્રભુદાસ જૈન તથા કૈલાશ ધોબી તે દોવાનુ

76. Drawing my attention to paragraph-13 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness has clearly specified that she was standing near the residence of Shri Ehsan Jafri when at about 2:30 p.m., a loud explosion was heard from the rear side of the Society also and according to the witness, the mob broke open the rear compound wall and entered into the Society in such fashion. The mob, according to the witness, was armed with swords, guptis, pipes, sticks and tridents and the mob indulged in stone throwing and throwing of burning rags at the Society and indulged in damaging and destruction of the houses located at the rear of the Society, as also

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after looting such properties, these properties were set afire. The mob thereafter, according to the witness, started damaging and looting and setting afire the properties located at the front of the Society also and also started destroying and setting afire the vehicles dragged outside the Society. The witness claims to have seen the motorcycle of her son and an autorickshaw belonging to her brother-inlaw being destroyed and set on fire by the mob. The brother-in-law is claimed to have run towards his residence but was prevented from doing so by the husband of the present witness and all of them claimed to have entered into the residence of Shri Ehsan Jafri to take shelter. The husband of the present witness is attributed to have gone away to bunglow No.16 at that point of time.

"૧૩. અમે જાફરી સાઠેબ ના ઘર પાસે ઉભા હતા ત્યારે બપોર ના બે અઢી વાગે પાછળ થી પણ વિસ્ફોટનો અવાજ આવેલ. તે વખતે અમે જાફરી સાઠેબ ના મકાન પાસે ઉભા હતા. મારી સાથે મારા પતિ સલીમભાઈ અને મારા દીચર જહાંગીરભાઈ તથમ મારો દીકરો મહમદ હુસેન હતો. પાછળ ની દીવાલ તોડીને પણ તે પછી ટોળુ અંદર ઘુસી ગચેલ. ટોળા પાસે તલવારો, ગુપ્તી, લાકડીઓ, ત્રિશુળો અને પાઈપો હતા. આ ટોળા એ અમારી સોસા.માં પથ્થરમારો કરેલ. સળગતા કાકડા ફેકેલ અને પાછળ ની બાજુ આવેલા મકાનો તોડફોડ કરી લુટફાટ કરી સળગાવેલા. આ ટોળા એ સોસા. ના આગળ ની બાજુના ભાગે આવેલ મકાનો માં પણ તોડફોડ કરી લુટફાટ કરી મકાનો ને આગ લગાડવાનુ ચાલુ કરેલ. આંગણાંમાં વાહનો પડેલા તેને આગ લગાડવાનુ ચાલુ કરેલ. આ ટોળા એ મારા દીકરા ની

Judgment

બાઈક અને મારા દીચર ની રીક્ષા પણ જવલનશીલ પ્રવાહી નાખી સળગાવી દીધેલ. જેથી મારા દીચર દોડતા દોડતા મારા ઘર તરફ ગયેલા પરંતુ મારા પતિ તેમની પાછળ જઈ તેમને લઈ ને જાફરી સાહેબ ના મકાનમાં આવી ગયેલા. પછી મારા પતિ મકાન નંબર સોળમાં જતા રહેલા. જે મકાન ખાન સાહેબ નુ છે."

Drawing my attention to paragraph-14 77. (reproduced verbatim herein below) of the testimony, Kodekar points out that the witness, her Shri sister-in-law Zarina, Mumtaz, her son Mohammad and her brother-in-law Jehangir and nephew Ashraf, all in terms of the testimony of the present witness, took shelter in Shri Ehsan Jafri's bunglow. The witness claims that when she entered the bunglow, Ehsan Jafri on the phone and the she saw Shri witness claims that Shri Jafri phoned number of Police officers, politicians in the shape of Shri Amarsinh Chaudhary, Shri Adwani, Shri Badruddin Shaikh and Shri Narendra Modi. The witness claims to have stood next to Shri Ehsan Jafri at that point of time. The witness has testified that at that point of time, the mob threw burning rags in the residence of Shri Ehsan Jafri and the residence also caught fire.

"૧૪. હું મારા બંને દેરાણી નામે ઝરીનાબેન અને મુમતાઝ મારો દીકરો મહમદ મારા દીચર જહાંગીરભાઈ અને મારો ભત્રીજો અશરફ અમે બધાં બચવા જાફરી સાહેબ ના ઘરમાં જતા રહેલ. અમે ઘરમાં ગયા ત્યારે જાફરી સાહેબ હતા અને તેઓ ફોન કરતા હતા. તેમણે કેટલાક પોલીસ ઓફીસરી

ને ફોન કરેલા. તેમણે અમરસીંહ ચૌધરી, અડવાણી ને અને બદરૂદદીન શેખ અને નરેન્દ્રમોદી ને પણ ફોન કરેલ. તે સમયે હુ તેમની પાસે જ ઉભેલી હતી. ત્યાર બાદ ટોળા એ જાફરી સાહેબ ના મકાન પર સળગતા કાકડા ફેંકતા તેમના ઘરમાં આગ લાગેલી."

77. Drawing my attention to the testimony of the witness, more particularly paragraph-15 (reproduced verbatim herein below), on page-13, it is submitted that the witness claims to have seen one Anwarbhai sitting on the 'Otta' of Shri Ehsan Jafri's residence. The witness further claims that said Anwarbhai was a cripple and was attacked with a sword by accused No.1 Kailash Dhobi, who inflicted blow with a sword. The witness has testified that at that point of time, the son of said Anwarbhai being one Aslam, tried to save his father by intervening, but the said Aslam sustained injuries on his fingers by a sword blow given by accused No.1. The witness claims to have seen the mob dragging away Anwarbhai and killing him by giving him number of blows with swords and other weapons. The witness claims that on suffocation due to fire within account of the residence of Shri Ehsan Jafri, a number of women came out, of whom the witness has stated that one Zebunben, Mehmudaben being the daughter-in-law of said Zebunben and two sisters-in-law of the present witness being one Mumtaz and Zarina ran outside, all of whom were attacked by the mob with swords and other weapons and were killed thereat by the mob.

"૧૫. ત્યારબાદ જાફરી સાઠેબ ના ઘર પાસે ઓટલા પર

અનવરભાઈ બેઠેલા હતા. જે અપંગ હતા. તેમની પર ટોળા ના કૈલાશ ધોબી એ તલવારથી ઘા કરેલ. જેથી તેમનો દીકરો અસલમ બચાવવા જતા તેના હાથ પર પણ તલવાર મારેલી. જેથી અસલમ ને હાથ ની આંગળી ઓ પર ઈજાઓ થચેલ. ટોળાના માણસો એ અનવરભાઈ ને ખેંચી ને તેમની પર તલવારો અને હથીચારો ના ઘા કરી ને તેમને મારી નાખેલા. જાફરી સાહેબ ના મકાનમાં આગ લાગતા ધુમાડો થચેલ અને ખુબ ગંગળામણ થતા ત્યા બીજી સ્ ત્રી ઓ હતી, તેમાં ઝેબુનબેન તેમના દીકરા ની વઠુ મહેમુદાબેન, તથા મારી બે દેરાણી ઓ નામે મુમતાઝ અને ઝરીના દોડી ને બહાર નીકળેલા. તેમને પણ ટોળા ના માણસો એ પકડી ખેંચી તલવારો તથા બીજા હથીચારો ના ઘા મારી મારી નાખેલ."

78. Drawing my attention to paragraph-16 (reproduced verbatim herein after), it is submitted the witness has stated that thereafter one that Firdos was dragged out by the mob and the said Firdos was the daughter of one Gulzarbhai. One Shehzad tried to intervene and save said Firdos but, according to the witness, the mob of whom accused Kanivo (A-42), Kailash Dhobi (A - 1)Mamo and absconding accused Ramesh Pandey and Naran Channelwala (A-43), all of whom were armed with swords, attacked said Shehzad and killed him. The witness claims to have seen this entire incident from the main room of the residence of Shri Ehsan The witness further claims that the said Jafri. Firdos was molested by the mob and thereafter, killed.

"૧૬. ત્યારબાદ ટોળા એ ફીરદોસ ને બહાર ખેંચેલી.

Judgment

જે ગુલઝારભાઈ ની દીકરી હતી. તેણે બચાવવા શહજાદ ભાઈ ને બુમો પાડી. શહજાદભાઈ તેને બચાવવા બહાર નીકળતા આ ટોળાના મામો કાણીચો, કૈલાશધોબી, રમેશ પાન્ડે અને નારણચેનલવાળા એ હથીચારો ના ઘા મારી મારી નાખેલ. આ મેં જાફરી સાહેબ નો અંદરમેઈન રૂમ છે તેમાંથી જોચેલ. આ રૂમ તેઓ બહાર થી મળવા આવતા તેમાટે વાપરતા. ફીરદોસ ની આ ટોળામાં રહેલા માણસો એ બેઈજજતી કરી તેને પણ દથીચાર થી મારી નાખેલ."

79. The witness, according Shri to Kodekar, in terms of her testimony in paragraph-17 (reproduced verbatim herein below), on page-16, has clearly identified the accused Mamo Kaniyo (A-42) in the Court. It is pointed out that the witness in terms of her testimony in paragraph-18 (reproduced verbatim herein below), claims that thereafter, her son, brother-in-law Jehangir also tried to run away and tried to escape, but the mob of whom accused No.1 Kailash Dhobi, absconding accused Ramesh Pandey and accused No.43 Naran Channelwala, attacked them with weapons and killed them. The witness claims to have been enraged by such incident and testifies that she too came outside where she too was caught hold of by the mob which started molesting her. It is pointed out that the witness has testified that she had worn a saari and claimed that she was a Gujarati working at Shri Ehsan Jafri's residence and therefore, the mob did not further harass her and she was permitted to go away.

"૧૭. દુ મામા કાણીયા ને ઓળખી શકુ. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી મામા કાણીયા ને ઓળખી બતાવુ છુ. આરોપી

Judgment

ને તેનુ નામ પુછતા રાજુ ઉ. મામા કાણીયા હોવાનુ જણાવે છે.

૧૮. તે પછી મારો દીકરો અને મારા દીચર જહાંગીરભાઈ પણ બચવા માટે બહાર ભાગેલા. તેમને પણ આ ટોળાના કૈલાશધોબી, રમેશ પાન્ડે અને નારણચેનલવાળા એ હથીાચરો ના ઉપરા ઉપરી ઘા મારી મારી નાખેલા. મેં આ જોતાં આવેશમાં આવી હું પણ બહાર ની તરફ જવા લાગેલી. જેથી મને પણ ટોળાના માણસો મને પકડી મારી બેઈજજતી કરવા લાગેલા. મેં સાડી પહેરતી હોવાથી એમ કહેલ કે, હું ગુજરાતી છુ અને જાફરી સાહેબ ના ઘરમાં કામ કરૂ છુ જેથી ટોળા એ મને છોડી દીઘેલ."

80. It is further pointed out that the witness in terms of her testimony in paragraph-19 (reproduced verbatim herein below), claims to have identified Manish Splendour (not an accused) and Manish Prabhudas Jain (A-38) as being present at that point of time and being armed with swords whereas accused Jayesh and Chirag Shah (A-41 and A-36 respectively) were armed with gupti at that point of time. Accused Babu Marwadi (A-66) and accused Bhuriyo Patni (juvenile) are attributed of having possessed with cans of kerosene at that point of time. The juvenile accused Bhuriya is attributed to have claimed that the mob had come to catch hold of Shri Ehsan Jafri and kill him. The witness however, is unable to identify Babu Marwadi as also the juvenile accused Bhuriyo in the Court. It is pointed out by Shri Kodekar that it could not be done so in light of the fact that such accused were not before the Court at that point of time.

"૧૯. આ ટોળામાં મેં મનીષ સપ્લેન્ડર અને મનીષ પ્રભુદાસ

જૈન ને ઓળખેલા જેમના દાથમાં તલવારો દતી તથા જચેશ તથા ચીરાગ શાદ ના દાથમાં ગુપ્તી દતી. અને બાબુ મારવાડી તથા ભુરીયો મફા પટણી દતા જેમના દાથમાં કેરબા દતા. ભુરીયો મફા પટણી એમ કદેતો દતો કે, આપણે જાફરી ને શોધવા આવ્યા છીએ તેને પકડી ને પતાવી દો. દું બાબુ મારવાડી અને ભુરીયાને ઓળખી શકુ. આ બે જણા આરોપી તરીકે દેખાતા નથી."

81. Drawing my attention to paragraph-20 (reproduced verbatim herein below) of the deposition, it is pointed out by Shri Kodekar, that the witness claims to have been escorted from the scene of incident and dropped at the Civil Hospital by some unidentified person and claims to have gone away to Dariakhan Ghummat thereafter and the witness claims that upon coming to know about the refugee shelter being opened at Dariakhan Ghummat, she went over there and there she came into contact with her husband Salimbhai and nephew Ashraf and brother-inlaw Raheman.

"૨૦. તે પછી હુ જાફરી સાહેબ ના ઘર પાસે બાજુમાં ઉભી રહી ગચેલ. જેથી ટોળાનો એક છોકરો મારી પાસે આવેલ અને મને પુછેલ કે, માસી કયાં જવુ છે. મેં સી.હોસ્પી. જવાનુ કહેતા તે છોકરો મને સી.હોસ્પી. ઉતારી ગચેલ. ત્યાંથી હુ દરીયાખાન ઘુમટ મારા સંબધી રહે છે તેમને ત્યાં ગચેલી. મોડેથી દરીયાખાન ઘુમટે રાહત કેમ્પ ખુલેલ હોવાની ખબર પડતા હુ રાહત કેમ્પમાં જતી રહેલ."

82. Paragraphs 21 and 22 of the testimony are admittedly hearsay and not referred to at length by Shri Kodekar.

83. Drawing my attention to paragraph-23 (reproduced verbatim herein below) of the testimony this witness, Shri Kodekar submits that the of witness claims to have visited Gulbarg Society on 11/03/2002 upon the directions of the Police to assess the damages caused to her residence and a statement of the witness, according to her, was recorded on such date. The statements of the witness the testimony of the witness, in terms of were recorded on 06/03/2002 and 11/03/2002 the and witness in of paragraph-24 (reproduced terms verbatim herein below) of her testimony, claims to have affixed a signature on some writing at the instance of her husband and other victims.

"૨૩. તે પછી ૧૧/૩ ના અરસામાં અમને પોલીસ અમારા મકાનમાં લઈ ગયેલ. તે સમયે હું મારા પતિ અને મારો ભત્રીજો અશરફ ગયેલા. તથા સોસા. ના બીજા માણસો હતા. એ નુકસાન નુ પંચનામુ કરવામાં આવેલ અને પોલીસે નુકસાન બાબત મારો જવાબ લીધેલ.

૨૪. બનાવ અંગે મારો જવાબ તા.૬/૩/૦૨ ના રોજ દુઘેશ્વર પોલીસ ચોકી માં લેવામાં આવેલ. તા.૬/૩/૦૨ અને તા. ૧૧ /૩/૦૨ ના જવાબો અમે લખાવ્યા મુજબના ન દતા. તે પછી અમે એક સોગંધનામુ કરેલ અને એક અરજી કરેલ. અરજી અમે પો.કમી. અને મેઘાણીનગર પો.ઈ. ને કરેલી. તે પછી ક્રાઈમ બ્રાન્ચ વાળા એ અમને જવાબ લેવા બોલાવેલ. અમે ગચેલા નદી. તે સમચે મારા પતિ અને સોસા. ના માણસો એ જવાબ આપવા જવુ નથી તેમ નકકી કરી એક કાગળ લખવાનુ નકકી કરેલ. તે કાગળ લખેલ અને તેમાં મેં સદી કરેલ."

Drawing my attention to paragraph-25 84. (reproduced verbatim herein below) of the deposition, Shri Kodekar submits that the witness has further corroborated the eye-witnesses inasmuch as, the incident in terms of the testimony of the witness, started at about 10:00 a.m. and went on till about 5:30 p.m. The witness has testified that she son Mohammad, her lost her brother-in-law Jehangir, Zarina - wife of Jehangir and sister-inlaw Mumtaz in the incident. These four members of the family of the witness lost their lives in the incident.

"રપ. તા. ર૮ મી એ બનાવ દસેક વાગે શરુ થયેલ અને સાંજના સાડા પાંચ વાગ્યા સુધી ચાલેલ. આ બનાવમાં મારો એકનો એક દીકરો મઠમદ ભાઈ મારા દીયર જઠાંગીરભાઈ તેમના પત્ની ઝરીનાબેન, અને મારા બીજા દેરાણી મુમતાઝ એમ ચાર જણાં મરણ પામેલ."

85. Drawing my attention to paragraph-26 verbatim herein below) of (reproduced the deposition, it is submitted by Shri Kodekar that the witness claims that she was summoned by the S.I.T. and а statement was recorded on 25/01/2008 at Gandhinagar. A statement prepared at the refugee shelter was also handed over by the witness to the S.I.T. at that point of time. She claims that visited of the S.I.T. thereafter members her residence to obtain clarifications with regard to the weapons used as also with regard to the names of three additional accused narrated by the witness,

being accused Mamo Kaniyo, Gabbar and Ambesh. The witness attributes that she had omitted to name such accused earlier in point of time.

"રક. તે પછી એસ.આઈ.ટી. એ મારો જવાબ લેવા મને તા. ર૧/૫/૦૮ ના રોજ ગાંધીનગર મુકામે બોલાવેલ. ત્યાં મારો જવાબ લીધેલ. મારો જવાબ લીધો ત્યારે મેં કોમ્પ. પર તૈયાર કરેલ મારુ નીવેદનપણ આપેલ. તે પછી મને કચાંચ બોલાવેલ નથી. સીટવાળા એકવાર મારા ઘરે આવેલા. તે હથીચારો ના ખુલાસા બાબત તથા મેં ત્રણ નામ વધારાના લખાવેલા તે બાબત પુછવા આવેલા. મેં ત્રણ નામ વધારે લખાવેલ તે મામુ કાણીચો , ગબ્બર અને અંબેશ ના દતા. તે નામ મારે પદેલા લખાવવાના રદી ગચેલા. મને ફરી પૂછપરછ કરી તેનો જવાબ લખેલ નદી."

86. Drawing my attention to paragraph-79 (reproduced verbatim herein below) of the testimony of this witness, Shri Kodekar points out that two subsequently arraigned accused being Rajesh Jinger (A-65) and Babu Marwadi (A-66) were identified positively in the Court by the witness at a later point of time naturally since they were arraigned at a later stage in the pending proceedings.

"૭૯. હું રાજેશ જીંગરને ઓળખુ છુ. હું બાબુ મારવાડીને પણ જોચે ઓળખુ છુ. હું કોર્ટ રુબરુ હાજર આરોપી રાજેશ જિંગર તથા બાબુ મારવાડીને ઓળખી બતાવુ છુ આરોપીઓને તેમના નામ પુછતાં અનુક્ર

મે પોતાના નામ રાજેશ જિંગર તથા બાબુ મારવાડી होવાનુ કબુલ કરે છે." 87. It is thus pointed out that the witness has portrayed herself to be a natural, truthful and credible witness and there is no reason to discard her testimony more particularly in light

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of the fact that she has corroborated the versions supplied by other eye-witnesses and has lent corroboration and support to the relevant documentary evidence relied upon by the State. It is submitted that she has positively identified a large number of accused as being perpetrators of the offence and the specific role and overt act committed by each of the accused identified by the present witness, is also pointed out. The nature of the weapons with which such accused were armed, is also narrated to by the witness which also finds corroboration from the testimonies of other witnesses and it is urged that therefore, this witness is required to be accepted as truthful and It is submitted believed in toto. that this testimony also qoes further to establish the Prosecution version as also prove beyond reasonable doubt the charges against the accused.

88. Shri Kodekar further relies upon the testimony of PW-191 being one Salimbhai Noormohammad Sandhi (husband of PW-177). The testimony of such witness is on the record of the proceedings at Exh.734. It is pointed out by Shri Kodekar that this witness also was a resident of Gulbarg Society more particularly bunglow No.6 thereof and therefore, his presence at the scene of the incident on the fateful day is clearly natural and appropriately explained and proved by the Prosecution. The witness was a employed driver Ahmedabad by the Municipal Corporation at the relevant point of time. The

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witness, according to Shri Kodekar, was conversant with the Police Force inasmuch as, the father and father-in-law of the witness were employed with the Police Force, in terms of the testimony recorded in paragraph-2 of the deposition. It is pointed out that in paragraphs 2 5 the witness, to (all reproduced verbatim herein below) of his testimony, has provided the background about the family of the witness and need not be repeated for the sake of convenience. The witness has further testified with regard to the tension prevailing in the atmosphere on 28/02/2002.

"ર. આ કેસમાં અગાઉ જુબાની આપી ગયા તે સાયરાબેન મારા પત્ની થાય છે. મારા સસરા પોલીસ ખાતામાં ફર્સ્ટ ગ્રેડ જમાદાર હતા. તે હાલ હયાત નથી. બનાવ વખતે પણ તેઓ હયાત નહતા. મારા પિતા પણ પોલીસ ખાતામાં જમાદાર તરીકે ફરજ બજાવતા હતા અને તેઓ પણ બનાવ ના અરસામાં હયાત ન હતા. અમે કુલ ચાર ભાઈ ઓ છીએ. જેમાં સૌથી મોટા રહેમાનભાઈ, પછી હું મારા થી નાના જહાંગીરભાઈ અને સૌથી નાના સીકંદરભાઈ છે.

3. સને ૨૦૦૨ માં અમે ગુલબર્ગ સોસા. ના મકાન નંબર છ માં રહેતા હતા. ત્યાં અમે સને ૧૯૮૦ થી રહેતા હતા. ત્યાં અમે બધા ભાઈ ઓ કુટુંબ સાથે સંચુકત કુટુંબ માં રહેતા હતા.

૪. મારે સંતાનમાં મહમદ હુસેન સલીમભાઈ નામે એક દીકરો હતો. જેનો જન્મ તા. ૪/૨/૭૮ ના રોજ થયેલ હતો. અને બનાવ ના અરસામાં તે સેકન્ડ એલ.એલ.બી.માં અભ્યાસ કરતો હતો. મારે બે દીકરી ઓ છે બંને પરણેલી અને તેમના સાસરે રહે છે. બનાવ વખતે મારા ભાઈ રહેમાનભાઈ ના પત્ની ઝુબેદાબેન હયાત ન હતા અને તેમના બે દીકરા ચોટીલા રહેતા હતા. મારી સાથે રહેમાનભાઈ,

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જહાંગીરભાઈ અને સીકંદરભાઈ અને હું તે રીતે ના અમે ચાર ભાઈ રહેતા હતા. સીકંદરભાઈ ના પત્નીનું નામ મુમતાઝ બેન છે. જહાંગીરભાઈ ના પત્નીનુ નામ ઝરીનાબેન છે.

પ. તા.૨૭/૨/૦૨ ના રોજ ગોધરાકાંડનો બનાવ બનતા તેના બીજા દીવસ તા. ૨૮/૨/૦૨ ના રોજ ગુજરાતબંધનુ એલાન હતુ. તે દીવસે હું નોકરી પર ગચેલ નહી. મારા કુટુંબ ના સભ્યો પણ ધંધા રોજગારે ગચેલ નહી અને બંધ ના દીવસે ઘરમાં હાજર હતા."

89. It has been pointed out by Shri Kodekar, that the witness in terms of his testimony in paragraph-7 (reproduced verbatim herein below), has clearly testified that he saw the mob attacking Ayub (Ankur Cycle Works) and that the said Ayub was given three or four stab blows with a gupti like weapon on his back. The said Ayub, according to the witness, ran towards his house whereas his brother Yousuf took shelter in Gulbarg Society at such point of time.

"હં બહાર ગયો ત્યારે મેં જોયુ તો ટોળા ના માણસો પૈકી એક જણા એ અયુબને ગુપ્તી જેવુ દથીયાર માર્ચુ હતુ. અયુબ અંકુરસાયકલ વાળા નો છોકરો છે. અયુબ ને પીઠ ના ભાગે મારેલ. અને તે તેના ઘર તરફ ગયેલ. યુસુફ દોડી ને સોસા. તરફ આવેલ. અયુબ અને યુસુફ બંને ભાઈઓ છે.

ਪਲੀ ਅਜੇ ਜ਼ੇਜ਼. તરફ આવી ગયેલા. જે ਜ਼ੇਜ਼. ਗੀ અંદર આવી ગયેલા." 90. Drawing my attention to paragraph-8 (reproduced verbatim herein below) of the testimony onwards, the witness is claimed to have testified, according to Shri Kodekar, in a truthful manner, as to how at 10:30 a.m. some Police Officers were there

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outside the Society when the witness together with Shri Ehsan Jafri and one Tasdup Hussain Faqir Ahmed had gone out to meet such Police Officers and the witness claims that Shri Ehsan Jafri identified the two senior Police Officers as Commissioner of Police Shri P.C.Pandey and P.I. Shri K.G.Erda who, the witness claims to have assured the witness with regard to Police protection and bandobast.

"૮. અમે સોસા. માં આવ્યા પછી દસ થી સાડાદસ ના સુમારે બહાર પોલીસ ની આઠ થી દસ ગાડી ઓ આવી હતી જેથી અહેસાન જાફરી સાહેબ અને અમારી સોસા. ના બે ત્રણ માણસો નામે તસદદુક હુસેન ફકીર મહમદ અને હું પણ ત્યાં ગયો હતો. જાફરી સાહેબે અમને જણાવેલ કે, આવનાર વ્યકિતઓ પી.સી.પાનડે અને કે.જી.એરડા છે. તેમની સાથે બંદોબસ્તની વાત કરી હતી. તેમણે કહ્યુ હતુ કે બંદોબસ્ત આવે છે તમે ચીતા કરો નહી. આમ કહી તે લોકો જતાં રહેલા."

91. Tt. is further submitted that the witness in terms of his testimony in paragraph-9 (reproduced verbatim herein below), claims that after such Police officers left, a mob gathered outside the Society which started damaging and destroying the shops and vehicles belonging to the minority community and started looting the said properties. The mob, according to the witness, was armed with deadly weapons and were shouting slogans like "JAI SHRI RAM" and killed the members of the minority community. The witness claims that number of residents residing outside Gulbarg Society and belonging to the minority community, fled and took

shelter in Gulbarg Society at that point of time. The mob thereafter is claimed to have indulged in stone pelting and also throwing burning tyres and rags into the Society. The witness claims that at that point of time, in retaliation of stone pelting, some residents of the Society also started pelting stones at the mob. The witness has further testified that stone pelting was started even from the rear side of the Society more particularly from the railway line and injury was sustained by the son of the present witness.

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"૯. એ લોકો ગયા બાદ સોસા. ની બહાર એક ટોળુ આવેલ. જેઓ મુસ્લીમો ની દુકાનો અને વાઠનો ને તોડફોડ કરી અને લુંટફાટ કરતુ હતુ. તે લોકો પાસે ઘાતક હથીયારો હતા અને મીંયા ઓ નેમારો.... અને કાપો.... અને ' જય શ્રી રામ ' ના નારા લગાવતા હતાં . ટોળુ આવ્યુ તે દરમ્યાન અમારી સોાસા. ની આજુબાજુની ચાલીઓ મા રહેતા ઘણા મુસ્લીમ પરીવારો બચવા માટે સોસા. માં આવ્યા હતા. આ ટોળા ના માણસો એ સોસા. માં પત્થરમારો ચાલુ કરી દીધેલ. જેમા સળગતા ટાયર, કાકડા અને પથ્થરો હતા જેથી અમે સોસા. નો ઝાંપો બંધ કરી અંદર આવી ગચેલા. પથ્થરમારો થયો એટલે અમે સ્વયં બચાવ માટે સામે પથ્થરમારો કરેલ. આ દરમ્યાન રેલવે લાઈન તરફ થી પણ રેલવેના પથ્થરોથી પથ્થરમારો થતો હતો. તેથી હું અને મારો દીકરો મહમદહુસેન ઈન્જર્ડ થયેલા. જેમાં મને હાથે અને પગે વાગેલ હતુ. અને મારા દીકરા મહમદને માથા પર અને ખ ભા પર વાગેલ અને લોહી નીકળેલ. આ સમયે અગીયાર વાગ્યા હશે."

. The witness also in terms of his

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testimony in paragraph-9 (reproduced verbatim herein above), was injured on his hand and foot and his son was injured on the shoulder and head and had started bleeding from such head injury which all took place, according to the witness, at about 11:00 a.m. The witness has further testified that one Irfan was also struck on the chest by a stone and he collapsed on account thereof and was shifted to the residence of Shri Ehsan Jafri at that point of time. The son of the present witness was sent towards the Masjid for the treatment and was given a drink of water by the witness. The witness has testified that thereafter he saw stone pelting from the terrace of bunglow No.1 of the Society at about 1:30 p.m. and he saw accused Rajesh Jinger (A-65) who was inciting the mob to rush into the Society. The witness claims to have heard a loud explosion and saw the mob entering into the Society at that point of time. The mob is claimed to have been armed with deadly weapons like swords, guptis, sticks and also with of inflammable liquid. The witness cans has positively identified accused Krishna, of son Champaben (A-34), Naran Channelwala (A-43) as being armed with quptis. The witness has positively identified in paragraph-10 (reproduced verbatim herein below) on page-7, other accused such as Atul Teli Vaidya (A-59), Bharat (A-54), Meghsing Chaudhary (A-58) and Arun Bhatt (not an accused) as being armed with swords at that point of time. According to the testimony of this witness, at that point of time, accused No.65 Rajesh Jinger came down

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from his terrace and became a part of the mob and he had a can of kerosene in his hands. The mob, according to the witness, comprised of at least 4000 to 5000 persons at that time and the witness has further identified one accused Pradip Parmar (A-56) as being part of the mob and he was armed with a pipe at that point of time. Such mob, according to the witness in terms of his testimony in paragraph-(reproduced verbatim herein below), who 11 has testified inter alia to the effect that the mob thereafter started damaging the vehicles when the witness and his son Mohammad Hussain were going towards Shri Ehsan Jafri's residence and when he saw that the autorickshaw of his brother Jehangir was being burnt and Jehangir was going towards the rickshaw when his wife Zarina exhorted the witness Jehangir. The witness claims that the to save witness dragged Jehangir towards the residence of Shri Ehsan Jafri and all the members of the witness's family thus entered into the residence of Shri Ehsan Jafri.

"૧૦. તે પછી અમારી સોસા. માં રહેતા ઈરફાન ગુલઝારભાઈ ને એક પથ્થર છાતી એ વાગતા તે પડી ગયેલ તેથી સોસા. ના છોકરાઓ ઉચકી ને તેને જાફરીસાહેબ ના ઘરે લઈ ગયેલ. આ સમય દરમ્યાન મારા દીકરા ને પથ્થરવાગવાથી લોહી નીકળવાથી તે મસ્જીદમાં આડો પડેલ. પછી મેં તેને ત્યાં જઈને પાણી પીવડાવેલ. તે પછી મકાન નંબર એક પર થી પત્થર મારો થતો હતો. તે સમય બપોર ના એક ત્રીસ વાગેલા. જેમાં રાજેશ દયારામ જીઝર હતો. આ ટોળુ પથ્થર મારો કરતુ હતુ અને ટોળા ને સોસા. માં ઘુસી જવવા ઉશ્કેરણી કરતુ હતુ. અને પછી વિસ્ફોટનો અવાજ આવેલ. અને આ ટોળુ સોસા. ની અંદર ઘુસી આવેલ. આ વિસ્ફોટ અમારી સોસાના આગળ ના ગેટ તરફ થયેલ. આ ટોળા પાસે ઘાતક હથીચારો જેવાકે, તલવાર, ગપ્તી, લાકડીઓ અને સળગતા કાકડાઓ અને કેરબાઓ હતા. આ ટોળામાં મેં ક્રિષ્ના સન ઓફ ચંપાબેન અને નારણચેનલવાળો કે જે બંને ના હાથમાં ગુપ્તીઓ હતી. બીજા એક અતુલ વૈદ, ભરત તૈલી, મેઘસીંહ ચૌધરી અને અરૂણભટટ કે જેના હાથમાં તલવારો હતી તેને મેં ઓળખેલા. અને રાજેશ દયારામ જીજંર જે ઘાબા પર થી ઉતરી ટોળામાં સામેલ થયેલ તેના હાથમાં કેરબો હતો. આ ટોળુ ચાર થી પાંચ હજારનુ હતુ. જેમાં પ્રદીપ પરમાર પણ હતા. પ્રદીપ પરમાર ના હાથમાં પાઈપ હતી.

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૧૧. આ ટોળએ અમારી સોસા.ના ઝાંપા પાસે નજીક ના ઘરો અને વાઠનો ને સળગાવેલા જેથી હું મારા દીકરા મઠમદઠ્ઠસેન ને લઈ જાફરી સાઠેબ ના ઘર તરફ જતો ઠતો. તે વખતે જઠાંગીરભાઈ ની રીક્ષા સળગતા ઝરીનાબેને મને કઠેલ કે, તમારા ભાઈને બચાવો. જઠાંગીરભાઈ જાફરીસાઠેબ ના ઘરની બાજુમાં ઝાડ આગળ ઠતા. રીક્ષા સળગતા તે રીક્ષા તરફ ગયેલા. ઝરીનાબેને જઠાંગીરને બચાવવાનુ કઠેતા ઠુ થોડા પગલા દોડી તેને લઈ પાછો જાફરી સાઠેબ ના ઘર તરફ આવેલ. મારા ઘરના લોકો જાફરી સાઠેબ ના ઘરમાં જતા રઠેલા."

93. Drawing my attention to paragraph-12 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness heard a loud explosion on the rear side of the Society and thereby climbed upon the terrace of bunglow No.16 of

Gulbarg Society and claims that number of persons were on the terrace of bunglow No.16 at that point of time. The witness claims that he saw a large mob armed with weapons which started damaging the houses and vehicles and setting them afire with kerosene. The witness apprehended for his life and therefore, hid in the rear side of the terrace of bunglow No.16 from where he claims to have heard explosions and pleas of women seeking somebody to save them.

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"૧૨. હું વિસ્ફોટ નો અવાજ આવવાથી મકાન નંબર સોળ કે જે ખાન સાહેબનુ છે તેના ધાબા પર ચડી ગયેલ. આ વિસ્ફોટનો અવાજ પાછળ થી રેલવે લાઈન તરફ થી આવેલ. તે વખતે મેં કાંઈ જોયેલ નહી. હું સોળ નંબર ના મકાન ના ધાબા પર ગયો ત્યાં બીજા માણસો પણ હતા. મેં ધાબાની જાળીમાંથી જોયુ તો આ ટોળુ હથીયારો સાથે વાહનો અને ઘરો ને પેટ્રોલ કેરોસીન છાંટી સળગાવતા હતા. જેથી મને કોઈ જોઈ જશે તેવી બીક લાગવાના કારણે હુ ધાબાની પાછળ ની બાજુ એ જઈ સંતાઈ ગયેલ. તે સમય દરમ્યાન

વિસ્ફોટોના અને સ્ત્રીઓ ની બચાવો...બચાવોની ચીસો સંભળાતી હતી."

94. Drawing my attention to paragraph-13 (reproduced verbatim herein below) onwards of the testimony of the witness, Shri Kodekar submits that the witness claims that at about 4:30 p.m. he heard Police whistles and felt that there was silence that had descended of incident the scene and he, therefore, got down from the terrace where he saw dead bodies of number of women and children near Shri Ehsan Jafri's residence and found a number of nude bodies of women at that point of time. The

witness has thereafter testified with regard to the fact of four members of his family having lost their lives in the incident and claims to have been escorted from Gulbarg Society by the Police and Shahibauq Police taken firstly to Station and thereafter to the refugee shelter at Dariakhan Ghummat. The witness has testified that thereat, he met his wife and was narrated in detail about the incident.

"૧૩. તે પછી સાડાચાર વાગ્યાના અરસામાં અમને વ્હીસલોનો અવાજ સંભળાચેલ અને વાતાવરણ એકદમ શાંત લાગતા અમો ધીમે ધીમે સીડીએથી નીચે ઉતરેલા. નીચે ઉતર્ચા ત્યા જમીન પર સ્ત્રીઓ અને બાળકો ની લાશો હતી અને જાફરી સાહેબ ના ઘર આગળ નગ્ન સ્ત્રીઓ ની લાશો અમે જોઈ અને મેં મારા પરીવાર ને શોધવાની કોશીશ કરેલ. મને કોઈ મળેલા નહી."

95. Drawing my attention to paragraph-16 (reproduced verbatim herein below) of the deposition, it is pointed out that the witness has testified that he was asked to identify the dead found that they were unidentifiable bodies but because they were charred, but however, he was compelled to identify the dead bodies by the Police officers on account of which the witness identified the dead body of his son Mohammad Hussain, brother Jehangir and sister-in-law Mumtaz. The witness corrects himself and claims that he did not identify the dead body of Mumtaz but identified the dead body of his other sister-in-law Zarina. It is claimed

that the statement was recorded on 06/03/2002 at Dudheshwar Police Station and another statement on 11/03/2002 when the witness was taken over to his residence at Gulbarg Society to assess the damage thereat. witness claims caused The that while recording his statement dated 06/03/2002, the correct facts as narrated by the witness were not reproduced and the persons whom the witness has identified as perpetrators were not named in the said statement. In the circumstances, the witness has narrated that an affidavit dated 14/11/2002 was sworn giving such details and the same was handed over to Advocate Shri Dawoodbhai and another application dated 25/11/2002 was handed over to the Police Commissioner.

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"૧૬. તા. ૨/૩/૦૨ ના રોજ રાહતકેમ્પમાં એલાન થયેલ કે, ગુલબર્ગ સોસા.માંથી લાશો ને કલંદરી કબ્રસ્તાનમાં લાવેલ છે. જેથી હું ત્યાં ગયેલ. આ લાશો ઓળખાય તેમ ન હતી. તે આઈડેન્ટીફાય તેવી ન હતી. તે બળી ગયેલ હાલતમાં હતી. પોલીસવાળા એ અમને કહેલ કે, લાશો ઓળખીલો નહીતો અમે પાછી લઈ જઈશુ. જેથી મેં મારા દીકરા મહમદહુસેન, જહાંગીર અને મુમતાઝની લાશો ઓળખેલ. હવે હું કહુ છુ કે મેં ઝરીનાની લાશ ઓળખેલ અને મુમતાઝ ની નહી. આ લાશો અમે સોસા. માંથી નીકળ્યા ત્યારે ઓળખાય તેવી હતી પણ પાછળ થી સળગાવી નાખી હોય તેવુ અમને લાગેલ. આ લાશો ને કલંદરી કબ્રસ્તાનમાં ઉંડા ખાડાખોદી સીડી થી નીચે ઉંતરી લાશો ની દફન વિધી કરેલ."

96. The witness in terms of paragraph-18 (reproduced verbatim herein below) of his testimony,

according to Shri Kodekar, has identified a number of accused and has positively identified accused Meghsing Chaudhary (A-58), Bharat Teli (A-54), Naran Channelwala (A-43) and Pradip Parmar (A-56) as those from amongst the accused present in the Court. However, the accused Atul Vaidya (A-59) is wrongly identified as such in the Court by the present witness. In fact, an accused Shivcharan Ramjilal Nath (A-64) is wrongly identified as accused Atul Vaidya.

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"૧૮. મેં નામો જણાવ્યા તેમને દુ ઓળખુ છુ. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી મેઘસીગ ને ઓળખુ છુ તે આરોપી ને તેનુ નામ પુછતા મેઘસીંગ ચૌઘરી દોવાનુ જણાવે છે.કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ભરત તૈલી ને ઓળખુ છુ તે આરોપી ને તેનુ નામ પુછતાઅને ખાત્રી કરતા ભરત તૈલી દોવાનુ જણાવે છે.કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપીનારણ ચેનલવાળા ને ઓળખુ છુ તે આરોપી ને તેનુ નામ પુછતા નારણ ચેનલવાળોદોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી પ્રદીપ પરમાર ને ઓળખુ છુ તે આરોપી ને તેનુ નામ પુછતા પ્ર દીપ પરમાર દોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી યદીપ વરમાર દોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી અતુલ વૈદ ને ઓળખુ છુ તે આરોપી ને તેનુ નામ પુછતા શીવચરણ રામજીલાલ નાથ દોવાનુ જણાવે છે.ચાર્જશીટ સાથે ના ફોટા થી ખાત્રી કરતાં આરોપી શીવચરણ રામજીલાલ નાથ છે."

97. The witness, according to Shri Kodekar, has also identified subsequently arraigned accused Rajesh Dayaram (A-65) in the Court, in paragraph-60 (reproduced verbatim herein below) of

his testimony, at a subsequent stage.

"૬૦. દું રાજેશ જીંગર ને ઓળખુ છુ. દું કોર્ટમાં દાજર આરોપી રાજેશ જીંગરને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા પોતાનું નામ રાજેશ જીંગર દોવાનુ જણાવે છે."

98. It is pointed out that this witness also is a natural, truthful and credible witness who has not exaggerated or has testified in a manner as would be doubtful, credibility of the witness is established in the course of his testimony, the witness has identified large number of accused, the weapons that they were holding and the specific overt acts committed by each of such accused. It is pointed out this thus, that witness has at the cost of repetition, corroborated the Prosecution version in its entirety and has gone a long way in establishing the charges against the accused beyond reasonable doubt.

99. Shri Kodekar has drawn my attention to the testimony of the another material and relevant witness being one Ashraf Sikanderbhai Sandhi (PW-142) whose testimony is on the record of the proceedings at Exh.654. It is pointed out that the witness is an eye-witness and was a resident of Bunglow No.6 of the Gulbarg Society at the time of the incident. The witness was at the relevant point of time employed as a driver with the Arvind Mills Limited, and drawing my attention to paragraph-2 (reproduced verbatim herein below) of the testimony

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of this witness, it is pointed out by Shri Kodekar that one of the uncles of the present witness, being one Jehangirbhai was a victim of the violence and had lost his life in the incident in the year 2002. Drawing my attention to paragraph-3 (reproduced verbatim herein below) of the deposition of this witness, it is pointed out that the witness, his Sikanderbhai, father mother Mumtazben, sister Nasimbanu, brother Shehzad and uncles Rehman and Sairaben (Salim's wife), Mohammad Hussain Salim, (son of Salim) and another uncle Jehangirbhai, his wife Zarinaben, sons Asif and Javed and daughter Parveenbanu were all residing as a joint family in Bunglow No.6 of the Gulbarg Society at the time of the incident.

"૨. મારે ત્રણ કાકા છે. જેમાં સદુથી મોટા કાકાનું નામ રહેમાન ભાઈ છે તેમના થી નાના નું નામ સલીમભાઈ અને સૌથી નાના નું નામ જદાંગીર ભાઈ છે. કાકા પૈકી દાલ જદાંગીર ભાઈ દયાત નથી. તેમનુ સને ૨૦૦૨માંગુલબર્ગ સોસા.ના તોફાનો માં અવસાન થયેલ. મારે એક બદેન છે જેમનુ નામ નસીમબાનુ છે. તેમના લગ્ન સરખેજ ફતેદવાડી ખાતે થયેલા છે.
૩. મારો જન્મ અમદાવાદમાં જ થયેલ છે અને જન્મ થી જ દુ ગુલબર્ગ સોસા. માં રહેતો દતો. ગુલબર્ગ સોસા. માં મકાન નં. ક મારા દાદા નુર મદમદ મોતીમીયા એ ખરીદેલ. તે મકાન દાલ મારા કાકા અને પપ્પા ના સંયુકત નામે છે. સને ૨૦૦૨માં આ મકાનમાં હું, મારા પિતા સીકંદરભાઈ, મારા માતા મુમતાઝબેન મારી બેન નસીમબાનુ , મારો ભાઈ શહઝાદ, મારા કાકા રહેમાન ભાઈ, બીજા કાકા સલીમભાઈ, તેમના પત્ની સાયરાબેન, તેમનો પુત્ર મદમદ હુસેન તથા બીજા કાકા જદાંગીરભાઈ, તેમના પત્ની

ઝરીનાબેન, તેમનો પુત્ર આસીફ, બીજો પુત્ર જાવેદ, અને એક પુત્રી પરવીન બાનુ એમ અમે બધા સંચુકત કુટુંબ માં રહેતા હતા. સને ૨૦૦૨માં નસીમ ના લગ્ન થયેલા નહી."

100. It is pointed out by Shri Kodekar that the present witness has largely corroborated the other eye-witnesses with regard to the sequence of events beginning from the incident that took place at Godhra Railway Station on 27/02/2002, the Bandh call announced by the Vishwa Hindu Parishad, Bajrang Dal and supported by the B.J.P. and the ensuing tension that took place on account of such Bandh call, which are all testified to by the witness.

Drawing my attention to the contents 101. of the testimony of the present witness as emerging from paragraphs 5 to 7 (all reproduced verbatim herein below) of his deposition, it is pointed out by Shri Kodekar that the sequence of events as they began from 9:00 a.m. on 28/02/2002, are faithfully, truthfully and accurately, according to Shri Kodekar, narrated in a manner as would provide ample corroboration to the testimonies of other eye-The testimony emerging witnesses. from such paragraphs clearly indicates as to how certain elements had started enforcing the closing down of shops in the vicinity of Gulbarg Society and the fact of the witness having himself seen such incidents is narrated on page-5, paragraph-5 of his

testimony. The persons enforcing such closure of shops are positively identified by the witness as being Girish Prabhudas Sharma (absconding accused), Ramesh Pandey (absconding accused) who were a part who were shouting obscenities of the mob and enforcing the closure of shops. The testimony of the from paragraph-6 witness as emerging clearly narrates accurately and corroborates the versions supplied by other eye-witnesses with regard to the attack on the two sons connected to Ankur Cycle Works and Shri Kodekar has pointed out that one son being Yusuf ran into the Society to take shelter and such person being Yusuf clearly narrated with regard to the fact of his brother Ayub being given gupti his back side. The witness has also blows on testified that the said Yusuf also claimed to have been beaten up by the members of the mob and the witness has testified that Yusuf was taken over to the residence of Shri Ehsan Jafri. The witness thereafter claims to have seen a large mob of persons who were engaged in damaging and burning an autorickshaw belonging to one Gulam Master. Of such persons engaged in such activity, the witness in terms of his testimony in paragraph-6 on page-6, has positively identified Kapil Munna (A-50), Dharmesh (A-47) as being the persons who were setting the autorickshaw on fire. The witness has testified that in a short while, the Police arrived at the scene of the incident and put out the fire and it emerges that in terms of paragraph-7 of his testimony, the witness, according to Shri Kodekar, has further

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narrated the version of other eye-witnesses by testifying that at about 10:30 a.m. about five Police vehicles came over to the said Gulbarg Society and from amongst the residents of Gulbarg Society, Shri Ehsan Jafri, Faqir Mohammad Saiyed (PW-314 herein) and Tasadduk Hussain Surohi (PW-213 herein) went out to meet the Police officials and the witness has further deposed that after having some talks with such Police officials, the vehicles went away and the present witness was indicated that amongst the Police officials who had visited Gulbarg Society in such fashion, were Shri K.G.Erda, the then P.I. of Naroda Police Station (presently accused No.57 herein) and the then Commissioner of Police Shri P.C.Pande, who in turn had assured the residents of Gulbarg Society of full Police protection.

102. The witness has further testified that consequent to such Police vehicles having gone away from near Gulbarg Society, a mob of about 10000 to 15000 persons had gathered outside the Society and the mob was shouting inciting slogans *inter alia* to the effect that persons belonging to the minority community should be killed. The witness has further identified as persons being present within such mob as Kailash Dhobi (A-1), Girish Prabhudas Sharma (absconding accused), Dinesh Prabhudas Sharma (A-63), Kapil Munna (A-50), Ambesh (A-32), Dharmesh (A-47) and Gabbar (A-14) as being present in the mob. The witness has explained that he was in a position

to identify such persons on account of having played cricket with them and that they were residing in the nearby Chawls located close to Gulbarg Society. The witness has further testified on page-8 inter alia to the effect that the mob was armed with swords, pipes and was possessed with cans of inflammable liquid. The mob, according to the witness, went on a rampage and started damaging and setting afire the vehicles that were parked nearby and shops belonging to the minority community were broken into and looted. The witness has claimed that at that point of time, members of the minority community residing outside Gulbarg Society ran into Gulbarg Society to take shelter. It is testified that the residences of such persons were looted and set afire. It is further testified by the witness that the mob started pelting stones on the Society and also threw glass bottles and burning rags into the Society. The witness has further claimed that the residents of Gulbarg Society also started pelting stones at the in self defence. The witness has further mob testified that a mob thereafter had also gathered at the rear side of the Society and from there also, the mob had started pelting stones as also throwing burning rags into the houses of the residents of Gulbarg Society and resultant thereto, the residences located within Gulbarg Society had caught fire which was put down by the residents of Gulbarg Society.

"પ. તા.૨૮/૨/૦૨ ના રોજ બંધનુ એલાન હોવાથી હું

ઘરે રહેલ. મારા પિતાજી સવારે વહેલા નોકરી એ જતા રહેલા. તે વખતે મારા બેનનસીમ અને મારા નાના ભાઈ શહેજાદ ને મારા બનેવી તેમના ઘરે ર૭ મી તારીખે લઈ ગચેલા. મારી માતા મારી સાથે ઘરે હતાં. તે દીવસે સવાર ના નવ વાગે હું ચા નાસ્તો કરી ને બેઠો હતો , ત્યારે મને જાણવા મળેલ કે, સોસા. ની બહાર અમુક છોકરાઓ આવી દુકાનો બંધ કરાવે છે. તેથી હું ઘરમાંથી બહાર નીકળેલ અને મારા ઘરની સામે મકાન નં. 3 માં રહેતો નદીમ સુરોદી પણ બહાર હતો. તેને મેં જણાવેલ કે, આપણે બહાર જઈ જોઈ આવીએ. તે પછી અમે સોસા. ના નાના ગેટ થી બહાર ગચેલા. ત્યાં જઈને જોયુ તો અમુક છોકરાઓ દુકાનો બંધ કરાવતા હતા. સોસા ની બહાર મુસ્લીમો ની અને સોની ની દુકાનોજે ચાલુ હતી તે બંધ કરાવતા હતા. તે ગેળા માં એક ગીરીશ પ્ર ભુદાસ શર્મા અને રમેશ પાન્ડે હતા. રમેશ પાન્ડે રમેશ ચોટી તરીકે ઓળખાચ છે. તે લોકો દુકાનો બંધ કરાવતા હતા અને બીભત્સ ગાળો બોલતા હતા. જેથી હું અને નદીમ સોસા. માં અંદર આવી ગચેલ.

૬. તે પછી થોડીવારમાં દસ પંદર છોકરાઓ સોસા. ની સામે આવી બુમાબુમ કરતાં હતા. તેમાં મેં કોઈ ને ઓળખેલ નહી. તે પછી અમે સોસા. ની અંદર પાછો આવી ગયેલ. હું સોસા. ની અંદર ગેટ પાસે ઉભો હતો તે સમયે બહાર થી અંકુર સાયકલ વાળા હબીબખાન નો છોકરો યુસુફ દોડી ને સોસા. માં આવેલ તે એકદમ ગભરાયેલી હાલતમાં હતો. તેણે આવી ને મને જણાવેલ કે, તેને બહાર ટોળા ના માણસો એ માર મારેલ છે અને તેના ભાઈ અયુબ નેપીઠ ના ભાગે ગુપ્તી મારેલ છે. તેથી સોસા. ના છોકરાઓ તેને જાફરી સાહેબ પાસે લઈ ગયેલા. તે પછી હુ નાના ગેટ તરફ જઈ અને ત્યાંથી બહાર નીકળેલ. ત્યાં જઈને મેં જોયુ તો ટોળા ના અમુક માણસો ગુલામ માસ્ટર ની રીક્ષા બહાર કાઢી સળગાવતા હતા. તે રીક્ષા સળગાવતા હતા

તેમાં મેં એક કપીલ મુન્નાભાઈ અને ધર્મેશ ને ઓળખેલ. એ રીક્ષા સળગાવતા હતા તેટલી વાર માં પોલીસ ની ગાડી ત્યાં આવેલ. તે ગાડી જોઈ ને ટોળુ ચાલીમાં ભાગી ગચેલ. પોલીસવાળા એ આજુબાજુ થી પાણી લઈ રીક્ષા બુઝાવી તે પછી ગાડી ત્યાંથી જતી રહેલ.

તે પછી અમે સાડાદસ વાગે ત્યાં નાના ઓટલા પાસે ى. ઉભા હતા. ત્યારે પોલીસ ની ચાર પાંચ ગાડી ઓ નાના ગેટ પાસે આવી ને ઉભી રહેલી. તે જોઈને જાફરી સાહેબ, ફકીરમહમદ સૈયદ અને તસદદુક હુસેન સુરોહી તથા બીજા બે ત્રણ માણસ ત્યાં મળવા ગયેલા. ત્યાં જઈ ને તેમણે કાંઈક વાતચીત કરેલ. અને પછી પાછા આવેલા અને પોલીસ ની ગાડી ઓ ત્યાંથી જતી રહેલ. તે વખતે અમે નાના ગેટ પાસે ઉભા હતા. પછી જાફરી સાહેબે અમને વાત કરેલ કે, જે આવેલા તેમાં આપણા મેઘાણીનગર ના પી.આઈ. કે.જી.એરડા અને બીજા પો.કમી. શ્રી પી.સી.પાંન્ડે હતા. જાફરી સાદેબે એમ જણાવેલ કે, મને પોલીસે એમ આશ્વાસન આપેલ છે કે, ચીંતા કરશો નઠી અને જરૂર લાગશે તો પોલીસ બંદોબસ્ત તમને મળી જશે. તે પછી થોડી જ વારમાં સોસા. ની બહાર પાચ થી દસ હજાર માણસોનુ ટોળુ આવી ગચેલ. તે વખતે અમે નાના ગેટ પાસે ઉભા હતા. ટોળુ બુમો પાડતુ હતુ કે, ''મીચા ઓ ને મારો કાપો'' એ ટોળા માં મેં કૈલાશ ધોબી, ગીરીશ પ્રભુદાસ શર્મા, દીનેશ પ્રભુદાસ શર્મા, કપીલ મુન્નાભાઈ, અંબેશ , ધર્મેશ અને ગબ્બર ને ઓળખેલા. આ બધા અમારી સોસા. ની આજુબાજુ ની ચાલીઓમાં રદે છે અને જોડે ક્રિકેટ રમતા તેથી તેઓ ને ઓળખૂ છુ. આ લોકો પાસે તલવારો, પાઈપો, કેરબા, વગેરે હતુ. આ લોકો એ અગાઉ જે રીક્ષા બાળી હતી તે પાછી રોડ પર લાવી તેને સળગાવેલ અને આજુબાજુ જે વાઠનો પડયા હતા તેને પણ લઈ ને સળગાવવા માંડેલા. તે પછી મુસ્લીમો ની દુકાનો ને તોડી

ને તેમાં લુટફાંટ ચાલું કરેલ. આ બધું થવાથી ભાગંભાગ થઈ અને આજુબાજુ ની ચાલીઓમાં રહેતા મુસ્લીમો બચવા માટે અમારી સોસા. માં આવી ગચેલ.તે પછી ટોળા ના માણસો એ લુટફાટ કરી સામાન બહાર લાવી સળગાવવા માંકેલ. અને ટોળુ સીધુ સોસા. પર પથ્થરમારો કરવા લાગેલ. ટોળુ સળગતાં કાકડા અને કાચની બોટલો પણ ફેકતુ હતુ. તેથી અમે અંદર આવી ને અમારી સોસા. ના બંને ગેટ બંધ કરી દીધેલા. અમે પણ અમારા સ્વબચાવ માટે સામો પથ્થરમારો કરવા લાગેલા. ટોળુ સતત પથ્થરમારો કરતું હતુ. થોડીવાર પછી પાછળના ભાગે પણ પથ્થરમારો શરુ થયેલ. અને ત્યાંથી પણ સળગતા કાકડા અને બોટલો ફેંકાવા લાગેલ. જેનાથી સોસા. માં

તે જે તે ઘરના લોકો અને સોસા. ના બીજા છોકરાઓ એ જઈને બુઝાવેલ."

પાછળના ભાગે આવેલ મકાનો ના બારી બારણા ને આગ લાગેલી.

Drawing my attention to the contents 103. of paragraphs 8, 9 and 10 (all reproduced verbatim here under) of the testimony of the witness, Shri submits that the witness has Kodekar in these portions of his testimony, clearly narrated the horrific incident as it unfolded and has narrated as to how the witness himself saw certain persons of whom he has identified positively some of the accused as committing overt acts which led to the death of number of victims. The present witness was himself injured in the events as have unfolded in the testimony contained in paragraphs 8 to 10 and it been pointed out by Shri Kodekar that the has incident as narrated therein started at about 1:00 p.m. and according to the witness, a large number of

persons got on to the terrace of bunglow No.1 of Gulbarg Society belonging to one Dayaram Jinger and had started pelting stones on the Society and the witness has positively identified Gabbar (A-14) as being the person amongst the mob who had climbed on the terrace of Dayaram Jinger's property and the person was inciting others to rush into the Society. The witness has further testified that he saw one Irfan being son of one Gulzarbhai sustaining injuries on his chest on account of such stone pelting and that the said injured Irfan having collapsed and taken away to the residence of Shri Ehsan Jafri by one Imtiyaz (PW-106 herein) and another boy of the Society. The witness has deposed that at that point of time, the witness himself sustained a head injury in the resultant stone pelting and he too went inside the residence of Shri Ehsan Jafri, escorted by his mother who was standing next to him at that point of time. The witness has deposed that at that point of time, there were more than 70 to 80 persons taking shelter in the residence of Shri Ehsan Jafri and the witness claims to have been standing on the 'Otta' of Shri Ehsan Jafri's residence when he heard a loud explosion near the main gate of the Society and saw that the mob had rushed into the Society therefrom. The mob, according to the witness, was armed with swords, pipes, sticks and also possessed of cans of inflammable liquid. The witness claims that bunglow No.2 belonging to one Shri Mansuri was entered into by the mob and looted. The vehicles parked outside

were also damaged and set afire and in a short while, the witness claims that he heard a loud explosion even on the rear side of the Society wherefrom also a mob of persons rushed into the Society and started damaging and destroying the properties and vehicles of Gulbarg Society and the mob thereafter came near the residence of Shri Ehsan Jafri and according to this witness, the residence of Shri Ehsan Jafri was completely surrounded on all sides by the mob. The witness has, on page-10 of his testimony, clearly identified Kailash Dhobi (A-1), Girish Prabhudas Sharma (absconding accused), Dinesh Prabhudas Sharma (A-63), Kapil Munna (A-50), Dharmesh (A-47), Ambesh (A-32) and Gabbar (A-14) as being a part of such mob. It is testified that Kailash Dhobi (A-1) was armed with a sword and Kapil Munna (A-50) and Ambesh (A-32) were possessed of cans of inflammable liquid and other members of the mob were holding pipes or sticks in their hand.

ખપોર ના એક વાગે ટોળુ સોસા. ના એક નંબર
ના દયારામ જીંગર ના મકાન પર ચઢી ગયેલ અને તે મકાન ત્રણ માળનું છે.
અને તેના ધાબા પર ટોળુ ચઢી ગયેલ અને ત્યાંથી પથ્થરમારો કરતુ હતુ.
તે ટોળામાં એક ગબ્બર હતો જે ટોળા ને અંદર ઘુસવા ઉશ્કેરણી કરતો હતો
તે લોકો ઉપરથી પથ્થર ફેંકતા હતા. જેથી ગુલઝારભાઈ ના પુત્ર ઈરફાન
ને છાતી ના ભાગે પથ્થર વાગેલ જેથી તે નીચે પડી ગયેલ. તેને ઈમ્તીચાઝ
અને બીજા એક છોકરા એ ઉપાડી ને જાફરી સાહેબ ના ઘરે લઈ ગયેલ.
તે જ સમયે મારા માથામાં પણ પથ્થર વાગેલ. જેથી મારા માતા ત્યાં ઉભા હતા
તેમણે મને પકડી ને જાફરી સાહેબ ના ઘરે લઈ ગયેલ. હું ત્યાં ગયો

ત્યારે જાફરી સાહેબ ના ઘરમાં આશરે સીતેર થી એંસી માણસો હતા. હું જાફરી સાહેબ ના ઘર ના ઓટલે ઉભો હતો તે વખતે સોસા. ના મોટા ગેટ તરક થી મોટો આવાજ આવેલ જેથી મેં તે તરફ જોતા મને એવુ લાગેલ કે ટોળૂ ગેટ તોડી ને અંદર ઘુસેલ છે. તે ટોળામાં બધા પાસે હથીયારો તેમા, તલવારો, પાઈપો, લાકડી ઓ અને કેરબા હતા. આ ટોળા એ બે નંબર ના મનસુરી ના મકાનમાં ઘૂસી ને લુટફાટ કરવાનુ શરૂ કરેલ. સોસા. માં બહાર વાઠનો પડ્યા હતા તે પણ સળગાવવાનુ શરુ કરેલ. તે વખતે થોડીવાર પછી પાછળ ના ભાગે થી પણ મોટો અવાજ આવેલ. તે તરફ થી પણ ટોળુ અંદર ની તરફ ઘુસ ેલ. તે ટોળા એ પણ સોસા. ના વાહનો ને આગ લગાડવાનુ શરૂ કર્યુ તથા મકાનો માં લુટફાટ કરવાનુ શરૂ કરેલ. આ બંને તરફ ના ટોળા એ લુટફાટ શરૂ કરી આગ લગાડવાનુ શરૂ કરી જાફરી સાદેબના મકાન તરફ આવેલ. તે વખતે હુ જાફરી સાદેબના મકાન પાસે ઉભો દતો. ટોળા એ ચારે બાજુ થી જાફરી સાદેબ ના મકાન ને ઘેરી લીધેલ. આ ટોળા માં મે, કૈલાશ ધોબી, ગીરીશ પ્રભુદાસ શર્મા, દીનેશ શર્મા, કપીલ મુન્નાભાઈ, ધર્મેશ, અંબેશ અને ગબ્બર ને મેં આ વખતે કૈલાશ ધોબી ના હાથમાં તલવાર હતી. કપીલ તથા ઓળખેલા.

અંબેશ ના હાથ માં કેરબા હતા અને બીજા ના હાથમાં પાઈપ લાકડી ઓ હતી. c. આ ટોળુ એકદમ જાફરી સાહેબ ના ઘરમાં ઘુસ `લ તેમા કૈલાશ ધોબી એ નીચે બેઠેલા અનવર ભાઈ ના છાતી ના ભાગ માં તલવાર વડે ઘા મારેલ અને અનવર ભાઈ ત્યાં જ પડી ગયેલ. તેમનો પુત્ર અસલમખાન તેમને બચાવવા ગયેલ. કૈલાશ ધોબી એ તેમને પણ જમણા હાથ પર તલવાર નો ઘા મારેલ. એ જોઈ ને તૈયબ ભાઈ એ અસલમભાઈ ને ઘર ની અંદર ખેંચી દીધેલ અને જાળી બંધ કરી દીધેલ. અનવર ભાઈ ને પેલા લોકો એ ઉપરા છાપરી તલવાર થી ઘા મારેલ. એ પછી એ જોઈને હું જાફરી સાહેબ ના

મકાન માં પાછળ ના ભાગમાં રુમ માં જચાં મારા મમ્મી ઉભા હતા તેમની પાસ ે જતો રહેલ. તે વખતે હુ અને મારા મમ્મીબારી પાસે ઉભા હતા. ત્યારે એકદમ પાછળ થી મારા પર કોઈ એ બારીમાંથી પેટ્રોલ જેવુ નાખેલ. મેં પાછળ વળી ને જોચુ તો કપીલ મુન્નાભાઈ અને ધર્મેશ હતો. પેટ્રોલ કપીલ મુન્નાભાઈ અને ધર્મેશે નાખેલ. તે જોઈ ને મારા મમ્મી ગભરાઈ ગચેલ અને કહેલ કે, તુ સીડી થી ઉપર જતો રહે. મારા મમ્મી નીચે રહેલા. હુ સીડી વાટે ઉપર ગચેલ. હુ ઉપર ગયો ત્યાં બીજા લોકો હતા ત્યાં જાફરી સાહેબ ના પત્ની જાકીચાબેન તથા તેમના સબંધી ઓ પણ ત્યાં હતા. હું ગયો તેની થોડી વાર પછી રૂપા દારા મોદી પણ ત્યાં ઉપર આવેલા. તેની થોડીવાર પછી ઇમ્તીયાઝ પણ ઉપર આવેલ.

૧૦. અમો ઉપર હતા ત્યારે નીચે થી ચીસો પડતી હતી અને બચાવો બચાવો તેમ બુમો પાડતા હતા. તે સમચે જાફરી સાહેબ ના મકાન ના સામેના ભાગ ની દુકાન પર થી પણ પથ્થરમારો શરુ કરેલ. જેથી અમે રૂમમાં બેસી રહેલા."

104. Drawing my attention to paragraph-9 (referred to verbatim herein above) of the testimony contained as on page-11 thereof, Shri Kodekar submits that the witness has clearly testified that at that point of time, Kailash Dhobi (A-1) inflicted a sword blow on the chest of one Anwarbhai who was seated outside Shri Jafri's bunglow and as a result thereof, according to the witness, the said Anwarbhai had collapsed. It is further deposed by the witness that at that stage, one Aslamkhan being Anwarbhai's attempted his father son, to save

whereupon he too was inflicted a sword blow by Kailash Dhobi (A-1) and thus sustained injuries on his right hand. The witness claims that at that Taiyyebbhai tried point of time, one to draq Aslamkhan into the residence of Shri Ehsan Jafri and shut the grill of the residence. The witness claims to have seen at that point of time that said Anwarbhai was being inflicted multiple wound blows with the sword. The witness claims to have gone into the rear portion of Shri Ehsan Jafri's residence together with his mother and both of them, according to the witness, were standing near a window where he felt that some inflammable liquid like petrol was thrown on the witness and he saw that Kapil Munna (A-50) and Dharmesh (A-47) were the persons who had thrown such liquid. At that point of time, the witness claims to have been instructed by his mother to rush to the first floor of Shri Ehsan Jafri's residence and on doing so, the witness found the wife of Shri Ehsan Jafri being one Zakiaben and other relatives of Shri Ehsan Jafri on the first floor of the residence. The witness claims that at that point of time, within a short while of the witness having reached the first floor of the residence of Shri Ehsan Jafri, one Rupaben Dara Modi (PW-107 herein) and Imtiyaz (PW-106 herein) also came over to the residence of Shri Ehsan Jafri. The witness claims that thereafter he heard loud screams for help from the first floor and he saw that the mob continued to pelt stones upon the bunglow of Shri Ehsan Jafri and the witness claims to have kept

on sitting in the room on the first floor.

105. Drawing my attention to paragraph-11 (reproduced verbatim herein below) of his testimony as contained on pages 12 to 14, Shri Kodekar submits that the witness has testified that at about 5:30 p.m., he heard the sound of Police whistles and firing of teargas shells and shooting from the weapons of the Police and a presumption was arrived at by the witness that the Police had come over and therefore, upon seeing the Police present at Gulbarg Society, all the residents came down and the witness saw that the entire residence of Shri Ehsan Jafri had completely burnt and was still having flames coming out of the building. The witness saw the dead Jafri's bodies the compound of Shri in Ehsan residence, of whom two were dead bodies of ladies who were devoid of any clothing. The front portion of Shri Ehsan Jafri's residence also was found to be littered with dead bodies and the witness tried to locate his near and dear ones and found his wife and two uncles Salim and Rehman and he further claims that three Police vehicles came over and all the residents of Gulbarg Society were made to sit in such Police vehicles to be taken away to shelter for their safety. The witness has further deposed that the mob had started pelting stones at the Police vehicles also, causing damage to the Police vehicles and the driver of the first vehicle expressed his inability to drive the vehicle any further and in the circumstances, the Police authorities present

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surrounded the vehicles and slowly all the vehicles containing the residents of Gulbarg Society were thus driven to Shahibaug Police Station. The witness has deposed that at that point of time also, the Police had to resort to firing teargas shells and bullets to disperse the mob which continued to pelt stones at the vehicles. The witness has further testified that the residents of Gulbarg Society were taken over to the refugee shelter at Dariakhan Ghummat from Shahibaug Police Station.

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તે પછી પાંચ સાડા પાંચ વાગે પોલીસ ની **~**99. વ્હીસલ ના અવાજ આવવા માંડેલા. ટીયર ગેસ તથા ફાયરીંગ ના પણ આવતા હતા. તે સાંભળી એવુ લાગતુ હતુ કે કદાચ પોલીસ આવી ગઈ હશે. જેથી અમે બારીમાંથી જોતા પોલીસ વાળા બધાને નીચે બોલાવતા હતા. પછી અમે નીચે ઉતરેલા. અમે જોયુ તો જાફરી સાઠેબ નુ મકાન આખુ બળી ગયેલ હતુ અને તેમાંથી આગ નીકળતી હતી. પાછળ ના કમ્પા. મા અમુક લાશો પડી હતી. તેમાં બે સ્ત્રી ની લાશો નગ્ન હાલતમાં હતી. ત્યાંથી આગળ આવી ને જોયુ તો આગળ પણ અમુક લાશો હતી. તે પછી અમે અમારા ઘરવાળા ની શોધખોળ કરેલી. ત્યારે મારા બે કાકા સલીમભાઈ અને રહેમાન ભાઈ મળેલા. પછી પોલીસે ગાડી ઓ મંગાવેલ. જે ત્રણેક ગાડી ઓ આવેલ. તે ગાડીઓમાં બધા ને બેસાડી દીધેલ. તે જ સમચે ટોળા એ ગાડી પર પણ પથ્થરમારો શરૂ કરી દીધેલ. અમારા થી આગળ ની ગાડી હતી તેનો કાચ તુટી ગયેલ. જે આગળ નો કાચ તુટી ગયેલ. ડ્રાઈવરે ઉતરીને કઠેલ કે, દુ પથ્થર મારા માં ગાડી ચલાવી શકુ તેવી હાલત નથી. તેથી પોલીસે ગાડી ઓ ને ચારે બાજુ થી ગાર્ડ કરી ધીરે ધીરે શાહીબાગ પો.સ્ટે. લઈ ગયેલ. ગાડી ઓ બહાર નીકળી

તે વખતે ટોળુ હટતુ ન હતુ જેથી ટીચર ગેસ ના સેલ છોડેલ તેમજ ફાચરીંગ પણ કરેલ. શાહીબાગ પો.સ્ટે. થી અમને દરીચાખાન ઘુમટ સ્કુલ છે ત્યાં લઈ ગયેલ. જયાં રાહત કેમ્પ હતો."

106. Drawing my attention vital to а portion of the deposition of this witness as paragraph-12 (reproduced contained in verbatim herein below) of his deposition, it is submitted by Shri Kodekar that the witness claims to identified all persons named by him in his testimony as from those present in the Court room. Shri Kodekar has pointed out that of the six accused named, the witness has been able to identify positively in the Court four of the accused of whom he has identified Kapil Munna (A-50), Ambesh (A-32), Dinesh Prabhudas Sharma (A-63) and Gabbar (a-14). It is noted in the deposition by the Court itself that more than 10 months had elapsed and the witness was unable to identify the other accused.

"૧૨. મેં જેના નામ આપ્યા તેમને હુ આજરોજ ઓળખી શકુ. કોર્ટમાં હાજર આરોપીઓ પૈકી હુ આરોપી કપીલ મુન્ના ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા કપીલ મુન્ના હોવાનુ જણાવે છે. હુ કોર્ટમાં હાજર આરોપી ઓ પેકી આરોપી અંબેશ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા અંબેશ હોવાનુ બતાવે છે. હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી દિનેશ પ્રભુદાસ શર્મા ને ઓળખી બતાવુ છુ. આરોપીને તેનુ નામ પુછતા દીનેશ પ્રભુદાસ શર્મા હોવાનુ જણાવે છે. હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી, આરોપી ગબ્બર ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા જયેશ ઉ. ગબ્બર

દોવાનુ જણાવે છે.(નોંધ : આરોપી ની ઓળખ માટે નો દસ મીનીટ નો સમય પુરો થયો છે બાકી ના આરોપી ઓ ને સાहેદ ઓળખી શકેલ નથી.)"

107. Drawing my attention to paragraph-13 of the testimony of this witness, it is submitted the details with regard to burial of that the victims, identification of such dead bodies, and recording of statements before the concerned Police on 06/03/2002 and 11/03/2002 are also deposed in 13 and 14 (both reproduced paragraphs verbatim herein below) of the testimony of the present witness. An affidavit being sworn by a large number of residents and surviving victims is also testified in corroboration of testimonies of other the witnesses by the present witness.

"**૧**3. તા. ૨/૩/૦૨ ના રોજ રાત્રી ના સમયે કેમ્પમાં એલાન થયેલ કે, જે ગુલબર્ગ ખાતે ની લાશો છે તે સીવીલ હોસ્પી.માંથી લાવવામાં આવેલ છે જે કલંદરી મસ્જીદ કબ્રસ્તાનમાં લાવવામાં આવેલ છે તેની ઓળખવિધી માટે જવા જણાવતાં દુ પણ કલંદરી મસ્જીદ ના કબ્રસ્તાનમાં ગયેલ. ત્યાં જઈ ને મેં જોયુ તો લાશો એટલી હદે બળી ગયેલ હતી કે ઓળખી શકાય તેમ ન હતી. જેથી પોલીસે જણાવેલ કે કોઈપણ નીશાની હોય તેના થી લાશો ઓળખી લો નહીતો તે સી.હોસ્પી. ખાતે પાછી લઈ જશે. જેથી મારા મમ્મી મુમતાઝબેન સીકંદરની લાશ મારા પિતાજી એ ઓળખેલ. મારા કાકા જહાંગીર ભાઈ અને કાકી ઝરીનાબેન ની લાશ મારા કાકા સલીમભાઈ એ ઓળખેલ. તેમજ તેમના પુત્ર મહદમ હુસેન ની લાશ પણ તેમણે ઓળખેલ. તે પછી લાશો ની ખાડો ખોદી ને દફનવિધી કરેલ. મારા પિતા ૨૮ મી તારીખે નોકરી એ ગયા હતા તે પછી પહેલી તારીખે સીધા રાહત કેમ્પમાં આવેલ હતા.

૧૪. આ બનાવ અંગે પોલીસ મારો સૌ પ્રથમ જવાબ તા. s/3/02 ના રોજ દુધેશ્વર ચોકી ખાતે લીધેલ. મારો બીજો જવાબ તા.૧૧ /3/02 ના રોજ મેધાણીનગર પો.સ્ટે. ખાતે લીધેલ. મારો બીજો જવાબ મારા મકાન ને થયેલ નુકસાની માટે લીધેલ. મેં તા.s/3/02 ના જવાબ લખાવ્યા બાદ આરોપી ઓ ને બહાર ફરતાં જોયેલા. જેથી મેં અમારા વકીલ ને વાત કરેલ. તેથી મારા વકીલે મરો જવાબ લાવી ને મને વાંચવા આપેલ અને કઠેલ કે, આ તમારો જવાબ જોઈલો. એ જવાબ મેં વાંચતા તેમા મે જે વીગતો લખાવેલી તે વીગતો હતી નહી તેમજ મેં જે નામો લખાવેલા તે પણ હતા નહી. સોસા. ના બીજા ઓ એ પણ જવાબ કઢાવી ને વાંચી લીધેલ. પરંતુ તે લખાવ્યા મુજબ ના ન હતા. તેથી અમે અમારા વકીલ મારફતે એફીડેવીટ કરેલ. તે એફીડેવીટ એક અરજી સાથે મેઘાણીનગર પો.સ્ટે. અને એક પો.કમી. ઓફીસમાં મોકલી આપેલ. તે પછી ક્રાઈમબ્રાન્ચે અમો ને જવાબ લખાવવા બોલાવેલા. પછી અમે એમને તેમને લેખીતમાં જાણ કરેલ કે અમને વિશ્વાસ નથી જેથી જવાબ લખાવવો નથી."

108. Drawing my attention to paragraphs 15 and 16 (both reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness has further testified that a statement was given by the witness on 25/01/2008 before the S.I.T. at Gandhinagar and a computerized signed statement was also presented by the witness before the S.I.T. The SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

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in paragraph-16 of his testimony, witness has testified that he lost his mother Mumtazben, uncle Jehangirbhai, aunt Zarinaben, cousin Mohammad Hussain in the incident that took place on 28/02/2002. The witness also claims that damage to the tune of Rs.6 lakhs to Rs.7 lakhs was caused to his residence in the said incident. The witness has further testified that he furnished the names of the concerned accused referred to herein before, in the course of his statement recorded on 06/03/2002 and assessed the quantum of damages sustained to his properties in terms of his statement recorded on 11/03/2002. It is submitted that the said witness is a truthful one, has not exaggerated or narrated incidents which could be treated as hearsay, but has only narrated those parts of the incident that he himself has seen and he has also positively identified four accused in the Court and has identified six accused in all. It is submitted that has provided ample and sufficient the witness corroboration to the testimonies of the other material witnesses and there is no deviation from the testimonies of such witnesses when compared with the testimony of the present witness and it is urged that in the circumstances, this witness also be believed and the testimony of this witness, according to Shri Kodekar, goes long way in а establishing beyond reasonable doubt the charges against the concerned accused.

"૧૫. તે પછી એસ.આઈ.ટી. એ મને જવાબ લખાવવા

ગાંધી નગર મુકામે બોલાવેલ. અને ત્યાં તા. ૨૧/૫/૦૮ ના રોજ મારો જવાબ લીધેલ. તે જવાબ લીધો ત્યારે મારુ કોમ્પ. ટાઈપ કરેલ મારુ સહી વાળુ નીવેદન પણ રજુ કરેલ. તે નીવેદન મેં પોતે હાથે લખેલ અને મારા ફ્રેન્ડ પાસે જઈ ને તૈયાર કરાવેલ.

૧૬. ૨૮ મી તારીખે બનાવ સવાર ના નવ સાડાનવ વાગ્યા સુધી શરૂ થઈ સાંજના સાડા પાંચ વાગ્યા સુધી ચાલેલ. આ બનાવ માં મારા માતા મુમતાઝ બેન, મારા કાકા જહાંગીરભાઈ, મારા કાકી ઝરીનાબેન અને મારા કાકાનો પુત્ર મહમદ હુસેન મરણ પામેલા. મને પાછળ થી ખબર પડેલ કે, અહેસાન જાફરી નુ ખુન થયેલ છે. તેમની લાશ મળેલ કે કેમ તે ખબર નથી. તા. ૬/૩/૦૨ ના પોલીસે લીધેલ મારા જવાબમાં માત્ર આરોપી ગીરીશ પ્રભુદાસ શર્માનું જ નામ લખેલ અને બીજા નામ લખેલ ન હતા. મારા સોગંધનામામાં ગીરીશ શર્મા, કૈલાશ ધોબી, દીનેશ પ્રભુદાસ શર્મા, કપીલ મુન્નાભાઈ, ધર્મેશ, અંબેશ તથા ગબ્બર ના નામ મેં લખેલા. મારુ છ નંબર નુ મકાન મને તા. ૧૧/૩/૦૨ ના રોજ જવાબ લખાવવા લઈ ગયેલા ત્યારે જોયેલ. મારા મકાન ને અંદાજે છ થી સાત લાખ રુપીયાનુ નુકસાન થયેલ હતુ."

109. Continuing with his line of submissions, Shri Kodekar next draws my attention to the testimony of PW-179 Ezazali Fagirmohammad Shaikh, whose deposition is on the record of the proceedings at Exh.720. Shri Kodekar has further submitted that this witness too was a resident of Gulbarg Society. The witness has corroborated the sequence of events as they took place on the fateful

day and the witness has further corroborated the testimonies of other eye-witnesses who have been examined herein and whose testimonies have been corroborated earlier by other eye-witnesses as well. is pointed out that this witness also has It positively identified some of the perpetrators amongst the accused - both at the scene of the incident as also in the Court. It is submitted that the testimony of the witness is natural, truthful embellished with and not exaggerations and therefore, it is urged that the witness goes a long way in corroborating the Prosecution case. It is further pointed out that certain highlighting aspects of the testimony of this witness are required to be paid special attention inasmuch as, the witness has testified with regard to the injury sustained by Shri Ehsan Jafri at the hands of the mob and he has also testified with regard to the loss of lives that took place in the incident. It is submitted by Shri Kodekar that therefore, there is no reason to discard the version of events emerging from the testimony of such witness.

110. It is submitted that the witness has testified in a similar vein as that of the other witnesses as far as the sequence of events leading to the fateful day are concerned inasmuch as, they relate to the Godhra Train incident, the Bandh call given thereafter, the tension that took place thereafter and the sequence of events that ultimately led to the horrific incident herein. My

bv

attention is drawn to paragraphs 5 and 6 (both reproduced verbatim herein below) of the testimony of this witness wherein the incident pertaining to the two young sons of the owner of Ankur Cycle Works is concerned, inasmuch as, Yusuf is attributed to have taken shelter in Gulbarg Society whereas his brother Ayub who was trying to rush into his own residence, is clearly seen by the witness to have been two to three blows with the gupti on his back side. The incident relating to the burning of the autorickshaw belonging to Gulam Master and the Police arriving at the scene of incident and putting out the fire on the autorickshaw, is narrated by the witness and drawing my attention to paragraph-6 (reproduced verbatim herein below), it is submitted Shri Kodekar that the witness has clearly testified that five to six Police vehicles came to Gulbarg Society and the officers had talked with Shri Ehsan Jafri and two/three others of the Society the witness has stated that his father was

and amongst the persons who had met the Police party and that he was informed by his father inter alia to the Commissioner of Shri effect that the Police P.C.Pandey and P.I. Shri K.G.Erda were members of the party and bandobast was assured.

તે દીવસે સવાર ના દસ વાગે ચમનપુરા તરફ થી ચાર "u. પાંચ છોકરાઓ આવેલા. અને અંકુર સાચકલ વાળા છોકરાઓ ને મારઝુડ કરવા લાગેલા. યુસુફ ને મારતાં તે સોસા. તરફ આવી ગયેલ અને તેનો ભાઈ અયુબ દોડીને ઘરમાં જતો હતો તે વખતે તેના પીઠના ભાગે બે ત્રણગુપ્તી ના

ધા મારેલા. તે કોણે ગુપતી મારેલ તેને મેં ઓળખેલ નહી. પછી આગળ ગુલામ માસ્ટર ની એક રીક્ષા પડી હતી તેને સળગાવેલ. પછી ત્યાં પોલીસ આવેલ. પોલીસે પાણી લઈ ને રીક્ષા બુઝાવેલ.

દ્. તે પછી જાફરી સાઠેબે ફોન કરી પોલીસ ની મદદ ની માગણી કરેલ. પાંચ છ ગાડી ઓ સાડાદસ પોણા અગીચાર વાગે સોસા. ના નાના ઝાંપા પાસે આવેલ. ત્યારે જાફરી સાઠેબ મારા પિતાજી અને સોસા. ના બે ત્રણ વડીલો ત્યાં પોલીસ ને મળવા ગયેલા. પછી દસ પંદર મીનીટમાં પાછા આવ્યા ઠુ અગાશીમાં ઉભો હતો ત્યાંથી જોતો હતો ત્યાંથી નીચે ઉતરેલ. અને સોસા.મા આવીને મારા પપ્પા ને પુછેલ કે આ મળવા આવેલ વ્યકિત કોણ હતા. મારા પપ્પા એ મને કહેલ કે, આવનારા પો.કમી. પી.સી.પાંડે અને પી.આઈ. કે.જી.એરડા હતા. બીજુ મારા પપ્પા એ જણાવેલ કે, બંદોબસ્ત થઈ જશે ચીંતા કરશો નહી."

111. My attention is now drawn to the sequence of events as deposed in paragraphs 7 to 11 (all reproduced verbatim herein below), whereby the witness has deposed with regard to the events that unfolded at about 10:30 a.m. and 11:00 a.m. when a mob armed with swords, guptis, sticks, pipes and cans of kerosene and petrol numbering about 5000 to 10000 persons, had gathered outside the Gulbarg Society and slogans inter alia to the effect that *`kill* and burn persons belonging to minority community, JAI SHRI RAM etc." were shouted by the mob. The witness, according to Shri Kodekar, has positively identified Mangilal Dhupchand Jain (A-25)

who is attributed to have been armed with a can of Prabhudas Jain (A-38) is petrol, Manish who attributed to be armed with a sword, Krishna (A-34) who was throwing burning rags and Mama Kaniya (A-42) who was holding a sword in his hand. The witness has explained that he could identify such persons because they were residing nearby. Drawing my attention to paragraph-8 of the testimony, Shri Kodekar submits that the witness has fully corroborated the version of other eye-witnesses with regard to pelting of stones from the terrace of Bunglow No.1 of Gulbarg Society belonging to Dayaram Jinger. The witness, according to Shri Kodekar, has positively identified Rajesh Jinger as being one of the persons of the mob who was on the terrace of the said bunglow No.1 and inciting the mob to rush into the Society as also pelting stones therefrom. The fact of one of such stones striking one Irfan on his chest and his collapsing is narrated in paragraph-8 by the witness in his testimony. The witness has also testified that one Rafiq Mansuri sustained an injury in his eye, Mohammad Hussain Sandhi sustained injury on his shoulder and all such injured were taken to the residence of Shri Ehsan Jafri. The witness has identified the said Rajesh Jinger (A-65) and Gabbar (A-14) as being the perpetrators of such fact, accused incident. In Rajesh Jinger is positively identified as a person who was working in the Police Department and who was inciting the mob to rush into Gulbarg Society.

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112. The deposition of this witness, more particularly paragraph-9 thereof, according to Shri Kodekar, contains the testimony inter alia to the effect as to how the mob rushed into the Gulbarg Society from the front portion by breaking open the main gate of the Society and the witness has clearly stated that he was standing near his residence when Mama Kaniya (A-42) hit the witness with a brick causing head injuries to the witness. The witness, according to Shri Kodekar, climbed up the stairs to his Flat after sustaining such injuries and he has narrated that one Usmankhan, Ayubkhan, Mehmudkhan, Hasanali and Ismail, all ran up to the Flat with the witness. The witness claims to have rushed into his bathroom and claims that a stone which was pelted by the mob, broke open the window of the bathroom from where itself the witness could see that his father Taiyyabali and Shejadali were rushing towards the residence of Shri Ehsan Jafri. The witness claims that in an effort to prevent the mob from rushing into the Flat, the main grill of the Flat was connected to a live electric wire and an electric current was made to run through the grill in an effort to prevent the mob from entering into the Flat. The mob having also indulged in destruction and looting of the properties located in Gulbarg Society, is also narrated by the witness. Shri Kodekar submits that corroborating the version of other witnesses, the present witness has testified that he heard a loud explosion at the rear side of the Society and therefrom also he saw a mob rushing

into the Society. Drawing my particular attention to paragraph-10 of the deposition, it is submitted by Shri Kodekar that the witness saw the mob pelting stones at the residence of Shri Ehsan Jafri as also throwing burning rags into the house which resulted in the front room of Shri Ehsan Jafri's residence getting afire and on account of which number of women and children rushed out from the bunglow of Shri Ehsan Jafri and they were caught hold of by the mob and killed by giving them sword blows. The horrific incident with respect to the daughter of one Gulzarbhai being one Firdos whose clothes were torn and who was being molested by the mob and the attempt to rescue such girl by the brother of the witness i.e. Shehzad, is also narrated. Shri Kodekar points out that the witness has specifically No.42 attributed accused Mamo Kaniyo to have delivered a sword blow on Shehzad and that the said Shehzad was killed by the mob thereafter. The girl Firdos was also dragged away by the mob, which was also seen by the present witness.

113. It is submitted by Shri Kodekar that, of vital importance is the portion of the testimony of the present witness as narrated in paragraph-11 of the deposition, where the witness claims to have positively seen the mob dragging away Shri Ehsan Jafri and continuously beating him up while he was being dragged away. The witness claims to have seen Shri Ehsan Jafri profusely bleeding from his injuries at that point of time. . ە"

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તે પછી અગીયાર વાગે ઓમનગર તરફ થી પાંચ દસ હજાર નુ ટોળુ આવેલ. ટોળુ બુમો પાડતુ હતુ કે, મારો..... કાપો..... મીચા ઓ ને બાળી મુકો..... તથા ' જય શ્રી રામ ' ના નારા લગાવતા હતા. તે વખતે હું સોસા. ના નાના ઝાપા પાસે હતુ. ટોળા પાસે તલવારો, પાઈપો, લાકડીઓ , ગુપ્તીઓ, પેટ્રોલ કેરોસીન ના કેરબા હતા. આ ટોળામાં મેં માંગીલાલ ધુપચંદ જૈન જેના હાથમાં પેટ્રોલ નો ડબો, મનીષ પ્રભુદાસ જૈન જેના દાથમાં તલવાર દતી, ક્રિષ્ના જેના દાથમાં સળગતા કાકડા દતા,

તથા મામા કાણીયો જેના દાથમાં તલવાર દતી તેમને ઓળખેલા. મામા કાણીયો આજુબાજુમાં રહે છે જેથી ઓળખુ છુ. બાકીના ત્રણ આરોપીઓ પણ ત્યાં જ રહે છે તેથી ઓળખુ છુ. આ ટોળા એ ગુલામ માસ્ટર ની રીક્ષા સળગાવેલી. તેમજ સાચકલ ની દુકાન ની તોડફોડ કરી સામાન બહાર કાઢી લુટફાટ કરેલ. આ વખતે અમારી સોસા. ના આજુબાજુ ની ચાલીઓમાં રહેતા મુસ્લીમો અમારી સોસા.માં આવી ગચેલ.

આ ટોળા એ આજુબાજુ ની દુકાનોમાં તોડફોડ ٢. કરી લુટફાટ કરેલી અને વાઠનો ને સળગાવેલા. આ ટોળુ અમારી સોસા. ના નાકે આવેલ મકાન ના ધાબા પર ચડી ગયેલ. તે મકાન રાજેશ જીજર નુ હતુ જેનો મકાન નંબર એક છે. ટોળુ ત્યાંથી પથ્થરમારો કરતુ દતુ એક પથ્થર ઈરફાન ને છાતીમાં વાગેલ રફીક મનસૂરી ને આંખમાં ઈજા થયેલ મહમદ દ્વસેન સન્ધી ને ખભામાં વાગેલ. આ બધાને જાફરી સાહેબ ના ઘરે લઈ ગયેલા. આ મકાન નંબર એક પર ટોળામાં મેં રાજેશભાઈ અને ગબ્બર ને ઓળખેલા. ગબ્બર રાજેશભાઈ ના શું થાય તે મને ખબર નથી. રાજેશભાઈ પોલીસ ખાતામાં આ ટોળુ માણસો ને સોસા. માં અંદર ઘુસી જવા જણાવતુ ୫ାમ ୫୧୯୮ ହିମା.

પછી આ ટોળુ ઝાંપો તોડવા લાગતા દીવાલ તુટી ગયેલ e. અને પછી ટોળુ અંદર ઘુસી આવેલ. અને સોસા. ના નાકે આવેલા મકાનોમાં તોડફોડ કરી વાઠનો ને સળગાવવા લાગેલા. આ ટોળુ અંદર આવ્યુ ત્યારે પથ્થરમારો કરતુ હતુ. હું ત્યાં મારા ફલેટ ની નીચે ઉભો હતો. મને મામા કાણીયા એ ઈંટ મારેલી જે મને માથામાં ડાબી બાજુએ વાગેલ. પછી હું મારા ફલેટ પર ચઢી ગચેલ. ઈંટ વાગી તે વખતે હું નીચે ઉભો હતો. હું ફલેટમાં ઉપર ગયો ત્યારે ત્યાં મારા ભાઈ ના સાળા ઉસ્માનખાન, અયુબખાન, મહેમુદખાન, હસનઅલી, ઈસ્માઈલભાઈ, મારા સંગાથે ઉપર ચઢી ગચેલા. હું મારા ઘરમાં બાથરૂમમાં જતો રહેલ. હું બાથરુમમાં ગયો ત્યારે એક ઈંટ નીચેથી આવેલ. બાથરુમ ની બારી સીમેન્ટ ની હતી તે તુટી ગયેલ. મેં બારી માંથી જોયુ તો મારા પિતાજી અન તૈયબઅલી અને શहજાદઅલી જાફરીસાદેબ ના ઘરે જતાં દતાં. મને ટોળુ ફલેટમાં ઘુસી જશે તેવુ લાગતા મેં એક વાયર લોખંડની જાળીમાં બાંધી બીજો છેડો પ્લગમાં નાખી સ્વીચ ચાલુ કરેલ. મેં બારીમાંથી જોયુ તો પાછળની બાજુ એ એક ધડાકો થયેલ. અને પછી રેલવે બાજુથી ટોળુ અંદર આવેલ. ટોળા એ નાકા પર મકાન હતા તેમા તોડફોડ કરી લુટફાટ ચાલુ કરેલ. ટોળુ જાફરીસાઠેબ ના મકાન પર પથ્થરમારો કરતુ 90. અને સળગતા કાકડા ફેંકતા હતા જેમાં આગળના રૂમમાં આગ લાગી ગયેલ.

જેથી ઘુમાડો થતાં બધાં બચવા માટે બહાર નીકળેલા. તો ટોળા એ તેઓ ને તલવાર ના ધા મારી મારી નાખેલા. થોડીવારમાં ટોળુ ગુલઝારભાઈ ની દીકરી ફીરદોસ ના કપડા કાઢી બાળતુ હતુ. ફીરદોસ બચાવો બચાવો ની બુમો પાડતી હતી. એટલે મારો ભાઈ શહજાદ તેને બચાવા ગચેલ. ત્યારે મામા કાણીયા એ શહજાદ ને તલવાર મારેલી. અને બીજા ટોળા એ પછી તેને મારી નાખેલ. ફીરદોસ ને ટોળુ પાછળ ખેંચી ગચેલ.

૧૧. તે સમયે જાફરી સાદેબ ને પાછળ થી મારતા મારતા લાવતા દોવાનુ મેં જોયેલ. તેઓ લોદી લુદાણ દાલતમાં દતા તેમને બદાર ખેંચી ગયેલ."

114. Drawing my attention to paragraph-12 (reproduced verbatim here under) of the deposition of the present witness, Shri Kodekar submits that the witness has testified as to how at about 4:30 p.m. he heard Police whistles and sounds of firing of teargas shells and that he saw Policemen in the Gulbarg Society and that peace had prevailed at such point of time, and that the witness thereafter came down from his residence.

"**૧૨**. પછી ચાર સાડાચાર વાગે પોલીસ ની સીસોટી વાગેલી અને ટીચરગેસ ના સેલ ના અવાજ આવેલા. મેં બારીમાંથી જોયુ તો પોલીસ ના માણસો સોસા. માં હતા અને વાતાવરણ શાંત થઈ ગયેલ હતુ. પોલીસે બુમ પાડતા બચેલા માણસો નીચે આવેલા. હું ઈલે. નો વાયર કાઢી ને નીચે ગયેલ."

my attention 115. Drawing to paragraph-13 (reproduced verbatim here under), it is pointed out that the witness claims to have seen number of dead bodies in the residence of Shri Ehsan Jafri and more particularly the dead bodies of women who were devoid of any clothing. The dead body of his brother Shehzad was also seen by the witness and thereafter, the witness claims to have been escorted by Police vehicles to the Shahibaug Police Station, but

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according to Shri Kodekar, the witness has also narrated the difficulties faced by the Police while escorting such survivors to safety and the witness in terms of his deposition in paragraph-13 on page-11, has testified that P.I. Shri Pathan of Shahibauq Police Station sought permission from Mr.Tandon to fire upon the mob which order was given and after great difficulty, the victims i.e. the surviving victims were taken away to safety. The sequence of events according to Shri Kodekar, as testified by the witness, thereafter are again corroborating the versions supplied by other eye-witnesses and the identification of dead bodies, treatment at V.S.Hospital and recording of statements initially by the Police, sworn affidavits thereafter and a final statement recorded bv the S.I.T. all are narrated by the witness in the of his course testimony.

"93. હું નીચે ગયો ત્યારે જાફરી સાદેબ ના ઘર આગળ લાશો પડેલ હતી. જેમાં સ્ત્રીઓ ની લાશો પણ હતી જે નગ્ન હાલતમાં હતી. ત્યાં ઘર આગળ મારા ભાઈ શહજાદ અલી ની લાશ હતી. જે કપાયેલી હાલતમાં હતી. ત્યાં મારા પિતા અને મારો ભાઈ તૈયબઅલી મળેલ. તૈયબઅલી ને નાક પર તથા માથામાં વાગેલ હતુ. મારા પિતાને હાથની આંગળી પર વાગેલ હતુ. પોલીસે ત્રણ ગાડી મંગાવી તેમાં બચેલા માણસો ને બેસાડેલા. તે સમયે ટોળા એ ગાડી પર પથ્થરમારો શરૂ કરેલ. ગાડીનો આગળ નો કાચ તુટી ગયેલ. તે વખતે શાહીબાગના પી.આઈ. એન.એન.પઠાણે ટંડન સાદેબ ને જણાવેલ કે, બચી ગયેલા માણસો

ને બચાવવા હશે તો ફાયરીંગ નો ઓર્ડર આપવા પડશે તેથી ટંડન સાદેબે ફાયરીંગ નો ઓર્ડર આપેલ. પોલીસે ફાયરીંગ કરી મહામુસીબતે અમને શાદીબાગ પો.સ્ટે. લઈ ગયેલા. તે સમયે રાત્રી ના સાડાસાત આઠ વાગ્યા હશે."

116. Drawing my attention to paragraph-15 (reproduced verbatim herein below) of the testimony witness, Shri Kodekar submits of the that the witness has positively identified Krishna (A-34) in the Court as also Mamo Kaniyo (A-42), but has not been able to identify Mangilal Dhupchand Jain (A-25) in the Court, but has instead identified Naresh Bansilal Prajapati (A-25) as accused Mangilal Jain. The witness is unable to identify any other accused in the Court.

"૧૫ . મેં ટોળામાં જોચેલા માણસો ને ઓળખી શકુ. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપીક્રિષ્ના ને દુ ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ક્રિષ્નાદોવાનું જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપીમામો કાણીચા ને દુ ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા રાજુ ઉ. મામો કાણીચો દોવાનું જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી માંગીલાલ જૈન ને દુ ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા નરેશ બંસીલાલ પ્રજાપતિ દોવાનું જણાવે છે. જે ચકાસણી કરતા ચોગ્ચ છે. તમામ આરોપી ઓ બેઠેલી દાલતમાં છાતી સુધી ના ભાગ સુધી સંપુર્ણ જોઈ શકાય તેમ છે. વધુમાં છ લાઈનમાં બેઠેલા છે તે દરેક લાઈન વારા ફરતી ઉભા કરી સાદેદ ને બતાવવામાં આવેલા છે. સાદેદે ઉપર ઓળખી બતાવ્યા તે સીવાય બીજા કોઈ આરોપી ને કોર્ટ સમક્ષ ઓળખી શકેલ નથી."

117. Tt. is submitted that in such circumstances, the present witness is a relevant witness and a material witness who has corroborated the Prosecution version with regard to the entire events that have taken place and the witness has positively identified some of the accused from the perpetrators, he has also positively identified as to which of the accused committed which overt act and which of the victims were victimized, in the course of his testimony. It is submitted that the witness is a truthful witness, had no reason to exaggerate or lie, has withstood the test of cross examination and therefore, his testimony is required to be accepted as genuine, credible and reliable.

118. Continuing with his submissions, Shri Kodekar has drawn my attention to the testimony of PW-192 Mohammadali Shahjadali Saived whose deposition is on the record of the proceedings at Exh.736. Shri Kodekar has further submitted that the witness also has been an eye-witness to the horrific incident, who has lost members of his family and has identified the mob persons as being the perpetrators from amongst the accused. It is submitted that the relevant accused are identified in the course of events that unfolded, the specific overt acts are attributed to them and the witness has further positively identified such accused in the Court also. It is submitted that the testimony of the present witness also largely corroborates the

version supplied by other eye-witnesses and the witness also is a credible and reliable witness. It is pointed out that it would not be material to reproduce in its entirety the evidence of the present witness, but however, it would be material to point out the relevant portions emerging from the testimony of the present witness.

119. Drawing my attention to paragraph-4 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the incident which took place at about 10:30 a.m. is narrated by the witness, that a mob of about 10000 to 15000 persons came from towards Chamanpura to Gulbarg Society and the said mob was armed with swords, tridents, guptis the the witness and from amongst mob has specifically identified Ambesh (A-32), Kapil Munna (A-50), Mukesh (A-39) and Dilip (A-62). The witness has in the course of his testimony on page-4, paragraph-4, clearly supplied the reasons and justifications for identifying such of the accused since the accused were residents of chawls and societies near to Gulbarg Society and were known to the present witness as also other residents of Gulbarg Society. The witness however, according to Shri Kodekar, is not able to identify Kapil Munna (A-50) but has wrongly identified accused Shivcharan (A-64) as Kapil Munna (A-50). The witness has also been able to identify Dilip (A-62) and has not wrongly identified Ambesh (A-32) as Dilip (A-62).

"૪. તે સમયે સવાર ના દસસ સાડાદસ વાગે ચમનપુરા તરફ

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થી દસ પંદર માણસનુ ટોળુ આવેલ. આ ટોળુ રોડ પર મુસ્લીમો ની દુકાનો બંધ કરાવતુ હતુ. ટોળા પાસે તલવાર, ત્રિશુળ અને ગુપ્તી જેવા હથીચાર હતા. આ ટોળામાં મેં અંબેશ, કપીલ, મુકેશ, દીલીપ, ને ઓળખેલા. કપીલ ગુલબર્ગ સોસા. ની સામે ચાલી આવેલ છે તે ત્યાં રહેતો હતો. તે સોસા.માં સવાર સાંજ રીક્ષા લેવા મુકવા આવતો. અંબેશી ની ઓમનગર જવાના રસ્તે બુટ ચંપલ ની દુકાન અને મકાન છે. દીલીપ અંબેશ નો ભાઈ છે. મુકેશ સામેની ચાલીમાં રદેતો દતો અને મારા કાકા ને અવારનવાર મળવા આવતો દતો તેથી દું તેને ઓળખુ છુ. હું આ લોકો ને ઓળખી શકુ. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા હોવાનુ જણાવે છે. કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી કપીલ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછી કોર્ટ ના રેકર્ડ થી ખાત્રી કરતા આરોપી શીવચરણ ઉ. કલ્લુ રામજીલાલ નાથ हોવાનુ જણાવે છે. (સાહેદ આરોપી ઓ ને લાઈનબંધ ઉભા કરવા વીનંતી કરતા હોઈ તે મુજબ ઉભા કરવામાં આવે છે.) કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી દીલીપ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા અંબેશ કાન્તીલાલ હોવાનુ જણાવે છે અને રેકર્ડ થી ખાત્રી કરતા અંબેશ કાંતીલાલ છે. (નોંધ : ક્રમવાર લાઈન ના આરોપી ઓ ને ઉભા કરી સાહેદ ને બતાવવામાં આવેલા છે. દસ મીનીટ ઉપરાંત નો સમય આપવામાં આવેલ છે. છતાં સાહેદ આરોપી ઓ ને ઓળખી શકેલ નથી. સાહેદ આરોપી ઓ ની નજીક જઈ ઓળખવા પરવાનગી આપવા વિનંતી કરે છે.

હાલ નો કેસ ચલાવવા માટે આ કોર્ટ ખાસ સ્થાપવામાં આવેલ છે અને આરોપી ઓ ની બેઠક વ્યવસ્થા કોર્ટ તેમજ સાક્ષી તેમજ કોર્ટમાં હાજર વ્યકિત દરેક આરોપી ને જોઈ ઓળખી શકે તે મુજબ થીચેટર ટાઈપ કરવામાં આવેલ છે. સાક્ષી ના પીજરા થી આરોપી ઓ ને બેસવાનુ સ્થળ માત્ર પંદર થી

વીસ ફુટ દુર છે. લાઈટ પ્રકાશ ની વ્યવસ્થા પણ પુરતી કરવામાં આવેલ છે. સાહેદે પોતાના પુરાવામાં જે આરોપીઓ ના નામ જણાવ્યા છે તેઓ ને તે શાથી ઓળખે છે તે અંગે પણ જણાવેલ છે જે લક્ષમાં લેતાં સમય થયો હોય છતાં પણ ઓળખી ન શકાય તેવી પરીસ્થીતી નથી. સાહેદ રહે છે તે જ વિસ્તારમાં તેમનાથી નજીક જ આરોપી ઓ રહેતા હોવાનુ અને રોજ સવાર સાંજ તેમની સોસા. માં આવતો હોવાનો પુરાવો આપેલ છે. આ સમગ્ર હકીકત લક્ષમાં લેતા અને તમામ આરોપીઓ ને જોઈ ઓળખી શકાય તેવી પુરતી વ્યવસ્થા હોવાથી સાક્ષીને આરોપીની નજીક જઈ ઓળખવાની પરવાનગી આપી શકાય નહી તેથી વિનંતી ના મંજુર કરવામાં આવે છે.)"

120. However, drawing my attention to the contents of paragraphs 5 to 8 (all reproduced verbatim herein below) of the deposition of the witness, Shri Kodekar submits that the present witness has clearly testified with regard to the incident in which the sons of the owner of Ankur Cycle Works were assaulted by the mob and that one son Yusuf took shelter in the Gulbarg Society and the other son Ayub while attempting to take shelter in the residence, was stabbed in the back with a qupti for two to three times. The setting on fire of the autorickshaw of Gulam Master is also testified by the witness in paragraph-6 of his testimony on page-7 and the fact of Kapil Munna (A-50) and Ambesh (A-32) identified as perpetrators of such incident, is testified to by the witness. Drawing my attention to the contents of paragraph-7 of the testimony, it has been pointed out that the witness has deposed

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about 11:00 a.m., two to three Police that at vehicles came over to the Police Chowky outside the Society and the Police officials were met by Shri Ehsan Jafri, the grandfather of the present witness Faqirmohammad, Tasadup Hussain, being one Kanu Solanki and Ambalal Nadia, all of whom, according to the witness, met the Police officials and after coming back in the Society, informed the residents of the Society including the present witness that adequate arrangements are made for Police bandobast and Shri Ehsan Jafri had informed everybody that amongst the Police officers, were the Commissioner of Police and Meghaninagar P.I. Shri Erda. The witness claims that at that stage, the main gate of Gulbarg Society was shut whereas the small gate was kept open.

"પ. આ ટોળા ના માણસો એ અંકુર સાચકલ વાળા અચુબ અને ચુસુફ સાથે મારા મારી કરવા લાગેલ. ટોળા. ના માણસો એ અચુબને પીઠમાં ગુપ્તી નો ઘા મારેલ. ચુસુફ દોડી ને સોસા. આવી ગયેલ અને અચુબ દોડી ને તેના ઘરે જતો રહેલ. અને હું સોાસ. ના નાના ઝાપા પાસ ે જતો રહેલ.

૬. તે પછી ટોળા એ રીલીફ ટેલર્સ ની રીક્ષા ને ઉંધી પાડી તેમાંથી પેટ્રોલ કાઢી તેમાંથી સળગાવી દીધેલ. તે રીક્ષા સળગાવતા મેં કપીલ અને અંબેશ ને જોયેલ. તે પછી હું અમારા ફલેટ ના ધાબા પર ગયેલ. મેં ફલેટ ના ધાબા પર થી જોયુ તો આ રીક્ષા સળગાવવાનો બનાવ બનતો હતો. તે પછી થોડીવારમાં પોલીસ આવેલ. તેમણે ટોળાના માણસો ને ભગાડેલા. રીક્ષાની આગ પોલીસવાળા અને ગુલાબભાઈ ના માણસો

એ ઓલવેલી.

૭. તે પછી આશરે અગીચાર એક વાગે પોલીસ ની બે ત્રણ ગાડીઓ આવેલ તે સોસાની પોલીસ ચોકી છે ત્યાં ઉભી રહેલી. તેમની પાસે જાફરી સાહેબ મારા દાદા ફકીર મહમદ, તસદદુક હુસેન, કનુભાઈ સોલંકી, અને અંબાલાલ નાડીચા, તેમને મળવા ગચેલા. તેમને મળી આવીને તેમણે જણાવેલ કે, પોલીસ બંદોબસ્ત આવે છે. જાફરી સાહેબે આ વાત સોસા. ના લોકો ને જણાવેલ. તેમણે બધાને અંદર રહેવા જણાવેલ. જાફરી સાહેબે પો.કમી. અને મેઘાણીનગર ના પી.આઈ. એરડા આવેલા તેમ જણાવેલ. તેવું કહેતા અમે મોટો ઝાંપો બંધ કરી દીધેલ અને નાનો ઝાંપો ખુલ્લો રાખી દીધેલ."

121. Drawing my attention to the contents of paragraph-8 of the deposition, it is pointed out by Shri Kodekar that consistent to the testimony of the other eye-witnesses, this witness has testified that nearly 10 minutes after the Police cars went away, a mob came over to Gulbarg Society from Chamanpura and Omnagar. The mob was consisting of of about 5000 to 10000 persons and was shouting slogans of "JAI SHRI RAM", shouting obscenities and shouting inter alia to the effect that "kill and burn the members of the minority community." The accused identified by the witness from amongst such mob, are Mamo Kaniyo (A-42), Manish Prabhudas Jain (A-38), Ramesh Pandey (absconding accused) and Gabbar (A-14) and Gatting (A-45). The witness has also testified that the said accused Mamo Kaniyo (A-42), absconding

accused Ramesh Pandey and Manish Prabhudas Jain (A-38) were armed with swords and were damaging and destroying shops belonging to the minority community and were also looting such places. The witness has justified and provided reasons about his being able to identify accused Mamo Kaniyo and Ramesh Pandey as also Manish Prabhudas Jain. The witness also justifies his being able to identify Gatting (A-45). તે પછી પાંચ દસ મીનીટ બાદ ચમનપુરા તથા ۲°۲.

ઓમનગર તરફ થી ટોળુ આવેલ. આ ટોળુ પાંચ થી દસ હજાર માણસો નુ હતુ. ટોળુ જય શ્રી રામ ના નારા લગાવતુ હતુ. અને ગાળો બોલતુ હતુ તથા મીચા ઓ ને મારો બાળી મુકો તેમ બોલતુ હતુ. હું મારા ફલેટ ના ધાબા પર ગચેલ. આ ટોળા પાસે તલવાર ત્રિશુળ, ગુપ્તી અને લાકડી જેવા હથીચાર હતા. તેમાં મામા કાણીચા, મનીષ પ્રભુદાસ જૈન, રમેશ પાન્ડે, તથા ગબ્બર અને ગેટીંગ ને ઓળખેલા. આ પૈકી મામા કાણીચા, રમેશ પાન્ડે અને મનીષ પ્રભુદાસ જૈન પાસે તલવાર હતી. આ લોકો મુસ્લીમો ની દુકાનમાં તોડફોડ કરતા હતા અને તેનો સામાન બહાર રોડ પર લાવી સળગાવતા હતા અને લુટફાટ કરતા હતા. મામા કાણીચા ઓમનગર તરફ રહે છે અને માથાભારે માણસ છે જેથી હું તેને ઓળખુ છુ. રમેશ પાન્ડે નવી ચાલી પાસે રહે છે. મનીષ પ્રભુદાસ ને કરીયાણા ની દુકાન છે. જે સોસા. ની પાસે આવેલ છે જેથી હું તેને ઓળખુ છુ. ગબ્બર ગુલબર્ગ ની સામેની ચાલીમાં રહે છે. અને ઉતરાયણ ના સમચે અમારી સોસા. માં પતંગ ચગાવવા આવતો જેથી ઓળખુ છુ. ગેટીંગ અયુબભાઈ ની દુકાનમાં કામ કરતો હોઈ તેને ઓળખુ છુ."

122. Drawing my attention to paragraph-9 (reproduced verbatim herein below) of the testimony,

is submitted that as a natural sequence, the it witness has positively identified Gatting (A-45) in the Court and has also positively identified Mamo (A-42) Gabbar (A-14) Kaniyo and in the Court. However, accused Manish Prabhudas Jain (A-38) is not identified and instead accused Chirag Dilipbhai Shah is wrongly identified as (A-36) accused Manish Prabhudas Jain.

કોર્ટમાં ઠાજર આરોપી ઓ પૈકી આરોપી ગેટીંગ ને "Е. ઓળખી બતાવ છુ આરોપી ને તેનુ નામ પુછતા ગેટીંગઉ. દશરથ ભાઈ જીવણભાઈ પટણી હોવાનુ જણાવે છે કોર્ટમાં ઠાજર આરોપી ઓ પૈકી આરોપી મુકેશ પુખરાજ સાંખલા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા મુકેશ પુખરાજ સાંખલા હોવાનુ જણાવે છે જે રેકર્ડ પર ખાત્રી કરતાં મુકેશ જૈન નથી. કોર્ટમાં ઠાજર આરોપી ઓ પૈકી આરોપી મામા કાણીયા ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા રાજુ ઉ. મામા કાણીયા હોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ગબ્બર ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ગબ્બર ઉ. જયેશ કુમાર હોવાનુ જણાવે છે. કોર્ટમાંઠાજર ઓરપી ઓ પૈકી હુ મનીષ પ્રભુદાસ જૈન ને ઓળખી બતાવ છુ આરોપી ને તેનુ નામ પુછતા ચીરાગ દીલીપભાઈ શાહ હોવાનુ જણાવે છે. જે રેકર્ડ થી ખાત્રી કરતા ચીરાગ દીલીપભાઈ શાહ છે. (ક્રમવાર લાઈનમાં આરોપીઓ ને ઉભા કરી સાહેદ ને આરોપીઓ ને ઓળખવા માટે પુરતો સમય આપવામાં આવેલ છે જે અંદાજે પંદર મીનીટ નો સમય આપવામાં આવેલ છે.)"

123. Drawing my attention to paragraph-10 (reproduced verbatim herein below) of the testimony

of this witness, more particularly the last three lines of paragraph-10 on page-11, it is pointed out that the witness has testified that when the mob started indulging in stone pelting and throwing burning embers upon the buildings in the Society, the Police vehicles came over and the Police is attributed to have fired teargas shells towards the Society as also indulged in firing from their firearms towards the Society. The witness has thereafter, according to Shri Kodekar, testified with regard to the horrific incident that took place at about 1:30 p.m.

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"૧૦. આ ટોળુ મુસ્લીમો ની દુકાન નો સામાન બહાર કાઢી તેનો સામાન સળગાવતુ હતુ. આ ટોળુ બીભત્સ ગાળો બોલતુ હતુ. પછી આ ટોળા એ સળગતા કાકડા અને પથ્થર ફેંકવા લાગેલ. તેમના તરફ થી આવતા પથ્થર અમે પણ સામે ફેંકતા હતા. તે સમયે બહાર જે પોલીસ વાળા હતા તે ટીયરગેસના સેલ અમારી સોસા. તરફ ફેંકતા હતા અને ફાયરીંગ કરતા હતા."

124. My attention is drawn to paragraph-12 (reproduced verbatim herein below) of the testimony where the witness, according to Shri Kodekar, has deposed with regard to the events whereby the stone pelting took place from Bunglow No.1 and role played by accused Rajesh Dayaram Jinger is also pointed out. The witness has identified accused Rajesh Dayaram Jinger (A-65), Gabbar (A-14) and Ambesh (A-32) as being present on the terrace of Bunglow No.1 and pelting stones at the buildings located outside

the Gulbarg Society. The persons on the terrace of Bunglow No.1 are also attributed to be inciting the other members of the mob to rush into the Society. The injuries sustained by Irfan Gulzarbhai and he being taken away to the residence of Shri Ehsan Jafri as also injury sustained to one Jehangir, Rafiq, Mohammad Hussain is also testified by the witness.

"૧૨. બપોર ના એક દોઢ વાગ્યા ના સમયે ટોળુ સોસા. નો મોટો ઝાંપો તોડવા પ્રયત્ન કરતું હતુ. ત્યારે જાફરી સાહેબે ટોળાને તોફાન ન કરવા વિનંતી કરેલ. ફોન પણ કરેલા પણ કોઈ મદદ આવેલ નહી. તે સમય દરમ્યાન મકાન નંબર એક જે સોસા. ના મુખ્ય ઝાંપા પાસે છે તે રાજેશ દયારામ જીંગર નુ છે. ત્યાં ટોળા ના માણસો ચઢી ગયેલા. તે ટોળામાં મેં રાજેશ દયારામ જીંગર, ગબ્બર અને અંબેશ ને જોયેલા. તે લોકો મકાન પર થી સોસા. ની અંદર તરફ ઈટ, કાચની બાટલી ઓ મારતા હતા. અને ટોળા ના માણસો ને અંદર ઘુસી જવા ઉશ્કેરણી કરતા હતા. મકાન નંબર એક પર થી ઈટ આવી તે અમારી સોસા.માં રહેતા ઈરફાન ગુલઝાર ને છાતીના ભાગે વાગેલી તે બેહોશ થઈ ગયેલ અને બેભાન થઈ ગયેલ તેને ઉચકી ને જાફરી સાહેબ ના ઘર તરફ લઈ ગયેલ. બીજા જદાંગીર ચાચા, રફીકભાઈ મહમદ હુસેન ને પથ્થર વાગેલ. આ વખતે હું મસ્જીદ પાસે હતો."

125. Drawing my attention to paragraph-13 (reproduced verbatim herein below) of the deposition, Shri Kodekar submits that the witness in consonance and corroboration with the testimonies of other eye-witnesses, has clearly narrated the incident that took place thereafter and the incident

as to how the mob broke open the main gate of the Society, rushed into the Society, started damaging and destroying the properties located in Gulbarg in of Society, are narrated paragraph-13 his deposition. The fact of the uncle of the witness i.e. Ezazali having passed electric an current through the main grill of their property is also narrated by the witness.

"૧૩. તે પછી રેલવે તરફ થી પણ પથ્થરો આવવા લાગેલા. અને સોસા. ચારે તરફ થી ઘેરાઈ ગચેલ હતી. આશરે બે વાગે સોસા. નો મોટો ગેટ તુટી ગચેલ. ટોળુ અંદર ઘુસી ગચેલ અને આગળ ના મકાનો માં તોડફોડ શરૂ કરેલ તેમજ વાહનો ની તોડફોડ શરૂ કરેલ. હું પહેલા જાફરી સાહેબ ના ઘર તરફ ગચેલ પરંતુ ચોગ્ચ ન લાગતા અમારા ફલેટ ના ઘાબા પર ગચેલ. ત્યાં અમારા ઘરનુ કોઈ હતુ નદી અને બહાર બેકરીઓમાં કામ કરતા હતા તે માણસો હતા. જેથી હું નીચે મારા ઘરમાં આવી ગચેલ. તે સમચે મેં જોચુ તો મારા ઘરમાં મારા કાકા એઝાજઅલી, મારા મામા મહેમુદખાન, ઈસ્માઈલભાઈ હતા. મારા કાકા એ ટોળુ અમારા ઘરમાં ના ઘુસી જાય તેમાટે અમારો દરવાજો જેમાં લોખંડ ની જાળી હતી તેમાં ઈલે. નો વાચર લગાવી બીજો છેડો પ્લગમાં લગાવી લાઈટ ચાલુ કરી દીઘેલ. મારા ઘરમાં રોડ તરફ ની ગેલેરીમાં આગ લાગેલ હતી. જે અમે બુઝાવેલ."

Drawing my attention to paragraph-14 (reproduced verbatim herein below) of the testimony, it is pointed out that the witness has clearly testified that he could see from the bathroom of his residence that a huge mob had gathered near Shri Ehsan Jafri's residence and even the rear portion of the compound wall of the Society was demolished by the mob by setting out a loud explosion. The mob is thereafter attributed to have entered into the residence of Shri Ehsan Jafri and setting on fire the property more particularly the movables located in the front room of the residence of Shri Ehsan Jafri. The witness has positively identified Manish Prabhudas Jain (A-38), Gabbar (A-14), Ramesh Pandey (absconding accused), Mamo Kaniyo (A-42) as being near the residence of Shri Ehsan Jafri at that point of time.

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"૧૪. પછી સોસા.માંથી અવાજો આવતા હતા તેથી હું મારા ઘરની બાથરુમ માં જતો રહેલ. તે હુ એકલો હતો. ત્યાંથી મેં જોયુ તો જાફરી અંકલ ના ઘર પાસે ટોળુ આવી ગયેલ. પાછળ ની રેલવે તરફ ની દીવાલ ઘડાકા સાથે તુટી ગયેલ. ત્યાંથી પણ માણસો અંદર આવેલા અને જાફરી સાદેબ ના આગળ ના રૂમ નો સામાન સળગાવવા લાગેલ. આ ટોળામાં મેં મનીષ પ્રભુદાસ જેન, ગબ્બર રમેશ પાન્ડે, મામા કાણીયા ને જોયેલા આ લોકો જાફરી સાદેબ ના ઘર પાસે હતા."

127. Drawing my attention to the testimony as it unfolds in paragraph-15 (reproduced verbatim herein below), it is pointed out that the women and children coming out of the residence of Shri Ehsan Jafri in a view to escape the flames and the consequent events that unfolded are positively deposed to have been witnessed by the witness from the grill of his bathroom. The mob is attributed to have attacked such persons rushing out of the

residence of Shri Ehsan Jafri, with swords and tridents and setting such persons afire by sprinkling some inflammable liquid upon their bodies. The incident that took place concerning the young girl Firdos is also narrated in paragraph-15 of the testimony of the witness and the witness has positively stated that the mob had torn apart the clothes of such Firdos witness and the has positively stated that on hearing her cries for help, the father of the present witness being Sehzadali had rushed to save such girl Firdos when the mob of whom Mamo Kaniyo (A-42) was present who turned upon the said Sahejadali, the witness claims to have seen Mamo Kaniyo (A-42) delivering a sword blow on the neck of his father and the witness has

seen his father collapse on account of injuries sustained on the neck and chest. The witness claims that at that point of time, the other members of the mob were sprinkling some inflammable liquid on the bodies of persons who had fallen and were setting such bodies afire. The witness claims to have seen Manish Prabhudas Jain (A-38), Gabbar (A-14), Ramesh Choti (absconding accused) being armed with swords at that time. The witness thereafter does not claim to have seen any portion of the incident, but has testified with regard to the fact of the Police having come over to the scene of the incident at about 4:30 p.m. and the sound of Police whistles and lack of noise from the mob was perceived by the witness. The witness thereafter, claims to have got down from his Flat along with his family members and

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other survivors.

"૧૫. જાફરી સાઠેબ ના મકાનમાં આગ લાગવાથી ઘરની અંદર થી સ્ત્રીઓ અને બાળકો બહાર આવવા લાગેલા. આ મેં મારા ઘર નની બાથરૂમ ની જાળીમાંથી જોયેલ. ટોળા ના માણસો આ બહાર આવતા માણસો ને તલવાર અને ત્રિશુળ થી મારતા હતા અને તેમના પર લીકવીડ નાખી સળગાવતા હતા. તે દરમ્યાન ફીરદોસ આપા બહાર આવેલા. જે ગુલઝાર મહમદ ના દીકરી છે. ટોળા ના માણસો એ તેમના કપડા ફાડી નાખેલા. તેમણે મારા પિતાજી ને બુમ પાડેલ જેથી મારા પિતાજી તેમને બચાવવા જાફરી સાઠેબ ના ઘરમાંથી બહાર આવેલા. જેમનુ નામ શઠજાદઅલી છે."

128. It is submitted by Shri Kodekar that the witness claims to have at that time, as is testified paragraph-18 (reproduced verbatim in herein below) of his testimony, seen the dead body his father which was in Shri Ehsan Jafri's of compound. The fact of the Police having provided some escort by taking survivors to safety is narrated by the witness and the fact of the Police having had to resort to teargas shelling and firing on the mob even at that time is testified in terms of paragraph-19 (reproduced verbatim herein below) of the testimony of this witness.

"૧૮. હુ નીચે ઉતરી ને પહેલા મારા પિતાજી હતા ત્યાં ગયેલ. તેઓ મરણ ગયેલા હતા. તેમની લાશ જાફરી સાહેબ ના મકાનમાં ગાડી પાર્ક કરવાની જગ્યા ની બહાર હતી. પછી હું મારા મમ્મી ઝુબેદાબેન ને મળેલ.

૧૯. તે પછી અમને બધાને બહાર પોલીસ ની ગાડીઓ આવેલ હતી તેમાં બેસાડેલા. પોલીસ ની ગાડીમાં અમને બેસાડી ને લઈ જતા હતા ત્યારે ટોળા ના માણસો અમારી ગાડીઓ પર પત્થરો ફેંકતા હતા. તે પછી પોલીસ ધીમે ધીમે અમને ચમનપુરા થઈ ને લઈ ગચેલા. આ સમચે પોલીસે ટોળા પર ટીચરગેસ ના સેલ છોડેલા તેમજ ફાચરીંગ કરેલ."

129. Paragraphs 20 24 (all reproduced to verbatim herein below) of the testimony of the present witness, according to Shri Kodekar, relate to the events that took place post the incident and relate to identification of the dead bodies of the victims and recording of statements by survivors including the present witness and the fact of such victims satisfied not being by recording of statements by the Police and swearing affidavits are all narrated by the witness in terms of paragraph-23 of his testimony and the fact of the witness having provided a statement before the S.I.T. on 23/05/2008 is also narrated by the witness.

"૨૦. પોલીસ અમને સૌ પહેલા શાહીબાગ પો.સ્ટે. લઈ ગયેલ. ત્યાંથી અમને અને બીજા લોકો ને દુધેશ્વર દરીયાખાન ઘુમટ લઈ ગયેલા. ત્યાં મ્યુ. સ્કુલમાં રાહત કેમ્પ કરેલ.

ર૧. મારા કાકા એઝાજઅલી ને પગમાં વાગેલ. તથા બીજા કાકા તૈયબઅલી ને માથામાં વાગેલ. મારા દાદા ફકીર મઠમદ ને ઠાથમાં ઈજા થયેલ. મારા કાકા એઝાજઅલી અને તૈયબઅલી રાઠતકેમ્પમાં પઠોચ્યા પછી વી.એસ.ઠોસ્પી. માં સારવાર માટે ગયેલા. દાદા અમારી સાથે જ રઠેલા

અને તેમણે કેમ્પમાં સારવાર લીધેલ.

૨૨. તા. ૨/૩/૦૨ ના રોજ કેમ્પમાં એવી જાહેરાત થયેલી કે,
ગુલબર્ગ સોસા. માં જે શહીદ થયેલા છે તેમની લાશો લેવા જવાનુ છે. જે
સી.હોસ્પી. જવાનુ છે. જેથી મારા કાકા એઝાજઅલી અને મારા દાદા ત્યાં
ગયેલા. લાશો કબ્રસ્તાનમાં લાવતા મારા પિતાજી ની લાશ મારા દાદા
એ ઓળખેલી. અને ત્યાં કબ્રસ્તાનમાં તેમની દકનવિધી કરવામાં આવેલ.

૨૩. તા. ૬/૩/૦૨ ના રોજ પોલીસ કેમ્પમાં આવેલ અને મને દુધેશ્વર ચોકી લઈ ગયેલ જ્યાં મારો જવાબ લીધેલ. એ જવાબ મારા લખાવ્યા મુજબ નો ન હતો. તે જવાબમાં મેઆરોપી ઓ ના જે નામ આપેલા તે લખેલ ન હતા. પછી અમે એક એફીડેવીટ કરેલ અને પો.કમી. તથા મેઘાણીનગર પો.સ્ટે. ને એક અરજી કરેલ. અમારી એફીડેવીટ અરજી સાથે મોકલી આપેલ. આ અરજી મોકલ્યા બાદ અમો ને ક્રાઈમ બ્રાન્ચ તરફ થી બોલાવવા આવેલા. અમે ગયેલા નહી. કે જવાબ લખાવેલ નહી. અમે ગયેલા નહી અને પછી સુપ્રિમ કોર્ટમાં એક અરજી કરેલ. અમને ગુજરાત પોલીસ પર ભરોસો ન હોવાથી ક્રાઈમ બ્રાન્ચમાં જવાબ લખાવવા ગયેલ નહી.
૨૪. અમે સુપ્રિમકોર્ટમાં અરજી કરી તે કામે મેં તા. પ/૯/૦૩ ના રોજ માટુ સોગંધનામુ કરેલ."

130. is pointed Tt. out that in the circumstances, this witness also has identified a large number of accused as being the perpetrators of the present incident and the specific overt acts attributed to the accused i.e. each of them, the with which they armed, all weapons were are testified to by the present witness and therefore,

this witness is also required to be accepted as a truthful, reliable and credible witness whose testimony goes a long way in establishing the charges against the accused beyond reasonable doubt.

131. Continuing in the same vein, Shri Kodekar now draws my attention to the testimony of the grandfather of PW-192, such witness being PW-314 Fagirmohammad Nasirali Saiyed whose deposition is on the record of the present proceedings at Exh.1098. It is submitted that the said witness is also an eye-witness, has testified with regard to only those relevant parts of the incidents which he has himself seen. The witness has also suffered the loss of his family members as also his property in the incident. The witness, according to Shri Kodekar, is also able to identify from amongst the perpetrators number of accused at the time of the incident and such accused are also to an extent positively identified in the Court also. It is pointed out that even if there are some inaccuracies or deficiencies in identification of the accused in the court on the part of the present witness, the witness is required to be excused since the testimony of the witness was recorded in August, 2010, nearly eight years after the incident and the age of the witness at the time his deposition was recorded, was about 75 years and therefore also, some inconsistencies or deficiencies as also some inaccuracies are required to be treated as lapses in memory on account of failing age and

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diminishing of the acute senses like eye-sight and hearing and it is urged that such deficiencies or contradictions are required to be treated as natural and cannot in any manner be treated as material contradictions which would in any manner be beneficial to the defence and be a detriment in the process of the State establishing beyond reasonable doubt the charges against the accused.

132. Shri Kodekar submits that the present witness also was a resident of the Flats located within Gulbarg Society and was residing thereat at least 12 years prior to the incident. The witness was residing there with his wife, three of his sons and their children i.e. his grandchildren, as a joint family. It is pointed out by Shri Kodekar that the witness was a worker of the Congress Party as emerging from his testimony on page-2 and in fact held a position with the Congress Party at that point of time. The witness was closely associated with ex-M.P. Shri Ehsan Jafri, one Ambalal Nadia, Kanu Solanki and Mangaldas Kapadia, who are all claimed to be Congress workers. It is submitted that the entire testimony of this witness is not read over nor is it required to be reproduced by the Court but the relevant portions would inter alia establish the events that took place at Godhra on 27/02/2002, ensuing tensions caused thereat and in the entire State of Gujarat including Ahmedabad, the Bandh call given by various Organizations and the ensuing effect and all of which leading to the

horrific incident at Gulbarg Society on 28/02/2002, which are narrated in the opening paragraphs of the testimony of this witness.

133. Drawing my attention to paragraph-6 (reproduced verbatim herein below) of the testimony of the witness, Shri Kodekar submits that the witness has deposed inter alia to the effect that on 28/02/2002, in the early hours of the morning, the witness met Shri Ehsan Jafri and thereafter went over to the place known as "Patrawali Chali" where about 25 to 30 Muslim families are residing, to warn them to be alert on that particular day. The residents of such chawl were also given a suggestion that they should come over to the Gulbarg Society for shelter if the situation so demanded it.

"૬. તા.૨૮/૨/૦૨ ના રોજ હું નાસ્તો પાણી પતાવી જાફરીસાઠેબ ના ઘરે ગયેલ. જાફરીસાઠેબે મને પતરાવાળી ચાલીમાં જવા અને ત્યાં રઠેતા પચીસ ત્રીસ મુસ્લીમ કુટુંબોને બહાર ન જવા સમજાવવા અને જો કાંઈ એવુ લાગે તો રેલવે પાટે પાટે થઈ ગુલબર્ગ સોસા.માં આવવા જણાવેલ."

134. Drawing my attention to paragraph-8 (reproduced verbatim herein below) of his testimony, it is submitted that this witness has also narrated the incident involving Yusuf and Ayub being the sons of the owner of Ankur Cycle Works and the fact of said Yusuf having taken shelter in Gulbarg the Society and Ayub being stabbed in the back by gupti blows, is also testified by the witness. The damaging and setting afire of the autorickshaw

belonging to Gulam Master and the Police coming over at that time and putting out the fire on the autorickshaw is also narrated by the witness accurately and in corroboration with the testimonies of all other witnesses referred to herein before.

ð પછી થોડીવાર અંકુરસાચકલવાળા ۳۷. બાદ હબીબખાનના છોકરાઓ દુકાન બંધ કરી બહાર ઉભા હતા. ત્યારે પંદર વીસ છોકરાઓનુ ટોળુ આવ્યુ અને તેમની સાથે મારામારી કરવા લાગેલ જેથી યુસુફ નામનો તેમનો દીકરો અમારી સોસા. માં આવી ગયેલ. અને અયુબ તેના ઘર તરફ જતો હતો ત્યારે ટોળામાંથી કોઈએ તેને પાછળ કમરના ભાગે ગુપ્તીના બે ત્રણ ધા મારી દીધેલ જેથી તે ઘરમાં જતો રહેલ. ત્યાં ગુલામ માસ્ટરની રીક્ષા પડેલ હતી તેને પેટ્રોલ છાંટી ટોળાએ સળગાવી દીધેલ. તે સમયે ઓમનગર તરફથી પોલીસની ગાડી આવતા ટોળુ ભાગી ગયેલ. પોલીસે રીક્ષા પર પાણી છાટીને આગ ઓલવેલ. અને પોલીસ જતી રહેલ. તે સમયે સોસા.ની અંદર હતા તેમને જાફરી સાદેબે સોસા.ની બહાર ન જવા જણાવેલ અને તેમણે પોલીસને ફોન કરેલ છે અને પોલીસ દમણા આવશે તેમ જણાવેલ."

135. Drawing my attention to paragraph-9 (reproduced verbatim herein below) of the testimony, Shri Kodekar has pointed out that this witness also has stated that in or about half an hour of the above referred incident, five or six Police vehicles came over to Gulbarg Society and at that time, the witness together with Shri Ehsan Jafri, Ambalal Nadia, Mangaldas Kapadia and Kanu Solanki, all went to the small gate of the Society. The witness has

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further deposed, according to Shri Kodekar, that at Shri Ehsan Jafri that stage, informed the Commissioner of Police Shri P.C.Pandey that required at Gulbarg Society. bandobast was The witness, according to Shri Kodekar, has also established the presence of P.I. Shri Erda at Gulbarg Society at that time. The witness has residents further deposed that the of Gulbarg Society were assured of Police protection and bandobast by such Police Officers.

"૯. તે પછી અડધા કલાકે પોલીસની પાંચ છ ગાડીઓ અમારી સોસા.ના નાના ઝાંપા આગળ આવી ને ઉભેલી. તે સમચે જાફરીસાદેબ અને અંબાલાલ નાડીચા,મંગળદાસ કાપડીચા, કનુ સોલંકી, હું અને અમારી સોસા.ના એક બે જણા અમે બધા નાના ઝાંપા આગળ રોડ પર ગચેલા. ત્યાં જાફરીસાદેબે પો.કમી. પી.સી.પાંડેને પોલીસ બંદોબસ્ત મુકવા જણાવેલ. ત્યાં મેઘાણીનગર ના પી.આઈ. એરડા સાદેબ પણ હતા. કમિ. સાદેબે એવુ જણાવેલ કે, હું હમણા થોડીવારમાં પોલીસ બંદોબસ્ત ગોઠવાવી દઉ છુ તમે લોકો અંદર બેસો. અમે અંદર આવેલા જાફરીસાદેબે અંદર બેસેલાને જણાવેલ કે, પી.સી.પાંડે સાદેબે પોલીસ બંદોબસ્ત ગોઠવાવી થઉ છુ તમે લોકો અંદર બેસો. અમે અંદર આવેલા જાફરીસાદેબે અંદર બેસેલાને જણાવેલ કે, પી.સી.પાંડે સાદેબે પોલીસ બંદોબસ્ત ગોઠવાવા જણાવેલ છે તમે લોકો ચિંતા કરશો નહી."

136. Drawing my attention to paragraph-10 (reproduced verbatim herein below) of the testimony, more particularly page-8 thereof, Shri Kodekar submits that the horrific incident as it started, is accurately narrated to by the witness, the witness has stated *inter alia* to the effect that a mob of

about 5000 to 10000 persons had gathered outside the Society and was shouting slogans inter alia to the "members of the minority community effect that should be killed and burnt." The mob, according to such witness, was armed with swords, guptis, sticks also possessed of cans of kerosene and and was witness identified Chunilal petrol. The has Prajapati (A-61), Mamo Kaniyo (A-42) and Bharat Talodiya (A-54) as being the members of such mob, who were positively identified by the witness at that point of time. The witness has further testified that accused No.61 is an ex-Municipal Councilor, accused No.42 is running an illicit liquor den/bar and accused No.54 according to the witness, was a Secretary of Bajrang Dal on account of which all three were known to the witness.

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"૧૦. પોલીસવાળા ગયા પછી અમારી સોસા. ની સામે પાંચ થી દસ હજારનુ ટોળુ અમારી સોસા. સામે આવેલ અને મીંચાઓને મારો કાપો અને બાળી મુકો તેવી બુમો પાડતા હતા. તેમની પાસે તલવાર ગુપ્તી લાકડી, પેટ્રોલ કેરોસીનના કેરબા હતા. તે ટોળામાં મેં ચુનીલાલ પ્રજાપતિ, મામા કાણીયા, ભરત તલોદીયાને જોચે ઓળખેલા. તે લોકો અમારા વિસ્તારના જ છે જેથી હું તેમને ઓળખુ છુ. અને તે રીતે મેં તેમને ઓળખેલા. તે લોકોને મેં નાના ઝાંપા પાસેથી ઓળખેલા. ચુનીલાલ ભાજપ ના માજી કોર્પો. છે. મામા કાણીયા દારુનો અડડો ચલાવે છે અને ભરત તલોદીયા બજરંગદળનો મંત્રી છે તેથી હું ઓળખુ છુ."

137. Drawing my attention to paragraph-11 (reproduced verbatim herein below) of the testimony,

it is pointed out that at that stage, the witness has positively identified Chunilal Prajapati (A-61) and Bharat Talodiya (A-54) in the Court, whereas Mamo Kaniyo (A-42) has not been identified by the witness and instead, the witness has wrongly identified Babu Manji Patni (A-23) as Mamo Kaniyo (A-42).

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"૧૧. હું કોર્ટમાં હાજર આરોપી ચુનીલાલ પ્રજાપતિને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા ચુનીલાલ હોવાનુ જણાવે છે. હું કોર્ટમાં હાજર આરોપી ભરત તલોદીચાને ઓળખી બતાવુ છુ. આરોપીને તેનુ નામ પુછતા ભરત તૈલી હોવાનુ જણાવે છે. હું કોર્ટમાં હાજર આરોપીઓ પૈકી પહેલી લાઈનમાં જમણી તરફ છેલ્લે બેઠેલાને મામા કાણીચા તરીકે ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા બાબુ મનજી પટણી હોવાનુ જણાવે છે. કોર્ટના રેકર્ડથી ખાત્રી કરતા આરોપી બાબુ મનજીી પટણી છે અને મામા કાણીચા નથી."

138. Drawing my attention to paragraph-12 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness made further efforts to identify accused No.42 but accused No.24 being Shankerji Hakaji Mali was wrongly identified as accused No.42 and no other accused was identified in the Court by the witness as being involved in the incident.

"૧૨. આરોપીઓને લાઈન પ્રમાણે ઉભા કરી ઓળખી બતાવવા જણાવતા આગળથી ત્રીજી લાઈનમાં વચ્ચે ના ભાગની લાઈન ના ત્રણ પૈકી વચ્ચેના માણસને મામુ કાણીયો તરીકે ઓળખી બતાવે છે.

Judgment

આરોપીને તેનુ નામ પુછતા શંકરજી હકાજી માલી જણાવે છે. કોર્ટના રેકર્ડ સાથે ખાત્રી કરતાં તેઓ શંકરજી હકાજી માલી હોવાનુ સાચુ છે. આ સીવાય અન્ય કોઈ આરોપી ને મામા કાણીયા તરીકે ઓળખી બતાવેલ નથી."

139. Tt. is submitted referring to paragraphs 13 and 14 (both reproduced verbatim hereunder) of the testimony, that Bharat Teli (A-54) Kaniyo (A-42) were, according and Mamo to the witness, armed with swords and such mob started afire including setting the vehicles the autorickshaw of Gulam Master and also shops belonging to the persons of minority community. At that point of time, according to the witness, some families residing outside Gulbarg Society, rushed into Gulbarg Society to take shelter and properties of such families were also damaged, looted and set afire by the mob.

"૧૩. મેં ટોળામાં ઓળખેલા તે માણસો પૈકી ભરત તૈલી અને મામા કાણીચાના હાથમાં તલવારો હતી. આ ટોળાએ ગુલામ માસ્ટરની રીક્ષાને ફરી સળગાવી દીધેલ અને તેની પાસે લ્યુના અને સાચકલ પડેલ હતા તે બંને ને આ ટોળાએ સળગાવી દીધેલ. તથા તેની સામે એક મુસ્લીમની દુકાન હતી તેમાં તોડફોડ કરી તેનો સામાન રોડ પર લાવી સળગાવેલ. તે સમચે અમારી સોસા. ની સામે ચાલી હતી તેમાથી કેટલાક મુસ્લીમ કુટુંબો બચવા માટે અમારી સોસા.માં આવી ગયેલ. તે લોકોની રોડ પર બેકરી હતી તેમાં ટોળાએ તોડફોડ કર સામાન સળગાવી દીધેલ."

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testimony, Shri Kodekar submits that the witness has clearly testified as to how the mob had completely surrounded Gulbarg Society and had started pelting stones, throwing burning rags and tyres at the Society on account of which some buildings, doors and windows started catching fire which fire was put out by the residents of the Society. The witness claims in terms of paragraph-14, page-11 of his testimony, to have also resorted to pelting stones at the mob in defence.

"૧૪. તે પછી ટોળાના માણસોએ સોસા. પર પથ્થરો, સળગતા કાકડા ફેંકેલા. જેથી જાફરીસાઠેબે સોસા.ના બંને ઝાંપા બંધ કરાવી તાળા લગાવડાવી દીધેલા. પછી ટોળાના માણસો રેલવે તરફ આવેલા અને તે બાજુથી પથ્થરો સળગતા કાકડા, સળગતા ટાયર ફેંકવા લાગેલા. જેથી સોસા.માં પાછળના ભાગે આવેલ મકાનના બારી બારણામા આગ લાગેલ. જેથી તે મકાનના માલીક અને સોસા.ના માણસોએ પાણી છાંટીને તે આગ ઓલવી નાખેલ. અમે પણ સામે પથ્થર ફેકેલા."

141. It is also pointed out by the witness in terms of paragraph-15 (reproduced verbatim hereunder) of his testimony, that Shri Ehsan Jafri went out of the small gate of the Society and requested the mob not to do so, but according to the witness, this further incited the mob and the mob attempted to break open the gates of the Society. At this point, the witness has testified, that he together with Shri Ehsan Jafri went over to the residence of Shri Ehsan Jafri where attempts to call

up the Police as also political leaders were made by Shri Ehsan Jafri, but according to the witness, no help either from the Police or from any political personality was received.

"૧૫. તે પછી આ ટોળા ના માણસો રોડ પર આવેલા અને મારા ફલેટ નીચે ક્રિષ્ના ઈલે.ની દુકાન આવેલહતી તે સળગાવેલ. જેથી મારા ઘરે આવેલા માણસોને મેં ફલેટમાથી નીચે ઉતારી બીજે મોકલી દીઘેલા. તે પછી આ ટોળાના માણસોએ સોસા. માં પથ્થર તથા કાકડા ફેકેલા જેથી સોસા.ના અંદરના માણસોમાં ભાગદોડ થયેલ. અમે પણ સામે પથ્થર ફેંકેલા. તે સમયે જાફરીસાહેબે સોસા.ના નાના ઝાંપા આગળથી આમ ન કરવા વિનંતી કરેલ. પરંતુ ટોળુ ઉગ્ર થયેલ અને ઝાંપો તોડવાનો પ્રયત્ન કરતુ હતુ જેથી અમે સામા પથ્થર ફેંકેલ. તે પછી હું અને જાફરીસાહેબ તેમના મકાનમાં ગયેલ અને ત્યાંથી પોલીસને અને નેતાઓને ફોન કરેલા. પરંતુ કોઈ મદદ આવેલ નહી. પોલીસ આવી નહી કે, નેતાની મદદ આવેલ નહી."

142. Drawing my attention to paragraph-16 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness has deposed that a Police car did come to the Society and did fire some teargas shells as also fired from the weapons, but this in fact did not have the effect of driving away the mob but had the effect of further terrifying the residents of Gulbarg Society who all rushed to the residence of Shri Ehsan Jafri to take shelter. The witness has testified that the Police thereafter went away and could not or did not disperse the mob.

તે પછી થોડીવારે પોલીસની એક ગાડી આવેલ અને

Judgment

"૧૬. તે પછી થોડીવારે પોલીસની એક ગાડી આવેલ અને સોસા.ની બહાર ફાચરીંગ કરેલ, ટીચરગેસ છોડેલ જેથી અમને ડર લાગતા કે કદાચ ગોળી અમને વાગી જાય તેવો ડર લાગતા અમે જાફરીસાદેબના મકાનમાં જતા રદેલ. પોલીસ ત્યાંથી જતી રદેલ પણ ટોળાને ત્યાંથી ભગાવેલ નદી."

143. Drawing my attention to the testimony from paragraph-17 (reproduced emerging verbatim herein below) of the deposition, Shri Kodekar submits that the incident that took place at about 1:30 p.m. relating to pelting of stones from the residence of one Dayaram Jinger located at Bunglow No.1 of the Gulbarg Society is deposed to. The witness has identified Rajesh Dayaram Jinger (A-65) and Gabbar (A-14) as persons who were a part of such mob who was pelting stones from the terrace of the building. The fact of the stone throwing resulting in injuries being caused to Irfan, the son of one Mr.Mansuri who were rushed to the residence of Shri Ehsan Jafri, is also testified and it is further testified that other residents of some Gulbarg Society were also injured in such stone throwing.

"૧૭. તે પછી બપોરના દોઢવાગે અમારી સોસાના એક નંબર ના દયારામ જીંગરના મકાનમાં ટોળાને ઉપર ચડાવી દીધેલ અને ઉપરથી તે લોકો પથ્થર ફેંકતા હતા અને ગાળો બોલતા હતા અને બોલતા હતા કે, સોસા.માં માણસો ઓછા છે અને તમે અંદર ઘુસી જાવ. તે ટોળામાં રાજેશ દયારામ જીંગર હતો અને ગબ્બર હતો. અને પથ્થર ફેંકતા હતા. એક પથ્થર

ગુલઝારભાઈના દીકરા ઈરફાનને વાગેલ અને બીજોએક પથ્થર મનસુરીના છોકરાને આંખ પર વાગેલ. તે લોકોને ઉપાડીને અમારી સોસા. ના છોકરાઓ જાફરીસાદેબના ઘરમાં લાવેલા આ છોકરાઓને પણ વાગેલ."

144. Drawing my attention to paragraph-18 (reproduced verbatim here under) of the testimony and the order passed by the Court at that stage, Kodekar submits that the witness Shri was not permitted to go very close to the accused and was permitted to identify the accused not in such fashion and the accused were made to stand in a line one by one and referring to paragraph-19 (reproduced verbatim herein below), the witness in his attempts to identify in the Court from amongst the accused, has wrongly identified Chirag Dilipbhai Shah (A-36) as Rajesh Jinger (A-65) and Mahesh Ramjilal Nath (A-51) is wrongly identified as Gabbar (A-14).

"૧૮. નોંધ : સાહેદ આરોપીઓને નજીક જઈ ઓળખવા પરવાનગી માગે છે અને જણાવે છે કે તેઓની ઉંમર થયેલ છે અને તેઓને કેન્સરની બીમારી છે.

સાહેદ આ વિસ્તારના એક રાજકીય પક્ષના સક્રિય કાર્યકર છે અને તેઓના પુરાવા મુજબ આ વિસ્તારના લોકોને વ્યકિતગત રીતે પણ ઓળખે છે. સાહેબે આ અગાઉ સાક્ષીના પિંજરામાંથી જ બે આરોપીઓને ઓળખી બતાવેલા છે. સાક્ષીનું પિંજરુ અને આરોપીઓને બેસાડેલ જગ્યા વચ્ચે માત્ર વીસ કુટનું અંતર છે. પુરતો પ્ર કાશ છે. દરેક આરોપીને લાઈનમાં ઉભા કરી ઓળખી બતાવવાની પુરતી તક સાદેદને આપવામાં આવેલ છે.. સાદેદ પોતાની નિચત ક્રમની કામગીરી સ્વભાવીક પણે કરે છે અને તેઓને રસ્તામાં આવવા જવા કે કચાંચ પણ કોઈ તકલીફ પડતી દોચ તેવુ જણાવેલ નથી. બનાવ વખતે ઘણે દુરથી આરોપીઓને ઓળખેલ દોવાનો કેસ લઈને આવેલ છે જે સમગ્ર દકીકત લ ક્ષમાં લેતા અને આ પુરાવા દરમ્યાન સાક્ષીના પિંજરામાંથી ઓળખી બતાવ્યા છે જે લક્ષમાં લેતા આરોપીની નજીક જવાની પરવાનગી આપવામાં આવતી નથી.

કોર્ટમાં ઠાજર આરોપીઓને લાઈનમાં ક્રમબધ્ધ ઉભા કરી ٩E. બતાવવામાં આવે છે તે પૈકી આગળથી બીજી લાઈન માં ડાબીબાજુ થી બીજા ગંભરવા આરોપીને સાઠેદ રાજેશ ၛႝၪၣ તરીકે ઓળખી બતાવે છે આરોપીને તેનુ નામ પુછતા ચીરાગ દીલીપભાઈ શાહ હોવાનુ જણાવે છે જે રેકર્ડ થી ખાત્રી કરતા બરાબર हોવાનુ જણાય છે. આગળની લાઈનના આરોપીઓને ઉભા કરી બતાવતા વચ્ચે ના બે આરોપી પૈકી પીળ્ હાફ બાંચનુ શર્ટ પહેરેલને ગબ્બર તરીકે ઓળખી બતાવે છે તે આરોપીને તેનુ નામ પુછતા મહેશ રામજીલાલ નાથ હોવાનુ જણાવે છે જે રેકર્ડથી ખાત્રી કરતા મદેશ રામજીલાલ નાથ હોવાનુ ખરુ છે."

145. It is pointed out that in the course of paragraphs 20 and 21 (both reproduced verbatim herein below) of the testimony, the witness has deposed with regard to further sequence of events where the mob entered into the Gulbarg Society by demolishing the gates and th compound wall and the witness has in the opening line of paragraph-20, clearly identified Chunilal Prajapati (A-61), Bharat

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Teli (A-54) and Mamo Kaniyo (A-42) as being the members of such mob. The mob is further attributed to have been armed with swords, spears, tridents and was also throwing burning rags at the Society. The mob according to the witness, thereafter destroyed and also started ransacking, looting and destroying houses of Gulbarg Society and a gas cylinder was used to cause an explosion which demolished the rear compound wall of the Society wherefrom also the mob entered into the Society, at which point of time, the witness and two of his sons Shahejadali and Taiyyabali rushed into the residence of Shri Ehsan Jafri to take shelter.

146. Drawing my attention to paragraph-21 of the deposition, Shri Kodekar submits that the witness has clearly stated that the mob thereafter started throwing burning rags into the residence of Shri Ehsan Jafri and the resultant smoke and fire made some of the residents taking shelter in Shri Ehsan Jafri's residence, to come out and such persons who rushed out were attacked by the mob, given sword blows and killed on the spot.

"૨૦. આ પછી ટોળુ સોસા.માં ઘુસી આવેલ જે આગળનો કોટ તોડીને અંદર આવી ગયેલ. તે ટોળામાં આગળ ચુનીલાલ પ્રજાપતિ, ભરત તૈલી અને મામો કાણીયો હતા. ટોળાના હાથમાં તલવાર, ભાલા, ત્રિશૂળ, સળગતા કાકડા હતા. આ ટોળાએ સોસા.માં જે વાહનો પડેલા હતા તેમા તોડફોડ શરુ કરેલ. બે નંબરના મકાનમાં તોડફોડ કરી આગ લગાડેલી.

ત્રણ નંબરના મકાનમાં પણ તે જ પ્રમાણે તોડફોડ કરી આગ લગાડેલ. તે સમચે રેલવે બાજુથી ટોળાએ ગેસના બાટલા થી તે બાજુની દીવાલ તોડેલ અને અંદર આવી ગચેલ. તે સમચે હું મારો મોટો દીકરો શહજાદઅલી ત્રીજો દીકરો તૈયબઅલી અમે ત્રણે જણા દોડીને જાફરીસાહેબના મકાનમાં ઘુસી ગચેલ.

ર૧. જાફરી સાહેબના મકાનમાં હું બીજા રુમમાં જતો રહેલ અને શહજાદઅલી અને તૈયબઅલી આગળના રુમમાં રહેલ. ટોળાના માણસો પાછળના મકાનો માં તોડફોડ કરી આગ લગાડતા હતા અને લુટફાટ કરતા હતા. અને તે પછી ટોળાના માણસોએ જાફરીસાહેબના મકાન પર સળગતા કાકડા, સફેદ કેમીકલની બાટલીઓ ફેંકેલ જેથી જાફરીસાહેબના મકાનના બારી બારણાને આગ લાગેલ. જેથી તેમના તેમના મકાનમાં પહેલા રુમમાં જે માણસો હતા તે બધાજ ગભરાઈ ગયેલા. જેથી ત્યાં દમ ઘુંટાવાથી તે લોકો બહાર નીકળવા લાગેલા. બહાર નીકળતા બહાર ઉભેલ ટોળુ તેમને તલવાર મારી મારી નાખતુ હતુ."

147. Drawing my attention to paragraph-22 (reproduced verbatim herein below) of the testimony, the horrific incident with the young girl Firdos is narrated accurately and in detail by the witness, which according to Shri Kodekar, in complete and further corroboration to the testimony of other witnesses. The fact of the said Firdos being attacked, her clothes being torn apart and her shouting for help resulted in the son of present witness i.e. Shahejadali to rush out in an effort to rescue the said Firdos. The witness has clearly

stated that at that point of time, Mamo Kaniyo (A-42) gave a sword blow to Shahejadali which resulted in his collapsing and falling down whereat he was attacked by other members of the mob and killed on the spot. The said Firdos, according to the witness, was dragged away by the mob. The witness claims to have been greatly shocked at seeing the horrific and brutal death of his son in the incident and was made to go away and sit in the rear portion of Shri Ehsan Jafri's residence.

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"૨૨. પછી ગુલઝારભાઈની દીકરી ફીરદોસને બહાર ખેંચી લીધેલ અને તેના કપડા ફાડવા લાગેલા. જેથી તે બચાવો બચાવો ની બુમો પાડતી હતી. તે સમચે મારો દીકરો શહજાદઅલી બહાર નીકળીને તેને બચાવવા પ્રચત્ન કરતો હતો. તે સમચે મામા કાણીચાએ તેની પાસેની તલવાર શહજાદઅલીના માથામાં મારેલ જેથી શહજાદઅલી ત્યાં જ પડી ગચેલ. ત્યારે ટોળાના બીજા માણસોએ તેમની સાથેના હથીચારોથી શહજાદ અલીને મારી નાખેલ. તે સમચે ટોળાના માણસો ફીરદોસને પાછળની બાજુએ લઈ ગચેલ. મારા મોટા દીકરાને ટોળાએ મારી નાખતા મને ખુબ આઘાત લાગેલ અને જાફરીસાહેબે મને તે સમચે આશ્વાસન આપેલ અને કહેલ કે, તમે પાછળના રૂમમાં જતા રહો."

148. The witness has testified in terms of paragraph-23 (reproduced verbatim herein below) of his testimony, according to Shri Kodekar, that he was filling shocked and was dizzy at that time and was hanging on to the grill in an effort to maintain balance when somebody from outside gave a sword blow

and caused injuries on both of his hands. The witness thereafter climbed on to the first floor of the residence of Shri Ehsan Jafri and even during such process, the witness was hit by stones which caused injuries to his mouth and back as is clearly emerging from paragraph-23 of his deposition. The witness has also testified that his other son Taiyyebali was also bleeding from his nose and from a head injury and there were many others who were injured in the incident. The witness claims that even at such point of time, the mob continued to throw stones and bottles.

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"23. પાછળના રુમમાં ઉપર તરફ જવાનો દાદરો આવેલ છે જેને જાળી લગાવેલ છે. મને ચકકર જેવુ આવતુ દોવાથી દું ત્યાં ગયેલ અને જાળી પકડીને ઉભો દતો અને રુમમાં જે માણસો દતા તેમને મેં ઉપર જવા જણાવેલ. તે સમયે કોઈએ મને જાળી પકડી દતી ત્યાં દાથ પર તલવાર મારેલ જે મને બંને દાથના આંગળા પર વાગેલ. પછી દું દાદરા મારફત ઉપર ચડતો દતો ત્યાં સામે એક દુકાન આવેલ છે તેના છાપરા પર થી ટોળુ પથ્થર ફેંકતુ દતુ જે પથ્થર પૈકી એક પથ્થર મારા પીઠના ભાગે એક પથ્થર મારા મોઢાના ભાગે વાગેલ અને દું ઉપર ચઢી ગયેલ."

149. Drawing my attention to paragraph-25 (reproduced verbatim herein below) of the deposition, the witness according to Shri Kodekar, has clearly stated that at about 5:00 p.m. there was an arrival of the Police Force which resulted to firing teargas shells and firing from their guns in a view to disperse the mob and thereafter things

became quiet and the witness has deposed that the witness and some other survivors came down from the first floor of the residence of Shri Ehsan Jafri and together with the present witness, was Shri Ehsan Jafri's wife Zakiyaben, one Surraiyaben, Nadim, his mother and one Tasaddupbhai, all of whom came out from the residence of Shri Ehsan Jafri.

"૨૫. સાંજના પાંચેક વાગ્યાના સુમારે પોલીસની સીસોટીના અવાજ આવેલા. ફાયરીંગનો તેમજ ટીયરગેસનો અવાજ આવેલ અને સોસા.માં વાતાવરણ એકદમ શાંત થઈ ગયેલ. જેથી મેં ઉપર ઉભા થઈને જાળીમાંથી જોયુ તો નીચે સોસા.માં પોલીસના દસ પંદર માણસો ઉભેલા હતા. અને તે વખતે દિંમત કરીને હું અને બીજા પંદર સોળ વ્યકિતઓ નીચે આવેલા. તે સમયે મારી સાથે જાફરીસાહેબના પત્ની જાકીયાબેન તથા સુરૈયાબેન સફદરભાઈ, નદીમ તથા તેમના મમ્મી, તસદદુકભાઈ હતા અને બીજા બધા હતા તે અમે નીચે આવેલા. અમે પાછળના ભાગે થઈને નીચે આવેલા."

150. Drawing my attention to paragraph-26 (reproduced verbatim hereunder) of the testimony, the witness according to Shri Kodekar, has clearly deposed having seen many bodies littered in the compound of residence of Shri Ehsan Jafri and has particularly stated on oath that the dead bodies of the women victims were devoid of any clothing. It is pointed out by Shri Kodekar that the witness has specified that the dead body of his son was in pieces since it was hacked by the members of the mob. It is submitted by Shri Kodekar that a vital aspect is emerging from the testimony of this

witness, more particularly from paragraph-26 that a senior Police Officer Shri Tandon was identified to be amongst the Police Party and the witness requested Shri Tandon to summon the Fire brigade in an effort save lives. Shri Tandon, according to the witness, had said that the witness should worry about his own safety and not worry about the safety of others. The witness in his deposition, has testified that it was clearly informed by Shri Tandon that the whole of Ahmedabad is burning and the witness has testified that nobody paid attention to the request made by the residents of Gulbarg Society.

"૨૬. અમે નીચે આવીને જોયુ તો ઘણી બધી લાશો હતી. તેમાં સ્ત્રીઓની લાશ નગ્ન હાલતમાં હતી. મેં જઈને મારા દીકરાની લાશ જોયેલ. જે કાપી નાખેલ હાલતમાં હતી. તે સમયે સેકટર નંબર બે ના ટંડન સાહેબ સોસા. માં ઉભેલા હતા. તેમને મેં જણાવેલ કે, તમે ફાયરબ્રિગેડ બોલાવો તો જાફરીસાહેબના મકાનમાં જે માણસો છે તે બચી શકે. ત્યારે ટંડન સાહેબે જણાવેલ કે, અત્યારે કોઈ ફાયરબ્રિગેડ આવશે નહી. આખુ અમદાવાદ ભડકે બળે છે. તમે તમારી ચિંતા કરો તેમ કહેલ અને ટંડન સાહેબે મારી વાત ધ્યાને લીધેલ નહી. તે સમયે થોડા ઘણા આદમી બચી શકે તેમ હતા."

151. Drawing my attention to paragraph-27 (reproduced verbatim herein below) of the deposition, it is submitted by Shri Kodekar that the witness has further testified as to how the survivors and remaining persons were taken away to a

shelter at Dariakhan Ghummat during which time also the Police vehicles carrying such persons, were attacked by the mob which resulted in the Police firing teargas shells and resorting to firing with weapons on such mob and ultimately how the victims and survivors were taken to Shahibaug Police Station and therefrom were taken to the refugee shelter at Dariakhan Ghummat.

"૨૭. તે પછી અમને ત્રણ મોટી એસ.આર.પી.ની ગાડી માં બેસાડેલા તે સમચે મારો દીકરો એજાજઅલી ફલેટમાંથી નીચે આવેલ ત્યારે તેને પણ માથામાંથી લોદી નીકળતુ હતુ. અમે આગળની ગાડીામાં બંને જણા સાથે બેસેલા. ત્યારે ચાલીમાંથી થોડાક માણસો ગાડી પર પથ્થર મારતા હતા. હું જે ગાડીમાં બેઠેલ તે ગાડીનો ડ્રાઈવર બાજુનો આગળનો કાચ તુટી ગચેલ જેથી ડ્રાઈવર નીચે ઉતરી ગચેલ અને જણાવેલ કે હું ગાડી ચલાવી શકીશ નહી. તે સમચે શાહીબાગના પઠાણ સાહેબે ટંડન સાહેબને કહેલ કે તમે ફાચરીંગનો હુકમ કરો તો આ લોકો બચી શકે તેમ છે. જેથી તેમણે ફાચરીંગનો હુકમ કરતાં પોલીસે ફાચરીંગ કરતાં અને ટીચરગેસ છોડેલા અને અમારી ગાડીની આગળ પાછળ પોલીસ ગોઠવાવી દીધેલ તે પોલીસ ટીચરગેસ છોડતી ગઈ તથા રોડ પર પડેલા અવરોધો ધીમે ધીમે દરુ કરતી ગઈ તે રીતે ગુલબર્ગ સોસા. થી ચમનપુરા ચકલા પહોંચતા દોઢ કલાક થચેલ અને તે પછી અમને શાહીબાગ પો.સ્ટે. લઈ ગયેલ."

152. The contents of paragraphs 29 to 36 (all reproduced verbatim here under) of the of this witness, according Shri testimony to Kodekar, cover the events that took place subsequent

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to the horrific incident and the fact of initial statements being recorded, the contents of the statements not being to the satisfaction of the witness and affidavit sworn by the witness, the witness and others having approached the Hon'ble Supreme Court, formation of the S.I.T. and all such aspects are narrated in the course of the testimony of the witness. The witness having assessed the loss and damage to his property which was to the tune of Rs.2 Lakhs, clearly emerges from paragraph-34 of his testimony.

153. My attention is drawn to the contents of paragraph-33 wherein the witness has clearly stated that while initially the statements were recorded, the Police failed and neglected to mention therein the names of the concerned accused even though the same were narrated and supplied by the witness.

154. Shri Kodekar submits that in the circumstances, the witness can be said to be a reliable witness who has accurately and truthfully stated on oath the sequence of events that took place on 28/02/2002, has identified from amongst the perpetrators a number of accused and has also supported and corroborated the version emerging from the testimony of other witnesses. It has been further pointed out by Shri Kodekar that the witness has withstood the test of cross examination and the combined weight of the testimony of all these

witnesses goes a long way in establishing beyond reasonable doubt the charges herein.

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"૨૯. તા.૨/૩/૦૨ ના રોજ કેમ્પમાં જાહેરાત થઈ કે, ગુલબર્ગની લાશો જે સી.હોસ્પી. આવેલ છે તેને લેવા જવાનુ છે. જેથી અમે દસ પંદર જણા ખટારામાં બેસીને સી.હોસ્પી. ગચેલા. ત્યાં બહાર ખટારામાં લાશો પડેલ હતી અને પોલીસવાળાએ જણાવ્યુ કે, આ ગુલબર્ગ સોસા.માંથી આવેલ લાશો છે. ગુલબર્ગ સોસા.માંથી અમે ગયા ત્યારે લાશો ઓળખી શકાય તેવી હતા પરંતુ અમે તે પછી કેમ્પમાંથી સી.હોસ્પી. ગયા ત્યારે આ લાશો ઓળખી શકાય તેવી ન હતી. અમે આ લાશો લઈને રાત્રે અગીયાર વાગે કલંદરી મસ્જીદ કબ્રસ્તાન પહોંચેલ.

૩૦. કલંદરી મસ્લીદ કબ્રસ્તાન પર એવી લાહેરાત કરવામાં આવેલ કે, ગુલબર્ગની એકવીસ લાશો આવેલ છે જે ઓળખાય તે ઓળખી બતાવો. બધાએ લાશો કપડા દાગીના પરથી ઓળખી બતાવેલ. મેં મારા દીકરા શહલાદઅલીની લાશ તેને દાઢી હતી તેના પરથી ઓળખી બતાવેલ. અને તે લાશો અમને સોંપી પોલીસે લાશ સોંપ્યા બાબતની સહી લીધેલ. તથા તેની પર પીએમ ના કાગળ લગાવેલ તે કાગળ પણ પોલીસે આપેલા.

૩૧. ત્યાં કબ્રસ્તાનમાં ત્રણ મોટા ખાડા કરવામાં આવેલા જેમા એક સ્ત્રીઓ માટે, એક પુરષો માટે અને એક બાળકો માટે કરવામાં આવેલ. અને ત્યાં સ્ત્રીઓ બાળકો અને પુરુષોને અલગ અલગ દફનાવવામાં આવેલ.

3ર. બીજા દીવસે પણ ઘણી લાશો કબ્રસ્તાનમાં આવેલ પરંતુ હું ત્યાં ગયેલ નહી.

33. તે પછી અમારા રાહતકેમ્પમાં મેઘાણીનગર

પો.સ્ટે.ના સી.પી.આઈ. પરમાર સાદેબ અમોને દુધેશ્વર પોલીસચોકી જવાબ લેવા માટે લઈ ગયેલા. ત્યાં મેં લખાવેલ કે, દસ વાગે જાફરીસાદેબ અને હું પો.કમી. સાદેબને મળવા ગયેલા પણ કમીશ્નર સાદેબનુ નામ તેમણે લખેલ નદી. મેં મામા કાણીયા, રાજેશ જીંગર ના નામ તેમને જણાવેલા પણ તે તેમણે લખેલા નદી.

3૪. તે પછી બે ત્રણ દીવસ પછી પરમાર સાહેબ અમને અમારી સોસા.માં લઈ ગયેલ. અમે સોસા.માંથી નીકળ્યા ત્યારે પહેરેલ કપડે નીકેળેલા. અમે જઈને જોયુ તો અમારા મકાનમાં લુટફાટ કરીને દોઢ થી બે લાખ રુપીયાનુ નુકસાન પહોંચાડેલ. જાફરીસાહેબે ફોન કર્યો ત્યારે જો

પોલીસ બંદોબસ્તમાં આવી હોત તો અમને આટલુ મોટુ નુકસાન ન થાત. 3પ. મેં તા.રપ/૧૧/૦૨ ના રોજ પો.કમી. ને એક અરજી કરેલ. જે અરજીની નકલ આંક : ૨૯ ની અરજી સાથે સામેલ છે. મેં પો.કમી.ને કરેલ અરજી સાથે સોગંધનામુ પણ મોકલેલ જેની નકલ પણ આંક : ૨૯ ની અરજી સાથે સામેલ છે. મેં પો.કમી. ને અરજી કર્યા બાદ સીટી ક્ર ાઈમવાળાએ અમોને જવાબ આપવા બોલાવેલ. પણ અમે ગયેલા નદી. કારણકે, પદ્દેલા અમે જવાબમાં લખાવેલ છતાં પોલીસે નામ લખેલા નદી જેથી અમે ગયેલા નદી.

35. મને એસઆઈટીએ જવાબ માટે બોલાવેલ. મે સીટમાં અરજી લખીને આપેલ જેથી જચાંથી મને સમન્સ આવેલ. સમન્સ આવેલ એટલે કે ગુજરાતી અને અંગ્રેજીમાં અરજી ટાઈપ કરાવેલ જે મેં મારા એક મિત્ર વકીલ ઈકબાલ ભાઈ પાસે લખાવેલ. અને તે લખાવીને પોલીસ બંદોબસ્ત સાથે હું અને મારો પૈાત્ર મહમદઅલી સીટમાં જવાબ લખાવવા ગચેલ. ત્યાં મે મારો જવાબ લખાવેલ. ત્યાં મેં અરજી આપેલ જેમાં નીચે મારી સહી કરેલ છે.

Judgment

મેં જે જવાબ લખાવ્યો તે એસઆઈટીએ લખેલ."

155. Shri Kodekar next draws my attention to the testimony of **PW-128** being one Mohammad Rafig Abubakkar Pathan, whose testimony is on the record proceedings at Exh.633. The of the witness, according to Shri Kodekar, has largely narrated and supported the versions of the previously referred witnesses and his testimony also confirms, corroborates and supports accurately the testimony of other eye-witnesses. According to Shri Kodekar, the witness is an eye-witness, a reliable witness and was a resident of Block No.14 of Gulbarg Society at the relevant point of time. The presence of the witness, therefore, is natural and believable, according to Shri Kodekar. The witness was residing together with his family in Gulbarg Society and in the course of his testimony, according to Shri Kodekar, the witness has positively identified the accused, attributed specific overt acts to such accused and has provided appropriate justification for being able to identify such accused. It is submitted that the witness, therefore, could be said to be a reliable eye-witness, providing full corroboration to the Prosecution case. The fact of Commissioner of Police Shri P.C.Pandey and P.I. Shri Erda coming over to Gulbarg Society and assuring Police protection, is emerging from paragraph-4 of the testimony, the incident related to Yusuf and Ayub and the fact of Ayub being given two to three

gupti blows is also seen by the present witness and the rickshaw of Gulam Master being set afire is also testified to by the witness in paragraph-3 of his deposition more particularly on pages and 3 4 thereof. The said paragraphs No.3 and 4 are reproduced verbatim herein below.

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તા. ૨૭/૨/૦૨ ના રોજ હુ નોકરી પર ગયેલ. "З. તે દીવસે ગોધરા ખાતે ટ્રેન નો બનાવ બનેલ હોવાથી સાંજના વાતાવરણ અમદાવાદમાં તંગ છે તેવુ મને જાણવા મળેલ. તેથી સાંજના સાતેક વાગે હુ અને મારો ભાઈ સલીમ ઘરે વહેલા આવી ગયેલા. અમે ઘરે હતા ત્યારે જાણવા મળેલ કે વિ.હિ.પ. અને બજંરગ દળે બીજા દીવસે તા. ૨૮/૨/૦૨ ના રોજ ગુજરાત બંધ નુ એલાન આપેલ છે. બંધનુ એલાન હોવાથી અમે તે દીવસ ે નોકરી એ ગયેલ નહી. તા.૨૮/૨/૦૨ ના રોજ સવાર ના નાસ્તો કર્યા બાદ હ ઘરે ઠાજર ઠતો. ત્યારે આશરે દસેક વાગે બઠાર બુમાબુમ સાંભળેલ જેથી ઠુ ઘરમાંથી બહાર આવેલ. હુ સોસા. ના ઝાંપે જોવા માટે આવેલ. જેથી સોસા. ना लोडो એ मने અंદર રहेવा જણाવતાં ह અંદર રहेलो. त्यांथी ह सोसा.मां આવેલા ફલેટ ના ધાબા પર ગયેલ. હુ ધાબા પર ગયો ત્યાં ત્યારે નદીમ વોરા, શકીલ મનસુરીધ અને બીજા લોકો હતા. મેં ધાબા પરથી જોયુ તો બહાર રોડ પર અંકુર સાચકલ ના માલીક ના બે દીકરા નામે યુસુફ અને અયુબ ની સાથે ટોળુ મારામારી કરતુ હતુ. જેથી ચુસુફ ભાગી ને અમારી સોસા. તરફ આવી ગયેલ. તેનો ભાઈ અયુબ તેના ઘર તરફ ભાગવા જતાં કોઈએ પીઠના ભાગે ગુપ્તી ના બે ત્રણ ધા મારેલા હતા. તે વખતે આ ટોળામાં મે કોઈ ને ઓળખેલા નહી. એ ટોળા એ ત્યાં બાજુમાં આવેલ રીક્ષામાં તોડફોડ કરી તેને આગ લગાવી દીધેલ. તે સમયે પોલીસ ની ગાડી ત્યાં આવતાં ટોળુ ત્યાંથી

ભાગી ગયેલ. પોલીસે બાજુમાં ધોબીની દુકાને થી પાણી લાવીને રીક્ષાની

આગ ઓલવેલી. આગ ઓલવ્યા પછી પોલીસ ચમનપુરા બાજુ જતી રહેલી. ૪. તે બાદ થોડીવાર પછી પોલીસ ની પાંચ થી છ ગાડી ઓ અમારી સોસા. ના નાના ઝાંપા તરફ આવેલી. એટલે હુ ધાબા પરથી નીચે આવેલ. ગાડી ઓ આવી ત્યારે માજી સંસદ સભ્ય એહસાન જાફરી હુસેન તથા તસદદુલ હુસેન ફકીર મહમદ અને સોસા. ના બીજા બે ત્રણ જણા પોલીસ ની ગાડી આગળ મળવા ગચેલા. તે પછી થોડીવારે જાફરી સાહેબ સોસા. ની અંદર આવેલા. અને તેમની સાથે ના માણસો પણ સોસા.માં અંદર આવેલા. તે સમયે સોસા. ના લોકો એ જાફરી સાહેબ ને પોલીસ બાબત પુછેલ, ત્યારે જાફરી સાહેબે કહેલ કે, આવનાર વ્યકિતમાં પી.સી.પાંડે સાહેબ તથા મેઘાણી નગર પો.સ્ટે. ના પી.આઈ કે.જી.એરડા હતા. જાફરી સાહબે કહેલ કે મેં તેમની પાસે પોલીસ બંદોબસ્ત ની માગણી કરેલ છે જેથી તેમણે વધુ પોલીસ બંદોબસ્ત મોકલુ છુ અને તમે લોકો સોસા. માં રહો તેમ જણાવેલ."

156. Drawing my attention to paragraph-5 (reproduced verbatim hereunder) of the testimony of it is pointed out by Shri the present witness, Kodekar that the mob indulged in damage and destruction to the Society and vehicles and of such mob, the witness has positively identified Manish Prabhudas Jain (A-38), Suresh Dhobi (A-52), Mangilal Dhupchand Jain (A-25), Gabbar (A-14) and Ambesh (A-32) as being the members of the mob. Mangilal Dhupchand Jain (A-25) is attributed to be having a of kerosene whereas the other accused are can

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clearly stated to be having swords and pipes in their hands. The fact of the Police having arrived at the scene, having fired from their weapons and also fired teargas shells, clearly emerges from the contents of paragraph-5 (reproduced verbatim herein below) on pages 5 and 6 of the testimony of this witness, according to Shri Kodekar. The fact of the Police unable to disperse the mob is also emerging from the testimony of such witness. Shri Kodekar that the witness also points out has clearly testified with regard to the stone pelting by the mob from all sides of the Society and the members of the Society retaliating is also emerging from paragraphs 7 and 8 (both reproduced verbatim herein below) of the testimony of this witness.

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"પ. તે પછી થોડીવાર બાદ બહાર રોડ પર ટોળુ બુમાબુમ કરતુ હતુ જે ડો.ગાંધીની ચાલી આગળ હતુ જેથી મેં બહાર આવી ને જોયુ તો ટોળુ ડો.ગાંધી ની ચાલી આગળ આવેલ દુકાનોમાં લુટફાટ કરી સળગાવતા હતા. ત્યારે મેં જોયેલ તો ટોળા એ સોસા. ની સામે આવેલ દરજી ની દુકાન અને સાયકલ ની દુકાનમાં લુટફાટ કરેલ જેથી આજુબાજુની ચાલીઓમાંથી ઘણા લોકો બચવા માટે અમારી સોસા.માં આવેલા. આટોળામાં મે, મનીષ પ્ર ભુદાસ જૈન, સુરેશ ધોબી, માંગીલાલ ઘુપચંદ જૈન, ગબ્બ્ર્ર, અંબેશ, ને ઓળખેલા. ટોળામાં માંગીલાલ ઘુપચંદ ના હાથમા કેરબો અને બીજા લોકો ના હાથમાં તલવારો પાઈપો હતા. તેથી હુ સોસા. માં આવી ગયેલ. તે વખતે આશરે અગીચાર થી સવા અગીચાર વાગેલા હતા. અમે સોસા. નો ઝાંપો બંધ કરી દીધેલ હતો. બહાર થી ટોળા ના માણસો અમારી સોસા. પર પથ્થરમારો સળગતા કાકડા, સળગતા ટાયરો ફેકતા હતા. અને સોસા. ના

દરવાજા ને તોડવાની કોશીશ કરતા હતા. તેથી અમે સોસા. ના માણસો ગભરાઈ ગયેલા. અને ટોળુ અંદર ઘુસી જશે તેવી બીક લાગતાં સામો પથ્થરમારો કરતા હતા. થોડીવાર પછી ત્યાં પોલીસ આવેલી અને ટીયર ગેસ ના સેલ છોડેલ તથા ફાયરીંગ કરેલ. જેથી અમે અંદર ની બાજુ જતાં રહેલા હતા. બહાર ના ટોળા ને તેઓ એ ભગાડેલ નહી.

તે પછી અમારી સોસા. ની પાછળ ની રેલવે લાઈન બાજૂ ى. થી ટોળુ ભેગુ થઈ ત્યાંથી પથ્થરમારો સળગતાં કાકડા ટાયરો બાટલી ઓ મારતાં હતા. મારૂ ઘર પાછળ ની બાજુ એ આવેલ હોવાથી હુ ત્યાં ગયેલ. અને ટોળા ને અંદર આવતુ રોકવા સામે પથ્થરમારો કરેલ. તે સમયે મારા ઘર ની સામે આવેલ ગુલઝારભાઈ ના ઘરમાં આગ લાગી ગયેલ હતી. તેથી મેં તેમના ઘરમાં જઈ આગ ઓલવવાની મદદ કરેલી. ત્યારે ટોળા ને અંદર આવત્ રોકવા અમે ધાબા પર જઈને હુ અને ફીરોઝ ગુલઝારભાઈ અને સોસા. ના બીજા લોકો સામો પથ્થરમારો કરેલો. આ અમે ગુલઝારભાઈ ના ધાબા પર ગયેલા. આજુબાજુ અમારી સોસા. ி થી ۷. પથ્થરમારો સળગતાં કાકડા ફેંકતા હતા. જેથી અમે બચાવ માટે અમારા થી બનતી કોશીશ કરતાં હતા. "

157. Drawing my attention to paragraph-9 (reproduced vertabim herein below) of the testimony, it is submitted that the incident where the mob had started pelting stones from Bunglow No.1 of Gulbarg Society belonging to one Dayaram Jinger and the involvement of Rajesh Jinger (A-65) and Gabbar (A-14) as being members of such mob on the terrace of

such property, is also positively stated by the witness in paragraph-9, page-7 of his testimony. The said two accused No.65 and 14 inciting the mob to rush into the Society, is also stated on oath by the witness and the injury being caused to Irfan by a brick thrown by Gabbar (A-14) is also testified by the witness who claims to have seen such incident. Kodekar, the According to Shri witness further claims in the course of his testimony that the mob managed to rush inside Gulbarg Society and started looting the properties and damaging and destroying vehicles parked outside. The witness has positively identified Manish Prabhudas Jain (A-38), Suresh (A-52), an accused Tiniyo Harijan who Dhobi is admittedly deleted as an accused on account his death pending the trial and proceedings are ordered to stand abated against such accused, Gabbar (A-14), Ambesh (A-32) and Mangilal Jain (A-25), as being the members of such mob.

"૯. આશરે દોઢેક વાગે ટોળુ આગળ ની સાઈડે રાજેશ જીંગર ના ધાબા પર થી પથ્થરમારો કરતુ હતુ તે મકાન નં. ૧ પર થી પથ્થરમારો કરતુ હતુ તેમા અમે ગબ્બર અને રાજેશ દયારામ જીંગર અને બીજા લોકો હતા. તેઓ ટોળા ને અંદર ભુસવા માટે ઉશ્કેરણી કરતા હતા. હું ગબ્બર અને રાજેશ દયારામ ને ઓળખુ છુ. તે સમયે ગબ્બરે એક છુટી ઈટ ફેંકતા તે ઈરફાન ગુલઝાર ભાઈ ને વાગેલ. તેથી ઈરફાન ત્યાં પડી ગયેલ. તેને હુ અને સોસા. ના બીજા લોકો જાફરી સાહેબ ના ઘરમાં લઈ ગયેલા. ત્યાં તેને પ્રાથમીક સારવાર આપેલી. પછી હુ સોસા. ના આગળ ના ભાગે ગયેલ હતો. અને ટોળા ને અંદર આવતુ રોકવા પથ્થરમારો કરતો હતા. તે પછી ટોળુ ગેટ ની બાજુમાં આવેલ દીવાલ તોડી અંદર આવી ગયેલ. અંદર આવીને મકાનો ને લુટફાટ કરવાનુ ચાલુ કરવાનુ કરી દીધેલ. ત્યાં બાજુમાં આવેલ અસલમ મનસુરી નો આઈશર ટેમ્પો અને બીજા વાઠનો ને આગ લગાડી દીધેલ. આ ટોળામાં મેં મનીષ પ્ર ભુદાસ જૈન ,સુરેશ ધોબી, ઈનીયો દરીજન, ગબ્બર, અંબેશ, માંગીલાલ ધુળચંદ જૈન ને જોયેલ દતા. પછી દુ ત્યાંથી જાફરી સાદેબ ના ઘરે થી મારા ઘરે ગયેલ દતો. મારી ત્રણે બદેનો સલમા, શમશાદ, શમીમ અબુબકર ને જાફરી સાદેબ ના ઘરમાં જવાનુ કદેલ. એ સમયે અમારી સોસા. ની પાછળ ની બાજુ રેલવે લાઈન તરફ થી ટોળુ કોટ તોડી વિસ્ફોટ કરી ને ટોળુ અંદર આવી ગયેલ દતુ. મેં જેના નામ કદ્યા તે બધાને ઓળખી શકુ."

158. The witness according to Shri Kodekar, has in the course of his testimony more particularly paragraph-10 (reproduced verbatim herein below) on page-9, has positively identified in the Court Mangilal Dhupchand Jain (A-25), Manish Prabhudas Jain (A-38), Gabbar (A-14), Suresh Dhobi (A-52) and Ambesh (A-32).

"૧૦. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી માંગીલાલ ઘુપચંદ જૈન ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા તે પોતાનુ નામ માંગીલાલ દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી મનીષ પ્રભુદાસ જૈન ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા મનીષ પ્રભુદાસ જૈન દોવાનુ જણાવે છે. દાજર આરોપી ઓ પૈકી ઈનીચો દરીજન આરોપીઓમાં દાજર નથી. દુ દાજર આરોપી ઓ પૈકી ગબ્બરને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતાજચેશ ઉ. ગબ્બર દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી સુરેશ ઉ. કાળુ ઘોબી ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ

પુછતાં સુરેશ હોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી અંબેશ ને ઓળખી બતાવુ છુ.

આ તબકકે સાક્ષી ઓ ના વકીલ શ્રી એસ.એમ.વોરા એવી રજુઆત કરે છે કે, સાત વરસ નો સમય થયો હોવાથી આરોપી ઓ ને નજીક જોઈ સાહેદ ને ઓળખવા પરવાનગી આપવી જોઈએ. કોર્ટ હાઉસમાં સાક્ષી ના પીંજરા થી આરોપી ઓ નુંપીજરાનું અંતર માત્ર વીસ કુટ છે. અને બધાંજ આરોપી ઓ છાતી ના ભાગ સુધી ઓળખાઈ શકે તે પ્રમાણે આરોપી ઓ ની બેઠક વ્યવસ્થા કરવામાં આવેલ છે. દરેક આરોપી સાક્ષી ના પીંજરામાંથી સ્પષ્ટ રીતે જોઈ શકાય તેવી પરીસ્થીતી છે. અંતર અને આરોપી ઓ ને ઓળખી શકાય તેવી સ્થીતી ધ્યાને લેતા અને જયારે સાહેદે પણ એમ કહેલ નથી કે, પોતે સાક્ષી ના પીંજરામાંથી આરોપી ઓ ને જોઈ શકતા નથી ત્યારે તેઓ તરફે વકીલે કરેલી રજુઆત માન્ય રાખી શકાય તેમ નથી."

159. Drawing my attention to paragraph-11 (reproduced verbatim herein below) of the testimony, is pointed out that the witness has clearly it testified that amongst the other members of the mob were Kapil Munna (A-50), Dharmesh (A-47) and Lala Mohansing (A-2). The witness has further testified that all these persons were indulging in pelting stones and throwing burning rags at the properties Society. More particularly drawing of the my attention to the last line of paragraph-11 on page-11 of the deposition, it is submitted that the witness has testified that Lala Mohansing (A-2) was shouting that Ehsan Jafri is the main person and

Mangilal Dhupchand Jain (A-25) had thrown burning rags at Ehsan Jafri's residence.

રાજેશ જીંગર આરોપીઓમાં નથી. રેલવે લાઈન તરફ થી **"**99. જે ટોળુ અંદર આવેલ તે ટોળામાં મે. કપીલ , ધર્મેશ, લાલ મોઠનસીંગ, ને ઓળખેલા. તેમાં કપીલ પાસે પાઈપ હતી, ધર્મેશ પાસે પાઈપ અને લાલા મોઠનસીંગ પાસે તલવાર હતી. આ ટોળામાં બીજા લોકો પણ હતા તેમને મે ઓળખેલ નહી. આટોળુ પથ્થર મારો કરતુ હતુ તેનાથી એક પથ્થર મને માથામાં વાગેલ અને લોદી નીકળવા લાગેલ જેથી દ અને મારો ભાઈ સલીમ અબુબકર જાફરી સાહેબ ના ઘરમાં જતા રહેલા. તે વખતે જાફરી સાહેબ ના ઘરમાં ઘણા લોકો હતા. મને માથામાં વાગેલ હોવાથી અને દુખતુ હોવાથી જાકરી સાહેબ ના મકાનમાં આવેલ રસોડામાં જઈ ને થોડીવાર બેસેલ. તે પછી હુ જાફરી સાહેબ ના રુમમાં આગળ ની બાજુ આવેલ. જાફરી સાહેબ ની રુમ ની બારી માંથી મે જોચેલ તો ટોળુ જાફરી સાહેબ ના મકાન પર પથ્થરમારો, સળગતા કાકડા ફેકતુ હતુ. આ ટોળામાં મે કપીલ, ધમેશ, માગીલાલ ધુપચંદ, ઈનીયો દરીજન, મનીષ પ્રભુદાસ જૈન , સુરેશ ધોબી , લાલા મોદનસીંગ દરબાર ને જોચેલા. ત્યારે લાલ મોઠનસીંગ બુમો પાડતો હતો કે જાફરી તો મેઈન છે તેમ કહેલ અને માગીલાલ ધૂપચંદ જૈન સળગતા કાકડા જાફરી સાહેબ ના મકાન પર ફેંકતો હતો. એ પછી હુ રસોડામાંથી પાછળ ના ભાગે થી ઉપરના માળે રુમ માં જતો રહેલ ત્યારે ટોળુ જાફરી સાહેબ ના મકાન ની સામે આવેલ કોટ ના ઉપર થી પથ્થરમારો કરતુ હતુ. જેથી હુ ઉપર જઈ ને સંતાઈ ગયેલ. ત્યાં ઉપર ના ભાગે જાફરી સાદેબ ના પત્ની, તસદદુલ દુસેન ના પત્ની અને બીજા ઘણા લોકો હતા. તે પછી જાફરી સાહેબ નુ મકાન નીચેથી સળગવા લાગેલ. અને મકાનમાં ધુમાડો થવા લાગેલ. તેથી ઘણા

લોકો બચવા માટે ઉપર ના માળે આવેલ હતા. અને જાફરી સાહેબ ના નીચેના રૂમમાંથી ગેસ ના બાટલા કુટવાનો અવાજ સંભળાચેલ હતા."

160. The witness in terms of paragraph-12 (reproduced verbatim herein below) of his testimony, according to Shri Kodekar, has positively identified Lala Mohansing (A-2) and Kapil Munna (A-50) together with Dharmesh (A-47) as being the members of the mob from amongst the accused present in the Court during the course of the testimony of this witness.

"૧૨. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી લાલા મોદનસીંગ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા લાલા મોદનસીંગ દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી કપીલ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા કપીલ દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પેકી ધર્મેશ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા ધર્મેશ દોવાનુ જણાવે છે."

161. Paragraph-13 (reproduced verbatim herein below) of the deposition of this witness, according to Shri Kodekar, relates to the time when the Police Force came over to Gulbarg Society, resorted to firing from guns and firing teargas shells and the events that unfolded thereafter, including the witness having personally seen the large number of dead bodies littered around Shri Jafri's residence, which Ehsan all is clearly testified to by the witness in paragraph-13 of his testimony. The witness, according to Shri Kodekar,

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has testified that he lost two of his sisters being Shamshad Abubakkar and Shamim Abubakkar and two members of his family i.e. Salmaben Abubakkar and Salim Abubakkar are missing and presumed dead. The witness, according to Shri Kodekar, has testified that he together with other survivors and victims, was taken over to the Dariakhan Ghummat for shelter where the brother of the present witness identified the dead bodies of the victims and the events that unfolded thereafter including the recording of the statements by the Police Officers, complaint with regard to non-writing and recording names of the accused despite being provided by the witness, subsequent events of forming of S.I.T. the by Hon'ble Supreme Court of India, which are all emerging from paragraphs 15 to 17 (all reproduced verbatim herein below) of the testimony of this witness. It is submitted by Shri Kodekar that Rajesh Jinger (A-65) who was arraigned as an accused subsequently, has been positively identified in the Court by this witness in the course of his testimony and it is thus pointed out by Shri Kodekar that this witness also is a reliable witness who has provided full corroboration and support to the testimony of other eye-witnesses with regard to the incident and with regard to the involvement and participation of the relevant accused who have been positively identified by the witness and their specific overt acts are also positively narrated by the witness in the course of his testimony Exh.633. It is pointed out that this witness also is required to be

believed.

"૧૩. દુ ઉપર ના રુમમાં દતો ત્યારે ટીચરગેસ અને ફાચરીંગ ના અવાજ સંભળાચેલ અને સોસા. મા પોલીસ આવી દોચ તેવો આભાસ થયેલ અને વાતાવરણ શાત થઈ ગયેલ. તે સમયે પોલીસ બચેલા ઓ ને નીચે આવવા બુમો પાડી જણાવતી દતી. મને માથામાં વાગેલ દોઈ અને ખુબ દુખતુ દોઈ મે નીચે આવી ને જોયુ તો જાફરી સાદેબ ના મકાન ની પાછળ આજુ બાજુ ઘણી લાશો પડી દતી. જેથી દુ ત્યાંથી નીકળી ને અનવરખાન ના મકાન ના ઓટલા પર બેસી ગયેલ. તે પછી દુ થોડીવારે મારા પોતાના ઘર તરફ ગયેલ. મારુ ઘર સળગતુ દતુ. મેં મારા પરીવાર ની શોધ કરેલ પણ કોઈ મને મળેલ નદી. ત્યારે મને લાગેલ કે, મારા પરીવાર ના સભ્યો ની ક્રુરતા પુર્વક દત્યા કરી નાખેલ છે. તે સમયે મે પોલીસ ને તમામ દકકીત કદેલ દતી.

૧૩. તે પછી પોલીસે અમો બચેલા જે સો થી દોઢસો જણા હતા તેમને સલામત સ્થળે ખસેડવાનુ શરુ કરેલ. ત્યારે ટોળા એ ગાડી ઓ પર પથ્થર મારો કરેલ. ત્યારે પોલીસે ટીચર ગેસ ના સેલ છોડેલા અને ફાચરીંગ પણ કરેલ. અને પોલીસ ની ગાડી ની આજુબાજુ પોલીસ ના માણસો એ ઉભા રહી ને અમને મહા મુસીબતે અમને શાહીબાગ પો.સ્ટે. લઈ ગચેલ. ત્યાંથી થોડીવારે અમને દરીયાખાન ઘુમટ રાહત કેમ્પમાં મોકલેલ. મને વાગેલ તેની સારવાર મેં રાહત કેમ્પમાં કરાવેલ. મારા મકાન ને તોડફોડ કરી ને આશરે રુ. બે થી અઢી લાખ નુ નુકસાન કરેલ.

૧૪. તે પછી તા. ૨/૩/૦૨ ના રોજ રાહત કેમ્પમાં રાત ના સમયે એલાન કરવામાં આવેલ કે, સી.હોસ્પી.માંથી લાશો કલંદરી કબ્રસ્તાનમાં લાવેલ છે જેથી જે તેણે લાશો ઓળખવા જવુ. જેથી હુ

કબ્રસ્તાનમાં ગયેલ જેથી પોલીસે કઠેલ કે આ લાશો ગુલબર્ગ સોસા. ની છે. જયારે મે જોયુ તો લાશો ખુબ બળી ગયેલ હાલતમાં હતી. અને ઓળખાય તેવી ન હતી. તેમાંથી મેં મારા પરીવાર ના કોઈ સભ્ય ની લાશ ઓળખેલ નહી. બીજા લોકો એ લાશ ની ઓળખવીધી કરેલ અને કબ્રસ્તાનમાં ત્રણ ખાડા ખોદી તેની દફનવિધી કરેલ.

૧૫. ત્યાર બાદ બીજા દીવસે પણ ઠુ કબ્રસ્તાનામા ગયેલ તેમા મે લાશો જોઈ તો તે પણ લાશો બળી ગયેલ ઠતી અને ઓળખી શકાય તેમ ન ઠતી અને તેમા મે મારા પરીવાર ના સભ્ય ની લાશ ઓળખી શકેલ નઠી. તે પછી પાછળ થી લાશો લાવવામાં આવી ત્યારે ઠુ કબ્રસ્તાન ગયેલ નઠી. પણ મારો ભાઈ ફરીદ અબુબકર ગયેલ ઠતો. તેણે મારી બેન શમશાદ અને શમીમ ની લાશો ઓળખેલ ઠતી. મારી બેન સલમા અને સલીમ ભાઈ ની ઠજુ સુધી લાશ મળેલ નથી. તેમના વિશે મેં આજસુધી કાંઈ સાંભળેલ નથી.

૧૬. તા. પ/૩/૦૨ ના રોજ મને રાહત કેમ્પમાં પોલીસ આવીને જવાબ લખાવવા દુઘેશ્વર ચોકી લઈ ગચેલા. ત્યાં મેં બનાવ વીશે હકીકતો કહેલ હતી. તે જવાબ મારા લખાવ્યા મુજબ પોલીસે લખેલ ન હતો. મેં જે આરોપી ઓ ના નામ આપલા તે પૈકી અમુક આરોપી ઓ ના નામ પોલીસે લખેલ નહી. મેં તા. ૧૧/૬/૦૨ અને તા. ૨૦/૧૦/૦૩ ના રોજ ક્ર ાઈમ બ્રાન્ચ સમક્ષ બોલાવેલ ત્યાં મે કોઈ નીવેદન લખાવેલ નહી. ત્યાં મેં મારી દુકાને આવી ખોવાયેલ મારા કુટુંબ ના સભ્યો અંગે પુછ પરછ કરેલી તે અંગે મે તેમને જણાવેલ. મારુ તા.પ/૩/૦૨ જુ નીવેદન મારા લખાવ્યા મુજબ ન હતુ જેથી મે એક સોગંધનામુ કરેલ. તે સોગંધનામુ મેં પો.કમી. ની કચેરી અને મેઘાણી નગર પો.સ્ટે. અરજી કરી તે સાથે મોકલેલ હતુ. મેં જે આરોપી ઓ ના નામ જણાવ્યા અને ઓળખી બતાવ્યા તે તમામ આજુબાજુ

ની ચાલીઓ માં રહે છે તેથી ઓળખુ છુ. મને એસ.આઈ.ટી. એ એસ.ઓ. પમ્પ પર જુહાપુરા જવાબ લખાવવા બોલાવેલા. ત્યારે મને ઈનીચો હરીજન છે કે ટીનીચો હરીજન છે તેમ પુછેલ. મેં ગાંધીનગર મુકામે એસ.આઈ.ટી. ને નીવેદન લખાવેલ. તે સમચે મે કોમ્પ. પર તૈયાર કરેલ નીવેદન લઈ ને ગયેલ અને તે મે એસ.આઈ.ટી. સમક્ષ રજુ કરેલ. એસ.આઈ.ટી એ મારુ ફકત એક નીવેદન લીઘેલ છે. મેં જે સોગંધનામુ કર્યુ તેમાં મે જે લોકો ને ઓળખેલા તે બધાના નામ મેં આપેલા.

૧૦. આગળ નો કોટ તોડી ટોળુ અંદર ઘુસ્યુ અને અસલમ મનસુરી નો આયશર ટેમ્પો સળગાવેલ તે કોણે સળગાવેલ તે મે જોયેલ નથી. મારા ઘરમાંથી કુલ ચાર વ્યકિતનું મરણ થયેલ છે. જેમાં બે ની લાશ ઓળખી શકાઈ છે અને બીજા બે ની લાશ મળી આવેલ નથી."

162. My attention is drawn to the testimony of PW-129 being one Firoz Mohammad Gulzar Mohammad Pathan whose testimony is on the record of the Exh.635. present proceedings at The witness, according to Shri Kodekar, was a resident of Bunglow No.15 at Gulbarg Society and was residing thereat on the day of the incident. In fact the witness was the brother of one Firdosbanu who was brutally raped and done away with in the incident. It is also relevant that the father of the present witness was the Secretary of Gulbarg Society and the witness has testified that it was Shri Ehsan Jafri who was the Chairman of Gulbarg Society at the time of the incident. It is pointed out that the events that took place on 27/02/2002, the tension that ensued

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thereafter and the Bandh call on 28/02/2002 lead to a meeting of the residents of the Society whereat Shri Ehsan Jafri had informed all members that adequate Police bandobast was to be provided. The witness has testified with regard to the fact that on 28/02/2002, at about 10:30 a.m., the witness on hearing the commotion, rushed out and went to the small gate of the Society where he saw a mob of at least 15 people standing outside the shop of Gulam Master. The witness has testified that such mob was armed with guptis, pipes, and other such deadly weapons and such persons were breaking open the shop of said Gulam Master. The witness in terms of the concluding lines of paragraph-4 (reproduced verbatim herein below) of his testimony on page-5 has, according to Shri Kodekar, clearly mentioned that the members of the Police who were posted at the Police Chowky near the Gulbarg Society, were merely watching such activities of the mob without making any attempts to disperse the mob. The witness, according to Shri Kodekar, has further testified that thereafter a mob set on fire an autorickshaw standing near the shop of Gulam Master as also a Luna parked thereat and at that very point of time, such persons of the mob were shouting slogans inter alia to the effect that "kill the members of the minority community, JAI SHRI RAM" and such inflammatory slogans. It is the testimony of the witness, according to Shri Kodekar that a Police Van came over to the scene of the incident and put out fire to the autorickshaw. the The witness has

further identified Girish Prabhudas (absconding accused) and Ramesh Pandey (absconding accused) as being the members of such mob.

"૪. બીજા દીવસે બંધનુ એલાન હતુ તેથી મેં દુકાન ખોલેલ નહી. અમે ઘરના બધાજ ઘરે હાજર હતા. મારો નાનો ભાઈ મહમદ આરીફ મારા કાકા ને ત્યાં જુહાપુરા હતો. તે દીવસે સવાર ના સાડા દસ વાગે અમે નાસ્તો કરી ને બેઠા હતા ત્યારે મારો નાનો ભાઈ નામે ઈમરાન દોડતો દોડતો આવેલ અને તેણે જણાવેલ કે, આપણી સોસાની બહાર દિન્દુ ઓ નુ ટોળુ આવેલ છે અને દુકાનો ની તોડફોડ કરી રહેલ છે. પછી હુ દોડી ને અમારી સોસા. ના નાના ઝાંપા ની બહાર ગચેલ. તે નાનો ઝાંપો ગેટ નં. ર તરીકે ઓળખાય છે. ત્યાં રોડ પર જઈને મેં જોયુ તો ત્યાં ગુલામ માસ્ટર ની દુકાન પાસે આશરે પંદરેક માણસ નુ ટોળુ ઉભું હતુ. ત્યાં અમારી સોસા.ના બીજા છોકરા ઓ પણ ઉભા હતા. ટોળા ના માણસો પાસે ગુપ્તી પાઈપો જેવા ઘાતક હથીયારો હતા. આ લોકો ગુલામ માસ્ટર ની દુકાન તોડતા હતા. અમારી સોસા. ની બાજુમાં પોલીસ ચોકી આવેલ છે ત્યા પોલીસ ના માણસો ઉભા હતા તે બધુ જોતા હતા. તેમણે ટોળા ને ભગાડવાની કોશીશ કરેલ નહી."

163. My attention is drawn to the contents of paragraph-6 (reproduced verbatim herein below) of the deposition, where the witness has clearly stated that five or six Police Vehicles thereafter came over to the Gulbarg Society and Shri Ehsan Jafri and two to three other members of the Gulbarg Society met such Police Officers and Shri Ehsan Jafri, according to the witness, informed all of them that the Police party comprised of the Commissioner of Police Shri P.C.Pandey and P.I. Shri K.G.Erda and that Police bandobast and S.R.P. was assured by Shri P.C.Pandey.

"5. પોલીસ ની ગાડી ગયા પછી પાંચેક મીનીટ પછી પોલીસ ની બીજી પાચ છ જેટલી ગાડી આવેલી. તે અમારી સોસા. આગળ આવીને ઉભી રહેલી. પછી અમારી સોસા. માંથી એહસાન જાફરી સાહેબ અને સોસા. ના બીજા બે ત્રણ માણસો ત્યાં મળવા ગયેલા. દસેક મીનીટ પછી આ ગાડી ઓ ઓમ નગર તરફ જતી રહેલી અને જાફરી સાહેબ સોસા મા આવેલ. અમે તેમને પુછતાં તેમણે જણાવેલ કે, આવનાર વ્યકિત પો.કમી. પી.સી. પાન્ડે સા. તથા મેઘાણીનગર ના પી.આઈ. કે.જી.એરડા હતા. મે તેમને પોલીસ બંદોબસ્ત ની માગણી કરેલ છે અને તેમણે થોડીવારમાં પોલીસ બંદોબસ્ત એસ.આર.પી. મોકલી આપુ છુ. તેમ જણાવેલ છે. તે પછી હુ સોસા. મા આવી ગયેલ."

164. Drawing my attention to paragraph-7 (reproduced verbatim herein below) of the testimony, Shri Kodekar has submitted that the witness has further testified that in a short while, a mob of about 4000 to 5000 persons armed with deadly weapons such as guptis, swords, pipes and also cans of kerosene had gathered outside the Gulbarg Society. The witness has positively identified from amongst such mob Naran Channelwala (A-43), Chunilal Prajapati (A-61), Dharmesh (A-47), Ambesh (A-32) and Kapil Munna (A-50) as being the members of the said mob. The witness, according to Shri Kodekar, could positively identify such accused on account of the

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fact that such persons were residing near to Gulbarg Society since long.

165. It is submitted by Shri Kodekar that the witness further in the has course of his testimony contained in paragraphs 8 and 9 (both reproduced verbatim hereunder) of his deposition, narrated the sequence of events whereby the mob had indulged heavy pelting, damaging in stone and destruction of vehicles parked near the Society, the taking of shelter by Muslim families staying near Gulbarg Society. The fact of the younger brother of

the present witness having sustained an injury on the chest on account of a brick being thrown from the terrace of Bunglow No.1 is narrated and such injured Irfan being taken over to the residence of Shri Ehsan Jafri, is also narrated by the witness.

"૮. તે પછી ટોળુ અમારી સોસા. પાસે આવી ગયેલ અને અમારી સોસા. પર પથ્થરમારો કરતુ હતુ. પથ્થરમારો કરતુ હતુ ત્યારે જાફરી સાહેબ ત્યાં ઝાંપા પાસે ગયેલ અને ટોળા ને પથ્થરમારો નહી કરવા વીનંતી કરેલ. પરંતુ ટોળુ માનેલ નહી. પછી હું મારા ઘર તરફ ગયેલ. મારુ ઘર રેલવે લાઈન ને અડી ને છે ત્યાં રેલવે લાઈન પર ટોળુ ભેગુ થયેલ હતુ. તે ટોળુ ત્યાંથી પથ્થરમારો કરતુ હતુ. સળગતા કાકડા કાચની બાટલી ઓ સળગતા ટાયરો, અમારી સોસા. મા ફેકતા હતા. તેથી મારા ઘરની બારીઓ ને આગ લાગેલી. પછી અમે આગ ઓલવતાં હતા. અમારા સ્ટોર માં પણ આગ લાગેલી. તેમાં અમારા ગોદડાં અને બીજો સામાન બળી ગયેલ તે આગ અમે ઓલવેલ. અમારી સામે મહેબુબ ભાઈ મનસુરી નુ મકાન આવેલ છે તેમાં પણ આગ લાગેલી. પછી હુ અને અમારી સોસા. ના બીજા લોકો ત્યાં આગ બુઝાવવા ગયેલા પણ આગ બુઝેલ નહી. પછી તે લાઈનમાં બીજા મકાનો હતા તેમાં પણ આગ લાગેલી.

૯. પછી હુ મારી સોસા. ના બીજા છોકરાઓ ને લઈ ને અમારા મકાન ના ધાબા પર ગયેલ. ત્યાંથી અમો એ પણ ટોળા ને ભગાવવા માટે સામો પથ્થર મારો કરેલ. ટોળુ ભાગેલ નહી. અને વધુ ને વધુ પથ્થરમારો કરવા લાગેલ. પછી તે ટોળુ સોસા. નો કોટ તોડવા લાગેલ. પછી અમે બધા નીચે ઉતરેલ. ત્યારે મને સોસા. ના એક બે છોકરા એ આવી ને કહેલ કે, તારા ભાઈ મહમદ ઈરફાન ને છાતી ના ભાગે પથ્થર વાગેલ છે. બંગલા નં. ૧ પર થી થતો પથ્થરમારો થતા તારા ભાઈ ને છાતી માં વાગેલ છે અને બંગલા નંબર ર પાસે તારો ભાઈ પડી ગયેલ છે. આ સાંભળી ને હુ અને મારી માતા બંને બંગલા નંબર બે પાસે જવા દોડેલ. અમે જતા હતા ત્યારે સોસા. ના ત્રણ ચાર છોકરાઓ મારા ભાઈ ને ઉચકી ને જાફરી સાહેબ ના ઘર પાસે લાવેલા. તેમના ઘરનો નંબર ઓગણીસ છે. ત્યાં મેં જાણેલ કે બંગલા નંબર એક પર થી પથ્થરમારો થયેલ તેમા તેને છાતી ના ભાગે પથ્થર વાગેલ છે અને તે બેભાન થઈ ગયેલ છે. પછી મેં તેના મોઢા પર પાણી છાટેલ પરંતુ તેને ભાન આવેલ નહી. પછી મેં, મારી મમ્મી અને સોસા. ના છોકરાઓ એ તેને ઉચકી ને જાફરી સાહેબ ના ઘરમાં મુકી દીધેલ."

166. According Shri Kodekar, to the contents of paragraph-10 (reproduced verbatim herein below) of the deposition clearly indicate and corroborate the testimony of other eye-witnesses with regard to the destructive activities of the mob which indulged in stone pelting, throwing of burning rags in the Society and looting the properties of the Society. My particular attention is drawn to the contents of paragraph-10 more particularized on page-12 of the deposition, where the witness has clearly testified that his mother had opened the cupboard containing valuable belongings and had removed therefrom gold and silver ornaments and Rs.40,000/- in cash which was all put in a cloth bag and kept with the mother of the witness.

"૧૦. પછી મારા મમ્મી તેની પાસે બેઠેલા અને હુ મારા ઘર તરફ આવેલ. ત્યાં મે જોયુ તો મારી અને મારી સામેના મનસુરી ના મકાન વચ્ચે જે કોટ છે તેને બાકોરુ પાડી દીધેલ છે. જેથી હુ અને મારા પિતા જી તે પાછળ ની તરફ ના કોટમાં પડેલા બાકોરા આગળ ઉભા રહેલા અને ટોળા ના માણસો ને સોસા. માં ઘુસવા દીધેલા નહી. પછી બંગલા નં. ૧૪ માં રદેતા સલીમ અબુબકરે આવી ને કદેલ કે, આપણી સોસા. ના ગેટ નં. ૧ ની બાજુનો કોટ તોડી ને ટોળુ અંદર ઘુસી ગયેલ છે. તે સાંભળી ને દુ એકલો તેમની સાથે બંગલા નં. ૨ પાસે જતો હતો ત્યારે બંગલા નં. ૧૦ પાસે પહોચ્યો મે જોચેલ તો ટોળુ બંગલા નં. ર માં ઘુસી ગચેલ. અને તે ટોળુ તોડફોડ કરતુ હતુ અને સરસામાન લુટફાટ કરતુ હતુ અને મકાનમાં આગ લગાડી દીધેલ. પછી બંગલા નંબર ૩ માં પણ ટોળુ ઘુસી ને લુટફાટ કરતી હતી અને આગ લગાડેલ. પછી ૬ નંબર ના મકાનમાં પણ ટોળુ ઘુસી ગયેલ. ત્યાં મેદાનમાં અસલમ મનસુરી ની આઈશર પડી હતી અને એક ટેમ્પો હતો તેને ટોળા એ આગ લગાડી દીધેલ. હુ ત્યાંથી મારા ઘર તરફ ગયેલ. ત્યારે મારી પાછળ મારી માતા પણ આવેલ. પછી મારા માતા ઘરમાં ગયલ અને તેમની પાછળ દ્ પણ ઘરમાં ગયેલ. પછી મારી માતા એ તીજોરી ખોલી અને તીજોરીમાં પડેલ સોના ચાંદીના દાગીના તથા ચાલીસ હજાર રૂ. રોકડા એક કપડા ની થેલીમાં નાખેલા. તે વખતે મારા પિતા મારા બદ્દેન અને નાનો ભાઈ પણ ઘરમાં જ આવી ગયેલ §dl."

167. Drawing my attention to paragraph-11 (reproduced verbatim herein below) of the deposition, the witness, according to Shri Kodekar, heard a loud explosion and the witness has testified that a gas cylinder was exploded to demolish the compound wall of the Gulbarg Society and a number of accused rushed into Gulbarg Society upon demolition

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of the compound wall in such fashion. The witness, according to Shri Kodekar, has positively identified Jitu Prataphai (A-48), Pappu Prataphai (A-49), Mukesh (A-29) and Girish (absconding accused) as being the members of the mob. The witness has testified that the said Jitu Prataphai (A-48) and absconding accused Girish were armed with swords and that accused No.48 threw the sword at the present witness, causing injuries on the right hand and wrist and right eye-brow of the witness. This resulted in all the persons from Gulbarg Society who were standing outside, required to rushed into the residence of Shri Ehsan Jafri to take shelter. The witness claims that he went up to the terrace of Bunglow No.16 whereas his mother, sister and other brothers had taken shelter at Shri Ehsan Jafri's residence. The witness in terms of his testimony on page-13, has categorically stated that he saw his mother being killed by sword blows which were delivered by accused No.48 Jitu and absconding accused Girish. It is however, pointed out by Shri Kodekar that the witness retracted a part of this version inasmuch as, the witness has stated that it was not the absconding accused Girish but accused Mukesh (A-29) who looted away the cloth baq containing valuables like jewellery and cash from mother of the present witness. The witness the claims that thereafter, the entire mob rushed into Gulbarg Society and the witness was scared and therefore, hid at the rear portion of the terrace of Bunglow No.16 and sat hidden for about 19 minutes.

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Shri Kodekar submits that the witness thereafter has testified with regard to the sequence of events that followed after the Police arrived at the scene of incident, the sequence of events which led to the surviving victims being escorted by the Police to safety and ensuing destruction that took place at that time and the fact that the witness had lost his mother, father, sister and brother in the incident. The identification of the dead bodies that took place on 02/03/2002 is also narrated, according to Shri Kodekar, by the witness in paragraph-15 (reproduced verbatim herein below) of his testimony. The fact of the witness having identified the dead body of his family members is narrated in paragraph-(reproduced verbatim below) 16 herein of his deposition.

"૧૧. અમે ઘરમાં હતા અને મેં એકદમ જોરથી ઘડાકાનો અવાજ સાંભળેલ. જેથી અમે બધા ઘર ની બહાર નીકળેલા પછી અમે જોયુ તો ગેસ ના બાટલા વડે ટોળા એ ગેસ નો બાટલા વડે કોટ તોડી નાખેલ. અને કોટ તોડી ને ચારપાચ જણા અમારી સોસા. મા ઘુસી આવેલા. તેમાં મે જોયુ તો જીતુ પ્રતાપભાઈ, પપ્પુ પ્રતાપભાઈ, મુકેશ અને ગીરીશ અને બીજા બે ત્રણ જણ હતા તેમને નામથી ઓળખતો નથી તેમને જોઉ તો ઓળખી લઉ. જીતુ અને ગીરીશ ના હાથમાં તલવાર હતી. જીતુ એ મને તલવાર છુટી મારી જેથી મેં આડો હાથ કરી દીધેલ. તો મારા જમણા હાથ ના કાંડામાં અને જમણી આંખ ની ભ્રમર પર વાગેલ. પછી અમે બધા જાફરી સાહેબ ના ઘર તરફ દોડેલા. હું અમારી બાજુ ના બંગલા નંબર સોળ બે માળ નો છે તેમના મકાનમાં થઈ ધાબા પર જતો રહેલ. મારા મા બેન ભાઈ બધા જાફરી સાઠેબ ના મકાન તરફ દોડેલા ત્યાં મે ઉપર જઈ ને જોયુ તો મારી મમ્મી ને જીતુ અને ગીરીશ તેમની પાસેની તલવાર થી મારી મમ્મી ને મારતા હતા. જે માથા ના ભાગે અને પીઠ ના ભાગે તલવાર ના ઘા મારતા હતા. મારી મમ્મી ત્યાં જ પડી ગયેલ. અને જીતુ અને ગીરીશે, નહી પણ ગીરીશ નહી પણ મુકેશે મારી મમ્મી ના હાથમાં જે થેલી હતી તે ઝુંટવી લીધેલ. તે લોકો ત્યાંથી ક્લેટ આગળ જતા રહેલા. પછી આગળ થી અને પાછળ થી બધુ ટોળુ સોસા. મા ઘુસી ગયેલ અને સોસા. માં પડેલ બધા વાહનો ને સળગાવવા લાગેલ. હુ ડર નો માર્થો કોઈ જોઈ જશે તેવી બીક થી ધાબામાં પાછળ ના ભાગે ખસી ગયેલ. મેં ત્યાં જોયુ તો ધાબા પર આવેલ પાણી ની ટાંકી પાસે બીજા ચાર પાંચ જણ સંતાઈ ને બેઠેલ હતા. જેમા ભાટીયા સાહેબ અને રફીક મનસુરી અને બીજા સોસા.ના લોકો હતા. પછી હુ પણ ત્યાં સંતાઈ ગયેલ. હુ દોઢેક કલાક સુધી ત્યાં બેસી રહેલ.

૧૫. cı. ૨/૩/૦૨ ના રોજ રાહ્તકેમ્પમાં એલાન કરવામાં આવેલ કે, સી.હોસ્પી. માથી લાશો લાવવાની છે તો ત્યાં જવાનુ છે. પછી અમે આઠ દસ માણસો પોલીસ ની ગાડી અને એક આઈશર ગાડીમાં ત્યાં ગયેલા ત્યાં અમને પો.મો. રુમ માં લઈ ગયેલા. ત્યાં અમુક લાશો પડી હતી તે અમારી પાસે ઉપાડાવી ને સાઈડમાં મુકાવેલી. અમારી સાથે ના પોલીસવાળા એ તે પછી અમને બહાર બોલાવેલા. ત્યાં રોડ પર થાંભલા પાસે એક આઈશર ટ્રક ઉભી હતી તેમણે કહેલ કે, આ ટ્રકમાં ગુલબર્ગ સોસા. ની સત્તર લાશો છે આ તમારે લઈ જવાની છે. પછી હુ ટ્રક પર ચઢી ગયેલ અને મે જોયુ તો ટ્રકમાં અમુક લાશો પોટલામાં બાંધેલી હતી અને અમુક લાશો બળી ગયેલી હાલતમાં પડી ગયેલ હતી. પછી અમે પોલીસ ની ગાડીમાં બેસી ને લાશો કલંદરી મસ્જીદ ના કબ્રસ્તાનમાં લાવેલા. લાશો કબ્રસ્તાનમાં ઉતારી

કેમ્પમાં એલાન કરવામાં આવેલ કે, જેની લાશો હોય તે ઓળખી જાય. તે લાશોમાં મે જોચુ તો મારા ઘર ની કોઈ લાશ તેમાં હતી નહી. બીજા લોકો એ તેમના સબંધી ની લાશો ઓળખેલી. એ લાશો ની મોડી રાત સુધી દફનવિધી ચાલેલી.

૧૬. તેના બીજા દીવસે તા. 3/3/૦ ના રોજ હુ કેમ્પમાં હતો ત્યારે જાણવા મળેલ કે, ગુલબર્ગ સોસા. ની બીજી પંદર લાશો કલંદરી મસ્જીદ ના કબ્રસ્તાનમાં આવેલ છે. જે મેં સાંજના સાતેક વાગ્યા હશે. હુ ત્યાં ગયો અને મેં લાશો જોયેલ. તે લાશોમાં મેં મારા ઘરનાની લાશો ઓળખેલ. જેમાં એક, મારા પિતા ગુલઝાર મહમદ નુર મહમદ પઠાણ, મારી માતા મરીચમબીબી ગુલઝાર મહમદ પઠાણ, મારી બેન ફીરદોસ બાનુ ગુલઝાર મહમદ પઠાણ , મારો ભાઈ ઈરફાન મહમદ ગુલઝાર મહમદ પઠાણ ની લાશો મેં ઓળખેલ. પોલીસે તે લાશો અમને સોંપેલ અને રાત સુધી અમે તેમની દફનવિધી કરેલ તે પછી હુ કેમ્પમાં પાછો આવેલ."

168. Drawing my attention to paragraph-17 (reproduced verbatim herein below) of the testimony on page-18 thereof, Shri Kodekar submits that the witness has positively identified Naran Channelwala (A-43), Chunilal Prajapati (A-61), Ambesh (A-32) and Kapil Munna (A-50) from amongst the accused present in the Court. The witness, however, is not able to identify Dharmesh (A-47). The witness has further identified in the Court Jitu Pratapbhai (A-48), Pappu Pratapbhai (a-49), Mukesh (A-29) and Dinesh Prabhudas Sharma (A-63) together with Prakash (A-

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"૧૭. મેં જેમના નામ આપ્યા તેમને દુ આજે ઓળખી શકુ. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી નારણ ચેનલવાળો ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા નારણભાઈ ચેનલવાળો દોવાનુ જણાવે છે. કોર્ટમાં દાજર આરોપી ઓ પૈકી ચુનીલાલ પ્રજાપતિ ને ઓળખી બતાવુ છુ તેને તેનુ નામ પુછતા ચુનીલાલ પ્રજાપતિ દોવાનુ બતાવે છે. દુ કોર્ટ માં દાજર આરોપી ઓ પૈકી અંબેશ ને ઓળખી બતાવુ છુ આરોપી પોતાનુ નામ અંબેશ દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ધર્મેશ ને દાલ ઓળખી શકતો નથી. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી કપિલ મુન્નાભાઈ ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ પુછતા કપિલ દોવાનુ

(નોંધ : આ આરોપી ને ઓળખવા માટે આરોપી ઓ ની એક એક લાઈન ઉભા કરાવી બતાવવામાં આવેલા છે અને સમય લઈ વિચારી ને આરોપી ને ઓળખી બતાવેલા છે.) હુ કોર્ટ માં હાજર આરોપ ઓ પૈકી જીતુ પ્રતાત ભાઈ ને અળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા જીતુ પ્રતાપભાઈ હોવાનુ જણાવે છે.(નોંધ : આ આરોપી ને ઓળખવા માટે આરોપી ઓ ની એક એક લાઈન ઉભા કરાવી બતાવવામાં આવેલા છે અને સમય લઈ વિચારી ને આરોપી ને ઓળખી બતાવેલા છે.) હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી પપ્પુ પ્રતાપ ભાઈ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા પપ્પુ હોવાનુ જણાવે છે. આ આરોપી ને પણ ઉપર મુજબ ઓળખી બતાવે છે. કોર્ટ માં હાજર આરોપી ઓ પૈકી મુકેશ ને ઓળખી બતાવુ છુ આરોપી ને તેને નામ પુછતાં મુકેશ હોવાનુ જણાવે છે. મેં જે બીજા બે આરોપી ને જોયે ઓળખુ તે જણાવ્યુ તે પૈકી એક આરોપી છેલ્લી લાઈનમાં ડાબી તરફ

થી બીજા નંબરે બેઠેલ છે તે છે. આરોપી ને તેનુ નામ પુછતાં તેનુ નામ દીનેશ પ્રભુદાસ શર્મા હોવાનુ જણાવે છે. બીજા આરોપી આગળ થી ત્રીજી લાઈનમાં બીજા નંબરે બેઠેલ છે તે જ છે. આરોપી ને તેનુ નામ પુછતાં પ્રકાશ ઉ. કલી હોવાનુ જણાવે છે."

169. The witness has thereafter testified in terms of paragraphs 18, 19 and 20 (all reproduced verbatim herein below) of his testimony the sequence of events which led to recording of statements, his grievances with regard to inaccuracies in recording the statement of the witness by the Police, the application filed by the aggrieved persons before the Hon'ble Supreme Court, affidavit by aggrieved persons including the present witness, the formation of S.I.T. and statements given by the witness to the S.I.T.

"૧૮. તા. પ/ ૩/ ૦૨ ના રોજ કેમ્પમાં પોલીસ વાળા આવેલા અને અમને જણાવેલ કે, તમારો જવાબ લેવાનો છે. કેમ્પમાંથી અમને પોલીસ
જીપમાં બેસાડી દુઘેશ્વર પોલીસ ચોકી એ લઈ જવામાં આવેલ. ત્યાં મે પોલીસ ને મારી બધી હકીકત જણાવેલ અને પોલીસે નીવેદન નોંઘેલ. પાછળ થી મને ખબર પડેલી કે, મારા તે નીવેદનમાં પોલીસે મેં જે જે હકીકત લખાવેલ તે પ્રમાણે નીવેદન નોંઘેલ નથી. અને નીવેદનમાં ફેરફાર કરી નાખેલ છે. તે પછી થોડા દીવસ બાદ અમે પો.કમી. માં અને મેઘાણી નગર પો.સ્ટે. માં એક અરજી કરેલી. અને તે અરજી સાથે મેં મારુ એક એફીડેવીટ મોકલેલ. તે અરજી અને એફીડેવીટ મેં મારો તા. પ/ ૩/ ૦૨ નો જવાબ મારા લખાવ્યા મુજબ ન હોવા અંગે કરેલ. તે એફીડેવીટ અને અરજી મં

કઈ તારીખે કરેલા તે હાલ મને ચાદ નથી. મેં એક સોગંધનામું જસ્ટીસ શ્રી કે.જી.શાહ તપાસપંચ માં પણ કરેલ. તે જ રીતે મેં તા. ૫/૯/૦૩ ના રોજ સુપ્રિમ કોર્ટમાં પણ એક એફીડેવીટ કરેલ. એસ.આઈ.ટી. એ મને જવાબ આપવા માટે ગાંધી નગર બોલાવેલ. ત્યાં એસ.આઈ.ટી. એ મારો જવાબ લીધેલ અને મેં એસ.આઈ.ટી. ને મારા કોમ્પ. પર ટાઈપ કરેલ ગુજરાતી અને અંગ્રેજી નીવેદન આપેલા. તે પછી એસ.આઈ.ટી. એ મને એક વખતે એસ.ઓ.જી.માં બોલાવેલ. ત્યાં મારી એફીડેવીટ અંગે મને પુછપરછ કરેલી. તે વખતે મારો જવાબ લીધેલ નઠી.

૧૯. મને ઈજા થચાની સારવાર જે મેં રાહત કેમ્પમાં કરાવેલ તેનુ મને સર્ટીફીકેટ મળેલ નહી. સારવાર માટે મને પોલીસે યાદી આપેલ હતી જે સી.હોસ્પી. માં જવા માટે હતી. પણ તે વખતે હુ ડર ના માર્ચા સી.હોસ્પી.માં ગચેલ નહી. તે પછી બે મહીના બાદ આગળ ની સારવાર મેં સી.હોસ્પી.માં કરાવેલ.

૧૯. મેં પો.કમી. ને અરજી કરી અને મારુ સોગંધનામુ મોકલ્યુ તે પછી તે અનુસંધાને મને ક્રાઈમબ્રાન્ચ પો.સ્ટે. નીવેદન આપવા બોલાવેલ પણ દુ ગચેલ નદી. મને પોલીસ પર ભરોસો ન દતો જેથી નીવેદન લખાવવા ગચેલ નદી. અગાઉ મેં અરજીઓ કરેલી અને નીવેદન લખાવેલા તે નીવેદન અમારા લખાવ્યા મુજબ ના ન દતા જેથી દુ ગચેલ નદી. અમે ક્રાઈમબ્રાન્ચ ને પત્ર થી આ બાબત ની જાણ કરેલ. એ કાગળ અમે તૈયાર કરેલ. જે દાઉદભાઈ દેસાઈ જોકે મોકલેલ.

૨૦. મારા ઘરને આ તોફાનો માં રુ. ૪,૨૪,૧૫૦/– નુ નુકસાન થયેલ. આ નુકસાન બાબતે પોલીસે મારો તા. ૧૧/૩/૦૨ ના રોજ જવાબ લીધેલ."

against the accused.

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170. It is submitted by Shri Kodekar that this witness also is a truthful and very important witness to the Prosecution case inasmuch as, his testimony accurately portrays the events as they took place on the day of the incident, there are no false exaggerations or statements emerging therefrom, the witness has lost least at five members of his family and he has seen his mother being killed, he has identified a large number of accused as being the perpetrators of the offence, the nature of weapons held by such accused and furthermore according to Shri Kodekar, the witness has positively identified a large number of such accused in the Court also. It is submitted that this witness has withstood the test of cross examination and has led full support and corroboration to the Prosecution version and therefore also, on the strength of the testimony of such witness, the Prosecution can confidently claim that it has established beyond reasonable doubt the charges

171. Submitting further, Shri Kodekar now draws my attention to the testimony of PW-**143** being one Altafkhan Gulabkhan Pathan whose testimony is on the record of the proceedings at Exh.655. It is pointed out by Shri Kodekar that this witness has also supported other PWs, he has been an eye-witness to the entire incident and was the resident of

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Chandulal Shamaldas Ni Chawl which was located opposite Gulbarg Society at the relevant point of time. Drawing my attention to paragraph-3 (reproduced verbatim herein below) of the testimony of this witness, Shri Kodekar points out that the witness has clearly stated that in the early morning at about 9:00 a.m., the witness was sitting in his autorickshaw when a mob of persons comprising of about five or six people, came over and started enforcing closure of the shops. The witness has stated that of the persons of such mob, he could identify Girish Prabhudas Sharma (absconding accused), Bharat Rajput (A-55), Kapil Munna (A-50) and Dharmesh (A-47) as amongst the members of such mob. The witness has positively identified accused No.50 Kapil Munna in the Court as also accused No.47 Dharmesh in the Court, but is unable to identify the other two accused of whom Girish Prabhudas is an absconding accused who was naturally not available in the Court and the witness has also not identified Bharat Rajput (A-55). The witness has narrated the incident, according to Shri Kodekar, that took place regard to Ayubkhan and Yusufkhan being the with sons of owner of Ankur Cycle Works and the witness has positively identified these persons as being the sons of one Habibkhan. The witness has stated that on learning the identity of such victims, the mob started assaulting the victims and the said Ayubkhan was given a stab blow with a knife, whereas the said Yusufkhan was given blows with fists and kicks. The witness, corroborating the testimony of other

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witnesses, has stated that the said Yusufkhan ran Gulbarg Society to take shelter into whereas Ayubkhan and his brother ran into their residence. The witness claims that the mob then proceeded to approach his rickshaw due to which the witness ran away, entered into his residence and went up on the terrace. The witness has testified that he saw at that stage, the mob having dragged his rickshaw and having taken out petrol therefrom and then having such autorickshaw afire. proceeded to set The witness claims that such incident took place between 9:30 a.m. and 10:00 a.m. The witness further states that at this stage, the Police arrived at the scene of the incident on account of which the mob ran away and the fire to the rickshaw was put out by the Police. The witness thereafter claims to have, together with his family, gone to the Gulbarg Society to take shelter and taken shelter in the Flat of his uncle being one Fakir Mohammad. The vehicles of the family members of the witness were also brought into Gulbarg Society over for protection. The witness has further testified that other members of the Muslim community residing outside Gulbarg Society, also came to Gulbarg Society for protection.

"3. તા. ૨૮/૨/૦૨ ના રોજ સવાર ના હું મારી દુકાન
ની સામે એક રીક્ષા ઉભી હતી તેમાં બેઠો હતો. તે રીક્ષા મારી પોતાની હતી. એ
દીવસે સવારે આશરે નવ થી સાડાનવ વાગે હુ મારી રીક્ષામાં બેઠેલ હતો.
તે વખતે પાચ છ માણસોનુ ટોળુ આવેલ. તે ટોળુ દુકાનો બંધ કરાવતુ હતુ.

Judgment

આ દિન્દુ કોમ નુ ટોળુ દતુ. એ ટોળામાં મેં ગીરીશ પ્રભુદાસ, ભરત રાજપૂત, કપીલ મુન્ના અને ધર્મેશ ને ઓળખેલા. મેં જે નામ કદયા તેમને આજે ઓળખી શકુ. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી કપીલ મુન્નાને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતાં કપીલ દોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી ઓ પૈકી આરોપી ધર્મેશ ને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા પોતાનુ નામ ધર્મેશ દોવાનુ જણાવે છે.(તમામ આરોપીઓ ને લાઈન મુજબ ઉભા કરી ને મને બતાવવામાં આવેલ છે. મેં જે બે આરોપી

ને ઓળખી બતાવ્યા તે સીવાય બીજા કોઈ આરોપી ને ઓળખી શકતો નથી) ૪. ટોળુ આવી ને અંકુર સાયકલ ની દુકાને ગયેલ.

આ ટોળાના બે જણા પાસે દાથમાં ખંજર દતા. તે ખંજર કોની પાસે દતા તે દુ કઠી શકુ નઠી. આ ટોળુ અંકુર સાચકલ ની દુકાન બંધ કરાવવા ગચેલ. તે દુકાન દબીબ ખાન ની દતી. ત્યાં દુકાન ના બાકડા પર ત્રણ ભાઈ ઓ નામે ઈશાક ખાન, અચુબખાન અને યુસુફખાન બેઠા દતા. જે દબીબ ખાન ના દીકરાઓ છે. ટોળા એ તેઓનુ નામ પુછેલ. પછી એમણે કઠેલ કે, આ મુસલમાનો છે તેમ જણાવી તેમને મારવા લાગેલા. અચુબ ને ચપ્પુ મારેલ અને યુસુફભાઈ ને લાતો અને ફેંટો મારેલી. એટલે યુસુફ દોડી ને ગુલબર્ગ સોસા. મા જતો રઠેલ અને બાકી ના બે તેમના ઘરમાં જતા રઠેલ. દુ બેઠેલ તે મારી રીક્ષા નો નંબર જી જે ૯ વાય હટક દતો. પછી ટોળુ મારી પાસે આવવા માંડયુ તેથી દુ દોડી ને મારા ઘરે જતો રઠેલ. અને દું મારા ધાબા પર ચડી ગયેલ. મેં ધાબા પર થી જોયુ તો આ ટોળા ના માણસો રીક્ષા ને બઠાર કાઢી ને તેમાથી પેટ્રોલ કાઢી ને તેને બાળી મુકેલ. આ બનાવ આશરે સાડા નવ થી દસ વાગે બનેલ. તે પછી થોડીવારે મેઘાણીનગર તરફ થી પોલીસ ની વાન આવેલ. જેથી ટોળુ જતુ રઠેલ. અને રીક્ષા ને પોલીસવાળા એ પાણી લાવી

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ને ઓલવેલ. અમે અને અમારા ઘરના બધા ગુલબર્ગ સોસા. માં જતા રહેલા. તે પછી અમે અમારા કુઆ ફકીર મહમદ ના ફલેટમાં જતા રહેલા. મારે ત્રણ વાહનો હતા જેમા બે રીક્ષા અને એક લ્યુના હતુ. બીજા રીક્ષા અને લ્યુના મારો ભાઈ લઈ ને ગુલબર્ગ સોસા.માં જતા રહેલા. આ સમયે ગુલબર્ગ સોસા. ની આજુબાજુમાં રહેતા મુસ્લીમ માણસો એ આશરો લેવા આવી ગયેલ."

172. Drawing my attention to paragraph-3 (reproduced verbatim herein below) on page-6 of his deposition, Shri Kodekar has pointed out that the witness has claimed that thereafter a mob of 10000 15000 persons had gathered and to had started looting the shops of the minority community and according to the witness, the said mob was also setting on fire the goods taken out from such shops. The mob, according to the witness, thereafter started pelting at Gulbarg Society. stones The witness claims in terms of his testimony on page-7, paragraph-4 (reproduced verbatim herein below), that the Society was being pelted with stones from all four sides and the persons within the Society also self retaliated in defence. The witness has testified that after the mob entered into the Society, the witness and his brother Shafiq ran away into the house of Shri Ehsan Jafri and consequent thereto, the witness claims that there was extreme stone pelting from all sides, the compound walls were broken from both sides and the mob had entered into the Society and had started killing persons and setting afire the houses located in the Society, as

is reflected in paragraph-5 (reproduced verbatim herein below) of the testimony.

"3. મારા કુઆ ફકીર મહમદ નો ફલેટ છે. એ ફલેટ ની ગેલેરીમાં તે પછી હુ ગયેલ. જે હુ જોવા માટે ગયેલ. મે તે સમયે જોયુ તો દસ થી પંદર હજાર માણસોનુ ટોળુ આવેલ. મે જોયુ તો આ ટોળુ દુકાનો લુટતા હતા અને તેનો માલ સામાન બહાર કાઢી સળગાવતા હતા. મારી દુકાન પણ લુટી ને તેનો સરસામાન બહાર કાઢી ને સળગાવેલ. તે પછી તે લોકો આગળ વધેલા અને સોસા. માં પથ્થરમારો શરુ કરેલ. તેથી હું અને મારો ભાઈ બંને નીચે આવી ગયેલ. મારા ભાઈનું નામ શફીકખાન છે.

અમે સોસા. માં નીચે ઉભા દતા
 ત્યારે ચારે બાજુથી પથ્થરમારો થતો દતો. જેથી અમે પણ સામે બચાવ
 માટે પથ્થરમારો કરતાં દતા. આ પથ્થરમારો આશરે દોઢ થી બે કલાક ચાલેલ.
 પછી આગળ થી ઝાંપો તોડી ને પબ્લીક અંદર ઘુસી ગચેલ. જેથી દું અને મારો
 ભાઈ શફીક જાફરી સાદેબ ના ઘરમાં ગચેલ. સોસા. ની પાછળ રેલવે ટ્રેક
 આવેલ છે. ત્યાં પણ પથ્થરમારો ચાલુ થચેલ. અને પછી ત્યાંથી દીવાલ
 તુટેલી. અને માણસો અંદર આવી ગચેલ.

પ. હુ અને મારો ભાઈ જાફરી સાહેબ ના ઘરમાં ગયા ત્યારે આશરે સો થી દોઢસો જેટલા માણસો હશે. આ વખતે પોણા બે થી બે વાગ્યા હશે. મેં જાફરી સાહેબ ને જોયેલા નહી. ત્યાં ટોળા એ પથ્થરમારો કચી, આગ લગાડી અને જાફરી સાહેબ ના મકાન ને આગ લગાડેલ. જેથી હુ બચવા માટે પાછળ થી સીડી થી ઉપર ના માળે જતો રહેલ. ત્યાં મારા કુઆ બેઠેલા હતા. મારો ભાઈ શફીક નીચે રહી ગયેલ હતો. ત્યાં ટોળામાંથી સળગતા કાકડા ફેંકતા હતા. અમે બધા માણસો તથાં બેઠા હતા. બીક ના

માર્ચા બેઠા હતા."

Drawing my attention to paragraphs 6 173. and 7 (both reproduced verbatim herein below) of the testimony of this witness, Shri Kodekar submits that the witness has stated that at about 4:30 p.m., the Police had arrived at the scene of the incident and on hearing the Police whistles, the witness came out of hiding and he saw number of dead bodies off the victims. The witness has further stated that a number of dead bodies were piled up on each other and were set afire as seen by the witness. The witness could also identify the dead body of Yusufkhan, son of Habibkhan. The Police, according to the witness, resorted to firing from guns as also firing teargas shells. The witness has identified from amongst the mob Bharat Rajput (A-55), Girish Prabhudas (absconding accused), Kapil Munna (A-50), Dharmesh (A-47) and Sushil Sharma (A-53) as the persons of the mob.

"૬. તે પછીઆશરે સાડા ચાર થી પાચ વાગે પોલીસ આવેલ. પોલીસો ની વ્હીસલ વાગતા પોલીસ આવ્યા ની ખબર પડેલ. જેથી અમે ઉતરી ને બહાર આવેલા. અમે સીડી ઉતરી વરંડા બાજુ થી બહાર આવેલા. વરંડામાં ચાર લાશો પડેલ હતી. જાફરી સાહેબ ના મકાન ના બહાર ના ભાગે બીજી બે ચાર લાશો પડી હતી. તે લાશો ઢગલો કરી ને બાળેલ હતી. મેં વરંડા માં જે ચાર લાશો જોચી તેમા ચુસુફખાન ની લાશ ઓળખેલ જે હબીબખાન નોછોકરો હતો. ટોળુ પોલીસે ટીચર ગેસ અને ફાચરીંગ કરતાં

Judgment

જતુ રહેલ. આ ટોળામાં મેં ભરત રાજપુત, ગીરીશ પ્રભુદાસ, કપીલ મુન્ના , ધર્મેશ અને સુશીલ શર્મા ને જોયેલા. અમે આશરે દોઢસો થી બસો માણસો બચી ગયેલા.

૭. પોલીસે અમો બચેલાઓને ગાડીમાં બેસાડેલા. જે ત્રણ મોોટી ગાડી ઓ હતી. અમને ગાડીમાં બેસાડી શાહીબાગ પો.સ્ટે. લઈ જતા હતા તે વખતે ટોળા ના માણસો ગાડી પર પથ્થરમારો કરતુ હતુ જેથી પોલીસે ટીચર ગેસ ના સેલ છોડેલ અને ફાચરીંગ કરેલ. શાહીબાગ પો.સ્ટે. અમે આશરે છ થી સાત વાગ્યા ના અરસામાં પહોંચેલા. ત્યાં પહોંચી ને મેં મારા ઘરના સભ્યો ની તપાસ કરેલ. ત્યારે મારો ભાઈ શફીક મળેલ નહી. આ બનાવ દરમ્યાન મને માથામાં અને કાનમાં વાગેલ. તેની મેં વી.એસ. હોસ્પી.માં સારવાર કરાવેલ. જે તે દીવસે રાત્રે સારવાર કરાવેલ."

174. Drawing my attention to paragraph-7 (reproduced verbatim herein above) and 8 to 10 (reproduced verbatim herein below) of the testimony, it is pointed out that the witness has testified with regard to the sequence of events that took place when the surviving persons were being escorted to safety by the Police. The witness claims that even at such time, the mob was required to be controlled by the Police by resorting to firing and releasing teargas shells. The witness has stated that his brother Shafiq was missing. It is pointed out by Shri Kodekar that the said Shafiq is missing and is required to be presumed legally dead. The witness claims that the witness was injured in the stone pelting and sustained injuries on the forehead

which required also ear treatment at the as The V.S.Hospital. witness claims to have been firstly taken to Shahibaug Police Station and thereafter to the refugee camp at Dariakhan Ghummat. identification of dead bodies The at Kalandari Masjid Kabrastan, the damage and loss caused to the properties of the witness, are narrated in paragraphs 9 to 10 of his testimony.

*૮. શાહીબાગ પો.સ્ટે. થી અમને દરીચાખાન ઘુમટ રાહત કેમ્પમાં લઈ ગયેલા. ત્યાંથી વી.એસ. હોસ્પી. ગયેલા. મારી સાથે સારવાર કરાવવા જવા બીજા પાચ છ માણસો હતા. અમે સારવાર કરાવી ને તે જ રાતે દરીચાખાન ઘુમટ રાહત કેમ્પમાં પાછ ા આવેલા.

૯. પછી ત્યાં એલાન થયેલ કે, ગુલબર્ગ ની લાશો કલંદરી મસ્જીદ કબ્રસ્તાનમાં લાવવાની છે જેથી ત્યાં જઈ ને ઓળખી લો. જેથી ઠું ત્યા ગયેલ. ત્યાં શફીક ની લાશ હતી નહી. બીજી જે લાશો હતી તેને ત્યાં દફનાવેલી. તે બાદ અમે પાછા દરીયાખાન ઘુમટે આવેલા. તે પછી પોલીસે મારો જવાબ લીધેલ.

૧૦. મારા પિતા રાજસ્થાન ગયેલ હતા જે બે ચાર દીવસ પછી પાછા આવેલા. મારી રીક્ષા અને લ્યુના જે ગુલબર્ગ સોસા. મા લઈ ગયેલા તેને પણ ટોળા એ બાળી નાખેલ. મારુ મકાન અને દુકાન બાળી નાખેલ અને સરસામાન લુટી લીધેલ. મને આશરે ચાર થી સાડા ચાર લાખ નુ નુકસાન થયેલ."

175. Particularly drawing my attention to the contents of paragraph-11 (reproduced verbatim herein below) of the deposition, Shri Kodekar points out that the witness has further clearly stated that the mob was armed with deadly weapons, pipes and cans of kerosene and was shouting slogans *inter alia* to the effect that "kill the members of the minority community."

"૧૧. મેં જે ટોળુ જોચેલ તે ટોળા ના માણસો પાસે હથીયારો હતા પાઈપો હતી અને કેરોસીન ના કેરબા હતા. આ માણસો 'મીયા ઓ ને મારો અને કાપો' તેમ બોલતા હતા."

176. It is pointed out that the witness has further testified with regard to his statements being recorded by the Police and by the S.I.T. in terms of his testimony in paragraphs 12 and 13 (both reproduced verbatim herein below). It is submitted by Shri Kodekar that the witness has withstood the test of cross examination, is a reliable witness and therefore, even the testimony of such witness further strengthens the Prosecution case against the accused.

"૧૨. પોલીસે મારો પ્રથમ જવાબ દરીચાખાન ઘુમટ રાહત કેમ્પ ખાતે લીધેલ. તે પછી બે ત્રણ જવાબ લીધેલ. તે જવાબ પાછળ થી લીધેલા તે મારા ભાઈ ની લાશ અને મને થયેલ નુકસાની બાબત ના લીધેલા.

૧૩. એસ.આઈ.ટી એ મને ગાંધીનગર મારો જવાબ લ ેવા બોલાવેલા. ત્યાં મારો જવાબ લીધેલ. સુશીલ શર્મા રામચન્દ્ર જે ચમનપુરામાં આવેલ છે ત્યાં રદે છે. તે દોમ ગાર્ડઝ માં દતો. તેને મેં રેલવે ટ્રેક તરફ પથ્થરમારો કરતાં જોયેલ. એસ.આઈ.ટી. એ પછી ફરી જુદાપુરા

પુછપરછ બોલાવેલ. ત્યાં મારા ઘરના બધા સભ્યો ને બોલાવી ને જવાબ લીધેલ. મારી મારા ભાઈ ની લાશ બાબતમાં પુછપરછ કરેલ. પછી કોઈ જવાબ લીધેલ નહી. હું સુશીલ શર્મા ને ઓળખી શકુ. કોર્ટમાં હાજર આરોપી ઓ પૈકી આરોપી સુશીલ શર્મા ને ઓળખી બતાવુ છુ અને આરોપી ને તેનુ નામ પુછતા સુશીલ શર્મા બતાવે છે. અમે વી.એસ. હોસ્પી. સારવાર માટે ગયા ત્યારે ડોકટરે મને કાંઈ પૂછેલ નહી."

177. attention is Μv now drawn the to testimony of PW-289 being one Nadim Tasadukhussain Surohi, whose deposition is on the record of the proceedings Exh.995. present at The witness, according to Shri Kodekar, was a resident of Bunglow No.3 in Gulbarg Society at the relevant point of time and was residing with his family and the events as unfolded on 28/02/2002 are narrated faithfully, accurately and in corroboration with the testimonies of other witnesses who have been referred to herein before. is Μv attention drawn to paragraph-3 (reproduced verbatim herein below) of the testimony of this witness, wherein according to Shri Kodekar, the mob of persons having come from Omnagar and enforcing the closure of shops is narrated by the witness, of whom the witness has identified Ramesh Pandey (absconding accused).

"3. તા.૨૮/૨/૦૨ ના રોજ બંધનુ એલાન હોઈ હું મારી નોકરી પર ગયેલ નહી. તે દીવસે સવાર ના આશરે નવ સવાનવ વાગે હું અમારી સોસા. ની બહાર ગયેલ. અને ત્યાં હું અને મારા મીત્રો એક દુકાન

આગળ બેઠેલા. મારી સાથે તે સમચે મઠમદ સલીમ સન્ધી અને અશરફ સીકન્દર સન્ધી હતા. અમે પાંચ દસ મીનીટ બેઠા હોઈશુ અને ઓમ નગર થી બે ત્રણ છોકરાઓ રોડ પરની દુકાનો બંધ કરાવતા કરાવતા આવતા હતા. તે છોકરાઓમાં એક રમેશ પાન્ડે નામનો છોકરો હતો અને બીજા બે નામની મને ખબર નથી. તેઓ દુકાન બંધ કરાવતા આવતા હતા જેથી અમે સોસા.માં અમારા ઘરે આવતા રહેલા."

178. Drawing my attention to the contents of paragraphs 4 to 7 (all reproduced verbatim herein the testimony of this witness, below) of Shri Kodekar points out that the witness has more or less testified in harmony to the testimony of other witnesses inasmuch as, he has also narrated the fact of the mob having started causing damage to Ankur Cycle Works and having caused injuries to Ayubkhan and Yusufkhan and more particularly the fact of Ayubkhan rushing to his residence for safety and Yusufkhan coming over to Gulbarg Society for protection, is also narrated. The fact of Ayubkhan being given a stab injury with a gupti is also seen by the witness as is reflected in paragraph-5 of his deposition. The witness has further, according to Kodekar, testified Shri that the mob started damaging and setting afire an autorickshaw at which stage according to the witness, a Police Jeep at the scene of incident and the fire was arrived put out. The fact of four to five Police vehicles arriving at Gulbarg Society thereafter, is clearly testified in paragraph-7 of the deposition of the

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witness and the fact of the Commissioner of Police Shri P.C.Pandey and P.I. Shri K.G.Erda being members of that Police team, is also narrated by this witness. The fact that Police bandobast was promised by such Police Officials as narrated by Shri Ehsan Jafri, is also deposed by this witness on page-5, paragraph-7 of his testimony.

''૪. તે પછી દસેક વાગ્યા ના સુમારે અમારી બાજુમાં રહેતા એક બેન નામે ઝેબુનબેન મનસુરી આવેલા અને તેમણે જણાવેલ કે, બહાર કેટલાક માણસો દુકાનમાં તોડફોડ કરી રહ્યા છે. જેથી હું કપડા પહેરીને બહાર

આવેલ. તે સમયે સોસા.ના માણસોએ મને બહાર ન જવા જણાવેલ.

જેથી હું સોસા. માં આવેલ ફલેટ ના ધાબા પર જતો ч. રહેલ. તે સમચે મારી સાથે શકીલ મનસૂરી અને રફીક અબુબકર હતા. મેં ધાબા પર થી જોચેલ તો કેટલાક લોકો સામે દુકાનમાં તોડફોડ કરી રહ્યા હતા જે સોસા. ની સામે આવેલ અંકુર સાચકલ નામની દુકાનમાં તોડફોડ કરી રહેલા. તે દુકાનમાં અયુબ અને યુસુફ બેઠેલા હતા. ટોળુ તેમને મારવા લાગેલ એટલ ે યુસુફ બચી ને અમારી સોસા. તરફ આવેલ અને અયુબ તેના પોતાના ઘરની તરફ દોડેલ. તે દોડીને જતો હતો ત્યારે કોઈએ તેને ગૃપતી નો એક ધા મારેલ. પછી લોકોએ બહાર એક રીક્ષા પડી હતી તેને સળગાવેલ. આ ટોળાના માણસો ના દાથમાં દથીયાર દતા, જેમાં, તલવાર, પાઈપ, દોકી, પેટ્રોલ ના કેરબા દતા. ટોળાએ રીક્ષા ને આગ લગાડેલ તે સમયે પોલીસ 5. ની એક જીપ આવેલ. તેને જોઈને ટોળૂ ભાગી ગયેલ. અને જીપમાં જે પોલીસવાળા હતા તેમણે ઉતરીને રીક્ષા ની આગ ઓલવી નાખેલ તે પછી પોલીસવાળા જતા રહેલા.

તે પછી થોડીવારે પોલીસની ચારપાંચ ગાડીઓ

આવેલ. તે સોસા. ના નાના દરવાજા સામે આવીને ઉભી રહેલ. તે જોઈને હું નીચે આવેલ. મેં જોચુ તો એહસાન જાફરી, મારા પિતા, અને ફકીર મહમદ ત્યાં ગાડી પાસે ઉભા હતા. બીજા બે ત્રણ જણા હતા પણ ત કોણ હતા તે મને ખબર નથી. પાંચ સાત મીનીટ પછી ગાડીઓ જતી રહેલ અને આ બધા સોસા.માં પાછા આવેલા. તે સમયે અમે ત્યાં ઉભેલા. મેં એહસાન જાફરીને પુછેલ કે, કોણ હતા. ત્યારે એહસાન જાફરીએ જણાવેલ કે, સીટી પોકમી. શ્રી પી.સી.પાંડે અને આપણા વિસ્તાર ના પી.આઈ. શ્રી એરડા હતા. તેમણે બંદોબસ્ત થઈ જશે ચીંતા કરશો નહી તેમ જણાવેલ છે."

179. Drawing my attention to paragraph-8 (reproduced verbatim herein below) of the testimony the deposition of this witness, of Shri Kodekar submits that the witness has clearly stated that in a short while thereafter, a mob of about 5000 to 10000 people had gathered and had started demolishing and damaging the shops belonging to the minority community. The witness also claims that the mob was shouting slogans inter alia to the effect that "kill and destroy the members of minority community, JAI SHRI RAM" and other such slogans. The mob according to the witness, was armed with swords, other sharp pointed weapons and was also armed with pipes and sticks and cans of kerosene and The witness has identified petrol. Naran Channelwala (A-43), Mukesh Mochi (A-29), Gabbar (A-14), Manish Prabhudas Jain (A-38), Suresh Kali Dhobi (A-52) as also one Rajesh Prabhudas Jain who is not accused in the present proceedings, the an as

persons who were present in such mob. The witness has testified that all such persons were armed with weapons and the mob had attempted to enter into the Society.

"૮. તે પછી થોડીવારે સામેથી પાંચ દસ હજાર માણસ નુ ટોળુ ભેગુ થયેલ. એ ટોળાએ દુકાનો માં તોડફોડ શરુ કરેલ. આ ટોળુ મીંચાઓ ને મારો, કાપો, જય શ્રી રામ તેવા નારા લગાવતુ હતુ. આ ટોળા પાસે હથીચારો હતા, જેમાં તલવાર હતી તથા બીજા તીશ્છા હથીચાર હતા,પેટ્રોલના કેરબા, પાઈપો, લાકડીઓ હતી. આ ટોળામાં મેં પાંચ છ જણાને ઓળખેલા જેમાં એક–નારણચેનલવાળા, બે–મુકેશ મોચી,ત્રણ–ગબ્બર, ચાર–મનીષ પ્રભુદાસ જૈન, પાંચ–સુરેશ કાલી ધોબી, છ– રાજુ પ્રભુદાસ જૈન જે મનીષ નો ભાઈ છે તેને ઓળખેલા. તે લોકો ના હાથમાં હથીચાર વગેરે હતા. આ ટોળુ સોસા. તરફ આવવા લાગેલ. સોસા. ની આગળ જે દુકાનો હતી તેમાં તોડફોડ કરેલ અને વાહનો હતા તેને સળગાવેલા."

180. According to Shri Kodekar, the fact of the mob having resorted to pelting of stones and throwing burning rags at the Society, is also narrated in paragraph-9 (reproduced verbatim herein below) of the testimony.

"૯. તે પછી સોસા. પર પત્થરમારો શરુ કરેલ. તેઓ પથ્થરો અને કાકડા વગેરે ફેંકતા હતા. અમે બચાવમાં તેમણે ફેંકેલા પથ્થરો પાછા ફેંકતા હતા. તે પછી પથ્થરમારો ચાલુ રહેલ. અમે અમારા મોટા દરવાજા પાસે ગયેલા કે જેથી તે લોકો અંદર આવે નહી. થોડીવાર પછી પથ્થરમારો વધી ગયેલ."

181.

Shri Kodekar points out that the incident that took place at about 1:30 p.m. is narrated from paragraphs 10 to 13 (all reproduced verbatim herein below) of the testimony. The witness claims that there was stone pelting at the buildings in the Society from all sides, the mob had entered into the Society by breaking open the main gate as also the small gate of the Society and a portion of the mob had climbed the terrace of Bunglow No.1 of Gulbarg Society and had started pelting stones therefrom which had caused an injury on the chest of

one Irfan Gulzarbhai who was then taken away to the residence of Shri Ehsan Jafri by two to three persons named in the deposition. The witness also claims to have been hit on the forehead by a stone on account of which the witness also went away into the residence of Shri Ehsan Jafri. The witness claims that the mob after having entered into the front and rear portions of Gulbarg Society, had started damaging, destroying and setting afire all vehicles parked in the Society and also breaking open, looting, damaging and thereafter setting on fire the properties of the residents of Gulbarg Society. The same, according to Shri Kodekar, is clearly reflected on page-8 of the testimony. The witness has further testified that the mob thereafter surrounded the property of Shri Ehsan Jafri and entered into the same and the incidents whereby a crippled Anwarbhai was done away with by the mob and his son Aslamkhan sustaining injuries in an attempt to save his father, are clearly narrated

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by the witness in paragraph-11, page-8 of his testimony. The witness claims that thereafter, the mob tried to break open the windows of Shri Ehsan Jafri's residence and the mob, according to the witness, poured kerosene into the residence of Shri Ehsan Jafri and attempted to set afire the said residence. The witness claims to have thereafter run away to the first floor of Shri Ehsan Jafri's residence.

182. Drawing my attention to paragraph-13 of the testimony of this witness, Shri Kodekar points out that the witness claims to have seen Zakia Jafri being the widow of Shri Ehsan Jafri, her sister Suraiya and others on the first floor of the property. The witness claims that he thereafter hid into one of the rooms on the first floor of Shri Jafri's residence.

"૧૦. બપોર ના ૧–૩૦ વાગ્યાના સુમારે સોસા. ના મકાન નંબર એક પર કેટલાક માણસો ચઢી ગયેલા. અને ત્યાંથી પથ્થરમારો શરૂ કરેલ. પછી ત્યાંથી તેમણે જોયુતો અંદર વધારે માણસો નથી. જેથી બહાર વાળાને ઘુસી જવા માટે બુમો પાડતા હતા. તે પછી ટોળાએ મોટા દરવાજા થી અંદર પ્રવેશવાની કોશીશ કરેલ. ત્યારે એક નંબર ના મકાન પર જે માણસો ચઢેલા તેમાંથી કોઈએ કશુક માર્ચુ તો મારી સાથે જે છોકરો હતો જેનુ નામ ઈરફાન ગુલઝારભાઈ છે તેની છાતીમાં તે વાગેલ અનેતે નીચે પડી ગયેલ. તે પછી તેને શકીલ મનસુરી, રફીક મનસુરી, ઈમ્તીયાઝખાન તે ત્રણે તેને ઉપાડીને જાફરીસાહેબ ના મકાન તરફ ગયેલા. તે પછી હું પણ ત્યાંથી આગળ ગયેલ. મને પણ કપાળ પર સામેથી આવેલ પથ્થરનો એક ઘા થયેલ. જેથી દું પણ જાફરીસાદેબ ના મકાન તરફ દોડેલ.

થોડીવાર પછી આગળના દરવાજા તરફથી એવો ٩٩. અવાજ આવેલો કે, આગળનો દરવાજો તુટચો છેઅને ત્યાંથી ટોળુ ઓદર આવેલ. સોસા. ની પાછળ રેલવે લાઈન આવેલ છે અને ત્યાંથી પણ લોકો અંદર આવતા હતા. થોડીવાર પછી પાછળ ની દીવાલ પણ તૂટેલી અને ત્યાંથી પણ ટોળુ અંદર આવેલ. આગળ અને પાછળ થી આવેલ ટોળાએ સોસા. ની અંદર વાઠનો પડેલા હતા તેને સળગાવ્યા અને મકાનો માં તોડફોડ કરી લુટફાટ શરૂ કરેલ. ટોળુજાફરીસાહેબ ના ઘર ને ઘેરી વળેલ. હું જાફરીસાદેબ ના મકાનમાં અંદર આવી ગયેલ. દું અંદર આવ્યો ત્યારે મારી પાસે અનવરખાન ઉભેલા હતા. તે જાળી ના દરવાજા પાસે ઉભેલા હતા. તે અંદર આવવાનો પ્રયત્ન કરતો હતો ત્યારે ટોળાએ તેને બહાર ખેંચી લીધેલ अने तेने टोणाએ तलपार नो धा भारीटीधेल. अनपरणान अपंग हतो. તેને બચાવવા માટે અસલમખાન ગયેલ પણ ટોળાએ તેને ઘા મારેલ. મારી આગળ તૈયબ અલી ઉભો હતો તેણે અસલમ ખાન ને અંદર ખેંચી લીધેલ. અને અમે જાફરીસાહેબ ના મકાન નો દરવાજો અંદર થી બંધ કરી દીધેલ. અનવર ખાન નું શુ થયુ તે મને ખબર નથી.

૧૨. અમે જાફરીસાઠેબ ના મકાનમાં આવી ગયા પછી ટોળાએ બઠાર થી જાફરીસાઠેબ ના મકાન ના બારીઓ અને દરવાજા તોડવાનુ ચાલુ કરેલ. તેમણે પેટ્રોલ નાખી કાકડા નાખી સળગાવવાનુ ચાલુ કરેલ. તેનાથી ઘરમાં ધુમાડો અને ગુંગળામણ થવા લાગેલ. જેથી ઠું અંદરના રુમમાં દોડીને ગયેલ. ત્યાંથી ઉપર જવાનો જે રસ્તો છે ત્યાંથઈ ઠું ઉપર દોડીને જતો રઠેલ.

૧૩. હું જાફરીસાઠેબના મકાનમાં ઉપર ગયો ત્યાં જાફરીસાઠેબ ના પત્ની જાકીયા જાફરી , તેમના બેન સુરૈયા અંકલેશ્વરીયા અને બીજા હતા. ત્યાંથી મેં જોયુ તો સામે આવેલ દુકાન ના ધાબા પરથી લોકો પથ્થરમારો કરતા હતા. તે પછી હું રૂમ ની અંદર સંતાઈ ને બેસી ગયેલ."

183. My attention is drawn to paragraphs 14 to 16 (all reproduced verbatim herein below) of the testimony of this witness where the witness has clearly testified that at about 5:00 p.m. the atmosphere became very quiet and calm, the witness could hear Police whistles and teargas shelling and the Police requesting the survivors to come out, which is all narrated by the witness in paragraph-14 The witness of his testimony. in terms of his testimony in paragraph-15 on page-10, has clearly stated that he saw a large number of dead bodies in the garden and other parts of the property of Shri Ehsan Jafri and the fact of the witness and other survivors being escorted to safety in Police vehicles, such Police vehicles being attacked and Police resorting to teargas shelling and firing, is all narrated in paragraph-16 of the deposition of the witness. The witness claims that thereafter the witness and others were taken over to Shahibauq Police Station and the witness and his family members thereafter went away to Gandhinagar to take shelter.

<u>"૧૪.</u> તે પછી આશરે સાડાચાર પાંચ વાગ્યા ના અરસામાં

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વાતાવરણ એકદમ શાંત થઈ ગયેલ. બે પાંચ મીનીટ પછી પોલીસ નીવ્હીસલો અને ટીચરગેસના અવાજો આવવા લાગેલા. પોલીસો નીચેથી તેઓ આવી ગયા છે અને નીચે આવી જાવ તેમ જણાવતા હતા. પરંતુ અમે એકદમ ગભરાઈ ગયા હતા જેથી નીચે ઉતરવુ કે નહી તેનો વિશ્વાસ પડતો ન હતો. તે પછી નીચેથી સોસા. ના કેટલાક માણસોનો અવાજ સાંભળ્યો જેથી હિંમત કરીને અમે નીચે ઉતરેલા.

૧૫. અમે નીચે ઉતરી રહ્યા હતા ત્યારે મેં જોયુ તો જાફરીસાહેબ ના બગીચામાં ત્રણ ચાર લાશો પડેલ હતી અને તેમના ઘરમાંથી ભારે આગ દેખાઈ રહી હતી. બગીચામાંથી આગળ તરફ આવ્યા તો ત્યાં પણ ઘણી લાશો પડેલ હતી. તે પછી પોલીસવાળાઓ એ બેચાર ગાડીઓ બોલાવી અને અમને તે ગાડીઓમાં બેસવા જણાવેલ.

૧૬. અમે ગાડીમાં બેસી ગયા તે પછી ટોળાનો પથ્થરમારો ચાલુ થયેલ. અમે જે ગાડીઓમાં બેઠેલા તે ગાડીઓ નો કાચ તુટી ગયેલ. જેથી તે ગાડીનો ડ્રાઈવર નીચે ઉતરીને ઉભો રદી ગયેલ. તે પછી જે પોલીસવાળા દતા તેમણે ટીયરગેસ છોડવાનુ અને ફાયરીંગ કરવાનુ ચાલુ કરેલ. અને અમને મુશ્કેલીથી બદાર કાઢેલ. અમને ત્યાંથી સાત આઠ વાગ્યા ના અરસામાં શાદીબાગ પો.સ્ટે. લઈ ગયેલા. ત્યાં પહોંચ્યા પછી મેં મારા એક ઓળખીતા ને બનાવ બન્યો હોવાની વાત કરી અને તેને ગાડીની વ્યવસ્થા કરવાનુ જણાવેલ. જેથી અમને ત્યાંથી લઈ જાય. તેણે ગાડી ની વ્યવસ્થા કરેલ અને અમે ગાંધીનગર ગયેલા. તે ગાડીામાં દુ, મારા પિતા, મારી માતા, મારા બદેન, જાફરીસાદેબ ના પત્ની અને બીજા બે ત્રણ જણ દતા."

Drawing my attention to paragraph-18

184.

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(reproduced verbatim herein below) of the deposition of this witness, it is pointed out that the witness in the course of his deposition in the Court, has also proceeded to identify in the Court the accused who were present at the time of the incident. Gabbar (A-14) is identified by the witness in the Court, Naran Channelwala (A-43) is also identified by the witness in the Court, Mukesh Sankhla @ Mukesh Mochi (A-29) is also identified by this witness in the Court and accused Manish Prabhudas Jain (A-38) is also identified by this witness in the Court. It is pointed out that in the circumstances, the present witness also has strengthened further the case of the Prosecution against the accused and there is no reason to discard the testimony of this witness.

ਮੇਂ જેમના વામ જણાવ્યા à લોકો **۳**9ζ. ને આજે ઓળખી શકુ. હું કોર્ટમાં ઠાજર આરોપીઓ પૈકી આરોપી ગબ્બર ને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતાં જ્યેશ ઉ. ગબ્બર હોવાનુ જણાવે છે. દું કોર્ટમાં દાજર આરોપી પૈકી નારણચેનલવાળા ને ઓળખી બતાવુ છુ આરોપીને નામ પુછતા પોતાનુ નામ નારણચેનલવાળો હોવાનુ જણાવે છે. દુ કોર્ટમાં દાજર આરોપી પૈકી મુકેશ મોચીને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતાં મુકેશ પુખરાજ સાંખલા હોવાનુ જણાવે છે. ચાર્જશીટ સાથે રજુ ફોટોગ્રાફસ અને વિગતો ઘ્યાને લેતા આ આરોપીને કૌસમાં મોચી તરીકે દર્શાવેલ છે. હું કોર્ટમાં હાજર આરોપી પૈકી મનીષ પ્રભુદાસ જૈન ને ઓળખી બતાવુ છુ. આરોપીને તેનુ નામ પુછતાં મનીષ પ્રભુદાસ જૈન હોવાનુ જણાવે છે. (આરોપીઓ ને લાઈનબંધ ઉભા કરીને બતાવવામાં આવ્યા છે સાહેદે ઉપર મુજબ ના આરોપીઓ ને ઓળખી બતાવ્યા છે તે સીવાય અન્ય

કોઈને ઓળખેલા નથી.)"

185. My attention is also drawn by Shri Kodekar to the testimonies of PW-241 being one Firoz Dilawar Shaikh and PW-301 being one Rashidabanu Dilawar Shaikh, whose testimonies are on the record of the proceedings at Exhs.831 and 1046 respectively.

186. It is pointed out that both these witnesses are members of the same family and were residents of Chandulal Shamaldas Ni Chali which is located just opposite Gulbarg Society. Both these witnesses, according to Shri Kodekar, are eyewitnesses and both of them have narrated the sequence of events as seen by them and which had transpired on the fateful day i.e. 28/02/2002. The fact of both these witnesses having corroborated the versions supplied by other witnesses, is quite clear.

187. Now insofar as the testimony of **PW-241** Firoz Dilawar Shaikh at Exh.831 is concerned, my particular attention is drawn by Shri Kodekar to paragraph-3 (reproduced verbatim herein below) on page-2 of the testimony of the said witness, where according to Shri Kodekar, the said witness has stated that on 28/02/2002, at a time between 9:00 a.m. and 10:00 a.m., the witness had come out of his residence and was sitting in an autorickshaw

together with his friend and at that time, Kapil Munna (A-50) came over to their autorickshaw, and it is testified by this witness that his friend (friend is not known to the the witness whose name of witness), was a friend of this Kapil Munna (A-50) and the witness claims that Kapil Munna (A-50) came over to them and informed them that " ચાલ આજે ਮਿਟੀਂગਮਾਂ ชนเดู่ ดยใ ขเผ พเชิ ผิ่เว่าผ่าชนเดู่ ดยใ. " The witness states that Kapil Munna (A-50) further informed that he was to go to a meeting where a decision was to be taken to kill the members of the minority community and having thus stated such facts, Kapil Munna (A-50) according to this witness, went away from the scene of the incident.

"3. તા. ૨૮/૨/૦૨ ના સવાર ના સમયે હું મારા ઘરે હતો ત્યારે સવાર ના નવ દસ વાગે હું મારા ઘરે થી નીકળી બહાર આવી રીક્ષામાં બેઠો હતો. રીક્ષામાં સાથે મારો મિત્ર હતો જેના નામની મને ખબર નથી. હું બેઠો હતો તે સમયે અમારી સાથે રહેતો કપીલ નામનો છોકરો અમારી પાસે આવેલ. તેની સાથે તેનો એક મિત્ર હતો તેના નામની મને ખબર નથી. મારી સાથે બેસ 'લ મીત્ર તેનો મીત્ર હતો તેણે આ કપીલે આવીને જણાવેલ કે, ચાલ આજે મીટીંગમાં જવાનુ નથી ચાલ આજે મીટીંગ માં જવાનુ નથી. તેમ જણાવેલ. મીંચાકો મારને કે મીટીંગમેં જાના હૈ તેમ કહેલ. તેમ કહીને કપીલ જતો રહેલ. તે પછી હું મારી સાથે મારો મિત્ર એક કાલુ મારવાડી હતો તેની સાથે તેના સાથે તેના સાથે મારો સાથે મારો મિત્ર એક કાલુ મારવાડી હતો તેની સાથે તેના ઘરે જતો રહેલ."

188. According to Shri Kodekar, the witness

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thereafter in terms of his testimony in paragraph-4 (reproduced verbatim herein below), has narrated the incident where the autorickshaw belonging to one Gulam Master was being set afire. The fact of the witness and members of his family having gone away to Gulbarg Society and the incident that took place thereafter, are according to Shri Kodekar, narrated in paragraph-5 (reproduced verbatim herein below) of the testimony of this witness. The fact of the compound wall of the Society being demolished by exploding a gas cylinder is also testified to by The witness, according to this witness. Shri Kodekar, has testified that the witness thereafter, went away into the residence of Shri Ehsan Jafri and he saw about 35 to 40 persons in such residence. The witness has testified inter alia to the effect, according to Shri Kodekar, that the mob had set the building of Shri Ehsan Jafri on fire and at that time, there were already 35 to 40 persons in the building, all of whom died as a result thereof. The witness claims to have sustained burn injuries in the same incident and more particularly on his leg and shoulder. The witness claims that the mob was armed with spears and other weapons.

"૪. તે સમચે રોડ પર બધા વાઘરીઓ લારી લઈને અંદર આવતા હતા. મારા મિત્ર એ મને તેના ઘરમાં આવી જવા જણાવેલ પરંતુ મારા ઘેર બધા એકલા છે તેમ જણાવી મેં તેને ના પાડી અને હું મારા ઘેર પાછા આવી ગચેલ. હું ઘેર આવતો હતો ત્યારે બહાર એક ૭૮૬ નંબર ની રીક્ષા હતી તેને ટોળાના માણસો સળગાવતા હતા. આ રીક્ષા ગુલાબમાસ્ટરની હતી.

તે પછી દું અને મારા ઘરના માણસો અમે બધા ч. ગુલબર્ગ સોસા.માં જતા રહેલા. અમે ગુલબર્ગ સોસા.માં ગયા પછી સામસામો પથ્થરમારો ચાલુ થઈ ગયેલ. આ પથ્થરમારો પોણા બે થી બે કલાક ચાલેલ. પથ્થરમારો થતો હતો ત્યારે હું સોસા. માં આવેલા ફલેટ ના ધાબા પર હતો અને અમે પણ સામા પથ્થરમારતા હતા. તે પછી પાછળ રેલવે લાઈન તરક આવેલા કોટ પર કોઈએ ગેમનો બાટલો લટકાવેલ જેથી ਮੇਂ કોઈએ બાટલો સળગાવીને દીવાલ તોડેલી નીચે આવીને જોચેલ. અને તે વખતે આગળ ના ભાગથી પણ કોઈએ ગેટ તોડેલ અને બંને તરફથી લોકો અંદર આવતા હતા. જેથી હું એહસાન જાફરી ના મકાનમાં જતો રહેલ. તે મકાનમાં દું ગયો ત્યારે પાંત્રીસ ચાલીસ માણસો હતા. અમે મકાનમાં ગયા બાદ મકાન નો દરવાજો બંધ કરી દીધેલ. તે સમયે બહાર ટોળ આવેલ. તે લોકો એ મકાન ને આગ લગાડેલ. તેના થી ખૂબ ધૂમાડો થયેલ અને મકાન ની અંદર પાંત્રીસ ચાલીસ માણસો હતા તે માણસો મરણ ગયેલ. હું પણ દાઝી ગયેલ. મારા બંને પગે તથા ખભાના ભાગે હું દાઝી ગયેલ. ટોળાના માણસો પાસે ભાલા અને બીજા હથીચારો હતા."

189. It is pointed out that the witness has thereafter testified as to how the Police arrived at the scene of the incident and escorted the survivors of the incident to safety. My attention is drawn to paragraphs 6 and 7 (both reproduced verbatim herein below) of the testimony of this witness.

"૬. તે પછી પોલીસવાળા બહાર આવી વ્હીસલ વગાડતા

દતા પરંતુ હું દાઝી ગચેલ તેથી મને સંભળાતુ નદતુ. તે પછી હું પાછળની બાજુએ બદાર નીકળતા હું પડી ગચેલ. તે પછી મારા પપ્પા અને ભાઈ વગેરે મને ઉપાડીને લઈ ગચેલ. જે ગુલબર્ગ સોસા. ની અંદર આવેલ ખુલ્લા મેદાનમાં લઈ ગચેલ. ત્યાં વાનમાં બેસાડેલા જેને પંચર કરી દીધેલ પછી અમને પોલીસ ની વાનમાં બેસાડેલા.

૭. ત્યાંથી અમને શાહીબાગ લઈ જતા હતા ત્યારે રસ્તામાં માણસો જવા દેતા નહતા. આ લોકો પેટ્રોલ બોમ્બ અને એસીડ ની બોટલો ફેંકતા હતા. પોલીસે ટીચરગેસ ના સેલ છોડેલા અને રસ્તો કરતા કરતા અમને શાહીબાગ લઈ ગયેલ. જયાં દરીયાખાન ઘુમટ રાહત કેમ્પમાં લઈ ગયેલા ત્યાં ડોકટરે મારી સારવાર કરેલી."

190. My attention is thereafter more particularly drawn to paragraph-8 (reproduced verbatim herein below) of the testimony, where the witness has produced his present treatment certificate issued by the V.S.Hospital and has positively identified Kapil Munna (A-50) as present in the Court in the course of his testimony.

"૮. આ બનાવ અંગે તા. ૧૧/૩/૦૨ ના રોજ પોલીસે મારો પઠેલો જવાબ લીધેલ. તે પછી ખાસ તપાસ દળના અધીકારી એ જુઠાપુરા મુકામે મારો જવાબ લીધેલ. પોલીસે મારો જવાબ લીધો ત્યારે મેં મને આપવામાં આવેલ સારવાર નુ પ્રમાણપત્ર આપેલ તે રજુ કરેલ જે મને બતાવવામાં આવે છે તે રજુ કરુ છુ જે દુ રજુ કરુ છુ તેને માર્ક 'એ' આપવામાં આવે છે. દું આરોપી કપીલ ને ઓળખી શકુ. દુ કોર્ટમાં ઠાજર આરોપી કપીલને ઓળખી બતાવુ છુ."

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191. Now my attention is also drawn to the testimony of the witness Rashidabanu Dilawar Shaikh i.e. PW-301 whose testimony is on the record of the proceedings at Exh.1046. According to Shri Kodekar, this witness has testified with regard to the sequence of events that took place on the fateful day i.e. on 28/02/2002 and more particularly my towards the attention is drawn contents of paragraph-3 (reproduced verbatim herein below) onwards where according to Shri Kodekar, the witness has further strengthened the Prosecution case by faithfully corroborating the version of events supplied and testified to by the previous witnesses. is also eye-witness The witness an and has identified a large number of accused from amongst the accused present in the Court. My attention is drawn to paragraph-4 (reproduced verbatim herein below) of the testimony of the present witness, more particularly on page-4, where the destruction and setting on fire of the autorickshaw of Gulam Master narrated and the witness according to is Shri Kodekar, has specifically identified Kapil Munna (A-50), Suresh Dhobi (A-52), Ambesh (A-32) and Dharmesh (A-47) as amongst the members of the mob. The witness has testified that she knew all four such accused right since their very childhood and was therefore, in a position to positively identify such accused. She has identified Kapil Munna (A-50), Ambesh (A-32) and Dharmesh (A-47) positively in the

Court in the course of her testimony whereas the witness is not in a position to identify Suresh Dhobi (A-52).

"3. તા.૨૮/૨/૦૨ ના રોજ સવારના મેં અમારા કપડા ધોયેલા. મારા ત્યાં કપડા વધારે હોવાથી મારા ઘરની રસ્સી પર કપડા આવેલ નહી જેથી હું ગુલામમાસ્ટરના ધાબા પર કપડા સુકવવા ગયેલ. તે સમયે સવારના દસ સવા દસ વાગ્યા હશે. મેં ગુલામમાસ્ટરના ધાબા પર થી જોયુ તો પચીસ ત્રીસ છોકરાઓ અસારવા બાજુથી આવતા હતા અને ઓમનગર બાજુ જતાં હતા. તે છોકરાઓ ઓમનગરથી પાછા આવેલા અને અંકુર સાયકલવાળાના છોકરાને દુકાન બંધ કરવા જણાવેલ. અંકુરસાયકલવાળાનું નામ એકનુ યુસુફ અને બીજાનુ અયુબ. આ છોકરાઓએ ટોળાને કહેલ કે, શટરતો બંધ છે અને આ મારા ઘરનું બારણુ છે. જેથી તેમાં હાથા પાઈ યાલવા લાગી અને છોકરાને મારવા લાગેલા. કોઈ અજાણ્યા માણસે અયુબને ગુપ્તી મારેલ. ગુપ્તી પાછળની બાજુએ મારેલ. પછી યુસુફ તેનો હાથ છોડાવીને સોસા. તરફ ગયેલ અને અયુબ તેના ઘરમાં જતો રહેલ.

જણાવે છે. હું કોર્ટમાં હાજર આરોપી પૈકી ધર્મેશને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતાં ધર્મેશ હોવાનુ જણાવે છે.

(નોંધ: તમામ આરોપીઓને લાઈનના ક્રમ પ્ર માણે ઉભા કરીને બતાવવામાં આવેલા છે. સાહેદે ઉપર મુજબ ત્રણ આરોપીને ઓળખેલા છે જ્યારે ચોથા આરોપી નામે સુરેશને ઓળખી શકેલ નથી."

192. Drawing my attention to paragraph-6 (reproduced verbatim herein below) of the testimony of this witness, it is submitted by Shri Kodekar that specific overt acts on the part of Kapil Munna (A-50) and Suresh (A-52) who are claimed to have drawn petrol from the autorickshaw, having poured it thereupon and the specific overt act on the part of Ambesh (A-32) and Dharmesh (A-47) in setting afire the autorickshaw, is specifically testified to by The witness the present witness. has further corroborated the Prosecution version when she has deposed that at this point of time, the Police attached to the Police Chowky near Gulbarg Society came over and put out the fire to the autorickshaw and had also dispersed the mob as is emerging from paragraph-6 of the deposition of this witness.

"૬. ગલીમાં રીક્ષા અને લ્યુના પડ્યુ હતુ તે લ્યુના માંથી કપિલ અને સુરેશે પેટ્રોલ કાઢી રીક્ષા પર છાંટેલ. અને તે પછી ધર્મેશ અને અંબેશે તેને આગ લગાડેલ. ત્યાં સામે પોલીસ ચોકીએથી પોલીસ આવેલ અને તેમણે આ આગ ઓલવી નાખેલ. અને પોલીસે ટોળાને ભગાડી મુકેલ."

193. The horrific events that took place thereafter are narrated by the witness according to Shri Kodekar, in paragraphs 7 to 9 (all reproduced verbatim herein after) of the testimony. The witness and her family members having gone to Gulbarg Society to take shelter, the fact of a large mob having gathered outside Gulbarg Society which mob was armed with sticks, guptis, swords and cans of petrol and kerosene, are narrated by the witness in paragraph-9 of her testimony.

"૭. તે બાદ હું મારા ઘરમાં આવેલ. હું ઘરમાં આવીને મારુ ખાવાનુ બનાવવા લાગેલ. ત્યારથી બહારથી અવાજ આવેલ કે, જાફરીસાહેબના ઘરે બે ચાર પોલીસની ગાડીઓ આવેલ છે. એટલે હું જોવા ગચેલ. મેં જોચુ તો જાફરીસાહેબ,ફકીરમહમદ અને બીજા બે ચાર ગુલબર્ગ સોસા.ના રહેવાસી સાહેબ સાથે વાત કરતા હતા. તે પછી હું ઘરે ખાવાનું બનાવવાનુ હોવાથી ઘરે પાછી આવી ગચેલ.

૮. તે પછી ગુલામમાસ્ટરનો છોકરો આવેલ. અને તેણે કહેલ કે, ફકીરમહમદચાચા એ કહેલ છે કે, નાના છોકરાઓ અને સ્ત્રીઓને સોસા.માં મોકલી દો. જેથી ત્યાં જવુ સારુ લાગતાં હુ અને ગુલામ માસ્ટરની વહુ, મારીસાથે મારી દીકરી, ગુલામ માસ્ટર તેમના કુટુંબના સભ્યો તે રીતેના અમે ગુલબર્ગ સોસા.માં ફકીરમહમદચાચા ના ઘરે ગયેલા. અમારી સાથે ચાલીસ થી પચાસ સ્ત્રી પુરુષો હતા જે ફકીરમહમદચાચા ના ઘરે ગયેલા.
૯. અમે ફકીરમહમદચાચાને ઘરે ગયા તે પછી ત્યાં પથ્થરમારો ચાલતો હતો.. તે સમયે અસારવા અને ઓમનગર બંને તરફથી

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ટોળા આવેલા. આ ટોળામાં બેચાર હજાર જેટલા માણસો હતા. ટોળાના માણસો પાસે, તલવાર, ગુપતી,લાકડી, પેટ્રોલ કેરોસીનના કેરબા હતા. આ ટોળામાંથી અમુકને મેં નામથી ઓળખેલા અને અમુક ને મેં જોચેલા પણ તેમના નામની ખબર નથી."

194. The witness in terms of paragraph-10 (reproduced verbatim herein below) of her testimony, according to Shri Kodekar, has positively identified Naran Channelwala (A-43), Gabbar Mochi (A-14), Prabhu Mochi (A-26), Ambesh (A-32), Suresh (A-52), (A-50), Kailash Kapil Munna Dhobi (A-1) and absconding accused Ramesh Choti together with Mangilal (A-25) as being the persons of such mob. The witness has in the course of her testimony in paragraph-11 (reproduced verbatim herein below), according to Shri Kodekar, has positively identified Kapil Munna (A-50) and Ambesh (A-32) as also has identified Krishna (A-34) and Sonu (A-21) as being the members of the mob on that day, such persons being identified in the Court in the line-up by the witness. The witness, according to Shri Kodekar, has also positively identified in the Court Naran Channelwala (A-43), Dharmesh (A-47) and Suresh (A-52) as present in the court. In addition thereto, accused No.56 is also identified by the witness as being amongst the mob on the fateful day. The witness however, has not identified Pradip Khanabhai (A-56) by specific name.

"૧૦. મેં આ ટોળામાં નારણચેનલવાળો, ગબ્બર મોચી, પ્ર ભુ મોચી, અંબેશ, સુરેશ, કપીલ ,કૈલાશ ધોબી, રમેશ ચોટી, માંગીલાલ દુકાનવાળા, આ સીવાય બીજા નામ હાલ મને ચાદ આવતા નથી. હું જોયેથી ઓળખી શકુ.

૧૧. દું કોર્ટમાં હાજર આરોપી પૈકી કપીલ, અંબેશ, ને ઓળખી બતાવુ છુ. છેલ્લી લાઈનમાં ચોથા નંબર ના પીળી બંડી પહેરેલ છે તેઓ પણ ટોળામાં હતા આરોપીને તેનુ નામ પુછતા ક્રિષ્ના જણાવે છે. છેલ્લી લાઈનમાં ખાખી શર્ટવાળા ભાઈ ટોળામાં હતા આરોપીને તેનુ નામ પુછતા સોનુ ઉ.સંદીપ ઘુંઘરુવાળવાળો જણાવે છે."

195. Drawing my attention to paragraphs 18 and 19 (both reproduced verbatim herein below) of the testimony of the witness, it is pointed out by Shri Kodekar that the incident where the mob had indulged in stone pelting and throwing of burning rags at the Society, and the fact of the witness and others gathering in the compound of the Society is narrated by the witness in paragraph-18, page-8 of her testimony.

"૧૮. આ ટોળુ પથ્થરમારો કરવા લાગેલ અને સળગતા કાકડા ફેંકવા લાગેલ. ટોળાના માણસો મારો કાપોની બુમો પાડતા હતા. અમે ફકીરમહમદચાચાના ફલેટમાં એકાદ કલાક જેટલુ રહેલા. આ ફલેટમાં નીચેના ભાગે એક ઈલે.ની દુકાન હતી. તે દુકાનમાં આગ લાગેલ. એટલે અમે નીચે ઉતરેલા. અમે નીચે ઉતરીને સોસા.ના મેદાનમાં આવેલા. જ્યાં અમે એકાદ કલાક જેવું રહેલા. એ દરમ્યાન બંને તરફથી પથ્થરમારો થતો

હતો. તથા સળગતા કાકડા પણ ફેંકતા હતા તેમજ બાટલીઓ પણ ફેંકતા હતા. આ પથ્થરમારો બંને તરફ એટલે કે, સોસા.ની આગળ રોડ તરફ અને પાછળ રેલવે તરફ થી પથ્થરમારો થતો હતો. આ ટોળા સોસા.ની બહારથી પથ્થરમારો કરતાં હતા.

૧૯. આ ટોળુ અગીચાર સાડા અગીચાર વાગે બહારનો ગેટ તોડી સોસા.માં ઘુસેલ. પાછળની બાજુ પણ ધમાકો થતાં દીવાલ તુટવાની અમને બીક લાગેલ. જેથી અમે વ્હોરાજીના મકાનમાં પહેલા માળે જતા રહેલા. આ વખતે બપોરના દોઢ વાગ્યાનો સમય થયેલ. અમે વ્હોરાજીના મકાનમાં ગયા ત્યારે પહેલા માળે અમારી સાથે ગુલામમાસ્ટરનું કુટુંબ હતુ તેમજ ફકીરમહમદચાચાનો પરીવાર પણ અમારી સાથે હતો. તથા બીજા માણસો પણ હતા."

196. Drawing my attention to paragraph-20 (reproduced verbatim herein below) of the deposition, Shri Kodekar points out that the witness has narrated as to how the mob attempted to set an explosion of one of the gas cylinders in the residence of a member belonging to the Vohra community and which was prevented by the present witness. The witness also claims that the witness had carried away a utensil containing about two kilograms of red chilly powder. According to the witness, the powder was dissolved in a bucket of water and in terms of paragraph-21 (reproduced verbatim herein below) of the testimony, the witness has testified that she was able to prevent the mob

from damaging the property by throwing such water containing chilly powder upon the mob. The witness claims that at that time, all the persons of the mob had their faces covered with the cloth on account of which she could not identify any of the persons. The witness claims that thereafter, some liquid was thrown at the witness which caused burn injuries to the witness and consequent thereto she heard the sound of Police whistles and the witness claims to have thereafter been escorted to safety by the Police.

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અમે વ્હોરાજીના મકાનમાં ઉપર હતા ત્યાં ટોળૂ આવેલ. અને તે તોડફોડ કરવા લાગેલ. તે પછી થોડીવારે અવાજ બંધ થતાં હું બહાર નીકળેલ અને બહાર નીકળી મેં જોયુ તો ગેસના બાટલા પર કપડુ લગાડેલ હતુ અને ટોળુ તેને સળગાવતુ હતુ. આ ટોળુ જે ગેસનો બાટલો સળગાવવા પ્રચત્ન માણસોને ઓળખેલ പല કરત તેના કારણકે à ટોળાના મોઢે કપડા બાંધેલ હતો. ગેસનો બાટલો ન કુટે તે માટે મેં માણસોએ ગેસના બાટલા પરનુ કપડુ બહાર ફેંકી દીધેલ અને બાટલો રુમમાં લઈ ગયેલ તે સમયે મારી સાથે ગુલામમાસ્ટર ના વઠુ ઠતા. તે પછી હું મરચાનો ડબ્બો લઈ અંદર જતી રહેલ અને મેં બારણુ બંધ કરી દીધેલ. આ ડબ્બો બે કીલો મરચાનો હતો.

ર૧. મેં અંદરથી દરવાજો બંધ કર્યા બાદ ટોળુ ફરીથી ઉપર આવેલ. ટોળુ હથીચાર થી બારણા પર ધા કરવા લાગેલ. જેથી દરવાજામાં થોડો ખાંચો પડી ગચેલ. જે ઉપરની બાજુ પડેલ. જેથી મેં એક ડોલમાં પાણી લઈ તેમાં મરચુ નાખી તે ફેંકવા માંડેલ. જેથી ટોળાના માણસો જતા

રદેલા. આ ટોળુ આવેલ તે ટોળાના માણસોના મોં પર કપડા હતા જેથી મેં કોઈને ઓળખેલા નહી."

197. Drawing my attention to paragraph-24 (reproduced verbatim herein below) of the testimony, it is pointed out that the witness has testified that the witness saw a large number of dead bodies strewn about in the residence of Shri Ehsan Jafri, of which some dead bodies were having clothes thereupon whereas number of dead bodies did not have any clothes thereupon. The witness has positively identified, according to Shri Kodekar, the dead body of one Anwarbhai as the fact of the witness being escorted to the refugee camp emerges from the testimony contained in paragraph-25 (reproduced verbatim herein below) of the deposition.

"ર૪. નીચે આવીને મેં જોયુ તો ત્યાં માટીમાં લાશો પડેલ હતી જેમા અમુક જણા પર કપડા હતા અને અમુક જણા પર કપડા ન હતા. મેં નીચે ઉતરી ત્યારે જાફરી સાહેબનું ઘર જોચેલ. ત્યાં બહાર લાશો પડેલ હતી. મેં નીચે ઉતરીને મારા પરીવારના માણસોને શોધતા મને મારો મોટો છોકરો ફિરોઝ જોવા મળેલ નહી. જેથી મેં મારા દીકરા જાકીર તથા નવાબને ફિરોઝને શોધવા માટે જણાવેલ. મારા દીકરાને શોધતાં તે જાફરીસાહેબના મકાનના પાછળના ભાગે મકાનની બહાર બેભાન હાલતમાં પડેલ હતો. હુ જાફરીસાહેબના મકાન તરફ ફિરોઝને શોધવા ગઈ ત્યારે ત્યાં ચારેબાજુ લાશો પડેલ હતી અને મકાનમાંથી ધુમાડો નીકળતો હતો. મેં ત્યાં અનવરભાઈ, એક માજી જેમના નામની ખબર નથી તેમની લાશ ઓળખેલી.

મેં ફિરોઝને બેહોશ જોયો ત્યારે તે પગે, હાથે બધે દાઝી ગયેલ હતો. મેં મારો દીકરો દાઝી ગયેલ હતો તેને પાણી છાંટેલ.

રપ. પોલીસે ગાડી બોલાવેલ અને તેમાં બેસવા જણાવેલ ત્યારે ગાડી પર પથ્થરમારો થતો હતો. પોલીસ ગાડીામાં અમને શાહીબાગ પો.સ્ટે. લઈ ગયેલ. શાહીબાગ લઈ જતા હતા ત્યારે ટોળુ પથ્થરમારો કરતુ હોવાથી હુ વાન લઈ નહી લઈ જઈ શકુ તેમ કહેલ. જેથી પોલીસે ટીયરગેસ છોડેલા અને હવામાં ફાયરીંગ કરેલ. શાહીબાગ પો.સ્ટે.થી અમને દરીયાખાન ઘુમટ લઈ ગયેલા. મારા દીકરા ફિરોઝે રાહતકેમ્પમાં સારવાર લીધેલ."

198. It is urged that this witness is also required to be relied upon inasmuch as, not only she has identified a large number of accused as being the perpetrators of the offence but specific overt acts are also attributed to each of such accused by the witness. Tt. is submitted that in the circumstances, there is no reason to discard the testimony of this witness also.

199. My attention is drawn to the testimony of the father of the above two witnesses i.e. PWs 241 and 301. However, Shri Kodekar has conceded that the witness Dilawarbhai Sikanderbhai Shaikh whose deposition is on the record of the proceedings at Exh.978, was sought to be declared hostile by the Prosecution. However, it is submitted that in the course of his testimony, the witness has positively identified some of the accused, he has narrated some

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of the events accurately and in the circumstances, the testimony of such witness even though he is declared hostile, cannot be discarded in its entirety. It is pointed out that the witness has not been very accurate in his description, but the witness has identified in the course of his testimony Kali Dhobi Dahyalal (A-52), Kapil Munna (A-50), Dharmesh (A-47), Naran Channelwala (A-43) as being the members of the mob. It is pointed out by Shri Kodekar that after the witness was declared hostile, the witness was cross examined by the then Special P.P. Shri R.K.Shah and the witness has clearly identified Naran Channelwala (A - 43), Dharmesh (A-47) positively in the Court, whereas Kapil Munna (A-50) is wrongly identified and the witness has identified Kailash Dhobi (A-1) as Kapil Munna (A-50). The witness has also identified Rajesh Dayaram Jinger (A-65) in the Court. It is pointed out that to this extent, the testimony of this witness is required to be accepted as corroborative piece of evidence.

200. My attention is now drawn to the testimony of two very important eye-witnesses whose narratives, according to Shri Kodekar, are required to be given special attention since their plight has been greatly brought up and correctly brought out before the Court in terms of their testimonies.

201. Shri Kodekar is drawing my attention to the testimonies of PW-337 Zakia Nasim, the widow of Shri Ehsan Jafri, whose testimony is on the record of the proceedings at Exh.1463 and the testimony of PW-107 Roopaben, wife of Dara Modi, whose testimony is on the record of the proceedings at Exh.548.

202. It is pointed out by Shri Kodekar that both these witnesses have lost members of their family, have been eye-witnesses to the horrific incident and both these witnesses are honest and truthful witnesses inasmuch as, they have not been able to identify any of the accused as perpetrators and therefore, it is required to be accepted that the Prosecution witnesses are largely truthful, reliable and their version is required to be accepted in toto. It is submitted that both these witnesses have suffered greatly inasmuch as, PW-337 Zakia Jafri is the widow of Shri Ehsan Jafri whereas PW-107 Roopaben lost her son in the incident inasmuch as, her son is missing and is therefore, required to be presumed to be legally dead. It is pointed out that both these witnesses have positively narrated in a truthful manner the entire sequence of events that took place on the day of the incident and both of them have clearly narrated the role or more particularly the negative role of P.I. Shri K.G.Erda (A-57) who was arraigned as an accused

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at a later stage. It is submitted that both these witnesses have narrated in the course of their testimony, the incomplete investigation on the part of the Police authorities, the inactivity on the the Police authorities in providing part of protection to the residents of Gulbarg Society and is pointed out that both these witnesses have it seen before their own eyes a large number of deaths, more particularly PW-107, whereas PW-337 being confined on the first floor of her residence, was able to see the incident but has suffered not equally on account of the fact that the entire incident was centered largely around her residence, she saw large number of bodies strewn all over the place when she came out being escorted to safety and the fact of her husband who was the former Member of Parliament and respected member of the Society not being traceable, are all the reasons whereby the testimonies of both these witnesses should be accepted in their entirety in accepting the Prosecution version and therefore, it is urged that the circumstances, the Prosecution must in be accepted to have established beyond reasonable doubt all the charges against all the accused. It is submitted that in the circumstances, though both the witnesses have not identified any accused, nor have been able to attribute a specific overt act to any particular or specific accused, even the generality of their testimonies should be accepted as genuine and as portraying a correct picture of the events on

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the day of the incident. It is submitted that both the witnesses have withstood the test of cross examination and cumulative weightage of these testimonies establishes beyond any reasonable doubt the sequence of events that transpired on 28/02/2002 and also establishes beyond reasonable doubt the involvement and guilt of all the accused in the offence that they stand charged with.

My attention is drawn particularly to 203. PW-107, the testimony of more particularly paragraph-24 (reproduced verbatim herein below) on page-16, where the incidents on account of which P.I. Shri Erda (A-57) narrated the names of accused No.59 and 54 as being involved in the incident, are It is pointed out that in terms of narrated. paragraph-25 (reproduced verbatim herein below) of her deposition, this witness has further identified in the Court all the three accused in the shape of accused No.57, 59 and 54, and therefore also, this witness has portrayed herself as a correct and truthful witness inasmuch as, she has not exaggerated nor has she attempted to falsely implicate any of the accused.

"૨૪. બનાવ ના ત્રણચાર મહીના પછી શ્રી કે.જી.એરડાનો અમારા સગા વહાલાને ત્યાં ફોન આવેલ. અને એમ જણાવેલ કે, તમારા બાબા વિશે મારે થોડુ લખાણ લખાવવુ છે. જેથી મેં બીજા દીવસે મારા સાસરે શાહપુર નુ સરનામુ આપેલ. શ્રી કે.જી.એરડા મને બીજા દીવસે શાહપુર બ્હાઈ સેન્ટર

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ખાતે મળેલા. તેઓ મને તથા મારી દીકરી ને તેમની સીલ્વર કલર ની ગાડીમાં મેઘાણીનગર કોર્ટમાં લઈ ગયેલા. ત્યાં મને એક ટેબલ પાસે બેસાડેલી. તેઓ હાથ થી એક લખાણ લખી ને લાવેલા. તે લખાણમાં તેમણે સહી કરવાન્ જણાવેલ. જેથી મેં વાંચવાનો આગ્રદ રાખેલો. તેમાં લખેલ દતુ કે, અમે ત્રણ વાગે બચાવવા આવેલા. ત્યારે મેં તેમને એમ કદેલ કે, તમે ત્રણ સાડા ત્રણે બચાવવા આવ્યા હોત તો અમે ઘણા બધા બચી ગયા હોત. તે પછી તેમણે તે એફીડેવીટ ફાડી નાખેલ. ત્યાર પછી તેમણે વકીલ ધ્વારા બીજુ લખાણ લખાવેલ. તેમાં પોલીસ પાંચ વાગે આવેલ અને ત્રણ ગાડી ભરી તેમ લખેલાનુ જણાવેલ. મે આનાકાની કરતાં બધાને બચાવેલ. તેમણે મને જણાવેલ કે, તમારી સોસા. પર હુમલો કરનાર ને હુ જાણુ છુ તેનુ નામ અતુલ વૈધ અને ભરત તૈલી છે. દુ તમને તેમની સાથે ભેગા કરી આપીશ. તેમણે મારા દીકરા ની લાલચ આપેલી જેથી તેમણે જેમ કહ્યુ તેમ મે સહી કરી દીધેલ. તે પછી તેઓ તેમની ગાડીમાં મને એક ઓફીસે લઈ ગયેલા. ત્યાં તેમણે અતુલ વૈદ અને ભરત તેલી ની મુલાકાત કરાવેલી. તેમને મેં મારા બાબા એ લાલ ટી શર્ટ પહેરેલ તેમ જણાવી મારા બાબા નો ફોટો અને પોસ્ટર આપેલા. તેમણે મને જણાવેલ કે, અર્ધા ભાગતા ફરે છે અને અડધા જેલમાં છે તેમને પુછીને તમને જણાવીશ. તેમ કહેલ.

રપ. મારો દીકરો અઝર આજસુધી મને મળેલ નથી કે, મેં તેના વીશે કાંઈ સાંભળેલ નથી. હુ એરડા સાહેબ ને ઓળખી શકુ. કોર્ટમાં હાજર શ્રી કે.જી.એરડા ને સાક્ષી કોર્ટમાં ઓળખી બતાવે છે. હુ અતુલ વૈદ અને ભરત તેલી ને ઓળખી શકુ. હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી અતુલ વૈદ ને ઓળખી બતાવુ છુ આરોપી ને તેનુ નામ પુછતા અતુલ વૈદ હોવાનુ જણાવે છે. હુ કોર્ટમાં હાજર આરોપી ઓ પૈકી ભરત તૈલી ને ઓળખી બતાવુ છુ. આરોપી ને તેનુ નામ

પુછતા ભરત તૈલી હોવાનુ જણાવે છે."

204. Shri Kodekar submits that he would now draw the attention of this court to the testimonies of some of the eye-witnesses who despite being eyewitnesses, are not able to identify a single accused nor have they accurately attributed any specific overt act to any of the accused, but have given a general picture about the sequence of events that took place on the day of the incident. It is pointed out that in the circumstances, these witnesses though having not provided any direct evidence with regard to the guilt of the accused, have given substantial corroborative and material evidence to the overwhelming evidence of the other witnesses and it is urged that in these circumstances also, the testimony of such witnesses gives further weightage to the testimony of the witnesses referred to herein before.

205. In connection with such submissions, my attention to Shri Kodekar has drawn the testimonies of PWs No.117, 152, 187, 189, 194, 213, 234, 236, 262 and 295 respectively being Ayubkhan Habibkhan Pathan, Yusufbhai Badarbhai Pathan, Yunusbhai Valibhai Patel, Yusufbhai Mohammadbhai Patel, Habibkhan Bhurekhan Pathan, Tasaddukhussain Mulla Tahifali Surohi, Anis Fatima Tasaddukhussain, Safdarhussain Fazluhussain, Maulana Yakub Akbar

Vijapura and Sabirkhan, whose testimonies are on the record of the proceedings respectively at Exhs.588, 681, 729, 731, 739, 763, 813, 815, 909 and 1031.

206. It is pointed out that the testimony of these witnesses also greatly supports and corroborates the Prosecution version. It is pointed out that from other sets of witnesses, the witnesses comprising of Panch witnesses, scientific experts in the shape of forensic experts and medical experts and Investigating Officers, are required to be examined further in an effort to establish beyond reasonable doubt the charges against the accused and further in an effort to interlink the accused, their presence at the scene of the incident, specific overt acts attributed to each of them and the conspiracy being entered into by all of them to commit the horrific carnage on 28/02/2002. It is pointed out that the testimonies of such groups of witnesses would establish beyond reasonable doubt the case of the Prosecution.

207. After drawing my attention to the eyewitnesses' testimony in terms of the deposition of the witnesses referred to herein above, Shri Kodekar submits that the clinching material in the shape of corroborative evidence which clearly establishes that the entire incident was a pre-planned conspiracy and the involvement of the accused in

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such conspiracy emerges from the testimony of a journalist Mr.Ashish Sureshchandra Khaitan who has been examined on the record of the present proceedings as PW-313 whose deposition is on the record at Exh.1091.

208. It is pointed out by Shri Kodekar that the journalist concerned i.e. the present witness had conducted a detailed investigation into the entire incident and in continuation and furtherance of such investigation, the witness had carried out a sting operation on some of the involved accused whereby the correct state of affairs has been brought to light. It is pointed out by Shri Kodekar that in the course of the testimony, the present witness has also narrated and reproduced the entire transcript of all the recordings that took place during the various dates and stages of the sting operation involving some of the accused and it is urged by Shri Kodekar that it would be necessary for the Court to reproduce such transcript for its convenience. I have noted such submissions made on behalf of Prosecution and at this juncture, I do not think it imperative in any manner to reproduce in its entirety the transcript while delivering the in the present proceedings judgment if at all relevant portions can be reproduced to establish the Prosecution case or otherwise. In my opinion, therefore, what is material is as to whether the

material in the shape of compact disks and other material used while conducting the sting operation and the data emerging therefrom, the results of the Forensic Science Laboratory with regard to the voice spectrography carried out on the concerned accused and witnesses are required to be considered in detail while coming to a conclusion as to whether the sting operation was genuine or not and as to whether the material can be considered as a corroborative material to establish the Prosecution case.

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209. While perusing the testimony of PW-313, it emerges that the witness at the time of his deposition, was gainfully employed with a TV News Channel "AAJTAK" and at the relevant time when the sting operation was conducted, the witness was investigative employed with another journal functioning from New Delhi under the name and style of "Tehelka News Magazine". Shri Kodekar points out that the witness has given total material in the course of his testimony which would establish as to how the witness came into contact with relevant Heads of organizations like the Vishwa Hindu Parishad and RSS and also thereby came into contact with some of the accused who were made to openly admit their role in the incident. My attention is pointed out by Shri Kodekar to the relevant portions of the testimony of the present witness where the

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witness has conducted a sting operation on Mangilal Jain (A-25), Prahlad Raju (A-28), Madan Dhanraj (A-30). It is pointed out by Shri Kodekar that from the sting operation conducted with regard to the above referred three accused, further names of Atul Vaidya (A-59), Bharat Teli (A-54), Meghsing Dhupsing (A-58) and K.G.Erda (A-57) has come to light. It is pointed out by Shri Kodekar that the FSL reports on the record of the proceedings with regard to the authenticity and genuineness of the data gathered by the present witness is on the record at Exh.1380 and it is, therefore, required to be accepted without any controversy that the sting operation is а genuine one and the material gathered is not tainted and should form tampered with substantive or corroborative material to establish the charges against the accused. It is pointed out by Shri Kodekar that not only has the present witness established himself in the course of his testimony to be a reliable and truthful witness whose sole intention was to bring out the truth with regard to incident in question, but the witness has the withstood the test of cross examination, and it is pointed out that the witness has in the course of his testimony in the court, has identified all the accused on whom the sting operation was carried out. It is pointed out by Shri Kodekar that in the course of his testimony, the witness has vide the contents paragraph-35, paragraph-91 of on page-115, paragraph-92 also on page-115, paragraph-113 on

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page-125, paragraph-112 page-124 on as also paragraphs 114, 115 and 116 on pages 125 and 126 (all such paragraphs reproduced verbatim herein below), identified all the concerned accused in the Court and time and again the witness has clearly ascertained and clarified that the identities of the concerned accused emerging in the videos captured during the sting operation as also the audio contents thereof, are positively identified to be that of the concerned accused, all of whom are identified in the Court by the witness in the course of his testimony and it is urged that there is no reason to discard the testimony of this witness and this witness gives further corroboration and support Prosecution case against the concerned the to accused. It is submitted that the Prosecution case with regard to there being established the elements of a well-planned conspiracy between the accused are also established in the course of the testimony of the present witness. It is, therefore, submitted this evidence also goes that а long way in establishing the Prosecution charges against the concerned accused.

"3પ. મેં જે ત્રણ આરોપી સાથે વાર્તાલાપ કર્યો તેમને હું ઓળખી બતાવુ છુ હું કોર્ટમાં હાજર આરોપી પ્રહલાદ રાજુને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા પોતાનુ નામ પ્રહલાદ રાજુ હોવાનુ કબુલ કરે છે. હું કોર્ટમાં હાજર આરોપી મદન જૈન ને ઓળખી બતાવુ છુ. આરોપીને તેનુ નામ પુછતા મદન ધનરાજ હોવાનુ કબુલ કરે છે. હું કોર્ટમાં હાજર આરોપી પૈકી માંગીલાલ જૈન ને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા માંગીલાલ જૈન હોવાનુ કબુલ કરે છે.

૯૧. આ સ્ટીંગ ઓપરેશનમાં મદન ધનરાજ ચવલ, ના સ્ટીંગ ઓપરેશનનો ભાગ બતાવવામાં આવે છે. જેમાં પીકચર મદન ધનરાજ નો છે અને અવાજ પણ તેનો જ છે. જે હું ઓળખી બતાવુ છુ. સાહેદ આરોપી મદન ધનરાજને કોર્ટમાં ઓળખી બતાવે છે અને જણાવે છે કે, તેનું જ સ્ટીંગ ઓપરેશન કરવામાં આવેલ.

૯૨. આ સમાચારમાં પ્રહલાદ રાજુનો ફોટો આપવામાં આવેલ

છે. પણ તેનો અવાજ અને સ્ટીંગ ઓપરેશનનો ભાગ આ સીડીમાં નથી. ૧૧૨. ચીપ–૩ ફોલ્ડરમાં બે ફાઈલો છે. જેમાં પ્રથમ ફાઈલ રર મીનીટ અને પક સેકન્ડની છે. તેમાં પણ મદન ધનરાજ નું સ્ટીંગ ઓપરેશન છે. મારી ડાચરીમાં જે કેમેરો હતો તેનાથી વિડીચો કરેલ છે. હું વિડીચો જોઈને કહુ છું કે તે ડાચરીના વિડીચો કેમેરાથી લીઘેલ છે. તેમાં અવાજ અને દશ્ય મદન ધનરાજ ના છે.

૧૧૩. ચીપ–૩ ની બીજી ફાઈલ ૧૪ મીનીટ ૩૪ સેકન્ડની છે. તેમાં આરોપી પ્રહલાદ રાજુનું સ્ટીંગ ઓપરેશનની વિડીયો છે. પ્રહલાદ રાજુનો અવાજ અને દશ્ય હું ઓળખી બતાવુ છુ. આરોપી કોર્ટમાં હાજર છે. તેને ઓળખી બતાવુ છુ.

૧૧૪. ચીપ-૪ ખોલતાં તેમાં ત્રણ ફાઈલો છે. જેમાં પ્રથમ ફાઈલ ખોલતાં તેનો સમય ૧૫ મિનીટ અને ૧ સેકન્ડની છે. જેમાં, ત્રણેચ આરોપીઓ, માંગીલાલ જૈન, મદન ધનરાજ અને પ્રહલાદ રાજુ છે. આ વિડીચોગ્રાફી મારા શર્ટના બટનના કેમેરાથી કરેલ છે.

૧૧૫. ચીપ–૪ ની બીજી ફાઈલ ખોલતા તે ૧૫ મીનીટ

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અને ૧ સેકન્ડની છે. અને તે ત્રણેચ આરોપીઓનું સાથે સ્ટીંગ ઓપરેશન કરેલ તેને સંલગ્ન ફાઈલ છે. ત્રીજી ફાઈલ પણ તેને સંલગ્ન છે. તે ૧ મીનીટ પ૦ સ ેકન્ડની છે. જેમાં ત્રણેચ આરોપીઓ માંગીલાલ, મદન ધનરાજ અને પ્રહલાદ રાજુના અવાજ અને દશ્ય હું ઓળખી બતાવુ છુ.

૧૧૬. ચીપ-પ માં એક ફોલ્ડર છે. તેમાં એક ફાઈલ છે. તે ૧૪ મિનીટ જર સેકન્ડની છે. જે મારા બટન કેમેરાથી લીધેલ છે. તેમાં આરોપી પ્ર દલાદ રાજુ નું સ્ટીંગ ઓપરેશન છે. તેનો અવાજ અને દશ્ચ ઓળખી બતાવુ છુ."

210. Shri Kodekar submits that with regard to the genuineness of the seizure of the DVDs and material from the sting operation carried out by PW-313, corroborating evidence is provided by the Prosecution in the form of testimonies of PW-336 being N.S.Raju who is an officer of the CBI, Mumbai and whose testimony is on the record of the proceedings at Exh.1377 and Dr.Shailendra Ramkishore Zha i.e. PW-338 whose testimony is on the record of the proceedings at Exh.1492. It is submitted that by such testimonies, the genuineness of the DVDs is established. It is pointed out by Shri Kodekar that in the circumstances, the entire chain of events which resulted in the sting operation being successfully carried out, the involvement of the accused being brought out on record by the accused themselves in the course of sting operation, are all established from the corroborative testimonies of

these two witnesses to be correct and genuine and therefore also, there is no reason to discard this valuable piece of evidence which establishes the conspiracy herein.

211. Shri Kodekar next draws my attention to the testimony of **PW-309** being one Laxmanbhai K. Pardhi whose testimony is on the record of the proceedings at Exh.1064, who has been the Executive Magistrate who arranged for and carried out the 05/02/2010 whereby the relevant T.I.Parade on witness identified accused No.66 in the course of the T.I.Parade which is established by the Panchnama Exh.1067 which has been drawn in that regard. The witness has testified, established and corroborated the T.I.Parade and the identification of accused in the course of such T.I.Parade. It is No.66 submitted that even this material is required to be considered and treated as a valuable piece of evidence whereby the Prosecution case is established beyond reasonable doubt.

212. Shri Kodekar submits that having provided sufficient material in the shape of testimonies of eye-witnesses, injured witnesses, victims who in turn were supported by corroborative material in the shape of a sting operation and further corroborated FSL analysis which by established and authenticated the genuineness of the sting operation, is now required to be correlated

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with the testimonies of the number of Investigating Officers who have investigated into the present offence from time to time and the cumulative effect of the investigation carried out by these officers clearly establishes beyond reasonable doubt the role played by each of the accused in the present offence and according to Shri Kodekar, it further establishes beyond reasonable doubt the charges against each of the accused.

213. My attention is firstly drawn to the testimony of **PW-328** being Mr.Narottam Dhulaji Parmar whose testimony is on the record of the proceedings at Exh.1164. It is submitted by Shri Kodekar that said witness is extremely relevant to the the incident inasmuch as, he was the P.I. in charge of the Meghaninagar Police Station on the date of the horrific incident. It is submitted that the witness was directed by his superior Officers to provide additional force and support at the ultra-sensitive localities of Ahmedabad city anticipating large scale violence post 27/02/2002 Godhra incident. It is pointed out that the witness has testified as to how the witness was largely posted at and within the jurisdictional area of Dariapur Police Station when the incident took place. It is pointed out by Shri Kodekar that the present witness has not been present at the scene of the incident during the course of the incident, but the witness has played a major role post incident inasmuch as, the then

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Senior P.I. attached to the Meghaninagar Police Station Shri K.G.Erda who has subsequently been arraigned as an accused herein, had entrusted the task of gathering material from the Dariakhan Ghummat relief camp and the witness has in furtherance of such process initiated by Shri Erda, proceeded to investigate herein and the witness has firstly initiated the process of identification of about 17 dead bodies and the bodies were sought to be identified from and by the persons who had taken refuge at the Dariakhan Ghummat shelter. A detailed panchnama regarding the process of identification of such witnesses, is according to Shri Kodekar, on the record of the proceedings at Exh.644 and the process identification of the witnesses is detailed of therein. Shri Kodekar has stated that the witness thereafter proceeded to record the statements of the relevant witnesses and victims and had also undertaken the process of handing over the dead bodies of the victims of the incident to the near and dear ones. The witness, according to Shri Kodekar, after recording statements of relevant witnesses, has in terms of his testimony and vide various reports which are on the record of the proceedings at Exhs.1189, 1190, 1191, 1192, 1193, 1194 and 1195, forwarded such statements together with his report to his superior officers.

214. Drawing my attention to paragraph-28 (reproduced verbatim herein below) of the testimony

Shri Kodekar submits this witness, of that the witness has proved and established the FIR which is on the record of the proceedings at Exh.1206 and the witness has thereafter forwarded the FIR to the Metropolitan Magistrate's Court and consequent thereto, the witness appears to have been divested of his powers as an I.O. and the investigation appears to have been handed over to a Senior Police Officer.

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"૨૮. હું મેઘાણીનગર પો.સ્ટે. માં બનાવ સમચે ફરજ બજાવતો હતો ત્યારે આ ગુનાની એફઆઈઆર તે સમચના પી.એસ.ઓ ઉદેસીંહ પ્રભાતસીંહ ના રુબરુ લખાચેલી જે અસલ એફઆઈઆર ફોર્મ નં.૧ પજ ના ફોર્મમાંમને બતાવવામાં આવે છે તે જ છે. તે પી.એસ.ઓના રાઈટરના હસ્તાક્ષરમાં લખાચેલ છે તે હસ્તાક્ષર હું ઓળખુ છુ જે ફરીચાદ દાખલ કરનાર તરીકે પીએસઓ ઉદેસીંહે સહી કરેલ છે. જેમની સહી હું ઓળખુ છુ તે અસલ એફઆઈઆર રજુ દાખલ આંક : ૧૨૦૬ આપવામાં આવે છે. જે પોલીસ સ્ટેશન તરફ થી મેટ્રોપોલીટન મેજી.ને મોકલી આપવામાં આવેલ તે જ છે. આ ફરીચાદની સ્ટેશન ડાચરીમાં એન્ટ્રી નં. ૧૦/૦૨ થી નોંધ કરવામાં આવેલ જે અસલ સ્ટે.ડાચરી મને બતાવવામાં આવે છે તે જ છે તેમાં પાનનંબર પ૧ પર એન્ટ્રી નં. ૧૦/૦૨ થી આ ફરીચાદની નોંધ કરવામાં આવેલ છે."

215. Shri Kodekar has further drawn my attention to the testimony of **PW-276** being Senior Police Officer Shri P.N.Barot whose testimony is on the record of proceedings at Exh.954 and who took over the investigation into the present offence.

Judgment

216. Drawing my attention to paragraph-2 (reproduced verbatim herein after) on page-2 of the testimony of this witness, Shri Kodekar submits that vide orders dated the witness was 07/03/2002, entrusted the investigation into the present offence. The witness, according to Shri Kodekar, has testified that the witness visited the scene of incident, obtained further remand of the arrested accused and it is pointed out that in the course of the investigation carried out by the witness, а drawn 11/03/2002 panchnama was on wherebv videography was carried out with regard to the scene of incident and a Panchnama was drawn in that regard is on the record of the proceedings at which Exh.524. It is pointed out that in the course of his investigation, the witness has recorded statements of large number of victims on 12/03/2002, the names such victims/witnesses are particularized of on page-7 off the testimony.

"૨. તા. ૨૭/૨/૦૨ ના રોજ અને તે પછી જે કોમ્યુનલ બનાવો બન્યા તે બનાવો વખતે એ.સી.પી. એ અને બી ડીવી. માં અમો ઉપરી અધિકારી શ્રી ના દુકમ આધારે બંદોબસ્તમાં રહેતા હતા. અને તે બંને ડીવી. ના રેગ્યુ. જે કાંઈ કામ હોય જેવા કે, ગંભીર ગુના ના વીઝીટીંગ, જાત તપાસ ના કેસો, વી.આઈ.પી., વી.વી.આઈ.પી. ના આગમન વખત ના બંદોબસ્ત પણ અમો કરતાં હતા. પો. કમી. શ્રી અમદાવાદ શહેર ના પત્રક્રમાંક જી/બરપ/સી.પી./૬૯૦/૦૨ તા. ૭/૩/૦૨ ના દુકમ આધારે નરોડા પો.સ્ટે.ફ.ગુ.૨. નં.૯૮/૦૨, ૧૦૦/૦૨ અને મેધાણીનગર પો.સ્ટે. ૬૭/૦૨ ના ત્રણે ગુના ઓની તપાસ અમારા એ.સી.પી. એ અને બી ડીવી ના

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ચાર્જ ની સાથે સાથે સોંપતો હુકમ થચેલ જે આધારે તા. ૮/૩/૦૨ ના રોજ સાંજના મેઘાણીનગર ૬૭/૦૨ ના ગુના ની તપાસ તે વખત ના તપાસ અધીકારી શ્રી કે.જી.એરડા પી.આઈ. પાસેથી અમો એ સંભાળેલી. તપાસ ના કાગળો , તથા અસલ કેસ ડાચરી અને શ્રી એરડા એ અટક કરેલ ત્રણ આરોપીઓ ઓ પણ સંભાળેલા. તપાસ કાર્ચવાઠી થી તેઓ શ્રી થી વાકેફ થચેલા."

217. The witness in terms of his testimony in paragraph-8 (reproduced verbatim herein below), further testifies, according to Shri Kodekar, with regard to the arrest of Kishor Patni (A-6), Mangaji Pokerji (A-4), Jayesh Patni (A-5) and also two other accused being Naranbhai Rathod and Kiran Nadia against whom the proceedings stand abated on account of their death pending proceedings. Such arrest, according to Shri Kodekar, had taken place on 12/03/2002 itself.

*૮. કેટલીક કલમો માં ઉમેરો કરવા માટે નામ. કોર્ટ ને ચાદી કરેલ. અમોએ આપેલ સુચના અનુસાર શ્રી ભાટી પો.સ.ઈ. એ આ ગુનામાં પકડવાના પાંચ આરોપી તા. ૧૨/૩/૦૨ ના રોજ લાવી રજુ કરેલ. તે તમામ આરોપીની પુછપરછ કરી તેમની શરીર સ્થીતી નુ પંચનામુ કરી આરોપી૧. કિશોરભાઈ મંગાભાઈ પટણી રહે. કડીચાની ચાલી, અસારવા, ૨. નારણભાઈ છનાભાઈ રાઠોડ, ગુજ.હા. કલાપી નગર, ૩. મંગાજી પોકરજી પ્ર જાપતિ, રહે. રામચન્દ્ર ટેકરા ચમનપુરા, ૪. જચેશ રામુભાઈ પટણી, રહે. ગુજ.હા. કલાપી નગર, ૫. કિરણભાઈ દીરાભાઈ નાડીચા, રહે. ગુજ.હા. કલાપી નગર ની આ ગુનામાં ક. ૧૯ વાગે અટક કરવામા આવી. તેમની આ

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ગુનાના અનુસંધાને પુછપરછ ચાલુ રાખેલી."

218. I.O. i.e. the The present witness, according to Shri Kodekar, had continued a detailed investigation into the offence and in terms of his testimony on page-7, the witness has specifically stated that statements of five of the victims particularized on page-7, paragraph-9 (reproduced verbatim herein below) were recorded by the witness. It is testified by the witness that Shailesh @ Kalu Patni (A-7), Kanaiya @ Bablu Madrasi (A-8), а juvenile accused Vijaykumar Prajapati, Kantibhai Popatbhai Patni (A-9) were all arrested and produced before the present witness who arranged for their custodial interrogation and got drawn a panchnama with regard to the arrest of the above four accused which panchnama is on the record of the proceedings Exh.415. The witness in the course of his at investigation, sought to obtain from the Ahmedabad Municipal Corporation the details of the residents of Gulbarg Society, Patrawali Chali, Municipal Slum Quarters and other premises particularized in paragraph-11 (reproduced verbatim herein below) of his testimony. The records of the Meghaninagar mobile vehicles were also made а part of the investigation by the present I.O. and the witness also arranged to forward the samples of relevant and material muddamal to the FSL for analysis and test thereupon. The accused No.10 Shakrabhai Sendhabhai

was arrested on 14/03/2002 in terms of the testimony of this witness.

"૯. તા. ૧૩/૩/૦૨ ના રોજ પો.કસ્ટડીમાંના પાંચે આરોપીઓને ઈન્ટરોગેટ કરવામાં આવેલા. સાહેદ કનૈયાલાલ જોઘ્ધારામ નુ નિવેદન લેવામા આવેલ. અને પાંચે આરોપીને મુદત અંદર કોર્ટ કસ્ટડીમાં રજુ કરી તા. ૧૯/૩/૦૨ સુધી નામ. કોર્ટ થી પોલીસ રીમાન્ડ મેળવેલા. આરોપીઓની પુછપરછ ગુના સબંધી ચાલુ રાખેલી. તે દીવસે એટલે કે, તા. ૧૩/૩/૦૨ ના રોજ નીચેના સાહેદો ના નીવેદન લેવામાં આવેલા.

- ૧. સુરૈયાબાનુ વા.ઓ. અસલમખાન અનવરખાન પઠાણ. રહે. ૧૮ ગુલબર્ગ સોસા.
- ર. અરવીનબાનુ ડો.ઓ. જહાંગીર ભાઈ નુરમહમદ સન્ધી. રહે. ૬ ગુલબર્ગ સોોસા.
- 3. હબીબ ખાન નુરખાન રહે. ડો.ગાંધીની ચાલી.
- જ. સલીમભાઈ નુરમહમદ સન્ધી રહે. ૩ ગુલબર્ગ સોસા.
- પ. અયુબ વલીભાઈ

અન્ય જે આરોપીઓ પકડવાના બાકી હતા તે બાબત તપાસ કરેલ પણ મળી આવેલ નહી.

૧૧. તા. ૧૪/૩/૦૨ ના રોજ મ્યુ. કમી. શ્રી ને યાદી લખેલ. ગુલબર્ગ સોસા., પતરાવાળી ચાલી, મ્યુ.સ્લમ કવા., સંતોકબેન ની ચાલી, ધુપસીંગ ની ચાલી, મામુપઠાણની ચાલીમાં, કચા મકાનમાં કોણ વ્યકિતઓ રહેતા હતા તે માહીતી રેકર્ડ પરથી મોકલવા જણાવેલ."

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Judgment

219. My attention is drawn to paragraph-18 (reproduced verbatim herein below) of the testimony of the present witness, where at that stage i.e. on or about 20/03/2002, about 53 persons were identified as perpetrators of the offence.

"૧૮. રેકર્ડ પરની માઠીતી ના આધારે કુલ ૫૩ જેટલા આરોપીઓ તપાસમાં જણાઈ આવેલા. પકડેલા આરોપી પૈકી ૧. વિજય પુષ્કરભાઈ પ્ર જાપતિ જુવેનાઈલ ઠોવાનુ જણાતા નામ. કોર્ટ ધ્વારા તેમને બાળઅદાલતમાં મોકલી આપવા જણાવતા તેમને બાળ અદાલતમાં મોકલી આપેલ."

220. Drawing my attention to paragraph-20 herein (reproduced verbatim below) of the deposition, Shri Kodekar submits that the accused No.11 Manoj Parmar, accused No.12 Dipakkumar Somabhai Solanki were both arrested on 18/03/2002 and the witness has further arrested accused No.13 Vinod Solanki and accused No.14 Jayesh @ Gabbar Jinger on the same day, their arrest panchnama being on the record of the proceedings at Exh.955.

* ૨૦. તા. ૧૮/૩/૦૨ ના રોજ આરોપી મનોજ પ્રેમજીભાઈ પરમાર ને પુછપરછ કરી આ ગુનામાં તેમને અટક કરવા જેટલો પુરતો પુરાવો હોઈ તેમની શરીર સ્થીતી નું પંચનામુ કરી ક. ૨૦ વાગે આરોપી ની અટક કરવામાં આવેલ. તે જ દીવસે આરોપી દીપકકુમાર સોમાભાઈ સોલંકી રહે. ઓમનગર ક્રોસીંગ પાસે છાપરામાં ને પો.સ.ઈ. શ્રી ભાટી એ રજુ કરતાં આ આરોપી વિરુધ્ધ પણ અટક કરવા જેટલા પુરતા પુરાવા હોઈ તેની પુછપરછ કરી તેની શરીર સ્થીતી નુ પંચનામુ કરી આરોપી ની અટક કરવામાં આવેલ."

221. Drawing my attention to paragraph-26 (reproduced verbatim herein below) of the testimony of this witness, it is further stated that the witness arranged to record the statements of number of victims and also secured the arrest of accused No.15 Ajay Somabhai Panchal.

"૨૬. શ્રી ભાટીએ આરોપી અજયભાઈ સોમાભાઈ પંચાલ ને રજુ કરતાં તેની પુછપરછ કરી શરીર સ્થીતીનુ પંચનામુ તા. ૨૦/૩/૦૨ ના રોજ ક. ૨૨ વાગે અટક કરવામાં આવેલ. આ માટે બે પંચો નામે એક, મોઠન ભજન શ્રી વાસ્તવ અને ભીખાભાઈ ખોડાભાઈ રાવત ને બોલાવેલા. તેમની દાજરીમાં આરોપી ની શરીર સ્થીતી તપાસી અટક પંચનામુ પોલીસ રાઈટર ના દસ્તાક્ષરમાં મારી રુબરુ તૈયાર કરવામાં આવેલ. પંચો એ મારી રુબરુ તેમાં સહી કરેલ. રુબરુ તરીકેની મેં મારી સહી પણ તેમાં કરેલ. તે હું અસલ પંચનામુ આજરોજ મારી સાથે લાવેલ છુ. તેમાં લખેલ હકીકત ખરી છે તે રજુ દાખલ આંક

: ૯૫૬ આપવામાં આવે છે."

222. attention is drawn the My to deposition of this particular witness more particularly paragraph-29 (reproduced verbatim herein below) on page-17 where the witness has testified with regard to the recovery of a weapon on 22/03/2002 from accused No.14 Jayesh Jinger which recovery was effected in terms of recovery panchnama drawn under Sec.27 of the Evidence Act, which is on the record of the proceedings at Exh.957. The

witness has also identified the weapon which is muddamal article No.63 which was recovered in terms of panchanama Exh.957. However, Shri Kodekar has conceded that the witness has failed to identify accused No.14 in the Court.

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"૨૯. તા.૨૨/૩/૦૨ ના રોજ નો પોલીસ રીમાન્ડ પરનો આરોપી જયેશ મદનલાલ જીંગર ની ગુના સબંધે, ગુનામાં તેની હાજરી સબંધે અને ગુના વખતે તેણે ધારણ કરેલ હથીયાર સબંધે તથા સહઆરોપીઓ સબંધે પુછપરછ કરતાં તેણે પ્રથમ અમારી સમક્ષ એમ જણાવેલ કે, તે તલવાર તેણે સંતોકબેન ની ચાલીના છાપરામાં એક જગાએ સંતાડેલ છે ચાલો હું બતાવુ. તેમ જણાવતા બે પંચો બોલાવી આ અંગેનુ પ્રાથમીક પંચનામુ પંચોની હાજરીમાં કરવામાં આવેલ. જે પર પંચો એ તે જ સમયે સહી કરેલ. મને માર્ક ૧ ૭૩/૧૦ નું અસલ પંચનામુ બતાવવામાં આવે છે. જે પ્રાથમીક પંચનામા નીચે મારી હાજરીમાં બે પંચો એ સહી કરેલ છે તથા રુબરુમા કરી મેં મારી સહી કરેલ છે."

223. Drawing my attention to paragraphs 32 to 37 (all reproduced verbatim herein below), Shri Kodekar submits that the witness continued to record the statements of further victims/witnesses during the period from 23/03/2002 to 04/04/2002.

"૩૨. તા. ૨૩/૩/૦૨ ના રોજ નીચેના સાહેદો ના નીવેદન લ ેવામાં આવેલા.

- ૧. સાબેરાબીબી વા.ઓ. ઈસ્માઈલભાઈ રમજાનભાઈ શેખ.
- ૨. બાનુબીબી તે દુસેનખાન નુરખાન ની વિધવા.

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Judgment

3. કબીરઆલમ રમજાન અલી અનસારી.

જ. કમરુદદીન ગુલામભાઈ અનસારી.

33. રીયાઝુદદીન શીરાઝુદદીન સૈયદે શહેર કોટડા પો.સ્ટે.
માં તા. ૮/૩/૦૨ ના રોજ ઝીરો નંબર થી એફ.આઈ.આર. દાખલ કરાવેલ
જે મળતા કામ માં સામેલ રાખેલ. તે દીવસે એટલે કે, તા. ૨૩/૩/૦૨ ના રોજ
રહ પો.મો. નોટ મળેલી. જે કામ માં સામેલ રાખેલ. આ તા.
૨૩/૩/૦૨ સુધીમાં કુલ ૩૭ પી.એમ. નોટ મળેલી.

3૪. તા. ૨/૪/૦૨ ના રોજ અસલમખાન એઠમદખાન પઠાણ ની અરજી પો.કમી.શ્રી ના પત્ર સાથે મળેલ જે કામ માં સામેલ રાખેલ. તેમજ પો.કમી. શ્રી ના પત્ર ની સાથે નીચેની વ્યકિતઓની અરજી પણ તે જ દીવસે મળેલ.

૧. ૨મઝાન ઈનાયત રસુલ રહે. દુકમસીંગ ની ચાલી.

ર. અબ્દુલભાઈ ગકુરભાઈ મનસુરી

૩. મનસુરી ગુલામરસુલ બોદુભાઈ.

૪. યુસુફ ઈબ્રાઠીમ મનસુરી

પ. નન્નેખાન મંગેખાન શેખ

ખબીજા મોહમદ મુનવર

હૈદભાઈ ગુલામભાઈ શેખ

૮. રફીક એઠમદ ઉસ્માનભાઈ મલીક

c. નુરમહમદ ગ્યાસુદદીન શેખ

૧૦. અમીનાબીબી અબ્દુલભાઈ મલેક

૧૧. ફાતમાબીબી અબ્દુલ સતાર શેખ

૧૨. અકબરભાઈ અબ્દુલભાઈ મનસુરી

Judgment

૧૩ ઈબ્રાઠીમભાઈ સાદીકભાઈ

૧૪. યુસુફભાઈ બાદરભાઈ પઠાણ

૩૫. તા. ૩/૪/૦૨ ના રોજ ફિરોઝ મહમદ ગુલઝાર મહમદ પઠાણ રહે. ૧૫, ગુલબર્ગ સોસા. ૨. બીલ્કીશબાનુ નસીરુદદીન સલીમુદદીન શેખ ની વિધવા રહે. ડો. ગાંધી ની ચાલી ના નીવેદન લીધા.
૩૬. તા. ૪/૪/૦૨ ના રોજ રમેશ ભાઈ નારણભાઈ મરાઠા કે જેમને ગુનાવાળી જગ્યાએ બંદુક ના છરા વાગેલા તેનુ મરણ થયેલ તેનુ ઈન્ક. પંચનામુ તપાસ ના કામે મને મળેલ તે તપાસ ના કામે સામેલ રાખેલ. જે પંચનામુ આંક : ૬૪૨ થી રજુ છે તે જ છે.

૩૭. તા. ૧૯/૪/૦૨ ના રોજ ન્યાય સહાયક વિજ્ઞાન પ્રયોગશાળામાંથી બે પરીક્ષણ અહેવાલ મળેલા જે કામ માં સામેલ રાખેલ. તે જ પ્રમાણે તા. ૨૮/૪ ના રોજ એફ.એસ.એલ. માંથી મળેલા અહેવાલ કામ માં સામેલ રાખેલ."

224.The witness in terms of his testimonyin paragraph-38 (reproduced verbatim herein below),has clarified that further investigation herein washanded over on 30/04/2002 to ACP Shri S.S.Chudasama."3c."3c.ul.sHl. %val.sHl. %val.sell. %oz di gsH di will?ao/v/oz di gsH di will?aiuqui i wi

225. The witness, according to Shri Kodekar, has further testified in paragraph-41 (reproduced verbatim herein below) with regard to the arrest of accused No.6 Kishor Mangabhai, accused No.4 Mangaji Pokerji, accused No.5 Jayesh Ramubhai as also two other accused Naranbhai Chhanabhai and Kiran Chhanabhai against whom the proceedings have been abated. The arrest panchnama relating to the arrest of such accused, is testified to be on the record of the proceedings at Exh.958. The witness further testified with regard to arrest of has accused No.10 Shakrabhai Patni and accused No.11 Manojkumar on 14/03/2002 and 18/03/2002 in terms of arrest panchanamas Exhs.959 and 960 respectively. It is conceded that the witness however, has failed to identify any of the accused persons in the Court and my attention is drawn to the contents of paragraph-(reproduced verbatim herein below) 45 of the testimony, where the witness has justifiably and truthfully testified with regard to the arrest of the concerned accused and on account of his advancing age and retirement, the witness is not able to identify the accused concerned in the Court

"૪૧. તા.૧૨/૩/૦૨ ના રોજ પી.એસ.આઈ. ભાટીએ મારી સુચનાથી પાંચ આરોપીઓ ને લાવી ને મારી સમક્ષ રજુ કરેલા જેઓના નામ અનુક્રમે, એક– કિશોરભાઈ મંગાભાઈ, બે– નારણભાઈ છનાભાઈ, ત્રણ– મંગાજી પોકરજી , ચાર– જયેશ રામુભાઈ અને પાંચ–

and in the course of his testimony.

કિરણભાઈ દીરાભાઈ દતા જેઓ ની વિરુઘ્ધ પુરતો પુરાવો દોઈ બે પંચો નામે એક– ચન્દ્રકાન્ત સોમાભાઈ બારોટ અને બે – રામચન્દ્ર અમથાભાઈ પટણીને બોલાવી તેઓની દાજરીમાં આરોપી ઓ ના નામ વગેરે પુછી તેઓ ની શરીર સ્થીતી તપાસી તેની વિગતે પંચનામા માં નોંધ કરી અટક પંચનામુ મારી રુબરુ પંચો ની દાજરીમાં પોલીસ રાઈટરે તૈયાર કરેલ. જેમાં પંચોએ મારી રુબરુમાં સદી કરેલ છે. જે દું ઓળખુ છુ. રુબરુ તરીકે ની તેમાં મેં મારી સદી કરેલ છે તેમાં લખેલ દકીકત ખરી છે. જે અસલ પંચનામુ આજરોજ દું લાવ્યો છુ તે રજુ દાખલ આંક : ૯૫૮ આપવામાં આવે છે.

જપ. મેં જે આરોપી ઓ ને અટક કર્યા તેઓને અટક કરે ઘણો લાંબો સમય થયો હોઈ તેમજ છેલ્લા પાચ વરસથી હું નિવૃત થયેલ હોઈ હાલ કોર્ટમાં તે આરોપીઓ ને ઓળખી શકું તેમ નથી."

226. submitted It is that in the circumstances, the testimony of this witness establishes the arrest of a number of accused and also further establishes the recovery of a weapon used by accused No.14 which further supports and corroborates the charges against the accused. It is submitted that the witness has withstood the test of cross examination, has testified in a manner as would inspire confidence and there is no reason to discard the testimony of this witness inasmuch as, it establishes the involvement and arrest of the concerned accused as also the recovery of the muddamal weapon from accused No.14.

227. Continuing the chain of testimonies, is the testimony of the **PW-332** being Mr.Sukhdevsinh S. Chudasama who took over the investigation from PW-276 and the testimony of PW-332 is on the record of the proceedings at Exh.1226.

228. The witness, according to Shri Kodekar, took charge of the investigation into the present offence on 28/04/2002 and conducted the investigation into the present offence till 19/11/2002 during which period the witness in the course of his investigation, arrested a number of accused herein, got drawn relevant panchanamas in respect of arrest of the concerned accused, panchanama for the recovery of weapons used in the offence in terms of panchnama drawn under Sec.27 of the Evidence Act and was instrumental in the arrest of a large number of accused in the present offence. accused No.16 Dilip @ Kalu was arrested on The 01/05/2002 in terms of an arrest panchnama Exh.1228, accused No.17 Ratilal Ganeshkumar was arrested on 04/05/2002. However, such accused having passed away during the pendency of the proceedings, the trial stands abated against such accused. The present witness in terms of paragraph-8 (reproduced verbatim herein below) of his testimony, has according to Shri Kodekar, testified with regard to the recovery of an iron pipe at the behest of accused No.16 and the recovery panchanama is on the record of the proceedings at Exh.1231 and the witness has

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positively identified the muddamal article No.64 in court. The witness in of the the course his investigation, recorded statements of further witnesses and victims at the Dariakhan Ghummat as relief initiated also Juhapura camps and an operation to trace out and arrest the till then absconding accused. Such operation was initiated on 26/05/2002 in which accused No.18 Sanjay Patni, No.19 Shailesh Patni, No.20 accused accused Prajapati and juvenile Nareshkumar accused Nayee together with accused Mahesh Vishalkumar Lalchand against whom the proceedings stand abated, were all arrested and panchanamas drawn in respect of such arrests are proved by the present witness and are on the record according to Shri Kodekar, at Exhs.1232 to 1235.

રીમાન્ડ પરના આરોપી દીલીપ કાળૂભાઈ ના ۳۷. એ પોતે મુ.માલ તથા તે જે કાંઈ કઠે છે તે બતાવવા તૈયાર ઠોઈ બે પંચોને ડીસીબી ઓકીસમાં બોલાવી તેઓને આરોપી તથા પંચોની ઓળખ કરાવી આરોપી જે કાંઈ અને બતાવવા તૈયાર થાય તે અંગે પંચનામુ કરવાનુ હોઈ પંચો તરીકે રહેવા ખુશી બતાવતાં પ્રથમ ભાગનું પંચનામુ ડીસીબી ઓફીસમાં કરવામાં આવેલ. અને ત્યારબાદ આરોપી તથા પંચો હું તથા સ ટાકના માણસો સરકારી વાઠનમાં બેસી રવાના થયેલા. અને ડીસીબી ઓફીસથી આસ્ટોડીયા દરવાજા ન્યુ કલોથ મારકેટ કાલુપુર પો.સ્ટે. થઈ આરોપીતા ၃၉၃။၁၂ તેણે બતાવ્યા મુજબ આવીને નીચે ઉતરીને આરોપીએ આગળ ચાલી પોતાના મકાનના પાણીના ટાંકા સામે આવેલ તેમા છત પરના ભાગેથી એક લોખંડનો પાઈપ જેની

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લંબાઈ સાડાચાર કુટ અને વચ્ચેથી વળી ગયેલ તે કાઢીને રજુ કરેલ. તેનુ વિગતવાર પંચનામુ કરીને પંચો તથા મારી રુબરુની સહીઓ કરી મુદદામાલનો પાઈપ પેક કરી તેની પર સહીઓ વાળી કાપલી લગાડી કબજે લેવામાં આવેલ."

229. The witness has in terms of paragraph-15 (reproduced verbatim herein below) of his testimony, testified that upon the conclusion of the investigation, a draft chargesheet was got prepared by the present witness and forwarded for approval to his superior officers on 31/05/2002. The witness has testified that upon such draft chargesheet being approved, the same came to be filed in Metropolitan Magistrate's Court No.11 on 03/06/2002.

"૧૫. તા.૩૧/૫/૦૨ ના રોજ મેં આ તપાસનું ડ્રાફટ ચાર્જશીટ તૈયાર કરી એપ્રુવ થવા માટે જોઈન્ટ પોલીસ કમી. તથા ડે.પોલીસ કમી. તરફ કેસના કાગળો સાથે મોકલી આપેલ. તે અગાઉ મેં આ ગુનાના કામે કલમ ૩૭૬ નો ઉમેરો કરવા માટે મેટ્રો.મેજી.ને તા. ૧૦/૫/૦૨ ના રોજ રીપોર્ટ કરેલ જેની ઓફીસ કોપી નિ. ૧૨૨૭/૮ થી રજુ છે તે જ છે અસલ રીપોર્ટ મેટ્રો.મેજી ને મોકલેલ તેની આ ઓફીસ કોપી છે તે રજુ દાખલ આંક : ૧૨૩૬ આપવામાં આવે છે. તેમજ તા.૨૯/૫/૦૨ ના રોજ મેં મેટ્રો.મેજી. કોર્ટને મુળ કલમો ચાલુ રાખવા રીપોર્ટ કરેલ જેની નકલ નિ. ૧૨૨૭/૯ થી રજુ છે તે જ છે. અસલ કોર્ટમાં આપવામાં આવેલ તેની આ નકલ છે તે રજુ દાખલ આંક : ૧૨૩૭ આપવામાં આવે છે."

230. Drawing my attention to paragraph-17 (reproduced verbatim herein below) of the testimony,

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Shri Kodekar submits that the witness got arrested No.24 Shankerji Mali in accused terms of а panchanama drawn and which is on the record of the Exh.673. proceedings The witness also at qot arrested a juvenile accused Rajeshkumar Chamanbhai and on 07/06/2002, accused No.25 Mangilal Patni Dhupchand Jain was arrested by the present witness in terms of a panchanama which is on the record of the proceedings at Exh.1240. It is pointed out by Shri Kodekar that the present witness was on leave for a period of two days beginning from 08/06/2002 and the charge was held by P.I. Shri J.L.Jadeja at the relevant time when accused No.25 Mangilal Jain volunteered and led to the recovery of a muddamal weapon which was a pipe which was recovered in terms of a panchanama drawn under Sec.27 of the Evidence is on the record of the present Act, which proceedings at Exh.1244.

"૧૭. તા.૫/૬/૦૨ના રોજ મેં આરોપ શંકરજી હકાજી માળી ની અટક કરેલ. તેમની શરીર સ્થીતીનું પંચનામુ કરી તેમનો એરેસ્ટ મેમો બનાવી સગાવહાલાને જાણ કરવાની સહી મેળવી તેમનુ નિવેદન નોંધી કામમાં સામેલ રાખેલ. આ આરોપીની અટક પંચનામુ આંક : ૬૭૩ થી રજુ છે તે જ છે તેનો એરેસ્ટ મેમો અને તેના સગાને જાણ કર્યા નો રીપોર્ટ તથા આક : ૫૮ નો રીપોર્ટ નિ. ૧૨૨૭/૧૦ અને ૧૧ થી રજુ છે તે હવે રજુ આંક : ૧ ૨૩૮ અને ૧૨૩૯ આપવામાં આવે છે."

231. Drawing my attention to paragraph-23 (reproduced verbatim herein below) of the testimony

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of the present witness, Shri Kodekar has submitted that the witness has testified with regard to the fact that the witness addressed a yaadi to the P.I., Meghaninagar Police Station on 12/06/2002 seeking details with regard to the license in respect of a 12-Bore firearm, which license was held by a resident of Gulbarg Society. The witness has testified that a report was received by him on 14/06/2002 wherein it was established that the firearm in question was licensed to deceased Shri Ehsan Jafri and that such license was valid till 31/12/2003. the letter from accused No.57 Shri K.G.Erda referred to above, is on the record of the proceedings at Exh.1245. The witness has testified that arrest of accused No.26 Pannalal Premchand Sisodiya, accused No.27 Gopaldas Vaishnav was effected on 20/06/2002 in terms of an arrest panchnama Exh.1247. The witness further arrested accused No.28 Prahladji Rajuji, accused No.29 Mukesh Pukhraj and accused No.30 Madanlal Raval on 24^{th} and 25th June, 2002 respectively. The witness has further testified that the brother of accused No.29 came over to the Police Station on 26/06/2002 and volunteered to lead to the recovery of a weapon used by accused No.29 in the offence and a weapon being a stick was recovered in terms of the panchanama Exh.499 which was drawn in terms of Sec.27 of the Evidence Act. Accused No.31, according to Shri Kodekar, was arrested by the present witness on 27/06/2002 in terms of panchnama Exh.1248. The

arrest of accused No.32 Ambesh Kantilal Jinger, accused No.33 Prahlad and accused No.34 Krishna Manilal was effect on 28/06/2002 in terms of a panchanama drawn which is at Exh.1249.

"૨૩. તા.૧૨/૬/૦૨ના રોજ મેં પી.આઈ.મેઘાણીનગર પો.સ્ટે.ને યાદી લખી માઠીતી મંગાવેલ કે, ગુલબર્ગ સોસા.માં બાર નંબર ની બંદુકના લાયસન્સ કેટલા ઈસમો ધરાવે છે તેની વિગત મોકલી આપવી. તા.૧૪/૬/૦૨ના રોજ તેઓ તરફથી રીપોર્ટ મળેલ કે, ગુલબર્ગ સોસા.માં શ્રી એઠસાન જાફરી ટવેલબોર બંદુકનુ લાયસન્સ ધરાવે છે જે લાયસન્સ તા. ૩૧/૧૨/૦૩ સુધી રીન્યુ થયેલ છે. તેમણે મોકલેલ લેખીત માઠીતી નિ. ૧૨૨૭/૧૬ થી રજુ છે તે જ છે. જે અસલ પત્રમાં પી.આઈ. શ્રી એરડાની સઠી છે. જે દું ઓળખુ છુ. તે અસલ પત્ર રજુ દાખલ આંક : ૧૨૪૫ આવે છે."

232. Drawing my attention to paragraph-32 (reproduced verbatim herein below) of the deposition of this witness, Shri Kodekar submits that on 29/06/2002, in terms of panchanama produced on record at Exh.794, a recovery of a muddamal weapon being a stick being muddamal article No.3 was recovered at the instance of accused No.32 Ambesh Kantilal. The witness has identified the muddamal article No.3 in the Court. The arrest of accused No.40 Parbatsinh and accused No.35 Ashok @ Aslo Thakor is also emerging from the testimony of this witness and it is pointed out that the witness in the course of his investigation, further arrested

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accused No.36 Chirag Dilipbhai Shah, accused No.37 Prakash @ Kali Khengarji Padhiyar on 15/07/2002. It submitted that accused No.35 has passed away is during the pendency of the proceedings and the trial stands abated against such accused. However, it is pointed out that a muddamal weapon was recovered at the instance of accused No.35 in terms of panchnama drawn under Sec.27 of the Evidence Act and а muddamal weapon being a sword at the instance of deceased accused. The such panchanama further specifies that the sword recovered is on the record as muddamal article No.4 and the panchanama drawn with regard to the recovery thereof is on the record proceedings at Exh.495. The of the witness, according to Shri Kodekar, has positively identified muddamal article No.4 in the Court as being the one recovered in terms of such panchanama.

બાદ તા. ૨૯/૬/૦૨ ના રોજ અંબેશ કાંતીલાલ ને સાથે <u>"32.</u> રાખી તેના ઘરની ઝડતી તપાસ કરતાં પંચો રુબર તેણે પોતાના ઘરમાંથી આ ગુનામાં ધારણ કરેલ લાકડી રજુ કરી જે વિગતવાર પંચનામુ કરી બંને પંચોની પંચનામામાં તે સ્થળ પર સહીઓ લેવામાં આવેલ. અને રૂબરૂમાં મેં મારી સહી કરેલી. જે આ કામે આંક : ૭૯૪ થી રજુ છે તે જ છે. મને આર્ટી. નં. 3 ની લાકડી બતાવવામાં આવે છે તે એ જ છે જે મેં આ કામે કબજે કરેલી."

My attention is further drawn to the 233. recovery on 17/07/2002 of a muddamal weapon being a knife which was recovered at the instance of accused No.37 Prakash @ Kali and the recovery of the weapon

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is established during the testimony of the present witness and a panchanama is drawn in that regard record of the proceedings which is on the at Exh.1258. The muddamal recovered is on the record of the proceedings as muddamal article No.5 which is also identified in the course of the testimony of the present witness. It is pointed out by Shri Kodekar that further recovery of muddamal weapons is established in terms of the testimony of the witness in paragraph-38 (reproduced verbatim herein below) wherein it is clearly established that accused No.36 volunteered to lead to the recovery of a muddamal weapon on 18/07/2002 and a sword was recovered in furtherance thereof and a panchanama was drawn in terms of Sec.27 of the Evidence Act which panchanama is on the record of the proceedings at Exh.1259. The muddamal sword, according to Shri Kodekar, is on the record as muddamal article No.6 and the same is identified by the present witness as the one recovered in terms of panchanama Exh.1259. The witness has further testified that a supplementary chargesheet was sought to be filed against the subsequently arrested accused and permission was sought in that regard.

"૩૮. તા.૧૮/૭/૦૨ ના રોજ આ કામના આરોપી ચિરાગ દિલીપભાઈ શાહ પોતે પુછપરછ દરમ્યાન કાઈ બતાવવા અને કહેવા માટે તૈયાર છે તેમ કહેતા બે પંચોને ડીસીબી ઓફીસમાં બોલાવવામાં આવેલ અને તેઓને આરોપી જે કહે તથા બતાવે તે અંગે પંચનામામાં પંચો તરીકે રહેવા

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માટે પુછતા તેઓએ સંમતી બતાવેલી. આરોપીએ પોતે આ ગુનાના કામમાં મુ.માલની તલવાર રજૂ કરવા ઈચ્છે છે તેમ બતાવતાં પહેલા ભાગનુ પંચનામુ આ ઘટના અંગેનુ કરવામાં આવેલ. તે પંચનામા પર બંને પંચોની સહીઓ તથા રુબરુમા મારી સહી કરવામાં આવેલ. ત્યાર બાદ,ડીસીબી ઓફીસથી સરકારી વાઠનમાં આરોપી, પંચો, તથા હું અને સ્ટાફના માણસો આરોપી લઈ જાય ત્યાં જવા માટે રવાના થયેલા. આરોપીને વાહનના આગળના ભાગે ડાઈવરની બાજુમાં તથા તેની બાજુમાં પંચો તથા પાછળના ભાગે હું તથા મારા સ્ટાફના માણસો બેઠેલા. આરોપીએ ડ્રાઈવરને ઈશારાથી વાઠન રાયખડ ચારરસ્તા, લા.દ, દીલ્ઠી ચકલા, થઈ ઈદગાઠ પુલ ચમનપુરા પોલીસ ચોકી પાસે ગુજરાત હાઉસીંગના મકાનોમાં લાવેલ. અને એક મકાનમાં પોતે બીજા રુમમાં દાખલ થઈ માળીયા પરથી એક તલવાર રજુ કરેલી જે પંચો રૂબર કબજે લેવામાં આવેલ. આ તલવાર જુની કાટ ખાધેલી જેનો હાથો પતરાનો જેની લંબાઈ સતર ઈચ તથા પહોળાઈ દોઢ ઈંચ જેટલી જેના પર લોહી અથવા બીજા કોઈ નીશાની કે ડાઘ જોવામાં આવેલ નહી. તેનુ વિગતવાર પંચનામુ બીજા ભાગનું સ્થળ પર કરવામાં આવેલ. બંને પંચોની સહીઓ આ પંચનામા લેવામાં આવેલ તથા રૂબરૂની મારી સહી કરેલ. તલવારને કપડામાં પેક นุว કરી તપાસ અર્થે કબજે કરવામાં આવેલ. અસમ પંચનામૂ નિ. ૧૭૩/૭૬ થી રજુ મને બતાવવામાં આવે છે તે જ છે. તે હવે રજુ દાખલ આંક : ૧૨૫૯ આપવામાં આવે છે. મને આર્ટી. ૬ ની તલવાર બતાવાવામાં આવે છે જે મેં આ પંચનામાની વિગતે કબજે લીધેલ તે જ છે."

234. Drawing my attention to paragraph-40 (reproduced verbatim herein below) of the testimony of the witness, the witness, according to Shri

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Kodekar, has testified that in the course of his investigation and more particularly on 16/08/2002, acting upon a phone call of a witness Nizamuddin Saiyed that there appeared to be human bones in a water tank in Gulbarg Society, the witness went over to the scene of the relevant investigation and on due investigation, it was found that the bones belonged to a dog. A supplementary chargesheet came to be filed by the present witness on 30/08/2002 and a supplementary chargesheet came to be filed against three juvenile accused on 03/09/2002. The witness has further testified that in the course of his investigation, the statements of number of witnesses recorded in addition to the were course of investigation adopted by the witness.

235. The witness has further testified in terms of his testimony with regard to the details of the arrest of accused Nos.26, 27, 28, 29 and 30. However, Shri Kodekar has candidly accepted that the witness is not able to identify a single accused in the Court.

"૪૦. તા.૧૬/૮/૦૨ના રોજ આ કામની તપાસમાં એક સાહેદ નિજામુદદીન જૈનુલ આબેદદીન સૈયદ ફોન થી અમોને જાણ કરેલ કે, ગુલબર્ગ સોસા. મસ્જીદ પાસે પાણીના ટાંકામાં માનવીના હાડકાઓ છે. જે પરથી આ સાહેદને રુબરુમાં હાજર રાખી પી.એસ.આઈ. સદાવ્રતી સાથે સ્ ટાફ મોકલી તપાસ કરાવતાં આ ટાંકા માના હાડકા કુતરાના હાડપીંજરના મળી આવેલ જે અંગે વિગતવાર સાહેદ નિજામુદદીનનનું નિવેદન મેં લીધેલ."

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236. Shri Kodekar has further drawn my attention to the fact that when the Investigating Officer Shri S.S.Chudasama was on leave, the further investigation into the present offence was handed over to DSP Shri H.P.Agrawat who has been examined on the record of the present proceedings at Exh.1069 as PW-310. It is pointed out by Shri Kodekar that the witness in the course of his investigation into the present offence, arrested accused No.26 Prabhu Mochi and accused No.27 Gopaldas Vaishnav on 20/06/2002 and thereafter, it emerges that the investigation was handed back to Shri over S.S.Chudasama on his resuming duty. However, in or around December, 2002, the present witness PW-310 was handed over the investigation upon transfer of Shri S.S.Chudasama and in the course of his handling the investigation, accused No.21 Sandip @ Sony was arrested on 03/12/2002.

237. My attention is drawn to paragraph-8 (reproduced verbatim herein below) on page-5 of the testimony of this witness, where the witness has clearly stated that accused No.21 volunteered to facilitate the recovery of the weapon used in the incident and in the circumstances, a preliminary panchnama was drawn under the provisions contained in Sec.27 of the Evidence Act at the Police Station and the Police together with the accused being accused No.21 Sony and the Panchas went over as directed by the accused and in terms of paragraph-9 (reproduced verbatim herein below) on page-6, the witness has clearly testified that a sword was recovered in terms of panchnama Exh.1071 and the said muddamal is also identified by the witness in the Court. The witness has wrongly identified accused No.21 in the course of his testimony in the Court. In fact, Shri Kodekar has been candid enough to admit that two attempts were made by the witness to identify accused No.21, but on both occasions, accused No.21 is wrongly identified as accused Jayesh Ramjibhai Parmar (A-41) and accused Kailash Dhobi (A-1), as is reflected on page-8, paragraph-10 (reproduced verbatim herein below) of the testimony. It is further pointed out that the witness in the course of his investigation, also arrested accused No.22 Babu Mohan Patni and accused No.23 Babu Manji Patni. The witness has, according to Shri Kodekar, concluded the investigation relevant and supplementary chargesheet came to be filed against accused Nos.21, 22 and 23.

"૮. આ કામે પુછપરછ દરમ્યાન તા. ૭/૧૨/૦૨ ના રોજ કસ્ટડીના આરોપી આ ગુના સબંધે કાઈક કઠેવા કરવા માગતા ઠોઈ બે પંચને બોલાવવામાં આવેલા અને આરોપીની વિગત જણાવી ગુના રજી. નંબર વગેરે જણાવી આ કામના આરોપી જે કાઈ ક્રિયા પ્રક્રિયા કરે તે ક્રિયા પ્રક્ર ીયાનુ પંચનામુ કરવાનુ ઠોઈ બંને પંચો એ પંચ તરીકે રઠેવા સ્વખુશી બતાવતાં તે સબંધે પંચનામાનો પ્રથમ ભાગ ક્રાઈમબ્રાન્ચ અમદાવાદ શઠેરની કચેરીમાં કરવામાં આવેલ તથા પંચોએ અમારી રુબરુમાં સઠી કરેલ. પંચો અનુક્ર

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મે દિવ્ચેશ રમણલાલ શાહ અને રોઠીતકુમાર નારણસીંદ રાઠોડનાએ મારી રુબરુ પ્રાથમીક ભાગના પંચનામામાં સઠી ઓ કરેલ તેમજ રુબરુ તરીકે ની મેં મારી પણ સઠી ઓ કરેલ.

પ્રથમ ભાગના પંચનામા મા સહી કર્યા બાદ આ કામના e. કસ્ટડીના આરોપી તથા બંને પંચો અમો પોતે તથા <u>શ્</u>રાઈમબ્રાન્ચના માણસો સરકારી વાઠનમાં બેસી ક્રાઈમબ્રાન્ચ થી રવાના થતાં કસ્ટડીના આરોપી જે દિશા તરફ હંકારવાનુ કહે તે તરફ ચલાવવા ડ્રાયવર ને સુચના કરેલ. તે મુજબ ડ્રાઈવરે વાહન ચલાવતા કલાપીનગર થઈ પર્ણકુંજ સોસા. વિભાગ – ૧ બંગલ નં. ૬૬ આગળ સરકારી વાહનને ઉભુ રહેવાની કસ્ટડીના આરોપીએ સુચના કરતા ડ્રાઈવરે સરકારી વાહન ઉભુ રાખી અને સરકારી વાહનમાંથી આરોપી તથા પંચો તથા તેમજ ક્રાઈમબ્રાન્ચના અધીકારીઓ નીચે ઉતરેલા અને ઘર નં. ૬૬ ની સામે ઈશારો કરી તેણે જણાવેલ કે, આ મારૂ ઘર છે. તેમ કઠી પોતે આગળ ચાલેલ તેની સાથે પંચો તથા અમો પણ ઘર આગળ ગચેલા. તે વખતે તેમના માતૃશ્રી ચંચળબેન હાજર હોઈ તેઓની હાજરીમાં કસ્ટડીના આરોપીએ મીટર બોક્ષની બાજુની રુમનો દરવાજો ખોલેલ. અને અંદર પ્રવેશ કરી અનાજના પીપડાઓની વચ્ચેથી હાથ નાખી એક તલવાર કાઢી આપેલ. જે તલવારનું વિગતવારનુ વર્ણન પંચનામા મા લખી લેવામાં આવેલ. ઉપરોકત તલવાર ઉપર કપડાનુ કવર બાંધી પંચો તથા અમારી સહીવાળી સ્લીપ મુકી તપાસ માટે કબજે લેવામાં આવેલ. ત્યારબાદ આ કામે ચંચળબેનને પુછપરછ કરવામાં આવેલ. કબજે લેવામાં આવેલ મુદદામાલની મુદામાલ પાવતી ફાડવામાં આવેલ. મને આર્ટીકલ નં. ૧ ની તલવાર બતાવવામાં આવે છે તે જ છે જે મે આરોપી સંદીપ ઉ. સોનુ ધુઘરુવાળવાળાએ પંચો રુબરુ કાઢી આપેલ તે જ છે તે સાથે સામેલ સ્લીપમાં બે

પંચોની સહી છે તેમજ રુબરુ તરીકેની મારી સહી છે જે હવે રજુ દાખલ આંક : ૧ ૦૭૦ આપવામાં આવે છે. મને પંચનામુ નિ. ૧૭૩/૭૭ નું અસલ પંચનામુ બતાવવામાં આવે છે જે મારી રુબરુ પંચોએ લખાવ્યા મુજબ મારા રાઈટર અશોકના હસ્તાક્ષરમાં લખાયેલ છે જે હસ્તાક્ષર હું ઓળખુ છુ તેમા પંચોએ મારી રુબરુ સહી કરેલ તેમજ રુબરુ તરીકે મેં મારી સહી કરેલ તે હવે દાખલ રજુ આંક : ૧૦૭૧ આપવામાં આવે છે.

૧૦. દું કોર્ટમાં દાજર આરોપી પૈકી સંદીપ સોનુ ને ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા જચેશ રામજીભાઈ પરમાર દોવાનુ જણાવે છે જે રેકર્ડ પરથી ખરુ દોવાનુ માલુમ પડે છે. દું કોર્ટમાં દાજર બીજા એક આરોપીને સંદીપ તરીકે ઓળખી બતાવુ છુ આરોપીને તેનુ નામ પુછતા કૈલાશ ધોબી દોવાનુ જણાવે છે. જે રેકર્ડ પરથી ખાત્રી કરતા ખરુ દોવાનુ જણાય છે."

238. My attention is thereafter drawn by Shri Kodekar to the testimony of **PW-331** Shri Girishkumar Laxmanbhai Singhal whose testimony is on the record of the present proceedings at Exh.1217. According to Shri Kodekar, this witness has played a significant role in the investigation into the offence inasmuch as, he was in charge of the investigation from 06/04/2003 to 15/12/2006. The witness in the course of his testimony in paragraph-3 (reproduced verbatim herein below) on page-2, has testified that absconding accused Jayesh Ramji Parmar was arrested in another offence and thereby came to be arrested in the present offence on the

strength of a transfer warrant. The said accused is accused No.41 herein. It is pointed out that a muddamal weapon in the shape of a sword was seized in terms of a panchnama Exh.1218 which recorded the recovery of the said muddamal weapon at the instance of accused No.41. The witness has positively identified the said muddamal weapon in the Court. The witness has further testified that on completion of the investigation, a supplementary chargesheet came to be filed against accused No.41 Jayesh Ramji Parmar. The witness, however, has failed to identify accused No.41 in the Court.

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"3. આ ગુનાના નાસતા ફરતા આરોપી જયેશ રામજીભાઈ પરમાર, મેઘાણીનગર પો.સ્ટે.માં અન્ય ગુનામાં પકડાયેલ હોઈ પો.સ.ઈ. શ્રી બી.એ.ચાવડાને આ આરોપીને ટ્રાન્સફર વારંટ મેળવી રજુ કરવા માટે યાદી આપેલ હતી. જે આધારે પો.સ.ઈ. શ્રી ચાવડાએ આરોપીનો કબજો મેળવી રજુ કરતાં આ ગુનામાં મેં તેને અટક કરેલ. બાદ સાહેદ ઘ્વારા આ આરોપીએ ગુનામાં વાપરેલ તલવાર રજુ કરતાં બે પંચોની હાજરીમાં પંચોના જણાવ્યા મુજબ આ હથીયાર કબજે કરવામાં આવેલ."

239. Drawing my attention further to his testimony, Shri Kodekar submits that the witness got arrested accused No.38 Manish Jain and accused No.39 Mukesh Thakor and filed a chargesheet against the accused. The witness has played a major role with regard to the obtaining of call details and CDs from various cellular phone service providers and the witness was entrusted due inquiries into the seizure

made by DCP Shri Rahul Sharma and a detailed report was filed by the present witness on completion of due inquiries.

240. It is submitted by Shri Kodekar that further investigation and further arrest of the part of the remaining absconding accused was proceeded with by DSP Shri H.R.Muliyana who has been examined as PW-329 at Exh.1211. The witness claims to have taken over further investigation into the present offence on 15/12/2006 and the investigation remained in the hands of the present witness till 27/04/2008. It is relevant to note that complying with the directions of the Hon'ble Supreme Court of India a Special Investigating Team was formed on 10/04/2008 to carry out further investigation in compliance of the directions of the Hon'ble Supreme Court of India in terms of the provisions contained and in Sec.173(8) of the Cr.P.C. It is submitted that in the course of his testimony, the witness has testified that he arrested accused No.40 Parbatsing Tarsansing Thakor on 08/04/2008.

241. It is submitted that the present witness has testified that it emerged from the investigation that the arrested accused No.40 Parbatsing was injured on account of some private firing on the date of the incident and therefore, a panchnama was got drawn at the instance of the accused with regard to the place where the accused

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sustained such injuries. The panchnama is on the record of the proceedings at Exh.1212. It is pointed out by Shri Kodekar that PW-119 Dr.Narendra G. Joshi whose deposition is on the record of the present proceedings at Exh.595, has clearly deposed with regard to accused No.40 sustaining a bullet injury the date of the incident on and an injury certificate is issued by the said witness i.e. PW-119 which is on the record of the proceedings at Exh.596. It is pointed out that the witness PW-119 has further testified that no object was removed from the body of the injured accused No.40.

242. Drawing my attention to paragraph-3 (reproduced verbatim herein below) of the testimony of **PW-329**, it is submitted that the claims to have recorded statements witness of relevant witnesses particularized in paragraph-3 of his deposition and on completion of investigation against the present accused, a chargesheet came to filed. The witness has positively identified be accused No.40 in the Court.

"3. આ સાથે સાથે અમોએ સી.હોસ્પી. ના પોલીસ સર્જન ડો. જે.વી. સતાપરાનું નિવેદન પણ લીઘેલ. તેમજ સી.હોસ્પી. ખાતે ઓ.પી.ડી. ટેબલ પર દવાખાના ડ્યુટી કોન્સ. શ્રી કિરણપુરી બકકલ નં. ૬૪૬૨ નું નિવેદન પણ લીઘેલ છે. આરોપીની વધુ પુછપરછ માટે નામ. કોર્ટમાંથી રીમાન્ડની કાર્ચવાઠી પણ કરેલ છે."

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243. It is pointed out that at the cost of repetition, it may be stated that on 10/04/2008, responding to the numerous complaints filed by the victims, the Hon'ble Supreme Court of India passed appropriate orders directing the formation of a Special Investigating Team to carry out a thorough investigation and determine as to whether there was involvement of Police officials and other political leaders as claimed by the complainants/victims. It is pointed out by Shri Kodekar that however, before relating the relevant material post formation of the S.I.T., it would be necessary to refer to the testimony of **PW-330** Shri Rahul Sharma at Exh.1213, who was the DSP, Bhavnagar at the relevant time and thereafter transferred to Ahmedabad as was DCP (Control Room) on 26/03/2002. Drawing my attention to the testimony of the said witness, it is pointed out that the witness has played a vital role in further strenuous ensuring that there was and appropriate investigation into the offence and it is pointed out that the witness has played a vital role in bringing to light the call details relating to the cell phones used by a number of accused as also some of the high ranking Police officials and the material collected by the witness has played a present offence. significant role in the The witness, according to Shri Kodekar, has testified that the witness while discharging his duties as DCP (Control Room), was also in addition thereto required to carry out such other and further duties

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as may be assigned to him by his superior officer being the Commissioner of Police of Ahmedabad. The witness was also, according to Shri Kodekar and in terms of his testimony, required to hold charge of other senior officers of other zones in Ahmedabad city who for reasons, would not be available on duty.

Drawing my attention to paragraph-4 244. (reproduced verbatim herein below) of the testimony is that of the witness, it pointed out on 07/05/2002, the witness was orally intimated by the then Police Commissioner Shri P.C.Pandey and was directed to assist Additional Police Commissioner Shri Suroliya who was attached to the Crime Branch, Ahmedabad and the present witness was directed to assist Shri Suroliya in the best manner that he could.

"૪. તા.૭/૫/૦૨ ના રોજ જે તે સમય ના પો.કમી. શ્રી પી.સી. પાંડે તરફથી મને ઈન્ટરકોમ પર મૌખિક સુચના આપવામાં આવેલ કે, ક્રાઈમબ્રાન્ચના જે તે સમચના એડી.કમિ.શ્રી સુરોલીયા સાહેબ પાસે જઈ તેમની પાસે ચાલતી ગંભીર ગુનાઓની તપાસમાં મદદ કરવી.

જેથી હું તે જ દીવસે શ્રી સુરોલીયા સાહેબ પાસે ગયેલ."

245. Drawing my attention to paragraph-5 (reproduced verbatim herein below) of the testimony of PW-330, Shri Kodekar submits that the witness in the course of his assisting the investigation of

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Shri Suroliya, decided that since the two major offences that took place on 27/02/2002, required a fair and impartial investigation, the witness in an attempt to do so, decided to bring on record and make a part of the investigative process scientific and forensic evidence which would help the investigating agency in arriving at a fair and impartial conclusion of the investigation. The witness has testified that he had specific information that wide spread use of cell phones was made by the accused and interested persons in the course of riots and disturbances and in the circumstances, the witness felt that it would be productive for the investigation if material in the shape of call details of relevant accused and other interested persons were obtained from the cellular phone service providers and made a part of the investigation. The witness has testified that in the circumstances, the witness proceeded to obtain the necessary records and call details of persons felt to be involved in the incident and such details were, in terms of paragraph-5 of his testimony on page-4, sought to be obtained from mobile service providers CELFORCE and AT&T which were the two service providers. The witness claims to have received details from AT&T within four to five days of such demand wherein the details as sought for were provided. The witness claims that the format in which such information was provided was supplied in the form of CDs which the witness stored in his

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personal computer at his residence and the original CD containing such details was handed over to the then I.O. Shri S.S.Chudasama (PW-332). The witness further testified that the service provider has CELFORCE was delaying the providing of necessary information on account of which Shri Suroliya demanded such details from CELFORCE at an early date on account of which the present witness received such details from CELFORCE and the data and details was, according to the witness, in the M.S. Excess format of which the witness claims to have no knowledge, and in the circumstances, the witness sought the assistance of a Police Officer who was well versed in computer skills being P.S.I. Shri attached to the Chandna who was Police Commissioner's office, Ahmedabad. Shri Chandna was instructed by the witness to go to the service provider CELFORCE and obtain the necessarv information in terms of what was demanded by Shri Suroliya. It is pointed out by the present witness that in the interim, Shri Suroliya was replaced by Shri P.P.Pandey as the Head of Crime Branch, Ahmedabad and consequent thereto, it appears that the service provider CELFORCE furnished the details in the form sought for by the investigating agencies. The witness claims to have verified the details after obtaining the assistance of Shri Chandna in that regard and it was found that even freshly supplied details were the lacking any material particulars and therefore, the witness

instructed Shri Chandna to yet again visit the office of the service provider CELFORCE to obtain the necessary details.

મને આ કામગીરી સોંપવામા આવી ત્યારે મુખ્ય »ų. બે બનાવ બન્યાને સવા બે થી અઢી માસનો સમય થયેલ. અને આ ગુનાના કામે આક્ષેપો પ્રતિઆક્ષેપો થચેલા જેશી ଧ୍ୟୋ. ิสนเพิ่ดใ તટસ્થતાને ધ્યાને રાખી અમોએ નકકી કરેલ કે, આ ગૂનાના કામે પૈજ્ઞાનિક પુરાવો મેળવવો. અમારી પાસે માઠીતી હતી કે, કોમી રમખાણો દરમ્યાન મોબાઈલ ફોનનો મહત્તમ ઉપયોગ થયેલ છે. જેથી મે એવી સલાહ આપેલ કે, મોબાઈલ કોનની કંપની ઓ પાસેથી જો માહીતી મેળવવામાં આવે તો આરોપીઓ બાબતમાં મહત્વના પુરાવા મળી શકે તેમ છે. જે માહીતીમાં અમોએ મોબાઈલ ફોનના નંબરની વિગતો, કયા સમય અને કેટલા સમય સુંધી વાત થઈ તે અને કઈ જગ્યાએથી વાત થઈ છે વગેરે અંગેની માઠીતી અને મોબાઈલ કોનના ધારકોના નામ સરનામા વગેરેની માહીતી જે તે સમયે મોબાઈલ સર્વિસ

આપનાર સેલફોર્સ અને એટી એન્ડ ટી કંપનીઓ પાસે માગવામાં આવેલ."

246. Drawing my attention to paragraph-9 (reproduced verbatim herein below) of the testimony of the said witness, Shri Kodekar has pointed out that in June, 2002, the witness was instructed by Shri P.P.Pandey by a written letter to study deeply the CDs available and relating to such cell phone records and the present witness was directed to file a report after carrying out such study. The witness submits that in a short while therefrom, he was transferred to the S.R.P. and in the circumstances,

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he was unable to study in detail the contents of the CDs. However, the witness claims to have inserted in his personal computer the details provided by CELFORCE enable him further to to carry out investigation. The witness, thereafter, handed over the original CDs to Shri Pandey through P.S.I. Shri Chandna and the CDs were handed over to Shri Chandna with a direction to be in turn handed over to Shri P.P.Pandey.

ત્યાર પછી જુન ૨૦૦૨ ના છેલ્લા અઠવાડીયામાં એક "E. નિમપત્ર મારકતે શ્રી પી.પી.પાંડે ધ્વારા મને આપવામાં આવેલ. ਅਰੇ સદરહ સીડીનો અભ્યાસ કરી રીપોર્ટ કરવા જણાવેલ. นข์ด જે તે વખતે રથયાત્રા બંદોબસ્ત માટે તૈયારી ચાલતી હોઈ અને ત્યારબાદ ટુંક સમયમાં મારી બદલી એસ.આર.પી. જુથ ૧૧ માં થયેલ હોઈ મેં આ સીડીનો અભ્યાસ કરેલ નથી. પરંતુ સીડી મળ્યા તારીખ થી બદલીનો ઓર્ડર મળ્યાની તારીખ સુધીમાં સદરહુ માઠીતીના અભ્યાસ સાર્ મે સેલકોર્સ ધ્વારા મોકલવામાં આવેલ સીડીની માઠીતીને પણ મારા ઘરના કોમ્પ.ની ઠાર્ડડીસ્ક પર કોપી કરેલ. કોપી કર્યા પછી મેં ઓરીજીનલ સીડી શ્રી પી.પી.પાંડેને પરત કરવા માટે શ્રી ચાંદનાને સૂચના આપેલ. અને તે માટે સીડી ચાંદનાને સોંપેલ. શ્રી ચાંદનાએ બે ત્રણ વખત પ્રયાસ કરેલ પણ દરેક વખતે શ્રી પી.પી.પાંડે સાહેબ સાથે તેનો સંપર્ક થયેલ નહી. જ્યાં સુધી મને ખબર છે ત્યાં સુધી મારા ચાર્જ છોડતા અગાઉ એક બે દીવસ અગાઉ મેં કન્ટ્રોલ રુમના એક રાઈડર ને સદરહુ સેલફોર્સની સીડી સોંપી શ્રી પી.પી.પાંડે ને પરત કરવા સુચના આપેલ. જે સીડી રાઈડરે શ્રી પી.પી. પાંડે સાદેબને સોંપી આવેલ. રાઈડર કોણ દતા તેનુ નામ અને ઓળખ આજે હું

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જણાવી શકુ તેમ નથી."

247. The witness in terms of his testimony in paragraph-10 (reproduced verbatim herein below) on page-8, according to Shri Kodekar, has testified that the details provided by cell phone service providers, were verv voluminous in and the circumstances, since the witness did not possess the necessary computer skills, again sought for the assistance of Shri Chandna and the information provided was sought to be compressed in a CD for the sake of investigative convenience. The details of the call records as provided by AT&T, according to the witness, were compressed into one zip file and the details of CELFORCE were also compressed into another zip file and were recorded on a CD which the witness prepared for the purposes of investigation. The witness further claims to have got made more copies of such CD and two copies thereof were handed a specialized Commission comprising of over to Justice G.T.Nanavati and Justice K.G.Shah (commonly known as "Nanavati-Shah Commission") and one copy of the CD was also forwarded by the witness to the Commission of retired Supreme Court Judge Justice U.C. Banerjee and the CD was also handed over to P.L.Mall of the Naroda Police Shri Station in offence connection with an registered Τat C.R.No.98/2002 (arising out of Naroda Gam incident). મારા કોમ્પ.ની ઠાર્ડડીસ્ક પર ઠવે એટી એન્ડ ટી **"**٩٥.

અને સેલફોર્સ બંને સેલફોન કંપનીઓની માઠીતી હતી. ગુજરાતમાં પોલીસ અધીકારીઓમાં એક પ્રથા છે કે, તેઓજે કેસની તપાસ નુ સુપરવીઝન અથવા તેની સાથે તપાસમાં કોઈ ભાગ ભજવેલ હોય તો તે સબંધીત દસ્તાવેજની એક નકલ રાખે છે. મારી પાસે મારા કોમ્પ. ના હાર્ડડીસ્કમાં જે માઠીતી હતી તે માઠીતી ખુબજ મોટી હતી. જે આશરે ૧.૮ જી.બી. જેટલી હતી. આ તમામ માઠીતીને એક સીડી બનાવવા માટે મેં શ્રી ચાંદના પાસે ટેકનીકલ માર્ગદર્શન મેળવેલ. અને તેમના કહેવા પ્રમાણે મેં આ માઠીતીને ઝીપ કરી મારા કોમ્પ.માં આવેલ સીડી રાઈટર મારફતે એક સીડી બનાવેલ. જે સીડીમાં એટી એન્ડ ટી ની એક ઝીપ ફાઈલ છે. અને સેલફોર્સની એક જુદી ઝીપ ફાઈલ છે. જે સીડી ની બે નકલો બનાવી મેં નાણાવટી શાદ કમિશનમાં આપેલી અને એક સીડી દીલ્દી ખાતે આવેલ બેનર્જી કમીટીમાં આપેલી. અને મારા ધ્વારા બનાવવામાં આવેલ પ્રથમ સીડી શ્રી પી.એલ.માલ, નરોડા પોલીસ સ્ટેશન માં દાખલ થયેલ ગુ.ર. નં. ૯૮/૦૨ (નરોડા ગામ) ગુનાના સંદર્ભમાં આપેલ."

248. The witness has testified in paragraph-11 (reproduced verbatim herein below) that his personal computer was hacked by a number of viruses during the period from 2002 to 2009 and therefore, it was impossible to retrieve any data from his personal computer.

"૧૧. ઉપરાંત, મારા ઘરના કોમ્પ. જેના પર ઉપરોકત
જણાવેલ સીડી બનાવવામાં આવેલ તે સીડી પણ નરોડા પોલીસ સ્ટે.
ફ.ગુ.ર.નં. ૯૮/૦૨ ના કામે તા. ૩/૨/૦૯ ના રોજ કબજે લેવામાં આવેલ
છે. પરંતુ આ સમય દરમ્યાન એટલે કે, ૨૦૦૨ થી લઈને ૨૦૦૯ સુધી મારા

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કોમ્પ. માં ઘણી વખત વાઈરસ આવી જતાં મેં મારા કોમ્પ. ની હાર્ડડીસ્કને ઓછામાં ઓછી પંદરથી વીસ વખત ફોર્મટ કરેલ હશે. જે પૈકી, ઓછામાં ઓછી સાત થી આઠ વખત લો લેવલ ફોર્મેટીંગ કરેલ હશે. જેથી જે તે વખતે મેં શ્રી માલને જણાવેલ કે, આ કોમ્પ. માંથી કોઈ જાતની માદીતી મેળવવી ખુબજ મુશ્કેલી થશે. સને ૨૦૦૨ના વર્ષમાં જે કોમ્પ. ઉપરથી મારી પ્ર થમ સીડી બનાવવામાં આવેલ તે કોમ્પ.ની ફક્ત હાર્ડડીસ્ક, સીડી રાઈટર, સીડી રોમ અને ઝીપ ડ્રાઈવ ૨૦૦૯ ના વર્ષમાં મારા કોમ્પ. માં હતુ. આના સીવાય બીજી તમામ વસ્તુઓ જેવી કે, માઈક્રો પ્રોસેસર, રેમ, વગેરે નવી હતુ. અને તેને આ સીડી તૈયાર કરેલ તે કાર્યવાહી સાથે કોઈ સબંધ નથી."

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249. Drawing my attention to paragraph-13 (reproduced verbatim herein below) of the testimony, Shri Kodekar submits that the witness was called over on 04/06/2002 by the then Police Commissioner Shri K.R.Kaushik through a written letter and on 04/06/2002, the witness was also given directions on telephone by Shri P.P.Pandey who directed the witness to come over to the office of Shri Pandey and the witness has testified that at that stage, Shri Pandey handed over the relevant documents pertaining to Naroda Patiya incident and directed the witness to study the documents and make his comments thereupon. The witness claims to have initially declined to carry out such directions, but account of the insistence of Shri Pandev, on according to the witness, he went through the documents and the witness has further testified that

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on taking up investigation into the documents as stated above, the witness went through the contents of the chargesheet wherein it was provided that the incident of Naroda Patiya took place on account of the fact that a truck driver had deliberately run over his truck on some victims which led to the incident. The witness PW-330 has testified that he was not willing to accept such conclusion in the chargesheet and he disclosed his disagreement with such conclusion and finding to Shri Pandev who brushed aside the objections of the present witness and in the circumstances, the witness wrote a letter to the then Police Commissioner Shri K.R.Kaushik. It is submitted that the witness is very relevant and on record that the material to show initial investigation was not carried out in a free and impartial manner and it was only upon the victims complaining to the Hon'ble Supreme Court of India S.T.T. was formed on 10/04/2008 that а and investigation was carried out by such S.I.T., an integral part of which investigation relied upon the documents, CDs and material provided by the present witness PW-330.

"૧૩. નાયબ પો.કમી. કન્ટ્રોલ રુમ અમદાવાદ શહેર તરીકે મારા કાર્ચકાળ દરમ્યાન મેં તા. ૪/૬/૦૨ નારોજ જેતે સમયના પો.કમી. શ્રી કે.આર.કૌશિક ને એક નિમપત્ર લખેલ. નિમપત્ર લખવાનુ કારણ નીચે પ્ર માણે હતુ.

તા.૪/૬/૦૨ ના રોજ શ્રી પી.પી.પાંડે સાદેબનો મારા પર ફોન

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આવેલ. અને મને તેમની કચેરીએ બોલાવેલ. હું શ્રી પી.પી.પાંડે સાહેબ પાસે પહોંચેલ. ત્યારે શ્રી પી.પી. પાંડે સાહેબે મને નરોડા પાટીયા બનાવના કેસ કાગળો આપી અભ્યાસ કરી ટીપ્પણી કરવા જણાવેલ. પ્રથમતો મેં આ કાર્ચવાઠી કરવા ના પાડેલ કારણકે, હું નરોડા પાટીયા ગુનાની તપાસ સાથે જોડાચેલ નહતો. અને તપાસ દરમ્યાન શું શું બનાવ બનેલ છેતે બાબતનું જ્ઞાન મારી પાસે નહતુ. પરંતુ, શ્રી પાંડે સાહેબ ધ્વારા વારંવાર રજુઆત કરતાં મેં આ કાગળો વાંચેલા. જે કાગળો વાંચતા મારા ધ્યાન પર આવેલ કે, ચાર્જશીટમાં એવો ઉલ્લેખ છે કે, બનાવના દીવસે કોઈ ટ્રક ડ્રાઈવરે ટ્રક અમુક માણસો પર ફેરવી નાંખતા તે માણસોના મોત થયેલ જેના કારણે નરોડાપાટીયાનો બનાવ બનેલ. આ વિચારધારા સાથે હું સંમત નહતો. અને મેં માર મંતવ્ય શ્રી પાંડે પાસે જણાવેલ. આ સમયે નાયબ પો.કમી. શ્રી ક્રાઈમબ્રાન્ચ શ્રી વણઝારા સાદેબ અને તપાસનીશ અધીકારી શ્રી ચુડાસમા પણ ત્યાં ઠાજર ઠતા. મારા મંતવ્યથી શ્રી પાંડે અને બીજા અધીકારીઓ સંમત ન થતાં મેં તેમને જણાવેલ કે, ગુનાની તપાસની જવાબદારી તપાસનીશ અધીકારી અને તેમના સુપરવાઈઝરી અધીકારીની હોય છે જેથી આપ સૌને જે યોગ્ય લાગે તે મુજબ આપ કાર્યવાહી કરી શકો છો. ત્યાર પછી મેં મારી કચેરીએ એટલે કે, નાચબ પો.કમી. કન્ટ્રોલ રૂમની કચેરી એ આવી શ્રી કૌશિક સાઠેબને ઉપર જણાવેલ નિમપત્ર લખેલ."

250. My attention is also drawn thereafter to the testimonies of PW-319 Shri K.G.Chandna and PW-320 Shri S.P.Gedam whose testimonies are at Exhs.1139 and 1140 respectively, on the record of the present proceedings. These witnesses, according

to Shri Kodekar, complete the chain of events and corroborate the testimony of PW-330 Shri Rahul Sharma with regard to the preparation and handing over of CDs containing the call details of cell phones used by interested persons related to the present incident. It is submitted that the testimony of PW-318 Shri Dhiren Lariya at Exh.1137, is partly relevant inasmuch as, the witness was a senior officer with CELFORCE at the relevant time and the witness testifies to have provided relevant call details to PW-330 and PW-319 Shri Chandna. It is submitted that the testimony of PW-330 is thus corroborated by the testimonies of these three witnesses and the irregularities in the investigation till 10/04/2008 are highlighted from the testimonies of such witnesses. It is submitted that it is not material at the moment to establish the charges against the accused, but it is necessary that it is in light of such investigation that accused No.57 was arraigned as an accused in the present proceedings.

251. It is pointed out by Shri Kodekar that at this point of time, it emerged that the victims were largely unsatisfied with the investigation process and had significant grievance about the fact of the IOs not recording the statements of victims in an appropriate manner and that it appeared to the victims that there was an all out effort on the part

of the investigation and Government machinery to protect influential and higher-up politicians as also Police Officers on account of which the victims cumulatively approached the Hon'ble Supreme Court of India by filing Special C.A.No.109/2003 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India while conducting hearing of the proceedings, also partly agreed with the grievances of the petitioners and therefore, vide an order, directed the constitution of a Special Investigating Team to carry out further investigation into the per the provisions contained in offence as Sec.173(8) of the Cr.P.C. Accordingly, a S.I.T. came to be formed and the S.I.T. so formed ordered that the ongoing investigation which was being conducted by Shri H.R.Muliyana i.e. PW-329, be continued by him and further investigation remained in the hands of such I.O. till 27/04/2008. Consequently, vide order dated 13/05/2008, the then ACP ('L' Division), Ahmedabad City Shri J.M.Suthar was handed over the investigation into the present offence and Shri Suthar took Τ.Ο. 14/05/2008. over as on Incidentally, Shri Suthar is the vital Prosecution witness who has brought closure to the investigation process, arrested the remaining accused an filed the final chargesheet herein. Shri Suthar is examined as PW-335 at Exh.1289.

252. Shri Kodekar has pointed out that the

examination-in-chief of this witness itself runs into 61 long pages and further examination-in-chief under re-examination is also carried out consequent to the excessively detailed and lengthy cross examination by the defence. It is pointed out by Shri Kodekar that the said witness has, in the course of his investigation, got arrested no less than 25 of the accused herein of whom the following were arrested in terms of relevant separate and distinct arrest panchnamas as per the following details:-

Sr.	Accused		Date of	Arrest panch-
No.	Name	No.	arrest	nama Exh.
1	Parbatsinh @ Darpansinh Tarsangji	40	18/04/2008	1356
2	Raju @ Mamo Kaniyo Ram Avtar tiwari	42	17/09/2008	1315
3	Naran Sitaramtok	43	17/09/2008	1316
4	Nagin Hasmukhbhai Patni	44	17/09/2008	1317
5	Dashrath @ Gatting Jivanbhai Patni	45	17/09/2008	1338
6	Lakhansing @ Laliyo Bhuriyo Lalubha Chudasama	46	17/09/2008	1319
7	Dharmesh Prahladbhai Shukla	47	17/09/2008	1320
8	Jitendra @ Nitu Pratapji thakor	48	04/11/2008	1321
9	Mahesh @ Pappu Pratapji Thakor	49	04/11/2008	1322
10	Kapil Dev Narayan @ Munnabhai Misra	50	04/11/2008	1323
11	Mahesh Ramjibhai Nath	51	12/11/2008	1324
12	Suresh @ Kali Dahyabhai Dhobi	52	12/11/2008	1325
13	Sushil Brijmohan Sharma	53	18/11/2008	1326
14	Bharat Laxmanbhai God	55	26/11/2008	1328

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	Rajput			
15	Bharat @ Bharat Taili Shitalaprasad Balodiya	54	24/11/2008	1327
16	Pradip Khanabhai Parmar	56	29/12/2008	1329
17	Kiritkumar Govindji Erda	57	08/09/2009	1330
18	Meghsing Dhupsing Chaudhary	58	20/02/2009	1331
19	Atul Indravadan Vaidya	59	20/02/2009	1332
20	Bipin Ambalal Patel	60	25/02/2009	1333
21	Chunilal Jethaji Prajapati	61	25/02/2009	1334
22	Dilip Kantilal Jinger	62	26/02/2009	1335
23	Dinesh Prabhudas Sharma	63	07/03/2009	1336
24	Shivcharan @ Lallo S/o. Ramjinath	64	11/08/2009	1337
25	Mukesh @ Bhuriyo S/o.Mafabhai Patni (Juvenile accused)	_	12/11/2008	_

253. Shri Kodekar also points out that the statement of relevant witnesses and further investigation in terms of such statements was carried out by the present witness. The said I.O. also investigated and thoroughly scrutinized the senior Police Officers in the present role of particularly in light of offence more the made against such officers complaints bv the victims and other interested organizations. It is more particularly in light of such detailed investigation that the role played by accused No.57 Shri K.G.Erda is particularly highlighted in paragraphs 63 to 76 (all reproduced verbatim herein below) of his deposition and it is largely based upon the facts contained in and emerging from such

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testimony and which form the part of the investigative process that Shri Erda was sought to be arraigned as and was ultimately arraigned as an accused on the record of the present proceedings. It is pointed out that the witness has clearly specified and testified with regard to the clear acts and omissions on the part of accused No.57 which have been instrumental in the incident getting out of hand and which resulted in loss of lives to the extent as has taken place in the present incident.

254. However, Shri Kodekar has also highlighted a very important aspect which has not emerged from the testimony of any of the previous referred to herein above witnesses and which possibly has emerged only in the course of the further investigation carried out by Shri Suthar i.e. the present witness upon constitution of the S.I.T.

255. Drawing my attention to paragraph-74 of the testimony of this witness, it is pointed out that it emerges that in the course of investigation, it became clear that Shri Ehsan Jafri had in self defence fired from his licensed weapon which resulted in injuries being caused to no less than 15 persons of whom one such injured also lost his life.

256. The paragraphs Nos.63 to 76 of the

deposition of this witness i.e. PW-335, are reproduced verbatim herein below:-

"૬૩. શ્રી કે.જી.એરડા એ આ બનાવ વખતે આગ લાગેલી તે માટે ફાયર બ્રિગેડને બોલાવવા માટે પાછળથી કોઈ રીકોલ કરેલ નથી અને તા.૮/૩/૦૨ સુધી પણ આગ લાગતી હતી ત્યાં સુધી ફાયરબ્રિગેડનો ઉપયોગ કરેલ નથી.

૬૪. શ્રી કે.જી.એરડા એ બનાવવાળી જગ્યાએથી મળી આવેલ લાશોના બ્લડ સેમ્પલ લેવા માટે કોઈ કાર્ચવાઠી કરેલ નથી.
૬૫. શ્રી કે.જી. એરડાએ લાશોના ઈન્ક. પંચનામા મીકેનીકલી તૈયાર કરેલા એટલે કે, બનાવવાળી જગ્યાએ પંચે ટુબરુ તેઓએ દરેક ઈન્ક. પંચનામાનો ટાઈમ વીસ મીનીટનો બતાવી તે પછી પંાચ મીનીટનો ગાળો રાખી બીજા ઈન્ક. આરીતે મીકેનીકલી ભરેલા છે જેના કારણે લાશો પર થયેલી ઈજાઓ કે અન્ય કોઈ વસ્તુઓની તપાસ ઉડાણ પુર્વક થયેલ નથી.

૬૬. આવા મહત્વના કોમ્યુનલ બંધના એલાન વખતે વીડીયોગ્રાફી કરાવવી જરુરી હતી તેમ છતા તેઓએ બનાવ વખતે કોઈ વિડીયોગ્રાફી કરાવેલ નથી.

કહ. આવા કોમ્યુનલ બંધના એલાન સંદર્ભે કોમી માનસ ધરાવતા તત્વોની કોઈ પ્રિવેન્ટીવ એરેસ્ટ તા.૨૭/૨/૦૨ ના રોજ કરેલ નથી. તેઓએ જાતે બંદોબસ્તની વર્દેચણી કરેલ નથી. તાબાના કર્મચારીઓએ કઈ રીતે ફરજ બજાવવી તેનુ કોઈ એડવાન્સ બીફીંગ કરેલ નથી ,તેની કોઈ સ્ટેશન ડાયરીમાં નોંધ કરેલ નથી. તા.૨૮/૨ નાન રોજ પણ કોઈ પ્રિવેન્ટીવ એરેસ્ટ નથી. આ બનાવ ચાલુ દ્વો તે દરમ્યાન પણ કોઈ આરોપીની સ્થળ પરથી

ધરપકડ કરેલ નથી.

૬૮. કોમ્યુનલ રાયોટસ વખતે શું કામગીરી કરવી તેની કોમ્યુનલ રાયોટસ સ્ક્રીમ અમલમાં હતી અને તેઓએ જાતે બનાવેલ હતી. તેમાં કોમી સંવેદનશીલ સ્થળો પર બંદોબસ્ત કરવાનો હતો. જેમાંથી નવમાંથી ચાર સ્થળ પર કોઈ પોલીસ બંદોબસ્ત ગોઠવેલ ન હતો અને તેમા ગુલબર્ગ સોસા.ની આજુબાજુના વિસ્તારનો પણ સમાવેશ થાય છે. મેઘાણીનગર પો.સ્ટે. તરફથી સીટને મોકલી આપવામાં આવેલ સને ૨૦૦૧–૨૦૦૨ ની કોમ્યુનલ રાયોટસ સ્ક્રીમના કાગળોનું બંચ હું આ સાથે રજુ કરુ છુ તેને સંયુકત આંક : ૧૩૫૮ આપવામાં આવે છે.

કલ. કોમી માનસ ધરાવતા બંને કોમના માણસોનું કેટેગરી વાઈસ એટલે કે, એ, બી અને સી કેટેગરીના કુલ ૩૯ ઈસમો હતા તે પૈકીની કોઈપણવ્યકિતની પ્રિવેન્ટીવ એરેસ્ટ કરેલ નથી. જેના કારણે આ ગુનામાં પાંચ આરોપી આ લીસ્ટ પૈકીના પકડાયેલ છે.

૭૦. આ બનાવમાં એફએસએલ તાત્કાલીક બોલાવવાની રહે છે પરંતુ, એફએસએલના અધીકારીને બોલાવ્યા બાદ ફરીથી તેઓએ રીકોલ કરી સમયસર બનાવવાળી જગ્યાની તપાસણી કરાવેલ નથી. તે જ રીતે સોસા.માં થચેલ ગેસ બ્લાસ્ટની પણ તપાસ કરાવેલ નથી.

૭૧. આ બનાવ વખતે તેઓઓ, વીએચએફ મેસેજ થી વધારાનો ફોર્સ માગવા માટે ઉપલા અધીકારીઓને જાણ થવા કન્ટ્રોલને મેસેજ આપેલા છે. પરંતુ તેઓ પાસે આઠ માણસો રીઝર્વમાં હોવા છતા તેનો ઉપયોગ છેવટ સુધી ન કર્યો અને વધારાના ફોર્સની માગણી કરતા રહ્યા.

હર. તેઓને પોતાને સરકારી રીવોલ્વર તથા તીસ કાર્ટીસ ઈસ્યુ થયેલ હતા પરંતુ બનાવ વખતે તેઓએ તેનો પુરતો ઉપયોગ કરેલ નથી અને માત્ર છ રાઉન્ડ કાયર કરેલ છે.

૭૩. પોલીસ સ્ટેશનમાં પચાસ રાચફલ હોવા છતાં માત્ર તેર કર્મચારીઓને આર્મ્સ ઈસ્યુ કરેલ. આ બનાવમાં ગુલબર્ગ સોસા. પર તોફાન ટોળાએ હુમલો કરેલ તે વખતે તેમની સાથેના પોલીસ અધીકાીરી તથા કર્મચારીઓએ તબકકાવાર ફાચરીંગ કરેલ તેમાં, ફાચરીંગ કરનાર કર્મચારીના લીધેલ નિવેદન પરથી ફલીત થયેલ કે, ક. ૧૨–૦ થી ૧૬–૦ દરમ્યાન કુલ એકસઠ રાઉન્ડ ફાચર કરવામાં આવેલા હતા તે દરમ્યાન એકપણ આરોપીને પોલીસ ફાચરીંગમાં ઈજા થયેલ નહતી. ઉલટાનુ, આરોપીઓએ કરેલ પથ્થરમારામાં શ્રી એરડા તથા અન્ય પાંચ મળી કુલ છ પોલીસ ઈજા પામેલ હતા.

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. આ દરમ્યાન શ્રી એઠસાન જાફરીએ સ્વબચાવમાં કરેલ ફાયરીંગ માં કુલ પંદર જણાને ઈજા થયેલ હતી અને એક જણ પાછળથી મરણ ગયેલ હતો. જયારે શ્રી એરડા અને તેમના કર્મચારી ઘ્વારા કરાવમાં આવેલ ફાયરમાં એકપણ આરોપીને ઈજા થયેલ ન હતી. ક.૧૬ થી ૧૮−૦ દરમ્યાન વધારાનો ફોર્સ અને ઉપલા અધીકારીઓ આવી જતાં કરવામાં આવેલ તેસઠ રાઉન્ડ ગોળીબારમાં ચાર હિન્દુ આરોપીઓ મરણ ગયેલ હતા અને અગીયાર જણને ઈજા થયેલ હતી. આમ, શ્રી એરડા એ તેમના બંદોબસ્તના સ્થળે ફરજ દરમ્યાન બીનઅસરકારક ફાયરીંગ કરેલાનું સ્પષ્ટ થયેલ.

૭૫. આ કામે, આરોપીઓ માંગીલાલ ઘુપચંદ જૈન, પ્ર હલાદજી રાજુજી અસોરી અને મદનલાલ ઘનરાજના સ્ટીંગ ઓપરેશન થયેલા. તેમાં, આરોપીઓએ, શ્રી આશીષ ખેતાને કરેલા સ્ટીંગ ઓપરેશન દરમ્યાન એવી કબુલાત કરેલ કે, શ્રી એરડાના સહકારથી આરોપીઓ આ કામ પાર પાડી શકેલ છે અને આરોપીઓને આ ગુનો કરવામાં છુટ આપેલ હોવાનુ અને આ

સમગ્ર બનાવ દરમ્યાન તેઓ મુકપ્રેક્ષક બન્યા હોય તેવું સ્ટીંગ ઓપરેશન પરથી સ્પષ્ટ થયેલ હતુ.

૭૬. શ્રી એમ.કે.ટંડન જોઈન્ટ સીટી સેકટર રનાઅઓએ બનાવના રોજ સવારના ગુલબર્ગ સોસા. પાસે શ્રી કે.જી.એરડાને મળેલા ત્યારે શ્રી એમ.કે.ટંડને શ્રી કે.જી.એરડાને સુચના કરેલ કે, આ મુસ્લીમ સોસા. દોવાથી વધુ ઘ્યાન આપવું તેમ છતાં આ બનાવ ચાલુ દતા તે દરમ્યાન શ્રી કે.જી.એરડા અન્ય સ્થળે એટલે કે, મેઘાણીનગર કોર્ટ કમ્પા. તરફ સ્થળ છોડી જતા રહેલા દતા. અને પરત આવ્યા બાદ પણ આ કોમી બનાવ અટકાવવા માટે અસરકારક કામગીરી ન કરી નિષ્ક્રીય રહી આરોપીઓને ગુનો કરવામાં પ્રેરકબળ આપેલ દોવાનુ તપાસ દરમ્યાન સ્પષ્ટ થયેલ."

257. It is pointed out by Shri Kodekar at the cost of repetition that the weapon was seized in terms of panchnama Exh.262 and was established in terms of due inquiries to be licensed in the name of deceased Shri Ehsan Jafri.

258. It is further pointed out by Shri Kodekar that the I.O. upon being examined, has clearly exposed off the lack of proper investigation inasmuch as, the witness has testified in terms of paragraph-78 (reproduced verbatim herein below of his testimony that no less than 249 witnesses were interrogated by the I.O. and statements of such persons were recorded. It is pointed out by Shri

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being satisfied with certain Kodekar that not aspects of the statements of some of the witnesses, the I.O. recalled no less than 22 such witnesses and obtained further statements/clarifications from such witnesses. The witnesses was a mix of victims, the investigative journalist Ashish Khaitan who conducted the sting operation, previous IOs and it appears that after clarification, it was found on a thorough analysis of all the material that 46 witnesses had not given statements which were relevant to the investigation and therefore, such 46 persons, according to the present witness, were not cited as witnesses in the chargesheet. The witness has testified, according to Shri Kodekar, that on completion of the investigation, a chargesheet came to be filed against all the accused herein.

"૭૮. મેં કુલ ૨૪૯ સાહેદોના નિવેદનો લીધેલા અને તે પૈકી કેટલાક સાહેદોના નિવેદનો વંચાણે લેતાં, તથા આગળના નિવેદનો ધ્યાને લેતાં, કેટલીક સ્પષ્ટતા થવી જરૂરી જણાતા મેં સાહેદ ,

- ૧. સલીમ નુરમદંમદ સન્ધી
- ર. સાચરાબેન સલીમભાઈ સન્ધી
- 3. સઈદખાન એહમદખાન પઠાણ
- ૪. ઈમ્તીચાઝ સઈદખાન પઠાણ
- પ. ફિરોઝમહમદગુલઝાર મહમદ પઠાણ
- ફકીરમહમદ નસીરઅલી સૈયદ
- **૭.** મહમદઅલી શહજાદઅલી સૈચદ
- તૈચબઅલી ફકીરમદમદ

Judgment

- ૨સીદખાન અહેમદખાન પઠાણ
- ૧૦. મહમદરફીક અબુબકર
- ૧૧. અલતાફખાન ગુલાબખાન પઠાણ
- ૧૨. ધનેસીંહ બેચરસીંહ
- ૧૩. પી.બી. ગોંદીયા સાહેબ
- ૧૪. આશીષ ખેતાન
- ૧૫. એ.એસ.આઈ. ટીકાજી નથુજી ચાવડા
- ૧૬. દીલાવરસીંહ નીરુભા ઝાલા
- ૧૭. વુ.કો. અમીનાબાનુ મહેમુદમીયા
- ૧૮. એ.એસ.આઈ. રણછોડ રામા
- ૧૯. એમ.ડી.વાઘેલા.
- ૨૦. એન.એસ.મલીક
- ૨૧. પો.ઈ. શ્રી આર.એમ.પઠાણ
- રર. શ્રી એન.ડી.પરમાર ના વિશેષ નિવેદન લીધેલા."

259. Drawing my attention to paragraph-82 verbatim herein below) of (reproduced the deposition, Shri Kodekar submits that the witness further testified that some of the accused has including one Manish Splendour, Babu Marwadi, Ramu Manibhai Patni, all could not be identified by the concerned witness and were therefore, not made accused in the present proceedings and a closure report was filed with respect to such accused whereas with regard to accused No.66 though the said

accused was not initially identified by one witness Imtiyaz, an identification parade was carried out in terms of the orders passed by the Court whereby accused No.66 was sought to be and was in fact positively identified by witness Sairaben Salimbhai Sandhi and therefore, the said accused was arraigned as accused No.66 on the record of the present proceedings.

"૮૨. મેં આ તપાસ દરમ્યાન આફોપિત મનીષ સ્ પેલન્ડરની ઓળખ પરેડ કરેલ. સાહેદ સાયરાબેન સલીમભાઈ સન્ધી ઘ્વારા કરાવેલ હતી. જેમાં, સાહેદ મનીષભાઈને ઓળખવામાં નિષ્ફળ ગચેલ. તેમજ, આફોપિત બાબુ હસ્તીમલ મારવાડી ની ઓળખ પરેડ સાહેદ ઈમ્તીયાઝ મારફત કરવામાં આવેલ. તે પણ સાહેદ મજકુર આફોપિતને ઓળખવામાં નિષ્ફળ ગચેલ. આફોપિત રામુ મણીભાઈ પટણીની ઓળખપરેડ સાહેદ ફકીરમહમદના ઘ્વારા કરવામાં આવતાં તેમાં પણ સાહેદ નિષ્ફળ ગચેલ હતા. જયારે, નામ. કોર્ટના હુકમથી આફોપિત બાબુ હસ્તીમલ મારવાડી ની ઓળખ પરેડ સાહેદ સાયરાબેન સલીમ ભાઈ સન્ધી ઘ્વરા કરાવતાં તેણી સામાવાળાને ઓળખવામાં સફળ થયેલ હતી. જે અંગે મે, નામ.કોર્ટને વિગતવાર રિપોર્ટ કરેલ."

260. Drawing my attention to paragraph-83 (reproduced verbatim herein below) of the testimony of the witness, Shri Kodekar points out that the finality of the investigation process is highlighted of such portions of the testimony inasmuch as, the witness has clearly established that out of the 86

probable accused, 46 of the accused were arrested investigating process prior to during the the appointment of S.I.T., 25 of the accused were arrested post establishment of the S.I.T., 5 of the accused are still absconding, 4 accused died in Police firing and one in private firing whereas three of the accused passed away prior to the filing of the chargesheet. It is also pointed out that two of the accused were arraigned by the Court upon an application tendered under Sec.319 of the Cr.P.C. and thus, in all 66 accused came to be tried in the present offence, of which 5 of the accused have passed away during the pendency of the trial proceedings and the proceedings stand abated against such 5 deceased accused.

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"23. આ કામે ભોગબનનાર સાદેદે નામ. કોર્ટને સી.આર.પી.સી. કલમ ૩૧૯ અનુસંધાને આપેલ અરજી વિરુધમેં નામ. કોર્ટને વિગતવાર અદેવાલ કરેલ. મારી સમગ્ર તપાસ દરમ્યાન કુલ ૮૬ આરોપીઓના નામ ખુલવા પામેલ દતા તે પૈકી, ૪૬ આરોપી પ્રિએસઆઈટીની તપાસમાં તેમજ ૨૫ આરોપી એસઆઈટીની તપાસમાં નામ ખુલેલા અને અટક થયેલા. જયારે બે આરોપી સામે સીઆરપીસી કલમ ૩૧૯ નામ.કોર્ટે કાર્યવાદી કરેલી. પાંચ આરોપી દજી સુંધી નાસતા ભાગતા છે. ચાર આરોપી પોલીસ ફાયરીંગમાં એક આરોપી ખાનગી પોલીસ ફાયરીંગમાં તેમજ ત્રણ આરોપી કુદરતી મોતથી મરણ ગયેલ છે."

261. Drawing my attention to paragraph-84 (reproduced verbatim herein below) of the testimony

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the witness, Shri Kodekar points out that a of report was filed by the present witness recommending departmental proceedings against the then J.C.P. Shri M.K.Tandon and the then A.C.P. Shri M.T.Rana the alleged negligence and carelessness for in discharge of their duties. It is pointed out by Shri Kodekar that the witness has further testified that since accused No.57 K.G.Erda was already arrested by an order passed below application under Sec.319 of Cr.P.c., only a report was forwarded by the present witness to his superiors directing departmental proceedings against such accused also.

આ તપાસ દરમ્યાન બનાવ વખતે કરજમાં રાખેલ ۳۲۶. બેદરકારી અને નિષ્કાળજી અંગે મેં તત્કાલીન જી.સી.પી. શ્રી એમ.કે.ટંડન સાઠેબ સેકટર બે વિરુધ તેમજ તપાસમાં સુપરવિઝનમાં વિઝીટીંગ ઠવાલદાર તરીકે નિષ્કાળજી રાખવા માટે મે, તત્કાલીન એ.સી.પી. શ્રી એમ.ટી.રાણા વિરૂધ ખાતાકીય પગલા માટે રીપોર્ટ પાઠવેલ. તેમજ આજ રીપોર્ટમાં તત્કાલીન પી.આઈ. શ્રી કે.જી.એરડા આ ગુનામાં સામેલગીરી હોવા અંગે તેઓની અટક

કરેલ હોઈ તેઓ વિરૂધ ખાતા રાહે પગલા લેવા માટે રીપોર્ટ પાઠવેલ હતો."

2.62. Drawing my attention to paragraph-85 (reproduced verbatim herein below) of the testimony of this witness, Shri Kodekar points out that such I.O. also recommended departmental proceedings against the concerned officers of the Fire Brigade who despite being directed by the then J.C.P. Shri Tandon to indulge in fire fighting activity, failed to do so. A report was thus filed recommending

departmental proceedings against such Fire Brigade personnel also. It is pointed out that winding up investigation the process in the present proceedings, the witness has testified as to how the various offences arising out of the same incident came to be clubbed together and separate 'C' Summary proceedings were ordered by the Court in two other offences which are highlighted in paragraph-86 (reproduced verbatim herein below) of his testimony. આ બનાવ વખતે પોલીસ કન્ટ્રોલ તરફથી તેમજ `'૮૫.

જે.સી.પી. શ્રી એમ.કે.ટંડન સાદેબ તથા ફાયરબ્રિગેડને સ્થળ પર બોલાવવા મેસેજ આપેલ અને ફાયરબ્રિગેડના કર્મચારી ફરજમાં રવાના થઈ કામગીરી પુર્ણ કર્યા વગર પરત આવતાં, તે અંગે ફરજમાં દાખવેલ બેદરકારી બાબતે પણ તેઓ સામે, યોગ્ય કાર્યવાઠી કરવા માટે મેં રીપોર્ટ પાઠવેલ હતો.

૮૬. આ કામે, ગુલબર્ગ સોસા. વિસ્તારમાં, રામેશ્વર ચોકી, ચમનપુરા વિસ્તારમાં જે બનાવ બનેલા તે અનુસંધાને મેં મેઘાણીનગર પો.સ્ટે. ફ.ગુ.ર: નં. ૭૪/૦૨,૭૭/૦૨,૭૮/૦૨,૭૯/૦૨,ના ગુના પણ પાછળથી અનુક્રમે પ્રથમ ગુનો તા. ૮/૩/૦૨,અને બાકીના ત્રણ ગુના તા.૧૧/૩/૦૨ ના રોજ નોંધાયા હતા. આ ગુના બનેલ તે વખતે તે જ અનુસંધાને આ ચાર ગુના બનેલ હોવાથી, આ ચારેય ગુનાઓ, મેઘાણીનગર ફ.ગુ.ર.નં. ૬૭/૦૨ ની સાથે કલપ કરવામાં આવેલા અને મેઘાણીનગર યો.સ્ટે.ફ.ગુ.ર.નં. ૭૪/૦૨ અને ૭૭/૦૨ ના કામે નામ.કોર્ટે સી સમરી પણ મંજુર કરેલ અને બાકીના બે ગુના માટે સી સમરી માગવા માં આવેલ જે હાલ નામ. કોર્ટ પાસે પ્રોસેસમાં છે."

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263. It is pointed out that thus the witness has completed the investigation in a fair and just manner and has ensured that all the named accused were arrested and brought to light and were made to face the trial process. The witness has also arranged for seizure and recovery of CDs relevant to and concerning the sting operation conducted herein as stated herein before.

264. It is pointed out by Shri Kodekar that the witness has also brought on record the contradictions emerging from the testimonies of number of witnesses herein and such contradictions are highlighted in paragraph-92 (reproduced verbatim herein below) of his testimony.

"લ્ર. એ વાત ખરી છે કે, તેમણે મારી રુબરુ ના નિવેદનમાં નીચે મુજબ લખાવેલ છે.

૧. '' ત્યારે જાફરીસાહેબે અમો છોકરાઓને સોસા.ની અંદર આવી જાવ તેમ જણાવેલ અને વધુ રક્ષણ માટે આવનાર કમી. પી.સી.પાંડે તથા એરડા સાથે વાતચીત કરી લીધેલ છે. ''

૨. '' ટોળુ પથ્થર ઉપરાંત સળગતા કાકડા અને બાટલીઓ ફેંકતુ હતુ. ''
૩. '' રેલવે લાઈન તરફથી ટોળુ પથ્થરમારો ઉપરાંત બાટલીઓનો મારો કરતું હતુ.''

૪. 🛛 '' બહારથી આવતા પથ્થર હું સામે ફેંકતો હતો.''

પ. '' બપોરના એકાદ દોઢ વાગે મારા મકાનની બાજુમાં આવેલ મકાન નંબર એકના ધાબા પર ટોળુ ચઢી ગચેલ અને ત્યાંથી અમારી સોસા. તરફ

Judgment

પથ્થરમારો, બાટલીઓ ફેંકવાનુ ચાલુ કરેલ તેમાં, ઈરફાનનામના છોકરાને વાગેલ, તેને મારા ભાઈ શકીલ તથા બીજાઓએ જાફરીસાદેબના મકાનમાં મુકી આવેલા.''

૬. '' જેમને ઈજાઓ થતી તેમને જાફરીસાહેબના મકાનમાં મુકી આવતા.''
૭. '' એ પછી અડધો એક કલાક બાદ રેલવે તરફની દીવાલ ગેસના બાટલા લગાવી તોડવામાંઆવેલ તે પછી મુખ્ય ઝાંપાની બાજુની દીવાલ તોડી ટોળુ સોસા.માં ઘુસી ગચેલ.''

८. '' મને નામ આવડતા નથી પણ જોચે ઓળખી શકુ.''"

265. Ιt is submitted that in the circumstances, the testimony of this witness is required to be accepted as wholly corroborative and indicative of the fair and unbiased investigation carried out herein and the testimony of the said witness would largely corroborate and support the testimony of relevant eye-witnesses and it is urged that the cumulative effect of such testimonies would result in arriving at of a conclusion that the successfully proved Prosecution has beyond reasonable doubt the charges against all the accused herein.

266. It is pointed out by Shri Kodekar that with a view to avoid summoning and examining further witnesses, the present witness in terms of paragraphs 212 to 222 (all reproduced verbatim herein below) of his testimony, has proved the

relevant documents produced subsequently vide list Exh.507 and my attention is drawn to the fact that he has only shortened the process of investigation by proving the documents produced subsequently vide list Exh.507. It is submitted that such exercise has not caused any prejudice to the defence. It is pointed out that in the circumstances, the witness is required to be treated as a truthful and reliable witness and his testimony is required to be accepted.

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"૨૧૨. મેં તપાસના કામે મેઘાણીનગર પો.સ્ટે.ની વન ગાડી મેસેજ બુકનો ઉતારો કબજે લીધેલ જે મેં આ કામે આંક:પ૦૭ ના રીપોર્ટના અનુક્રમ નંબર ૧૮ થી રજુ છે તે જ છે. જે અસલ પરથી કરવામાં આવેલ ઝેરોક્ષ નકલ છે. જે પ્રમાણીત કરેલ છે તે હવે રજુ દા.આંક: ૧૪૭૦ આપવામાં આવે છે.

ર૧૩. મેં તપાસના કામે મેઘાણીનગર પો.સ્ટે.ની વર્ધીબુક તા. ૨૭/૨/૦૨ થી તા.૪/૩/૦૨ સુધીની કબજે લીધેલ તેની પ્ર માણીત ઝેરોક્ષ નકલ મેં આ કામે નિશાની ૫૦૭/૧૯ થી ૨જુ કરેલ છે તે જ છે જે હવે ૨જુ દાખલ આંક: ૧૪૭૧ આપવામાં આવે છે.

ર૧૪. મેં તપાસના કામે ઝોન – ૪ ડીસીપીના લોગબુકના ઉતારાની નકલો કબજે લીધેલ જેની પ્રમાણીત નકલો નિ. ૫૦૭/૨૦ થી રજુ છે તે છે. જે દ્વે રજુ દાખલ આંક:૧૪૭૨ આપવામાં આવે છે.

ર૧પ. મેં તપાસના કામે એસીપી જી ડીવીઝનની તા.૨૭/૨/૦૨ થી તા.૧/૩/૦૨ સુધીની વર્ધીબુક કબજે લીધેલ તેની પ્ર માણીત ઝેરોક્ષ નકલ નિ.૫૦૭/૨૧ થી ૨જુ છે તે જ છે. જે હવે ૨જુ દાખલ

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આંક: ૧૪૭૩ આપવામાં આવે છે.

ર૧૬. મેં તપાસના કામે એસીપી જી ડીવીજનની વીકલી ડાયરી, વગેરેની માગણી કરેલ જે કાગળો મળી આવેલ નથી તેવો રીપોર્ટ એસીપી જી ડીવીઝનના એ આપેલ જે નિ. ૫૦૭/૨૨ થી રજુ છે તે જ છે જે હવે રજુ દાખલ આંક:૧૪૭૪ આપવામાં આવે છે.

ર૧૭. મેં તપાસ દરમ્યાન મોબાઈલ નં. ૯૪૨૬૦ ૦૧૧૪૮ ની ડીટેઈલ્સ બીએસએનએલ પાસે માંગેલ જે પ્રાપ્ય નથી તેવો બીએસએનએલે મને જવાબ આપેલ જે નિ.૫૪૬/૨ થી ૨જુ છે તે હવે ૨જુ દાખલ આંક: ૧૪૭૫ આપવામાં આવે છે.

૨૧૮. મેં તપાસ દરમ્યાન મોબાઈલ નં.૯૮૯૮૫૯૬૩૫૫ ની માઠીતી એરટેલ પાસે માંગેલી તેનો એરટેલ કંપનીએ આપેલ જવાબ

નિ.પજ્ડ / ૩ થી રજુ છે તે રજુ દાખલ આંક: ૧૪૭૬ આપવામાં આવે છે. ૨૧૯. મેં ટેલીફોન નં. ૨૩૧૩૪૪૪૫ ની માઠીતી માંગેલી જે મળી શકે તેમ ન હોવાનું બીએસએનએલ કંપનીએ મને જણાવેલ તે બીએસએનએલ કંપની નો પત્ર પજડ / ૫ થી રજુ છે તે જ છે જે હવે રજુ દાખલ આંક: ૧૪૭૭ આપવામાં આવે છે.

૨૨૦. મેં તપાસ દરમ્યાન સેકટર ટુ ની ગાડીની મેસેજ બુકની માંગણી કરતા સંચુકત પો.કમી.ના પત્ર મુજબ તે નાશમાં ગયેલ દોવાનું જણાવેલ જે પત્ર નિ. પજક / ૧૭ થી રજુ છે તે જ છે તે દવે રજુ દાખલ આંક: ૧ જ્વટ આપવામાં આવેલ છે.

રર૧. મેં તપાસ દરમ્યાન કંટ્રોલ રુમની મેસેજ બુક વગેરેની માગણી કેરલ જે જે ડીસીપીએ તેમના તા.૩૦/૧/૦૯ ના રોજ જણાવેલ તે પત્ર નિ.૫૪૬/૧૮ થી રજુ છે તે જ છે જે હવે રજુ દાખલ આંક: ૧૪૭૯

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આપવામાં આવે છે.

રરર. તે જ પ્રમાણે સેકટર ટુની ગાડીની મેસેજ બુક ની ડીસીપીએ આપેલ માઠીતી નિ. પજક/૧૯ થી રજુ છે તે જ છે જે હવે રજુ દાખલ આંક: ૧૪૮૦ આપવામાં આવે છે."

267. It is submitted that in light of the testimony of such witness at Exh.335, the testimony PW-279 being the then J.C.P. Shri M.K.Tandon of becomes relevant and the testimony of Shri Tandon is on the record of the proceedings at Exh.965. It is pointed out by Shri Kodekar that the witness has only tried to testify as to the steps taken by him in the course of the entire incident and it is pointed out by Shri Kodekar that the witness has hardly been relevant to the Prosecution in light of the fact that he has not been able to identify any of the accused nor is he able to give any eyewitness account of the incident, but it is only with a view to ensure that there is no lacuna in the such witness process that was examined as а prosecution witness. It is pointed out that even if the testimony of this witness is scrutinized thoroughly, it emerges clearly that the witness along with the team of Police Officers, visited Gulbarg Society twice during the fateful dav. However, the first visit was prior to any incident taking place and the second visit was completely after the entire incident had taken place and it is

urged that in the circumstances, the testimony of the eye-witnesses and victims gets further corroboration inasmuch as, it clearly establishes that they were made to undergo the trauma of such a horrendous experience without any Police protection being offerred to them.

268. The testimony of PW-281 being the then Commissioner of Police (Zone-IV) Deputy Shri P.B.Gondia is on the record of the proceedings at Exh.972 and the said witness also has not played any role in either preventing or arresting any of the accused nor has he taken any steps to further the investigative process but it is in fact pointed out by Shri Kodekar that the present witness PW-281 together with PW-279 as also the then Commissioner of Police Shri P.C.Pandey and PW-332 Shri S.S.Chudasama, were sought to be arraigned as accused in the present proceedings. It is submitted in a nutshell is the material oral that this evidence required to be considered in coming to the conclusion that the State has thus discharged its very heavy burden in establishing beyond reasonable doubt the charges against the accused. Ιt is submitted that the testimony of such witnesses is at harmony with and corroborative to the documentary evidence gathered on the record, there is positive identification, there is positive establishing of a conspiracy and meeting of minds on the part of the

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accused, there is positive identification of the concerned accused by the victims, more than one victim has identified a number of accused, the specific overt rule and act of the accused is established in the course of such oral testimony, the same is further corroborated by recovery of muddamal weapons and it is urged that under all such circumstances, the charges against the accused herein are required to be held to be established and the accused are required to be suitably penalized.

269. It is submitted by Shri Kodekar that he would now proceed to make submissions on the question of law raised herein.

After having taken this court through 270. the voluminous material in the shape of oral evidence of the relevant witnesses, Shri Kodekar now submits that he proposes to further cement and establish the Prosecution case against the accused by compartmentalizing his arguments into three stages. It is submitted that the first stage herein would be taking the Court through the entire process which culminated into filing of the chargesheet against the accused, the second stage would be to show the nexus between the accused and the offence and the third stage would be to establish beyond reasonable doubt the charges against the accused by co-relating all material aspects of the present trial.

In support of his efforts to establish 271. the process which resulted in the arrest and chargesheeting of the concerned accused herein, Shri Kodekar submits that the Prosecution intends to in produce on record and has fact produced a compilation of details relating to each of the accused which provides details about the injuries sustained by each of the accused, either in Police firing or in private firing or on account of the stone pelting incidents, which would positively establish the presence of such accused at the scene of the incident. It is submitted by Shri Kodekar that the injury certificates relating to each of the accused and the material witnesses examined with regard to establishing such injuries, is provided in the compilation where no less than 24 of the accused particularized in such details, have sustained injuries in a manner as would establish beyond reasonable doubt the fact of the accused being present at the scene of the incident and having established their presence in such fashion corelating the injuries and their identification by concerned witnesses, the involvement of the accused herein is established beyond in the offence reasonable doubt.

272. A second compilation relates to no less than 62 witnesses having deposed on the record

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of the proceedings with regard to the various panchnamas relating to the scene of the incident, relating to the arrest of the accused, relating to incriminating muddamal recovery of and other relevant panchnamas such as inquest panchnamas, identification parade etc. are provided in the compilation. It is submitted that no doubt in a large number of panchnamas details of which are provided in the compilation, a number of panch witnesses have turned hostile, but according to Shri Kodekar, in light of the settled legal position, that would hardly affect the genuineness of the panchnamas or for that matter, the genuineness of the evidence linking the accused to the offence. It is submitted that such panchnamas also establish the recovery of incriminating weapons and in such circumstances, these panchnamas also go a long way to establish the Prosecution version against the accused.

273. The third compilation produced on the record of the proceedings consists of the depositions of no less than 28 Police witnesses including the eye-witnesses who have identified the accused and perpetrators and who have also in their own fashion supported and corroborated the versions of the eye-witnesses inasmuch as, the involvement, participation and guilt of the accused in the present offence is concerned. It is submitted that

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all the 28 Police witnesses have fully supported and corroborated the Prosecution version, each of the witnesses has identified a large number of accused, details of which are clearly made out in the compilation and it is submitted that this also is an effective corroboration to the testimony of the eyewitnesses. It is submitted that the Prosecution has thus established beyond reasonable doubt the involvement nad participation as also the guilt of each of the accused in the present offence, the role made out by each of them, the weapon with which all of them were possessed of at different times of the incident and their specific overt acts are also established beyond reasonable doubt from the supportive and corroborative versions emerging from the eve-witnesses' testimonies, the selfincriminating material emerging from sting operation and the further corroboration and support given to such testimonies by 28 Police witnesses which has the cumulative effect according to Shri Kodekar, of proving beyond reasonable doubt the guilt of the accused in the present offence and it is urged that each of the accused is required to be penalized for all the offences that they stand charged with. It would be, in my opinion, therefore, necessary to reproduce in tabulation form the above referred material supplied by Shri Kodekar to be made a part arguments advanced on behalf of the of the Prosecution, which I hereby do so:-

<u> </u>		- 1 1	
Sr. No.	Name of accused	Exh. No. of Inj. Certi. or Panchnama of physical examination	Evidence of Doctor
1	Mangaji Pokarji Prajapati (A-4) [injured in Police firing]	614	Dr.Jayesh Somabhai Kanoriya (PW-123 at Exh.612)
2	Jayesh Ramubhai Patni (A-5) [injured in stone pelting]	958	I.O. Shri P.N.Barot (PW-276 at Exh.954)
3	Kishore Mangaji Patni A-6)[injured in private firing]	613	Dr.Jayesh Somabhai Kanoriya (PW-123 at Exh.612)
4	Shailesh @ Kalu Hiralal Patni (A-7)	824	Dr.P.R.Vaghela (PW-237 at Exh.818)
5	Kanaiya @ Bablu Chechau (A-8)	415	Bharat Sohanlal Prajapati (Panch witness - PW-53 at Exh.414)
6	Kantibhai Popatbhai Patni (A-9)	512	Dr.D.B.Jadav (PW- 93 at Exh.511)
7	Sakrabhai Sendhabhai Patni (A-10)	958	I.O. Shri P.N.Barot (PW-276 at Exh.954)
8	Manojkumar Premjibhai Parmar (A-11) [injured in police firing]	594	Dr.Gautam Vrajlal Nayak (PW-118 at Exh.593)
9	Deepakkumar Somabhai Solanki (A-12) [injured in private firing]	623	Dr.Jayesh Somabhai Kanoriya (PW-123 at Exh.612)
10	Vinodbhai Arvindbhai Solanki (A-13) [injured in police firing]	623	Dr.Jayesh Somabhai Kanoriya (PW-123 at Exh.612)
11	Ajay Somabhai Panchal (A-15) [injured in private firing]	514	Dr.D.B.Jadav (PW- 93 at Exh.511)
12	Ratilal Ganeshji Kumbhai (A-17) [died]	622	Dr.Jayesh Somabhai Kanoriya (PW-123 at Exh.612)

(I) Compilation of injured accused

Sr.	Name of accused	Exh. No. of	Evidence of
Sr. No.	Name of accused	Inj. Certi.	
		or	
		Panchnama of	
		physical examination	
<u> </u>			
13	Sanjay Sakrabhai Patni	619	Dr.Jayesh
	(A-18) [injured in police firing]		Somabhai Kanoriya (PW-123 at
	police liling]		(FW-125 at Exh.612)
14	Shailesh Natvarlal	616	
14	Patni (A-19) [injured		Dr.Jayesh Somabhai Kanoriya
	in police firing]		(PW-123 at
			Exh.612)
15	Naresh @ Nariyo	615	Dr.Jayesh
	Bansilal Prajapati (Ā-		Somabhai Kanoriya
	20) [injured in police		(PW-123 at
	firing]		Exh.612)
16	Babubhai Mohanbhai	624	Dr.Jayesh
	Patni (A-22) [injured		Somabhai Kanoriya (PW-123 at
	in police firing]		(PW-123 at Exh.612)
17	Debu Mandi Debui (A	C1 7	
1 /	Babu Manji Patni (A- 23)	617	Dr.Jayesh Somabhai Kanoriya
	[injured in police		(PW-123 at
	firing]		Exh.612)
18	Shankerji Hakaji Mali	673	I.O. Shri
	(A-24)		S.S.Chudasama
			(PW-332 at
			Exh.1226)
19	Gopaldas Mandas	673	I.O. Shri
	Vaishnav (A-27)		S.S.Chudasama (PW-332 at
			Exh.1226)
20	Prahlad Rajuji Asori	517	Dr.D.B.Jadav (PW-
20	(A-28) [injured in	J 1 /	93 at Exh.511)
	private firing]		·
21	Madanlal Dhanraj Raval	621	Dr.Jayesh
	(A-30) [injured in		Somabhai Kanoriya
	police firing]		(PW-123 at
<u> </u>			Exh.612)
22	Prahlad Omprakash	823	Dr.P.R.Vaghela
	Sonegara (A-33)		(PW-237 at
	[injured in private firing]		Exh.818)
23		620	Dr. Jauach
23	Mukesh Atmaram Thakor (A-39)	620	Dr.Jayesh Somabhai
	[injured in police		Kanoriya
	firing]		(PW-123 at
			Exh.612)
	L		,

Sr. No.	Name of accused		Exh. No. of Inj. Certi. or Panchnama of physical examination	Evidence of Doctor
24	Parbatsing Darsansing Darpansing Thakor 40)	0 0 (A-	596	Dr.N.G.Joshi (PW- 119 at Exh.595)

(II) Compilation of Panch witnesses

Sr. No.	Name of Panch witness	Panchnama Exh.	Exhibit of deposition
1	Anup Mangatram Sukhwani (PW-1)	260, 261 & 262	259
2	Jagdish Vanaji Mali (PW-9)	278 to 295	277
3	Popatbhai Shantibhai Thakor (PW-10)	297 to 310	296
4	Mohanji Piraji Vanjhara (PW-15) [hostile]	320 to 326	319
5	Ishwarbhai Devibhai Solanki (PW-16)	328	327
6	Raman Bhikaji Prajapati (PW-18)	331	330
7	Sohanji Vaghaji Thakor (PW-19)	333	332
8	Maheshkumar Ramchandra Makwana (PW-24)	342	341
9	Dharmendrabhai Bhikabhai Bharwad (PW- 25)	344	343
10	Ratilal Ladhabhai Sumera (PW-26)	346	345
11	Sendhabhai Lalabhai Dholwala (PW-27)	348	347
12	Maheshbhai Ratnabhai Patni (PW-32)	355	354
13	Premaram Ummedji Vanjhara (PW-32)	357	356
14	Prabhat Sankabhai Desai (PW-36)	381	380

Sr. No.	Name of Panch witness	Panchnama Exh.	Exhibit of deposition
15	Kamleshbhai Ambalal Thakkar (PW-42)	394	393
16	Kantibhai Shankerbhai Patni (PW-43)	396	395
17	Ramprakash Gulabsinh Bhadoria (PW-44)	398	397
18	Girish Jayantilal Patel (PW-51)	412	411
19	Bharat Sohanlal Prajapati (PW-53)	415	414
20	Mahendrasinh Baburam Rathod (PW-54)	417	416
21	Ghanshyam Bhavanifer Tiwari (PW-60)	417	431
22	Santosh Ramlal Pathak (PW-65) (hostile)	957	456
23	Hitendrasinh Manubha Jadeja (PW-66) 456	456	455
24	Ramtirth Sahdevsinh Patel (PW-68)	460	459
25	Suresh Lalchand Dhobi (PW-73) (hostile)	1086	471
26	Pawankumar Hiralal Samodia (PW-74) (hostile)	1244	472
27	Kishan Jorjibhai Rajpurohit (PW-76)	480	479
28	Dineshbhai Mohanbhai Vala (PW-77)	482 to 485	481
29	Dinesh Jayantibhai Od (PW-79)	488	487
30	Bhupendra Kantilal Patel (PW-83) (hostile)	495	494
31	Himanshu Jayantilal Vyas (PW-84) (hostile)	1259	496
32	Divitesh Ramanlal Shah (PW-85) (hostile)	1071	497
33	Jitusinh Kalusinh Chauhan (PW-86)	499	498

Sr. No.	Name of Panch witness	Panchnama Exh.	Exhibit of deposition
34	Pankajbhai Maheshbhai Katri (PW-88) (hostile)	1258	501
35	Rameshbhai Jayantilal Doshi (PW-95) (hostile)	1084	522
36	Narendrasinh Rajbahadursinh Chauhan (PW-96)	524	523
37	Omprakash Shapuaji Diya (PW-98)	1244	526
38	Munavarali Mohd. Ismail Sheikh (PW-100)	530	529
39	Narendra Bechardas Kahar (PW-101)	532	531
40	Jigneshbhai Rajubhai Shah (PW-102)	535	534
41	Saiyed Salimuddin Mohd. Miya Saiyed (PW-103)	537	536
42	Halubhai Ramji Patni (PW-105)	540	539
43	Shantilal Govindbhai Parmar (PW-111)	576	575
44	Yakubbhai Musabhai Qureshi (PW-112)	578	577
45	Kesha Bhikabhai Thakor (PW-114)(hostile)	581	580
46	Amarsinh Sundersingh Vaghodia (PW-131)	642	641
47	Abdulaziz Abdul Khalid Sheikh (PW-133)	644	643
48	Salim Achhankhan Pathan (PW-145)	671	670
49	Jeparam Devaji Mali (PW-146)	673	672
50	Mayurkumar Govindbhai Parmar (PW-147)	675	674
51	Jitendra Chandubhai Makwana (PW-164) (hostile)	1218	695
52	Jagdishbhai Sakharam Degle (PW-173) (hostile)	1259	705

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Sr. No.	Name of Panch witness	Panchnama Exh.	Exhibit of deposition
53	Amin Usmangani Sheikh (PW-174) (hostile)	1212	706
54	Rafiq Gulabkhan Pathan (PW-200)	746	745
55	Kanubhai Kalabhai Bharwad (PW-218)	775	774
56	Suresh Ambalal Parmar (PW-227)	794	793
57	Manjir Ahmed Abdul Aziz Sheikh (PW-255)	878	877
58	Rameshkumar Madanlal Jinger (PW-256)	878	884
59	Harun Shakurbhai Ghanchi (PW-257)	886 & 887	885
60	Altafkhan Shezadkhan Pathan (PW-307) (hostile)	1067	1061
61	Nitinkumar Narandas Sheth (PW-323)	1148	1147
62	Bhikusinh Khatusinh Rathod (PW-325)	1159	1158

(III) <u>Compilation of Police witnesses</u>

Sr. No.				Whether identified the accused in the Court or not
1	2	Nathusinh Naharsinh Chauhan	26, 29, 32, 35, 41 and	
2	3	Babuji Chhaguji Dabhi	21, 25, 26, 29, 32 and absconding	

Sr. No.	PW No.			Whether identified the accused in the Court or not
3	4	Rajendrasinh Kallusinh Rajput	Accused Nos.1, 3, 16, 35, 36, 37, 41	Identified accused No.3, 35, 36, 37, 41
4	5	Indrasinh Himmatsinh Gohil	Accused Nos.3, 16, 25, 29, 36, 37 and absconding accused Girish Prabhudas Sharma	
5	6	Lalitkumar Ramanbhai Patni	25, 26, 29 and	
6	7	Arvindsinh Shankersinh Vaghela	Accused Nos.1, 3, 16, 21, 35, 37	Identified accused Nos.3, 16, 21
7	11	Rameshbhai Nagjibhai Pandor	Accused Nos.1, 35, 37	Identified accused Nos.35 and 37
8	12	Sajjansinh Jorubha Jhala	Accused Nos.1, 3, 21, 35, 41	Identified accused No.35
9	13	Dhanesinh Becharsinh Kumpavat	16, 21, 25, 29, 32, 35, 26, 37,	Identified accused No.3, 16, 35, 37 and absconding accused Ramesh Pande and Ashish Pande
10	20	Indrasinh Mansinh Solanki	Absconding accused Girish Prabhudas Sharma, Ramesh Pande, Ashish Pande, and accused No.14, 25, 26, 32	
11	21	Motibhai Dahyabhai Vaghela	Absconding accused Ramesh Pande and Ashish Pande, and accused No.35	

Sr. No.	PW No.		Accused named in deposition	Whether identified the accused in the Court or not
12	22	Shailesh Kalusinh Jadeja	Accused Nos.36, 37 and 41	Identified accused No.41
13	28	Pradeepsinh Shetansinh Rathod	3, 14, 36 and	Identified accused Nos.1, 3, 41 and absconding accused Ramesh Pande
14	29	Dhananjay Bhaskarrao Bhagvat	Accused Nos.1 and 3	Identified accused Nos.1 and 3
15	30	Dharmabhai Ramjibhai Bodat	Accused No.1	Identified accused No.1
16	37		accused Girish Prabhudas	
17	38	Daulatsinh Padamsinh Rathod	Accused Nos.2 and 36	Not identified
18	39	Chandubhai Vashrambhai Gami	Accused Nos.16 and 21	Identified accused No.21
19	40	Pasabhai Galabhai Solanki	Accused Nos.1, 2, 3	Not identified due to lapse of time
20	41	Rameshbhai Somabhai Solanki	Accused Nos.2 and 36	Not identified due to lapse of time
21	45	Rajeshbhai Kuberbhai Parmar	Accused Nos.25 and 41	Not identified due to lapse of time
22	47	Ranchhodbhai Ramjibhai Malavia	Accused Nos.2, 37	Not identified
23	48	Jagatsinh Mulsinh Bhati	Accused Nos.1, 2, 3	Not identified

Sr. No.	PW No.	Name of Prosecution Witness	Accused named in deposition	Whether identified the accused in the Court or not
24	75	Puransinh Ramsinh Tomar	and absconding	Identified accused No.35 and absconding accused Girish Prabhudas Sharma
25	254	Prahaladji Magalji Barot	Accused No.3, 21, 41	Identified accused No.3
26	269	Natvarji Jawanji Bhati	Absconding accused Girish Prabhudas Sharma, Ramesh Pande and Ashish Pande, and accused Nos.1, 3, 14, 16, 21, 26, 29, 32, 35, 36, 37, 41	
27	305	Bhupendrasin h Karansinh Sisodiya		Identified accused Nos.1 and 37
28	306	Ramvishal Ramlakhan Pathak	Accused Nos.2, 36, 41 and absconding accused Girish Prabhudas Sharma	

274. Shri Kodekar has further provided an extremely accurate and well worked out compilation relating to each of the 66 accused herein and the compilation which is also hereby ordered to be made a part of the record, clearly relates to each accused, recovery of any incriminating material if any, the eye-witnesses' versions if any against the particular accused, medical and forensic evidence if any against a particular accused and the fact as to whether the accused concerned is identified in

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the course of testimony of the eye-witnesses as also whether such accused is identified in the court by such witness or not. I am required to, therefore, mention a complementary note with regard to the intensive research and efforts put in by the Prosecution to simplify and bring clarity to the highly complex and voluminous evidence that has been recorded and gathered herein.

275. The Prosecution has, in my opinion, greatly reduced the burden of this Court in sifting through the voluminous record of this court and copies of these compilations have been supplied to the defence as also the victims and any inaccuracies or inconsistencies would be required to be pointed out if there are any, during the submissions of such concerned parties. However, at this juncture, there does not appear to be any objection or error in such compilations which is brought to my notice by the other side. In such circumstances, I am required to place on record the second compilation which is a detailed compilation which specifically highlights and points out the role of each of the accused and the material relevant to each of the accused and therefore, according Shri Kodekar, to this compilation establishes beyond reasonable doubt that each of the 66 accused is required to be held guilty and suitably penalized for the offence that they stand charged with.

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It is pointed out by Shri Kodekar that the harshest penalty is required to be imposed since the offence relates to wholesale massacre of innocent men, women and children most of whom were burnt beyond recognition, most of whom are now required to be presumed dead since even their dead bodies are now not traceable and some of the female victims were also gang raped before being done to death. It is submitted that these are unprecedented horrors and therefore, to set а precedent, the heaviest punishment is required to be It is submitted that in the

imposed herein. circumstances, the Prosecution has discharged the extremely heavy burden of establishing beyond reasonable doubt the guilt of each of the accused which is required to be, at the cost of repetition according to Shri Kodekar, inflicted exemplary heavy punishment to set a precedent and discourage any further horrific incident taking place in future.

277. Shri Kodekar has submitted that he now proposes to rely on judgments of the Hon'ble Apex Court in support of his contentions. A list of been placed compiled judgments has for the consideration of this Court and it is pointed out that the Hon'ble Supreme Court has consistently since the last 30 years or more, laid down the ratios which are good law even today and even today are being consistently approved of and cited by consequent Benches of the Hon'ble Supreme Court, and

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it is urged that in the circumstances, the law is settled beyond issue and the ratio emerging from such judgments would be binding on this court since it is the law of the land and it is urged that in the circumstances, a large number of these judgments also establish that they i.e. the legal propositions also applies squarely to the factual position herein and therefore also, the Prosecution is required to be accepted to have established beyond reasonable doubt the guilt of the accused in the present offence.

278. Shri Kodekar has relied upon the judgment of the Hon'ble Supreme Court which is delivered in the case of Masalti & others v. State of U.P. as reported in AIR 1965 SC 202(1). It is pointed out by Shri Kodekar that the judgment positively lays down a ratio with regard to the parameters and tests as to whether a person is a member of an unlawful assembly or not and also laid down the parameters as to when a common object is required to be established and if such common object or common intention is established, then all accused are required to be held quilty of all the offences that are involved in the incident.

279. It is pointed out by Shri Kodekar that **Masalti's case (Supra)** has been followed, distinguished but largely accepted by the Hon'ble Supreme Court in number of precedents over the years

and lastly in the case of C.Muniappan an others v. State of Tamilnadu as reported in 2010(9) SCC 567 where the Hon'ble Supreme Court has accepted the principles and ratio emerging from Masalti's case. It is pointed out that in the circumstances and more so when in the present proceedings, a large number of eye-witnesses and Police witnesses have established the presence of each of the accused at the scene of incident, their involvement and common intention and common object behind the commission of the offence which is also established and more so number of accused when а large persons are specifically attributed to have committed an overt act are specifically attributed to have been armed with weapon and number of accused have themselves sustained injuries in the Police firing or private firing for that matter, and stone pelting incidents, they are not innocent passers-by but were members of the mob who had gathered with a common object and intention and it is urged that in the common circumstances, each of the accused is required to be held a member of the mob and is, therefore, required to be penalized under all the provisions with which he stands charged with.

280. Specific attention has been drawn by Shri Kodekar to a ratio emerging from a judgment of the Hon'ble Supreme Court delivered in the case of Binaykumar Singh v. State of Bihar as reported in (1997) 1 SCC 283 wherein the Hon'ble Supreme Court

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has again held that there is no role of evidence that no conviction can be based unless a certain number of witnesses have identified a particular accused as a member of the unlawful assembly. The evidence should not be counted but should be weighed and the Hon'ble Supreme Court, according to Shri Kodekar, has observed that it is not the quantity of the evidence but the quality of the evidence that is relevant. The judgment, according to Shri Kodekar, also deals with the evidentiary value of the testimony of an injured witness. It is submitted that the judgments referred to and relied upon apply on all counts to the proposition sought to be canvassed by the Prosecution.

281. My attention is further drawn to the judgment of Hon'ble Supreme Court delivered in the case of Dharnidhar v. State of U.P. as reported in (2010) 7 SCC 759 where Shri Kodekar submits that even if there is a variation in the testimony of the witnesses, the appreciation of the evidence is required to be carried out by the Court in its proper perspective and some variations cannot the Prosecution vitiate case when there is overwhelming material to establish the involvement, participation and guilt of the accused together with their object intention common and common in committing the offence. It is submitted that in the circumstances, if there is some contradiction or variation with regard to the sequence of events or

involvement of the particular accused in а particular incident, the same cannot create doubts of such a nature that the benefit of such doubts should go to the accused. In fact inconsistencies and variations are but natural looking to the gravity and the horrors that the witnesses have since they were eye-witnesses to undergone the entire horrific incidents and since according to Shri Kodekar, most of the eye-witnesses have lost a number of members of their family in front of their very eyes. It is submitted that therefore, anv their initial statements and in inconsistencies their deposition which were taken number of years after the incident, is required to be taken as natural wear and tear of a person who has suffered enormous trauma, and it is, therefore, submitted that any inconsistencies and variations on the part of a particular witness cannot assist or help an accused whose role otherwise has been established beyond reasonable doubt.

282. attention is also drawn Mv to а judgment of the Hon'ble Supreme Court delivered in the case of R.K.Anand v. Registrar, Delhi High Court as reported in (2009) 8 SCC 106 where the law with regard to sting operations and the evidentiary value of such operations and material gathered therefrom has been elaborately decided. It is pointed out by Shri Kodekar that the Hon'ble Supreme Court in the said judgment, has clearly held that such evidence

and material is justifiable and required to be treated as good corroborative material and the evidence emerging from а sting operation if established to be genuine by forensic experts, is required to be accepted as having consistent and considerable evidentiary value which can corroborate and support the Prosecution in establishing the quilt of a particular accused. It is submitted that in the circumstances, the sting operation carried herein referred to herein before, clearly out establishes the role of the concerned accused, the extent of perpetration of offence by such accused and it is according to Shri Kodekar, the best evidence emerging against such accused since there is a direct admission of the involvement of the accused herein. It is pointed out that in the circumstances, the material emerging from the sting operation also goes a long way in establishing the quilt of the accused herein and it is pointed out establishment since there is of that. common intention and common object, each of the accused is covered and bound by the material emerging from the sting operation also though it may not be specifically emerging against a specific accused. It is pointed out that even in such circumstances, the accused are required to be held guilty, the State is required to be accepted as having discharged its burden beyond reasonable doubt of the involvement and guilt of the accused.

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283. judgment of the Hon'ble А Supreme Court delivered in the case of Rajinder & others v. State of Haryana & anr. as reported in (2005) 9 SCC 784 is also pressed into reliance. My attention is drawn to the contents of paragraphs 6 and 8 of the said judgment wherein the Hon'ble Supreme Court has in fact come to a conclusion that even if there is no recovery of muddamal weapons, it would not be by itself fatal to the Prosecution case. It is submitted that the said judgment is still good law and is binding to the present Court and therefore, any defence with regard to non-recovery of weapons or incriminating muddamal qua some of the accused cannot be of any help to the defence and it is urged that even in such circumstances, the State has discharged its burden beyond reasonable doubt. It is submitted that in the circumstances, each of the accused is required to be suitably penalized. Shri Kodekar at this stage, reserves his right to make further submissions as a counter to any submissions that may be required to be explained after the learned advocates for the defence have made their submissions herein.

Submissions of Shri S.M.Vora, learned advocate appearing for the victims/witnesses.

284. It is submitted by Shri S.M.Vora, the learned advocate appearing on behalf of the witnesses/victims, that post incident, a complaint

came to be filed on 28/02/2002 itself by accused No.57, in which detailed versions regarding the names of the victims, the names of the accused and role played by them, was given in general terms and it is urged that this could not have been done so without carrying out a detailed interrogation of the witnesses and family members relevant of the victims. It is submitted that in any case, accused No.57 Shri K.G.Erda malafide entrusted the investigation also to himself and thus became both the complainant and the Investigating Officer, which resulted in miscarriage of justice. It is pointed out by Shri Vora that subsequent thereto, since the victims felt investigation that the was not proceeding in the right direction, an application was tendered by the victims to the Commissioner of Police, Ahmedabad City, together with an accompanying affidavit giving all details, which application came to be tendered on 25/11/2002. It is submitted that even in such applications/affidavits, the victims provided the names of the perpetrators i.e. the accused and also gave details with regard to the role played by them in the incident. It is submitted that therefore, it cannot be said that NGOs/interested Advocates made up the names of the accused with a view to falsely implicate them as is by the defence. Ιt is urqed submitted that therefore, it is required to be accepted that right since the very beginning, the victims have been crying about the role played by each of the accused in the perpetration of each incident highlighted,

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specified and narrated in the application before the Commissioner of Police and supporting affidavits, despite which the investigation did not move in the right direction. It is submitted that subsequent thereto and after a long passage of time, the victims were compelled to move the Hon'ble Supreme Court which, as is an admitted position, established the SIT to further investigate into the present incident together with other incidents that had taken place in Gujarat. It is pointed out by Shri Vora that even application Exh.192 under an Sec.173(8) of the Cr.P.C. was tendered by the victims and vide another application Exh.98 reliefs under Sec.91 of Cr.P.C. were sought for production of the documents, and it is urged that it is, therefore, explicitly clear that the victims have been providing details and have been seeking further investigation into the incident since the very inception of the present proceedings. Ιt is submitted that therefore, it cannot be accepted as what is contended by the defence that the victims for malafide reasons, have added, substituted or subtracted accused as is falsely alleged in the course of the arguments. It is submitted that the defence has tried to highlight on such aspects which are not correct. Ιt is submitted that all throughout, the victims have been pressing for bringing right persons on the record as accused and making them answerable to the society for their acts and offences. It is submitted that therefore, there is no merit in the defence version that the victims

have malafide orchestrated the naming and dropping of accused at later stages. It is submitted that even during the investigation carried out by the SIT, the victims have been approaching the SIT as also the Courts, seeking to arraign more and further accused in the present proceedings persons as because those persons were not being made answerable for their actions. It is pointed out by Shri Vora that in response to a call for justice made by the victims, persons like Ashish Khetan and Rahul Sharma have placed for the consideration of the Courts relevant records which are required to be considered to decide the fate of the present proceedings. It is pointed out that the defence version that the victims have wrongly named the accused for malafide reasons, is also not correct, not believable and not required to be accepted. It is submitted that most the eye-witnesses have lost large number of of members of their family who were killed before their very own eyes and such witnesses have seen the actual incident taking place where their loved ones were done away with by the accused in such fashion. is submitted that in such circumstances, the Ιt victims and also the eye-witnesses would not wrongly try to implicate any persons and let the actual perpetrators qo free. It is submitted that the persons with whom the victims had no previous enmity or reasons to falsely involve, cannot be attributed to have been maliciously involved in the present proceedings as is falsely alleged by the defence. It is submitted that the entire submissions made by the

defence in this regard are required to be discarded and are required to be given a go by.

285. It is submitted that the victims have played an active role in bringing and placing before the Court relevant material for consideration of the Court, which would go a long way in securing justice for the victims. It is submitted that even the SIT not discharged its responsibilities in the has manner it ought to, and therefore, an application under Sec.319 was tendered by the victims which is on the record of the proceedings at Exh.738, which application also was partly allowed by the Court, meaning thereby that the Court also came to a conclusion that there was some merit in the application and arraignment of more accused was made in terms of the orders passed by the Court. It is submitted that it was the duty of the SIT to bring on record such accused or at least attempt to make such persons prima facie involved in the offence, as accused, but there was a failure on the part of the SIT also to do the same. It is submitted that some applications made by the present victims were contested by the SIT and therefore, it could be said that there was some diversion in the stands taken by the SIT and the victims.

286. Shri S.M.Vora has relied upon a judgment of the Hon'ble Supreme Court delivered in the case of **Gajoo v. State of Uttarakhand** as reported in (2012)3 SCC(Cri.) 1200, and has drawn my

attention more particularly to paragraphs 20 and 27 of the said judgments, which are reproduced herein below:-

"20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under : (SCC pp. 280-83, paras 27-36).

"27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. <u>this Court stated that it is well</u> <u>settled that if the police records become</u> <u>suspect and investigation perfunctory, it</u> <u>becomes the duty of the court to see if the</u> <u>evidence given in court should be relied upon</u> <u>and such lapses ignored. Noticing the</u> <u>possibility of investigation being designedly</u> <u>defective, this Court in Dhanaj Singh v. State</u> of Punjab, held : (SCC p.657, para 5)

<u>"5. In the case of a defective</u> <u>investigation the court has to be circumspect</u> <u>in evaluating the evidence. But it would not be</u> <u>right in acquitting an accused person solely on</u> <u>account of the defect; to do so would</u> <u>tantamount to playing into the hands of the</u> <u>investigating officer if the investigation is</u> designedly defective."

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287. It is submitted by Shri Vora that this judgment makes it absolutely clear that even lapses in investigation should not result in acquittal of any accused and the evidence before the Court is the only aspect to be considered to decide the fate of the accused. It is submitted that this trend of the Hon'ble Supreme Court is consistently followed right since the year 1996.

288. It is submitted by Shri Vora that this judgment makes it absolutely clear that even lapses in investigation should not result in acquittal of any accused and the evidence before the Court is the only aspect to be considered to decide the fate of the accused. It is submitted that this trend of the Hon'ble Supreme Court is consistently followed right since the year 1996.

289. It is submitted that with regard to the role played by accused No.57, it is required to be repeated that accused No.57 was the complainant and complaint lodged on 28/02/2002 and was investigation was carried out by accused No.57 upto 08/03/2002. It is submitted that a panchnama with regard to the scene of the incident was drawn on 01/03/2002 and thereafter right since 01/03/2002 officers till the time the FSL and other investigating agencies visited the site, more and more bodies were discovered, more effort was made to investigate appropriately into the identities of

such dead bodies and deliberately the bodies were allowed to decay by the accused. It is submitted that if there were more bodies recovered after 01/03/2002 and that too when the Panchnama was completed, it is required to be accepted that the accused No.57 deliberately chose not to take the investigation in the riqht direction and deliberately chose to ensure that the investigation became **defective.** It is submitted that this clearly shows that accused No.57 was trying to derail the investigation in a manner as would not serve the cause of justice. It is submitted that such actions on the part of accused No.57 rightly require him to be arraigned as an accused and it is urged that in such circumstances, the accused No.57 is required to appropriately penalized. Shri S.M.Vora has be pressed into reliance a judgment of the Hon'ble Supreme Court as reported in 2010 AIAR (Cri.) 799 SC

State of Andhra Pradesh.

290. It is submitted by Shri Vora that accused No.57 has given the name of one Dipak @ being involved in the Pradip as offence, but deliberately chose not to take any steps to arrest such person nor take any steps in bringing such accused before the Court. It is submitted that it only after the SIT took charge was of the investigation that the said individual was arrested and is presently before us as accused No.56. It is submitted that such aspect is corroborated and

in the case of Maqbool @ Zuber @ Shahnawaz & Anr. v.

emerging from the testimony of the IO of SIT Shri J.M.Suthar i.e. PW-335 who has deposed about this aspect in detail in paragraph No.61 of his deposition.

291. Tt. is submitted that despite this being an incident of rare and grave seriousness where it could be said to be a genocide, it would have been the natural conduct of a senior Police Officer to carry out videography/photography of the site of the incident, which according to Shri Vora, was deliberately not done so by accused No.57. It is submitted that this was deliberately not done so with a view to hide the real culprits and perpetrators. It is submitted that therefore also, the accused No.57 is required to be held guilty of the charges framed against him. It is submitted that number of dead bodies were found from the site of the incident after the completion of the Panchnama and it is submitted that it is an admitted position that such dead bodies were beyond identification, could not be recognized, had decayed and were emitting foul smell and even insects had infected such dead bodies. It is submitted that where was the to hurriedly conclude the Panchnama need on 01/03/2002 when such number of bodies were as yet not recovered. It is submitted that this clearly establishes the criminal negligence on the part of the accused No.57. It is submitted that 38 inquest Panchnamas (at Exhs.278 to 295, 297 to 310, 482 to record of the present 485 488 the and on

proceedings) were all mechanically carried out and each Panchnama was concluded in a short time of 20 minutes and it is submitted that there was undue haste in carrying out such panchnamas and all of which were carried out during the period when accused No.57 was in charge of the investigation and therefore, such defective investigation is the sole responsibility of such accused. It is submitted that on 08/03/2002, during the same period i.e. between 14:00 Hrs. and 15:00 Hrs., a panchnama with regard recovery and seizure of muddamal jewellery to (Panchnama Exh.576) was effected and simultaneously an inquest Panchnama Exh.488 was also drawn at the same time. It is submitted that this clearly shows seriousness which the attached was to the investigation being carried out and it shows that No.57 the accused wanted to subvert the investigation process and therefore, such state of affairs. It is submitted that all these aspects are emerging from the testimony of PW-335 Shri J.M.Suthar in paragraph No.62 of his deposition.

292. It is submitted that a panchnama dated 06/03/2002 in respect of the recovery of a can of inflammable substances recovered from accused No.3 was drawn by accused No.57 in which the real brother of accused No.1 was a panch witness. It is submitted that this goes to show the malafides on the part of the IO. It is submitted that in any case, such panch witness was examined by the Court as PW-73 and naturally he has not supported the Prosecution. It

is submitted that despite providing full details about the number of dead bodies, the accused No.57 did not make any efforts to investigate into the aspect of recovery of such dead bodies and hurriedly 01/03/2002 completed the panchnama on without looking into the aspect of recovery of dead bodies which was well within the knowledge of the accused since he himself was the complainant and the complaint provided full details of such dead bodies. It is submitted that this also establishes the role of the accused.

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293. Ιt is submitted that despite being aware of the Bandh call given, which bandh call was given on 27/02/2002 itself, no preventive arrests were carried out by accused No.57. It is submitted that this is corroborated in the testimony of PW-249 has produced the Register relevant to such who records and which clearly establishes that no preventive arrests had been carried out by accused No.57. It is submitted that if such arrests were carried out, the possibility of such massacre could have been greatly reduced. It is submitted that such inaction on the part of the accused No.57 also establishes the guilt of the accused.

294. It is submitted that PW-335 has further pointed out in the course of his deposition that accused No.57 had a reserved staff of about eight persons in his Police Station. It is submitted that it is an admitted position that services of

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such eight reserved personnel was not utilized by accused No.57 and accused No.57 only made show of asking for more Police personnel at the scene of the incident and it is urged that non-deployment of such reserve personnel was deliberate.

295. It is submitted that even when the gas cylinders were exploded in his presence as is reflected from the evidence on record of the present proceedings, no effective firing was ordered by accused No.57 as would have prevented the use of gas cylinders to explode and destroy the walls and properties of Gulbarg Society. It is submitted that this also establishes the criminal negligence on the part of accused No.57.

296. It is pointed out by Shri Vora that the sting operation carried out in connection with the present incident, is clearly providing strong corroborative material with regard to the role played by accused No.25 Mangilal Jain, accused No.28 Prahladji Rajuji Asori and accused No.30 Madanlal It is submitted that the sting Dhanraj Raval. operation is corroborated by the testimony of PW-336 who is a CBI Officer and who has clearly established that the material comprising of the sting operation, meaning the recordings, DVD an other material were verified by the FSL and found to be not tampered with. It is submitted that in such circumstances and especially when none of the three accused referred to above, has denied that the voice emerging from

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the recordings of the sting operation, was not theirs, in light of the judgment of the Hon'ble Supreme Court as reported in (2009) III CCR 402 (SC) delivered in the case of **R.K.Anand v. Registrar**, Delhi High Court, wherein the Hon'ble Supreme Court has clearly laid down the parameters wherein when the maker of the voice has not denied hos own voice, the same is required to be accepted as a relevant material. It is submitted that therefore, and more particularly when the three accused have not denied their voices and it is established in the course of voice spectrography (Exh.1493) that the voices recorded are the voices of the concerned accused, this is good corroborative material against such accused. It is submitted that PW-313 who was the author of the sting operation being one Ashish Khetan, has not been effectively cross examined by the defence and therefore, his evidence is required to be accepted as good corroborative evidence to establish the quilt of the accused. It is submitted that further corroboration to the sting operation is emerging from the testimony of PW-338 who is an expert witness of the FSL.

297. It is submitted by Shri Vora that from the circumstantial evidence which is required to be considered as the only inference that can be drawn, is that right since the incident of 27/02/2002, the atmosphere had become communally surcharged which was further aggravated by the Bandh call given on 28/02/2002 and it is submitted that the entire

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present incident has taken place in the presence of senior Police Officers who chose to do nothing with regard to the incident and it is, therefore, urged this clearly establishes the criminal that conspiracy emerging herein between the accused. It is submitted that the conduct of the accused itself is suggestive of the existence of the conspiracy. It submitted that the is defective investigation carried out by the Police authorities itself furthers the stand of the victims that there was an existence of a criminal conspiracy behind the entire incident. It is submitted that the evidence on record establishes that all senior Police Officers including those of the rank of Commissioner of Police, had visited the site of the incident on the fateful day itself and it is required to be inferred, according to Shri Vora, that being such senior Police officers, they would have realized the gravity of the situation and would have definitely considered the possibility of such incident taking place despite which no steps were taken by them, which also suggests that there was criminal conspiracy behind the incident. It is submitted by Shri Vora that all the star witnesses including PWs 106, 107, 116, 177 have consistency testified that even on 27/02/2002, they had sought for Police protection and right throughout the taking place of the incident, consistent efforts were being made to avail of Police protection which was denied to them and it is urged that it is under such circumstances also that inaction on the part of the Police

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authorities would suggest and infer a larger criminal conspiracy. It is submitted that the evidence establishes that even on the last moment, Shri Ehsan Jafri had attempted to contact the Chief Minister, but no help was provided.

is submitted 298. It that in such circumstances, the testimony of PW-241 has been misinterpreted by the defence and in fact the testimony of PW-241 Firoz Dilawer Shaikh is required to be read in the correct context and it is submitted that such testimony clearly establishes the criminal conspiracy that was existing on the date of the incident. It is submitted that the testimony of PW-171 Ismailbhai Ibrahimbhai Pathan, is also required to be considered inasmuch as, he admits that he was not an eye-witness to the incident at Gulbarg Society, but he saw a mob of persons making preparations to attack Gulbarq Society, as is emerging from his testimony. It is submitted that under such circumstances, it is the only inference that can be drawn that the mob had started making preparations in furtherance of a meeting of minds and therefore, if there was а meeting of minds, that itself establishes the criminal conspiracy. It is submitted that thus PW-171 also establishes the criminal conspiracy.

299. It is submitted by Shri Vora that PWs 157, 215, 229, 296, have all testified with regard to having personally heard the mob shouting slogans and

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shouting slogans to the effect that "kill and slaughter persons of the Muslim community (भीयांओने मारो अने $\mathcal{S}(\mathcal{V})$. It is submitted that such consistent testimony, corroborative testimony, clearly establishes that there was only one thing in the mind of the mob and that was to do away with the members of the minority community and therefore also, such testimonies are clearly suggestive of the fact that there was criminal conspiracy entered into by the accused in the present incident. It is submitted that PWs 161, 192, 198, 207, 210, 230, 231 and 303 have all provided corroboration and support to the testimonies of the above referred witnesses with regard to what was being uttered by the mob.

300. According to Shri S.M.Vora, PW-181 Riyazuddin Siyazuddin Saiyed has clearly testified that he was warned by his neighbours with regard to there being some incident about to take place and therefore, the previous warning given to such witness clearly suggests that his neighbours were also aware of what was to transpire and take place on that day and this also establishes that there was a previous meeting of minds and this also further establishes the conspiracy herein. It is submitted that PW-208 Akbarhussain Abdulbhai Mansuri has in the course of his deposition, also testified that he was provided shelter by a Marwadi Hindu family and while taking shelter in their residence, he heard the shouting of slogans of "JAI SHRI RAM" and

slogans inter alia to the effect that "kill the members of the minority community". It is submitted that this also goes to show the criminal conspiracy. It is submitted that in terms of the testimony of PW-212 Abbasbhai Ayubbhai Kadir, the target of the life of members mob was property and of the particular community which also establishes meeting of minds with regard to the action to be taken on such date and therefore, also, criminal conspiracy is established.

301. My attention is drawn to the testimony of PW-3 Babuji Chhaguji Dabhi, who in the course of his testimony in paragraph No.6, has narrated thus:-મુસ્લીમોની માલ મિલ્કતો દુકાનોની તોડફોડ કરી આગ ચાંપી ۳۶. સળગાવી દેવાના બનાવો બનતા અમો એ ચોકી વિસ્તારમાં સખત પેટ્રોલીંગ રાખેલ અને બંદોબસ્ત વધારેલ. દરમિયાનમાં જણવા મળેલ કે, ચમનપુરા ચોકી વિસ્તારમાં બપોરના દોઢેક વાગે જાણવા મળેલ કે, ગુલબર્ગ સોસાયટી આગળ દિન્દુ કોમના લોકોના મોટી સંખ્યામાં ટોળા એકઠા થયા છે અને રોડ પરની મુસ્લીમોની દુકાનો, મિલ્કતોની તોડફોડ કરી રોડ પર સળગાવી દેવામાં આવેલ છે. અને વધારે પોલીસ બંદોબસ્તની જરુરીયાત છે. આવુ જાણતા અમો અમારી સાથેના બંદોબસ્તના પોલીસના માણસો સાથે રીકવીઝીટ વાઠનોમાં રત્નસાગર ચાર રસ્તાથી મીનાબજાર, કલાપીનગર છેલા બસ સ્ટેન્ડ થઈ ઓમ નગર ત્રણ રસ્તા ગયેલા. ત્યાં જઈ જોયુ તો રોડપર વાઠનો અવર જવર ન કરે તે સારુ પથ્થરો લાકડા મુકી આડશો કરેલ . ઓમ નગરથી ચમનપુરા ચકલા રોડ ઠેર ઠેર આગ સળગતી જણાચેલ.

લોકોના ટોળા રોડ પર એકઠા થયેલા હતા. અમો ગુલબર્ગ સોસાયટી પહોંચવા આડશો દૂર કરતા ગુલબર્ગ સોસા. પહોંચ્યા. ત્યાં ગુલબર્ગ સો. ની સામે રોડ પર મેઘાણીનગર પો.સ્ટે. સી.પો.ઈ.શ્રી કે.જ.એરડા સાદેબ, પી.એસ.આઈ.શ્રી ભાટી સાદેબ તથા પોલીસના માણસો બંદોબસ્તમાં ઠાજર ઠતા. અમોએ શ્રી એરડા સાઠેબને બંદોબસ્ત અંગે રીપોર્ટ કરેલ. આ દરમિયાનમાં રોડ પર મોટી સંખ્યામાં ટોળા એકઠા થઈ ગયેલા અने ' જય श्री राम' तेमल ' मूसलमानोने मारी नाणो, डापी नाणो, સળગાવી નાખો' ના સુત્રોચ્ચાર કરતા. ટોળાના માણસો પાસે તલવારો, પાઈપો, લાકડીઓ ચપ્પા જેવા જીવલેણ દૃથિયારો તથા પ્લાસ્ટીકના કેરબાઓ ધારણ કરેલા હતા. ટોળા ઉગ્ર બનતા અમોએ અમારી સાથેના પો.કો. ઈન્દ્રસિંદને ટીચરગેસ છોડવા માટે દુકમ આપવા ઓમનગર ત્રણ રસ્તા બાદ પ્રથમ ત્રણ સેલ છોડેલા. ટીયરગેસથી ટોળાપર થોડી અસર થવા પામેલી પણ થોડી જ વારમાં ટોળા એકઠા થયેલા અને પોલીસ પર સખત પથ્થરમારો ચાલુ કરી દીધેલ. તેમજ ગૂલબર્ગ સોસાયટી પર પણ પથ્થરમારો શરુ કરી દીધેલ. આ દરમિયાન ગુલબર્ગ સો.માંથી પણ ટોળા પર પથ્થરમારો શરુ થવા લાગેલ. તેમજ ખાનગી ફાયરીંગ થવા પામેલ. તેમાં ટોળાના કેટલાક ઈસમો ઘવાયેલા આથી ટોળા વધારે ઉશ્કેરાયેલા અને એસીડના બલ્બ, સળગતા કાકડા ગુલબર્ગ સોસા. પર ફેકવા લાગેલા અને ટોળા ખુબજ દિસક સ્વરુપ ધારણ કરેલ.આ વખતે પો.ઈ.શ્રી એરડા સાદેબે ટોળાને વિખેરાઈ જવા માટે ટીચર ગેસ છોડવામાં આવશે, લાઠી ચાર્જ કરવામાં આવશે, તથા ફાયરીંગ કરવામાં આવશે તેવી વારંવાર ચેતવણી આપેલી પરંતુ તેની ટોળા પર કોઈ અસર થવા પામેલ નહિ. આથી

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ટીચરગેસના સેલ સંખ્યાબંધ છોડવામાં આવેલા તેમજ મેં મારી સાથે ના પો.કો. ઈન્દ્રસિંદને દુકમ આપી સાત ટીચરગેસના સેલ છોડેલ. તેની ટોળા પર અસર થવા પામેલી નદિ."

302. It is submitted that the witness is an independent witness and there is no reason to disbelieve such witness and that the testimony of such witness clearly establishes the objective of the mob and meeting of minds of the members of the mob. It is submitted that the witness has further testified inter alia to the effect that the mob was armed with deadly weapons like swords, knives, sticks and was armed with cans of inflammable material.

303. It is submitted by Shri Vora that PW-177 Sairaben Sandhi has also corroborated the testimony of the above witness, and she has also narrated in paragraph No.13 of her testimony as thus:-

"૧૩. અમે જાફરી સાઠેબના ઘર પાસે ઉભા હતા ત્યારે બપોરના બે અઢી વાગે પાછળથી પણ વીસ્ફોટનો અવાજ આવેલ. તે વખતે અમે જાફરી સાઠેબના મકાન પાસે ઉભા હતા. મારી સાથે મારા પતિ સલીમભાઈ અને મારા દિચર જહાંગીરભાઈ તથા મારો દિકરો મહમદહુસેન હતો. પાછળની દિવાલ તોડીને પણ તે પછી ટોળુ અંદર ઘુંસી આવેલ. ટોળા પાસે તલવારો, ગુપ્તી, લાકડીઓ, ત્રીશુળો અને પાઈપો હતા. આ ટોળાએ અમારી સોસા.માં પથ્થરમારો કરેલ. સળગતા કાકડા ફેંકેલ અને પાછળની બાજુ આવેલા મકાનો તોડફોડ કરી લુંટફાટ કરી સળગાવેલા. આ ટોળાએ સોસા.ના આગળની બાજુના ભાગે આવેલ મકાનોમાં પણ તોડફોડ કરી લુંટફાટ કરી મકાનોને આગ લગાડવાનું ચાલુ કરેલુ. આંગણામાં વાઠનો પડેલા તેને આગ લગાડવાનું ચાલુ કરેલ. આ ટોળાએ મારા દીકરાની બાઈક અને મારા દિચરની રીક્ષા પણ જવલનશીલ પ્રવાઠી નાખી સળગાવી દીધેલ. જેથી મારા દિચર દોડતા દોડતા મારા ઘર તરફ ગચેલા પરંતુ મારા પતિ તેમની પાછળ જઈ તેમને લઈને જાફરી સાઠેબના મકાનમાં આવી ગચેલા. પછી મારા પતિ મકાન નંબર સોળમાં જતા રહેલા. જે મકાન ખાન સાઠેબનું છે."

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304. It is submitted by Shri Vora that accused No.29 has admitted in the sting operation with regard to the slogans being shouted by the mob with regard to killing of Muslims and it is urged that this is an aspect corroborated from the version emerging from the testimony of PW-313 Ashish Khetan and therefore also, this is a good and seriously incriminating piece of evidence which establishes criminal conspiracy and the role of accused No.29 in the incident.

305. It is submitted that there is clear evidence emerging that the Commissioner of Police and senior Police Officers had visited the scene of the incident prior to any incident taking place and had gone away after giving reassurances to the residents of Gulbarg Society. It is pointed out by Shri Vora that immediately within half an hour of such senior Police officers going away, a mob had

gathered outside Gulbarg Society, which also establishes that there was something unnatural going on, on that day which in view of the greater context of the submissions made herein, is required to be accepted as further corroborative material with regard to existence of a criminal conspiracy. It is submitted that Shri Tandon coming over to the scene of incident with a strike force, is also established in the course of testimony of PW-7 and it is submitted that despite being present with such strike force, no efforts were made to disperse the mob or prevent any incident, which also suggests a greater conspiracy.

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306. Shri S.M.Vora has relied on a judgment of the Hon'ble Supreme Court delivered in the case of Gulam Sarbar v. State of Bihar (now Jharkhand) as reported in 2014 Cr.L.J. 34 (SC) wherein reliance is placed on head note 'A' of the judgment, which reads "Penal Code (45 of 1860), S. 120B-Criminal as conspiracy-Essential ingredients-Meeting of minds to form a criminal conspiracy has to be proved by substantive evidence in adducing cases where circumstantial evidence is incomplete or vague."

307. It is urged by Shri S.M.Vora that in the circumstances, the evidence is overwhelming and believable and credible in respect of the role played by all the accused in the present offence and it is urged that since all the accused are established to be a part of the criminal conspiracy, all of them are required to be held guilty and given

harshest punishment to provide justice to the victims.

Judgment continued in Part-III.....

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<u>PART – III</u>

Arguments by learned defence Counsels Shri Abhay Bhardwaj, Shri T.R.Bajpai and Shri Rajendra Trivedi on behalf of the concerned accused.

308. Bhardwaj, the learned advocate Shri appearing on behalf of the concerned accused, submits that the Prosecution has completely failed in discharging its duty of establishing beyond reasonable doubt any of the charges, much less the charges that the accused concerned face herein and it is urged that there is neither material in the form of evidence or in the form of testimonies of concerned witnesses which would in any manner make this Court come to a conclusion at the end of the trial that the State has discharged its burden of establishing beyond reasonable doubt the charges against the accused, and it is urged that in such circumstances, not only are the accused required to be given the benefit of such non-establishment of charges beyond reasonable doubt on the part of the Prosecution, but are required to be given a honourable and clean acquittal.

309. It is pointed out by Shri Bhardwaj that the material available and gone through so far by the concerned Advocates, may kindly be considered to set up an effective and appropriate defence on behalf of the concerned accused and it is submitted

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that it would be the endeavour of the defence to establish from the evidence of the Prosecution itself that the Prosecution has completely failed in establishing the charges against the accused. It is pointed out by Shri Bhardwaj that he intends to firstly draw the attention of the Court to the relevant aspects of the oral evidence produced on the record of the present proceedings, and particularly my attention is drawn to the testimony of PW-106 at Exh.542 i.e. Imtiyazkhan Saeedkhan Pathan, who admittedly even in terms used by the Prosecution and now being repeated by the defence, is a star witness on whom the Prosecution has greatly relied upon in an effort to prove its case.

310. My attention is drawn to page No.77 of the testimony of this witness and reference is made to a note which is nothing but an observation made by the Court in the course of recording of the evidence of the said witness. Drawing my attention to the observations made as referred above, Shri Bhardwaj points out that an application Exh.543 was tendered by the accused drawing the attention of the Court to the fact that two persons mainly being Ms.Tista Setalvad and Mr.R.B.Sreekumar, who according to the accused, were instrumental in preparing the statements of the victims and were also instrumental in preparing the witnesses, were present all throughout in the Court and that their presence, according to the defence in terms of

application Exh.543, was not desirable for the fair conduct of the trial and the relief was sought inter alia to the effect that the Court should pass appropriate orders directing these two persons not to remain present in the Court during the recording of the testimony of the witness. However, on perusal of application Exh.543, it transpires that such application was disposed of as "not pressed". But however, according to Shri Bhardwaj, the learned Judge has proceeded to record on page No.77 inter alia to the effect that there is a constant presence of these two individuals while the testimony of the present witness was being recorded. It is pointed out by Shri Bhardwaj that such observation goes to the root of the defence that the Prosecution has relied upon the testimony of tutored witnesses and the objective of such exercise was to achieve the goal of establishing the guilt of all the accused and ensure that all the accused rightly or wrongly were punished and held guilty of the charges framed against them. It is pointed out that it is in the background of such observations by the Court that the defence will be required to be looked at and it is requested that defence be looked at from the perspective of the possibility of broad the Prosecution witnesses being prepared and tutored with some ulterior motives.

311. My attention is drawn to page No.48 onwards of the cross examination of PW-106, wherein,

according to Shri Bhardwaj, the witness has categorically admitted that he was being assisted by a N.G.O. in preparing his statement and that the name of such N.G.O. is admitted to be "Citizens for Justice & Peace" and it is pointed out by Shri Bhardwaj that it is further admitted by the witness that the statement which was signed and produced by the witness before the S.I.T. at Gandhinagar, was prepared four or five days prior to the witness putting his signature thereupon. It is pointed out that the witness has further conceded that the statement was typed on a computer and that the same was not prepared by him. It is pointed out that the further testified in witness has his cross examination *inter alia* to the effect that other such persons were also possessed of such computerized statements when they all went to the SIT at. Gandhinagar. It is pointed out that the witness has further admitted that all such computerized statements were prepared on the same computer and there was an English version handed over to the present witness and other witnesses, as also a Gujarati version. It is pointed out by Shri Bhardwaj that the witness has further conceded that he did not understand the contents of the English version and translation was made for his benefit. It is further pointed out that the witness has conceded that when the witness signed such statement, he did install a date under his signature. not Ιt is pointed out that the witness has further conceded

that the SIT had never demanded such written statements from any of the witnesses, but that the witnesses had got prepared such material to refresh their memory.

312. My attention is drawn to paragraph the cross examination of the present No.65 of witness and it has been pointed out by Shri Bhardwaj that in paragraph No.65 of the cross examination of this witness, the witness while denying the fact of the statement being prepared by the NGO 'Citizens for Justice & Peace", has admitted that he was aware of the fact that Ms.Tista Setalwad was connected with the said NGO. However, it is, according to Shri Bhardwaj, categorically denied by the witness that Ms. Tista Setalvad and Advocate Shri Tirmizi were instrumental in preparing such statements. It is pointed out that the very fact that there is a strong denial by the witness, makes it clear that a question was specifically posed to the witness by the Prosecution which was implied that this has been the consistent stand taken by the defence with regard to the role and doubtful accuracy of the statements which are heavily relied upon by the Prosecution. It is pointed out that it is in the background of such facts and circumstances that the observation made by the Court on page No.77 with regard to the application Exh.543 as also with regard to the presence of Ms.Tista Setalvad and Shri R.B.Sreekumar in the Court, becomes material and

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relevant.

313. It is pointed out by Shri Bhardwaj that the testimony of the witness PW-106 also clearly exposes the desire behind the entire exercise on the part of some of the interested persons inasmuch as, it is pointed out that prior to the year 2008, the incident and the registered offence in respect thereof was being investigated by very senior Officers of the Gujarat State Police and it is pointed out that it is an admitted position established in the course of the trial that each of such Police Officers investigating into the incident, was sought to be made an accused in the present proceedings and it is submitted that this entire exercise was aimed at not providing the defence with the whole truth and placing before the Court only subjective and coloured material which would have helped the cause of Prosecution. It is pointed out that in such circumstances, the accused have been denied their fundamental right, more particularly the right to a free and fair trial and it is in these circumstances that the entire evidence relied upon by the Prosecution is required minutely scrutinized to look to be at. the effectiveness of the Prosecution case and it is that from the examination-in-chief pointed out itself of some of the Prosecution witnesses, these aspects would be highlighted and brought to the notice of the Court in the course of the submissions

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made by the defence. It is pointed out that the testimonies of these witnesses, are aimed at not bring out the whole truth but are aimed at achieving a singular objective of ensuring that all the accused are denied a free trial. It is pointed out that it is on such count alone that the accused are required to be given the benefit of doubt and are required to be given clean acquittal.

314. Ιt is pointed out by Shri Bhardwaj that the second aspect or thrust of the defence would be *inter alia* to the effect that all the star witnesses are claimed to be present at the scene of the incident and concentrating on PW-106, it is pointed out that PW-106 together with the other victims was escorted by the Police and taken to safety at 4:45 p.m. on 28/02/2002 i.e. on the date of the incident itself. It is pointed out that consequent thereto, the witnesses were escorted to the Shahibaug Police Station and were thereafter escorted to the relief shelters or relief camps for their own protection. It is pointed out that it is natural for a victim or an eye-witness to be traumatized by what has happened before his very eyes, but according to Shri Bhardwaj, it is a natural course of behaviour that such victims or witnesses would feel a sense of security when they are protected, placed in protective custody and are placed in shelters to protect them from their fears. It is pointed out that, that was the time when such

witnesses were required to com out with the whole truth but despite such state of affairs they did not make any statement or volunteer any information to any Police Officer for more than two days and the first such interaction PW-106 and other witnesses had with the Police, was on 2nd of March, 2002. But however, it is pointed out that the statement tendered by the witness before such Police officer was thereafter disclaimed and denied with an intent to help a greater conspiracy in bringing more and more accused persons into the net and it is pointed out that in such circumstances, it would be unsafe to rely on a testimony of a witness who keeps on improving in his testimony by implicating others as perpetrators of the offence. It is pointed out that normally in the case of communal riots, the perpetrators of such riots never indulge in any activities, and especially the victims are in a position to identify them more in a situation when the perpetrators are known to the victims. It is submitted that in the circumstances and therefore also, the witness PW-106 has been able to identify so many accused and gave specific details with regard to the roles played by them in the incident. It is pointed out that such narration of the events is nothing but the testimony of a tutored witness whose role is being monitored and orchestrated by persons who have an ulterior objective and it is pointed out that it would, therefore, be unsafe to rely on such testimony and make it any basis for

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arriving at a finding of guilt on the part of any of the accused. It is pointed out that it is an admitted position that a large number of the socalled eye-witnesses were shifted to the so-called shelters where there would be an exchange of information and an opportunity would arise on the part of such victims and witnesses to manufacture names and incidents which would help them in their ulterior objective. It is pointed out that in the circumstances and more particularly when there is gross contradiction emerging from the versions supplied by such witnesses, the only inference that the Court can draw is that they are tutored witnesses and therefore, it is urged that the testimonies of these witnesses is required to be discarded while deciding the fate of the accused.

315. It is further pointed out by Shri Bhardwaj that the witnesses who are claimed to be the witnesses on behalf of the Prosecution, who are claimed to be eye-witnesses to the entire incident, who claim to be in a position to identify the perpetrators of the incident and who have given specific names of accused involved in the incident, have in fact only exposed the hollowness of their case by contradicting each other in a manner which completely exposes their version as being wholly untrue and it is pointed out that it is an endeavour which the defence claims to describe as "robotic behaviour" on the part of the witnesses who were

tutored to point a finger at specific accused without really establishing the truthfulness of such versions or accusations. It is pointed out that to cite illustrative examples, Shri Bhardwaj intends to take the testimonies at the outset of four witnesses who are claimed to be star witnesses and it is, according to Shri Bhardwaj, an initial attempt and an endeavour to establish on record that these witnesses who have been touted as star witnesses by the Prosecution, are totally unreliable and if these are the best witnesses that the Prosecution can offer, then the entire Prosecution is. case according to Shri Bhardwaj, without any foundation or basis and is required to be thrown out wholesome.

316. attention is drawn My to the testimonies of PW-106 i.e. Imtiyazkhan Saeedkhan Pathan, PW-107 i.e. Roopa @ Tanaz Daraminu Modi, PW-116 i.e. Saeedkhan Ahmedkhan Pathan and PW-283 i.e. Aslamkhan Anwarkhan Pathan. It is submitted that all these four witnesses claim to have seen the first incident at 10:30 A.M. when the father of Aslamkhan was allegedly done away with by the mob more particularly by accused No.1 Kailash Dhobi who is attributed to have inflicted sword blows which resulted into the death of the father of the PW-283 and which also further resulted in causing injuries to PW-283 Aslamkhan himself. It is pointed out that the testimonies of these four witnesses differ greatly with regard to the actual place of incident,

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the role played by each of the perpetrators and the manner in which the incident took place. It is pointed out that the tutored witnesses have given one version, but the injured witness himself even has given a totally contradictory version with regard to the incident and it is pointed out that while PW-106 i.e. Imtiyazkhan Saeedkhan Pathan and PW-116 i.e. Saeedkhan Ahmedkhan Pathan have given a version whereby the victim Anwarkhan is attributed to have been seated on the OTAA of the residence of Shri Ehsan Jafri when the mob led by accused No.1 attacked them and accused No.1 inflicted sword injuries on Anwarkhan which resulted into his death. is also pointed out by both these witnesses Ιt according to Shri Bhardwaj, that they have stated specifically that PW-283 happened to be the son of the deceased Anwarkhan and tried to intervene and in an effort to intervene, caught hold of the sword on the said witness Aslamkhan account of which sustained injuries on account of the sword being caught hold of and it is submitted that in the circumstances, it is clear that according to these two witnesses, the incident took place on the OTAA of Shri Ehsan Jafri's house and that Aslamkhan was inflicted a blow with a sword which was required to be established to be held by accused No.1 because no other accused is attributed to be holding a sword and because the intervention is to be inferred an intervention where accused No.1 was attributed to be doing away of the said witness's father.

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317. It is pointed out that on the other hand, PW-283 Aslamkhan has himself given an entirely different version of the event. Going through the testimony of the said witness i.e. PW-283, Shri Bhardwaj has pointed out that the witness has inter alia deposed to the effect that when the father of the witness was sitting near the OTAA of Shri Ehsan Jafri's house, there was an altercation between the deceased and a mob comprising of accused No.1 Kailash Dhobi and the accused No.1 is attributed to have given a blow on the neck of deceased Anwarkhan and at that stage the witness claims that he i.e. PW-283 and his brother Akhtarkhan tried to intervene and drag their father to safety but at that time, according to the testimony of this witness, somebody from within Shri Ehsan Jafri's residence, inflicted an injury with a sword on the witness PW-283. It is

pointed out that in the circumstances, these are entirely contradictory versions.

318. Bringing my attention to another aspect which according to Shri Bhardwaj, is a wholly contradictory version, is the fact as to from where these witnesses i.e. PWs 106, 116 and 283 witnessed the incident at about 10:30 A.M. According to Shri Bhardwaj, it is emerging from the testimonies of PWs 106 and 116 i.e. Imtiyazkhan and Sayeedkhan whose version is that at 10:30 A.M. after taking their breakfast, both had gone up to the terrace of their own residence when they saw an incident of stone throwing, when according to PW-106, he witnessed an

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incident where two boys Ayub and his brother were attacked and stabbed by a mob. The witness claims to have been an eye-witness to the entire incident and further claims to have seen the same from the terrace of his building in the company of his father. According to Shri Bhardwaj, the testimony of this witness is to a great extent supported by his father who also claims to have been with his son on th terrace at the time of such incident taking place. On the other hand, PW-283 who happens to be the nephew of PW-116, has supplied an entirely different version of the incident in which in terms of his testimony in which he has deposed that he was the only person on the terrace and it is further testified that on seeing the incident, the witness shocked, he rushed down and told the other was members of his family including PWs 106 and 116 about the incident and according to such witness, both these witnesses i.e. PWs 106 and 116 were never on the terrace and were in fact on the ground floor at the time when he narrated the incident. It is, therefore, urged by Shri Bhardwaj that either the set of witnesses being witnesses No.106 and 116 on hand or the witness No.283 have given one an incorrect version of the entire event and in the circumstances, such versions only expose the hollowness of the Prosecution case.

319. Drawing my attention to the testimony of PW-107 being Mrs.Rupaben Modi, it is pointed out that she too has deposed in a manner which does not

inspire confidence. It is pointed out that in the course of her testimony, this witness has clearly stated that she was at Shri Ehsan Jafri's residence when she was pelted with a stone thrown by one "Raju Mochi" whom she has claimed to know very well. The exact words are "હું સારી રીતે ઓળખું છું." It is pointed out that in fact no person by the name of "Raju Mochi" exists nor was he arrested ever in connection with the present incident. It is pointed out that subsequently, accused No.65 Rajesh Jinger was arrested in the course of the present proceedings and conveniently according to Shri Bhardwaj, the witness No.107 subsequently identified accused No.65 as Rajesh Jinger who was claimed to have pelted the stone on her, but however, in the course of identification in the trial, the witness pointed out and identified a person who was established to be one Bharatsinh who had nothing to do with the incident in question. It is submitted that under all such circumstances, it can be established that all the witnesses have departed from whole truth and the testimonies are required to be treated as concocted versions set up by the Prosecution with ulterior motives. It is pointed out by Shri Bhardwaj that in the course of the submissions that would follow, further contradictions would emerge which would negate the case of the Prosecution and it is urged that the very basis of the Prosecution case being without any basis or foundation, the benefit must go to the accused.

320. Drawing my attention to the testimony of PW-116 i.e. Sayeedkhan inasmuch as, it relates to the question of identifying accused No.45, it is pointed out by Shri Bhardwaj that the witness in the of his examination-in-chief, course more particularly on page No.9 in paragraph No.11, has testified *inter alia* to the effect that in an incident that he has narrated having taken place at about 1:30 p.m. and which pertains to stone pelting from the terrace of Bunglow No.1 of the Gulbarg Society, Shri Bhardwaj has pointed out that the witness has categorically stated that stone pelting took place from the terrace of the house of one Dayaram Jinger and that the witness categorically has testified that he could identify one Gabbar and one Rajesh Jinger (accused No.65) as being two of the perpetrators of such incident. However, in the very same breath, my attention is drawn to the fact that this witness in his deposition before the Court, has categorically claimed that he cannot identify Rajesh Jinger (accused No.65). Ιt is submitted that no explanation is tendered for providing any reasons for the non-identification of such accused by the witness.

321. Challenging the veracity and the truthfulness of the present PW-116, my attention is drawn by Shri Bhardwaj to the testimony of the witness more particularly on page No.4 wherein, in his examination-in-chief itself, the witness has

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categorically stated on oath inter alia to the effect that he witnessed Ayub being inflicted two to three gupti injuries by one Bharat Rajput and it is submitted by Shri Bhardwaj that the identification is categorical and clear and no doubt is expressed with regard to the identify. My attention is further drawn by Shri Bhardwaj to the opening portions of paragraph No.6 of the testimony of this witness, where according to Shri Bhardwaj, the witness has clearly deposed before the Court that he is in a position to identify the persons whom he has named in his deposition. The witness, according to Shri Bhardwaj, has thereafter proceeded to identify the person who he had identified as Bharat Rajput, meaning, the person who had inflicted such injuries on the said Ayub. The witness has thereafter pointed a finger at an accused whom he identifies as Bharat Rajput but upon verification, it is established in the Court that the person so identified was in fact not Bharat Rajput but an accused named Babu Manji (accused No.23).

322. It is pointed out by Shri Bhardwaj that the witness in the process of identifying the accused, claims to be in a position to identify six of the accused as being the perpetrators of the various incidents narrated by him. It is submitted that as stated above, accused Bharat Rajput was wrongly identified and only accused Bharat Teli (accused No.54) was identified by the witness whereas the witness has categorically stated that he

is not in a position to identify accused Kapil Munna (accused No.50), Dharmesh Prahlad (accused No.47), Mukesh Pukhraj (accused No.29) and Ambesh Kantilal (accused No.32).

323. It is pointed out by Shri Bhardwaj that at the time the witness PW-116 was deposing with regard to the contents of paragraph No.9 of his examination-in-chief, the accused No.65 Rajesh Jinger had not been arrested till date and was not arraigned as an accused and therefore, was not present in the Court on that day. However, since the witness had categorically denied his ability to identify such person, the had observed Court categorically to the effect that the question of raising the possibility and enabling the witness to identify such accused who was specially added was not required to be considered but however, in the greater interest of justice, the witness was permitted to make an attempt to identify the said Rajesh Jinger. It is pointed out that surprisingly a person who claims to be having weak eyes, who claims be having cataract, without any hesitation to identifies accused No.65 in the Court which is reflected in paragraph No.85 on page No.70 where the categorically and witness has specifically identified accused No.65 without any hesitation. It is submitted that in such circumstances, either the witness was tutored at a later stage to identify the some other factor which accused or there was resulted in the witness firstly denying even the

possibility of identifying the accused and thereafter identifying the accused in such unhesitating and clear fashion. It is pointed out by Shri Bhardwaj upon a querry raised by the Court that even accused No.14 i.e. Gabbar was not identified by the witness. Ιt is pointed out that no Test Identification Parade has been carried out with regard to the present witness and it is urged that therefore, on the question of the capability of the witness to identify the perpetrators, there are and serious doubts with regard grave to the genuineness of the identification by the witness.

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324. is pointed out by Shri Bhardwaj Ιt that according to the Prosecution case, the incident started in all earnestness between 2:00 p.m. and 2:30 p.m. when the mob entered into Gulbarg Society and the incident relating to the deceased Anwarkhan took place. It is pointed out that all the four witnesses referred to herein before have clearly testified that the incident took place when the deceased Anwarkhan who according to all the four witnesses, was a disabled person, was sitting on the OTAA of Shri Ehsan Jafri's residence when the mob which was armed with deadly weapons, entered into the Society, and accused No.1 inflicted a sword blow upon the deceased. It is pointed out that all the witnesses have tried to depose inter alia to the effect that at that stage, the sons of said Anwarkhan i.e. PW-283 Aslamkhan and his brother Akhtarkhan (missing and presumed dead) tried to

intervene and dragged their father inside Shri Ehsan Jafri's residence and to safety when accused No.1 inflicted a blow with a sword on the fingers of Aslamkhan i.e. PW-283, causing injuries to him. He has further testified that he was dragged to safety at such point of time. It is pointed out by Shri Bhardwaj that from the testimony of all such four witnesses, it can be gathered that the Prosecution case is that the incident took place between 2:00 p.m. and 2:30 p.m. on the OTAA of Shri Ehsan Jafri's residence and both i.e. PW-283 Aslamkhan and his brother Akhtarkhan were outside and not within the residence of Shri Ehsan Jafri. It is pointed out that this version is further fortified from the testimony of PW-283 wherein his examination-in-chief on page No.5, paragraph No.7, the said witness has deposed that "ते पछी आशरे जे थी अढी पाग्याना सुमारे जन्ने બાજુથી ટોળૂ સોસા. માં આવી ગયેલ. તે સમયે મારી પતિન બાળકો વગેરે જાફરીસાઠેબ ના ઘરમાં જતા રહેલ અને અમે બહાર ઉભા રહેલ. જે ટોળુ અંદર આવ્યુ તેની પાસે હથીયારોમાં, તલવાર, ગુપ્તી, લાકડીઓ વગેરે હતુ. તે સમચે મારા બાપુજી જાફરીસાદેબ ના ઓટલા પાસે બેઠેલા હતા. તે દરમિયાન ઝપા ઝપીમાં મારા બાપુજી ને કૈલાશ લાલચંદ ધોબીએ તેમના ગળા ના ભાગે તલવારનો ઘા મારતા મારા બાપુજી પડી ગચેલા. તે પછી દું અને મારો ભાઈ અખ્તરખાન અમે અમારા બાપુજી ને મકાનમાં અંદર ખેંચવા જતા તે દરમિયાન જાફરીસાદેબ ના ઘરના બારણા માંથી કોઈ અજાણ્યા શખ્શે મારા હાથ પર ઘા કરેલા. તે ટોળાના માણસો કૈલાશ ધોબી સાથે

હતા. મને મારા ડાબા હાથની આંગળી પર તલવારનો આ ઘા વાગેલ. તે પછી દું અને મારો ભાઈ જાફરીસાદેબના મકાનમાં અંદર જતા રદેલા. તે સમયે મને પાછળથી કોઈએ અંદર ખેંચી લીધેલ." It is pointed out by Shri Bhardwaj that completely contradicting this version and completely exposing the hollowness and incorrect versions attempted to be supplied by the Prosecution, is the cross examination o this witness PW-283 more particularly on i.e. No.35, page paragraph No.59 where it clearly is conceded by the witness inter alia to the effect that "એ पात ਅરੀ છે કે, દું જાફરી સાહેબના મકાનમાં ગયો ત્યારે મેં મારા બાપુજી અનવરખાન અદેમદખાન જે જાફરીસાદેબ ના મકાન ના ઓટલા પર બેઠેલા હતા તેમને હું અંદર લઈ ગયેલ નહિ. હું જાફરીસાઠેબ ના મકાનમાં અંદર ગયો તેની પાંચેક મીનીટમાં મારા બાપુજી પર દુમલો થયેલ. બહાર થી દું જ્યારે જાફરીસાદેબના મકાનમાં અંદર બારણાંમાં ગયો ત્યારે સોસા.માં ટોળુ બન્ને તરફથી અંદર આવી ગયેલ હતુ. એ વાત પણ ખરી છે કે, સોસા. ની બન્ને તરફથી ટોળુ સોસા.ની અંદર દાખલ થયુ તે પછી જ હું જાફરી સાહેબના મકાનમાં દાખલ થયેલ." Ιt is pointed out that in the circumstances, the witness has clearly established that all the four witnesses who have supplied an entirely different version of the incident, have lied and contradicted each other so as to establish their credentials as eye-witnesses. It is pointed out that it is unambiguous and clear that PW-283 had entered into the residence of Shri Ehsan Jafri at least five minutes prior to the incident even

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according to his own conceded cross examination. It is submitted that in the circumstances, the entire version of the incident supplied in the examinationin-chief of the defence witnesses not only is completely contradicted but is established to be a complete untruth and it is pointed out that this supports the defence theory that the testimonies of such witness is in the nature of tutored testimony and that the witnesses are, as the present witness has pointed out and stated earlier, compelled to be robots and supplied a version that was convenient to the Prosecution. It is pointed out by Shri Bhardwaj that this aspect of the cross examination of PW-283 also establishes that when this witness took shelter into the residence of Shri Ehsan Jafri, no incident had taken place, no injury was caused either to his father or to his person and it is submitted that in such circumstances, the entire version supplied by these four witnesses is required to be discarded. It is pointed out that the witness has conveniently omitted to depose with regard to the presence of his brother Akhtarkhan at subsequent stages of his testimony.

325. Drawing my attention to the testimony of another witness i.e. PW-142 who Shri Bhardwaj terms as "so called eye-witness" being one Ashraf Sikanderbhai Sandhi who in terms of his testimony Exh.654, has specifically stated in paragraph No.9 on page No.11 wherein he has stated that "에 읽어 એકદમ જાફરી સાહેબના ઘરમાં ઘુસેલ તેમાં કૈલાશ ધોબી એ નીચે બેઠેલા અનવર ભાઈના છાતીના ભાગમાં તલવાર વડે ઘા મારેલ અને અનવર ભાઈ ત્યાં જ પડી ગયેલ. તેમનો પુત્ર અસ્લમખાન તેમને બચાવવા ગયેલ. કૈલાશ ધૌબી એ તેમને પણ જમણાં હાથ પર તલવારનો ઘા મારેલ. એ જોઈને તૈયબ ભાઈએ અસ્લમભાઈને ઘરની અંદર ખેંચી દીધેલ અને જાળી બંધ કરી દીધેલ. અનવર ભાઈને પેલા લોકોએ ઉપરા છાપરી તલવારથી ઘા મારેલ. એ પછી એ જોઈને ઠું જાફરી સાઠેબના મકાનમાં પાછળના ભાગમાં રુમમાં જ્યાં મારા મમ્મી ઉભા હતા તેમની પાસે જતો રહેલ. તે વખતે હું અને મારા મમ્મી બારી પાસે ઉભા હતા." It is pointed out that the witness has clearly deposed and has supplied a fresh version wherein he has partly seen Kailash Dhobi (accused No.1) inflicting the injuries on the hand PW-283 Aslamkhan, whereas the said Aslamkhan of himself while easily being able to identify Kailash Dhobi (accused No.1) as the perpetrator and giver of the blow to his father Anwarkhan, Aslamkhan himself has not stated that it was Kailash Dhobi (accused No.1) who inflicted the injuries to his fingers, but attributes inflicting of such injuries initially to some unknown persons and has thereafter attributed it to some unconnected persons. It is pointed out by Bhardwaj that the said witness PW-142 has Shri further proceeded to testify on oath inter alia to the effect that the said injured Aslamkhan was dragged into the house of Shri Ehsan Jafri by one Taiyabbhai. It is submitted that the said Taiyabbhai is a new entrant to the incident inasmuch as, none

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of defence witnesses have the even remotely mentioned the name of such Taiyabbhai. Ιt is submitted that in the circumstances, these so-called have only ended eve-witnesses up in grossly contradicting each other. It is further pointed out that while PW-283 Aslamkhan has stated that his father Anwarkhan was given a blow with a sword on the neck by Kailash Dhobi (accused No.1), this has categorically deposed oath in witness on paragraph No.9 on page No.11 of his testimony that the deceased Anwarkhan was delivered a blow with the sword on his chest by accused No.1 Kailash Dhobi. It is submitted that in these circumstances, while some latitude can be given for some stray lapses in the version, there cannot be wholesale contradictions in the versions of the different witnesses. Ιt is pointed out that while PW-283 Aslamkhan himself has not deposed as to who treated his injuries, there is mystery with regard to such treatment inasmuch as PW-107 Mrs.Rupaben Modi has testified inter alia to the effect that it was she who had treated the injuries of the said Aslamkhan, whereas there is controversy emerging from the testimony of PW-106 Imtiyazkhan as to who has given the treatment to said Aslamkhan. It is pointed out that it is established from the testimony of PW-106 inasmuch as, he has contradicted in the course of his course examination that he had ever given a statement before the SIT officer Shri J.M.Suthar inter alia to the effect that it was he i.e. PW-106 who dragged Aslamkhan to safety and it was he i.e. PW-106 who

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treated the injuries of Aslamkhan whereas the said SIT officer Shri J.M.Suthar who has been examined in the present proceedings as PW-335 and whose the of testimony is on record the present proceedings at Exh.1289, has clearly established the contradiction inasmuch as, the witness has stated on oath inter alia to the effect that PW-106 in his statement recorded on 22/05/2008 has categorically stated what PW-106 now denies. It is submitted that such aspects are clearly reflected in the cross examination of Shri J.M.Suthar, more particularly in paragraph No.236 of his testimony. It is submitted that these contradictions are major in nature and cannot be brushed aside in evidence and memory and it is submitted that in the circumstances, the entire beginning of the incident is not free from doubt.

My attention is also drawn to the 326. testimony of PW-177 being one Sairaben Sandhi whose testimony is on the record of the present proceedings at Exh.711, and it is pointed out that the testimony of the witness more particularly, in paragraph No.15, clearly indicates that she too in an attempt to support PW-142 who happens to be her nephew, has clearly attributed accused No.1 Kailash Dhobi to have given a blow to the deceased Anwarkhan with the sword and he is also attributed to have injured Aslamkhan (PW-283) when the said Aslamkhan attempted to intervene in an attempt to save his father. It is pointed out that these aspects are

contradicted by Aslamkhan himself and therefore, such versions are required to be read with a lot of caution while coming to a conclusion with regard to the Prosecution case.

327. is further pointed out by Shri Tt. is Bhardwai that there further contradiction emerging with regard to the identity of the persons who had inflicted injury on PW-283 Aslamkhan. It is submitted that as pointed out earlier, PWs 177 and 142 have attributed the inflicting of such injury to Aslamkhan by accused No.1 whereas, as stated herein before, PW-283 Aslamkhan himself does not attribute the injury being inflicted by accused No.1 but in the examination-in-chief, attributes the injury to have been inflicted by some unknown persons. Drawing my attention to paragraph No.10 of the examinationin-chief of PW-283, Shri Bhardwaj submits that the witness has conveniently thereafter identified from amongst the persons who he has referred to as unknown persons, to include a person specifically by name, which the witness identified in the Court as one Bipin Ambalal Patel (accused No.60). It is submitted that the said Aslamkhan could not identify any other person whereas in the cross examination on page No.28 of his testimony, the witness has deposed that "મને હાથે તલવારથી ઈજા થઈ ત્યારે મેં બે અજાણ્યા માણસોને જોચેલા. અમારા મેઘાણીનગર વિસ્તારમાં ભૈયાજીઓની વસ્તી છે. એ વાત ખરી છે કે, મને જે બે અજાણ્યા માણસો દેખાયા તે મને ભૈયાજી જેવા

લાગેલા. મેં તે દિવસ થી જ્યારે જ્યારે પોલીસે મારા જવાબો લીધા તે દરમિયાન આ અજાણ્યા માણસોના નામ જાણવા કોઈ પ્રયત્ન કરેલ નદિ." It is submitted that it is very clear from this deposition of thee portion that the witness attributed his injuries being caused by two persons whom he identifies as "Bhaiyajis", meaning persons belonging to Uttar Pradesh region. It is submitted that in the circumstances, and more so when the witness admits that till the time his statements were recorded, he made no efforts to find out the veracity of his attackers, and it is surprising and strange that he identifies a person by name in the Court. It is pointed out that in any case, the person so identified and named by this witness, does not belong to Uttar Pradesh but is very much a Gujarati. It is pointed out that this is one more serious contradiction emerging with regard to the injuries sustained by PW-283.

328. further pointed out by Shri It is Bhardwaj that it is also debatable and doubtful as whether PW-283 sustained injuries to while attempting to save his father or he sustained injuries while he was within the residence of Shri Ehsan Jafri or he sustained injuries elsewhere and he is conveniently trying to pass off his injuries having been inflicted in the incident. as Μv attention is drawn to the testimony of PW-107 i.e. Mrs.Rupaben Modi who has clearly testified that when she attempted to put her fingers out of the grill,

she was warned by her son not to do so and she was specifically warned that she too might suffer the same fate and get injured in the same manner as drawn Aslamkhan. My attention is to particular paragraph No.14 of her testimony on page No.9, where she has deposed that "ते पछी जारीमांथी એક छोडराએ मारा पर પેટ્રોલ છાંટેલ તેથી હું બારી બંધ કરવા જતા મારા દિકરા એ મને કહેલ કે,મમ્મી તમે હાથ બહાર કાઢશો નહિ. તમે હાથ બહાર કાઢશો તો એ લોકો પાસે તલવાર છે જે રીતે અસ્લમ અંકલના આંગળા કાપી નાખ્યા તેમ તમારો પણ હાથ કાપી નાખશે." My attention is further drawn to the testimony of PW-116 Sayeedkhan and more particularly on page No.28 wherein the witness has categorically deposed that " ર૮મી તારીખે સૌ પ્રથમ મારા ભાઈ અનવરભાઈને જાફરી સાઠેબના ઓટલે બેઠેલા જોચેલ. દું જાફરી સાઠેબના ઘરમાં દાખલ થઈ ગયોતેના પંદર વીસ મીનીટમાં અનવરભાઈને મારવાનો બનાવ બનેલો. મને ખ્યાલ નથી કે, જાફરી સાહેબનું મકાન અંદરથી બંધ કર્યુ તે પહેલા મેં કે ઈમ્તીયાઝે અનવરભાઈને મકાનની અંદર લેવા પ્રયત્ન કરેલ કે કેમ. દું આ પંદર વીસ મીનીટ દરમિયાન જાફરી સાહેબના મકાનના ભોંચતળના ભાગે આગળના રુમમાં જ હતો. એ સમયે જાફરી સાહેબના મકાનમાં ઉપર નીચે થઈને એંસીથી સો માણસો દશે. તે સમચે અસ્લમભાઈ દરવાજા પાસે ઉભેલા હતા. તે જાળી વાળો દરવાજો હતો. તે દરવાજાને તાળુ મારેલ ન હતુ પરંતુ દરવાજો બંધ કરેલ હતો. તે પંદર વીસ મીનીટ દરમિયાન અસ્લમભાઈએ અનવરભાઈને અંદર લાવવા પ્રયત્ન કરેલ કે કેમ તે મને ખ્યાલ નથી. મેં અસ્લમને કદેલ નદિ કે, તું અનવરભાઈને અંદર લઈ

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HIQ." It is pointed out that this testimony clearly indicates that Aslamkhan, according to this witness, was within the residence of Shri Ehsan Jafri when the incident relating to Anwarkhan took place. It is submitted that therefore, it is difficult to crystallize as to which of the versions is correct and since there are so many versions, according to Shri Bhardwaj, none of them are required to be relied upon.

329. It is pointed out by Shri Bhardwaj that another grave and serious contradiction with regard to the beginning of the entire incident, emerges from the cross examination of the PW-116 Sayeedkhan. My attention is drawn to the cross examination of the witness, more particularly on in paragraph No.90 wherein the said page No.73 witness has clearly admitted that he had addressed a letter/application to the Commissioner of Police wherein he has deposed inter alia to the effect that on 28/02/2002 between 10:00 AM and 10:30 AM when the witness was within his residence, a mob of persons heavily armed, had attacked his Society and had caused damage to life and property of the Society. My attention is drawn to the particular words of the witness where in paragraph No.90, it is deposed that "પોલીસ કમીશ્નરને કરેલ અરજીમાં મેં એમ લખાવેલ છે કે, 'તા. ૨૮/૨/૦૨ ના રોજ હું મારા ઘરે હાજર હતો ત્યારે લગભગ દસથી સાડા દસ વાગ્યાના સુમારે કેટલાક ઈસમો દથિયારો સાથે અમારી સોસા. પર દુમલો કરેલ અને અમોને જાનહાનિ તેમજ માલની નુકશાની પહોંચાડેલ" તે મેં પોતે લખાવેલ છે.'"

It is pointed out by Shri Bhardwaj 330. that in terms of a recovery panchnama drawn under Sec.27 of the Evidence Act, the weapon allegedly recovered at the behest of accused No.1 in terms of such panchnama, is not a sword but is a knife. It is pointed out that in such circumstances, this is one more aspect which needs to be considered and it is urged that this aspect also further undermines the accuracy and veracity of the Prosecution case inasmuch as, there is doubt in all areas pertaining to the incident including the place of the incident, the time of the incident, the manner of the taking place of the incident, the person allegedly involved in the perpetration of the offence as also the weapon allegedly used in the offence and it is urged that it would, therefore, be unsafe to rely on such evidence as credible and believable evidence.

331. It is pointed that furthermore, PW-116 has not identified accused No.1 in the Court. It is pointed out that it is quite natural that attempting to identify a perpetrator, a witness might not be able to successful to do so. It is submitted that however, in the instant proceedings, this witness PW-116 has not even attempted to identify the accused in the Court and he has merely expressed his inability to identify anybody.

332. It is further pointed out that even th medical evidence does not support the Prosecution attention Drawing my to the medical case. certificate Exh.603 and the testimony of Dr.Rajesh D.Patel who is examined as PW-121 at Exh.599, it is pointed out that the medical expert despite proving the injury certificate, was not posed a question with regard to as to whether the muddamal weapon was capable of inflicting the injuries found on the injured victim PW-283 Aslamkhan. It is submitted that this is deliberately suppressed with a view to avoid any comfortable answers that would have come forth. It is pointed out that however, the witness in his cross examination more particularly in paragraph No.17 on page No.12, has clearly admitted and conceded that if a person falls on the ground and thus comes into contact with a stone, then the type of injury found on PW-283 could occur. It is submitted that this effectively rules out the injury being caused by either a knife or a sword and it is urged that this is also a grave and serious question which seriously undermines the veracity and truthfulness of the incident which is claimed to have taken place as per the Prosecution version.

333. Incidentally on 02/07/2015, Shri Bhardwaj, the learned advocate for the accused not being available, submissions are made on behalf of the accused by Shri T.R.Bajpai, the learned advocate appearing for the concerned accused as stated above,

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and to ensure continuity of the arguments and further to ensure that there is no wastage of time, there is, this permitted departure of the normal practice whereby another Advocate is permitted to make submissions even before the submissions of Shri Bhardwaj have been concluded. In fact, the learned Shri R.C.Kodekar as also the Spl.P.P. learned victims, advocate representing the on being specifically asked, have indicated that they have no objections if such state of affairs is permitted.

334. It is in the background of such facts and circumstances that my attention is drawn to the testimony of the first I.O. Shri N.D.Parmar being PW-328 whose testimony is on the record at Exh.1164. It is pointed out by Shri Bajpai that the purpose of reading portions of the testimony of this witness is to rebut the claim of the victims *inter alia* to the effect that the local Police did not take timely and appropriate action and did not take steps for the speedy investigation and that the local Police made no efforts to record the statements of the relevant witnesses. My attention is drawn to the testimony of this witness, more particularly paragraphs Nos.5 to 14 of the examination-in-chief wherein, upon reading the said testimony, it emerges inter alia to the effect that the concerned I.O. was directed and instructed in writing by the CPI Shri K.G.Erda who incidentally is now an accused in the present proceedings, to go to the refugee camp known as "Dariakhan Ghummat Refugee Camp" to record the

statements of the concerned witnesses/victims. My attention is drawn to those aspects of the testimony of the witness PW-328 wherein he has clearly stated that such directions were given to him on 02/03/2002 i.e. two days after the incident and that acting promptly thereupon, the said I.O. Shri Parmar faithfully went to the refugee camp and tried to record the statements of relevant witnesses/victims. It is submitted that there was only partial success inasmuch as, two witnesses gave their statements on the first day, but however, a large majority of the witnesses/victims declined to give statements to the I.O., a fact which is clearly reflected in his testimony, and from the documentary evidence in the shape of documents Exhs.1191, 1192 and 1193 which are reports made by the I.O. to his CPI as also to the P.S.O. of the Meghaninagar Police Station stating therein that though attempts were made, the concerned witnesses declined to give the statements. My attention is also drawn to the testimony of Shri Parmar wherein it is clearly emerging, according to Shri Bajpai, that no sooner did such witnesses declined to give statements, the said I.O. contacted the organizers of the relief camp and recorded the statements of two such organizers being one Rajabhai Shaikh and one Shri Ataullahkhan with regard to the fact of the witnesses/victims declining to get their statements recorded before the I.O. My attention is also drawn to and emphasis is also put on Exh.1192 in the Station Diary in the being an entry Meghaninagar Police Station, dated 04/03/2002

wherein the fact of the witnesses currently taking shelter (at that time) at Dariakhan Ghummat relief camp, had declined to give statements. It is submitted that therefore, such allegations and grievances against the local Police are baseless and this also shows the hollowness of the veracity of the witnesses examined by the Prosecution in an effort to prove the charges against the accused.

335. Shri Bajpai submits that he would now attempt to bring on record the contradictions in the testimony of PW-106 Imtiyazkhan who is examined on the record of the proceedings at Exh.542 and who has been described by the Prosecution as a star witness. It is submitted that there are large number of contradictions which the defence seeks to point out as herein after follows.

336. It is pointed out by Shri Bajpai that the witness PW-106 has in the course of his testimony before the Court on separate occasions which are provided in a tabulated form, clearly deposed with regard to each of the incidents and has further provided names of the alleged accused who were indulging in such criminal acts at that particular point of time. It is pointed out that with each of the incidents in question, the witness was cross examined on behalf of the defence and in the course of his cross examination, the witness has clearly denied and stated that it is incorrect to say that he did not provide such details in the

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course of his statement which was recorded on 05/03/2002. It is further pointed out that the I.O. i.e. PW-328 has in the course of his testimony and more particularly in the course of his cross examination, details of which are provided in a tabulated form, has clearly testified *inter alia* to the general effect that the witness gave no such specific names with regard to each related incident when his statement was recorded on 05/03/2002.

337. It is submitted that it could thus be seen that the witness PW-106 has provided absolutely no material particulars or details with regard to the incident when his statement was recorded on 05/03/2002 and it is pointed out that it is, therefore, not required to be believed when the witness has deposed in his testimony after six long years and provided such detailed particulars with regard to the role played by each of the accused as specified in his oral evidence. It is pointed out that these omissions cannot be treated as minor or insignificant omissions but the same go to the very root of the accuracy and veracity of the witness. It in the course is pointed out that of the examination-in-chief of PW-106, he has provided the names of no less than 23 accused, who according to him, were involved in different incidents, all of which were witnessed by him. It is submitted that in utter contradiction of such state of affairs, PW-328 I.O. Shri N.D.Parmar, being the has clearly testified and admitted in his cross examination in

paragraph No.133 *inter alia* to the effect that names of only four of the accused were furnished by PW-106 in the course of his statement recorded on 05/03/2002 i.e. nearly five days after the incident. It is submitted that therefore, this aspect requires close consideration.

338. It is pointed out by Shri Bajpai that another major contradiction emerging from the testimony of PW-106 is that, in the course of his examination-in-chief, he has clearly stated that accused No.55 Bharat Rajput was the person who had delivered blows with the gupti upon the boy Ayub in the incident narrated on page No.8, paragraph No.8 of the examination-in-chief, whereas in the course of his cross examination, the I.O. Shri N.D.Parmar i.e. PW-328 has in paragraph No.134 of his cross examination, clearly admitted that the name provided by PW-106 in the course of his statement recorded on 05/03/2002 with regard to the person who delivered gupti blows upon the said Ayub, is attributed to be one Girish Prabhudas who in fact, according to Shri Bajpai, is an absconding accused. It is submitted that the name of Girish Prabhudas tendered in the statement dated 05/03/2002 was not convenient to the Prosecution inasmuch as, the said Girish Prabhudas is as on today absconding accused, not traceable and therefore, in an effort to cement the Prosecution case, the witness has conveniently attributed No.55 Bharat Rajput as the person who accused delivered the gupti blows. It is pointed out that it

was convenient for the witness and the Prosecution to identify accused No.55 as the perpetrator of the said incident and therefore, it is submitted that this is a major contradiction which is required to be considered to decide the fate of the Prosecution case.

339. It is submitted that not only against the local Police, the witness has also raised grievances with regard to the role of the SIT officers in investigating the present offence. It is pointed out that the PW-106 has in the course of his testimony on page No.47, paragraph No.42, testified inter alia to the effect that he i.e. PW-106 was not required to go before the SIT on any other occasion and there is a specific denial on page No.49, paragraph No.44 of his testimony wherein the witness has categorically denied that the IO of the SIT Shri Suthar has never recorded his statement on 14/09/2008. My attention is drawn to the testimony of Shri J.G.Suthar who has been examined as PW-335 in the present proceedings and my attention in particular is drawn to the contents of paragraph No.120 of the cross examination of the said witness, wherein the said witness has clearly accepted inter alia to the effect that he i.e. the I.O. PW-335 recorded the statements of PW-106 Imtiyazkhan on two occasions i.e. on 22/05/2008 and 14/09/2008.

340. It is pointed out that PW-106 has in the course of his testimony, furnished the names of

considered.

two of the perpetrators being Manish Somabhai Patel @ Splendar and one Krishna, son of one Champaben, and my attention is drawn to the testimony of PW-106 and page No.16, paragraph No.16 and page No.18, paragraph No.16, are referred to in this regard. It is submitted that the IO PW-335 Shri J.G.Suthar in the course of his testimony on page No.75, paragraph No.120, has admitted that PW-106 did not provide the names of the two above named persons in the course of his statement which was recorded on 22/05/2008. It is pointed out that the witness himself has denied having recorded a statement on 14/09/2008 and therefore, the question of the witness supplying such names in the course of his statements before the SIT, simply does not arise. It is submitted that this is also a factor which is required to be

341. It is pointed out that in any case, the PW-106 has himself admitted in his cross examination with regard to the fact of his not having narrated or given details about specific incidents, questions with regard to which were posed to the witness during the course of his cross examination and which are herein after supplied to this Court in terms of a tabulated form. It is submitted that in such circumstances, the reliability of the witness is a key question.

342. Shri T.R.Bajpai, the learned advocate for the concerned accused, submits that the law laid

down by the Hon'ble Supreme Court of India in the judgments beginning right from the year 1976 and consistently approved and followed by the subsequent judgments of the Hon'ble Supreme Court right upto the year 2009, have all inter alia laid down the ratio to the effect that if a witness or a victim was silent and did not disclose the name of his assaulters or the involved accused at the first possible opportunity, where in cases where there was delay in disclosing the names, which delay was comparatively insignificant inasmuch as, even six hours' delay was found to be fatal by the Hon'ble Supreme Court, it is urged that in the instant proceedings as submitted above, there was silence on the part of the witnesses and the victims despite they being under Police protection right since the evening of the incident i.e. 28/02/2002 after 5:00 p.m., and the failure and deliberate not mentioning of the names of the perpetrators and declining to give statements to the Police Officers as is already submitted herein before, clearly indicates that these witnesses are suffering from a question of credibility and it is urged that it is required to be inferred that the witnesses did not know the names of the perpetrators and were able to provide such names at a subsequent stage only when such names were given over to them by interested and concerned persons with ulterior motives. Ιt is submitted that the cumulative weight of all the

cited judgments would clearly ensure and require

this Court to come to a conclusion that these

witnesses are not reliable and their testimonies or statements cannot be made the basis of conviction of any of the accused herein. It is urged that in the circumstances, the cited judgments be appropriately considered.

343. The above mentioned judgments cited by Shri Bajpai, are referred to herein below:-

Sr. No.	Party's Name	Reported in
1.	Muluwa S/o. Binda and others Vs. The State of Madhya Pradesh.	
2.	State of Orissa Vs. Mr. Brahmananda Nanda.	1976 Cri. Law Journal Page 1985- AIR 1976 Supreme Court 2488.
3.	State of Madhya Pradesh Vs. Bacchudas @ Balaram & Ors.	
4.	Pannayar Vs. State of Tamil Nadu By Inspector of Police.	-
5.	Ramreddy Rajeshkhanna Reddy & Anr. Vs. State of Andhra Pradesh.	2006 SAR (Criminal) Page 384 Supreme Court.
6.	Ashok Somalal Thakkar and Anr. Vs. State of Gujarat.	
7.	Mohd. Iqbal M. Shaikh & Ors. Vs. State of Maharashtra.	-
8.	Dhanna etc. Vs. State of Madhya Pradesh.	1996 (2) Supreme Court (Cri.) Page 183.
9.	Swaran Singh Vs. State of	1998(3) Crimes Page 98

Sr. No.	Party's Name	Reported in
	J & K.	Supreme Court.
10.	Rajagopal Vs. Sadaya Gounder and Others.	-
11.	Sujoy Sen Alias Sujoy KR. Sen Vs. State of W.B.	-
12.	Parme Hansda And Another Vs. State of Bihar (Now Jharkhand)	-
13.	State of Gujarat Vs. Kanubhai Zinabhai Patel & Ors.	-
14.	State of U.P. Vs. Mushtaq Alam.	2008(1) Supreme Court Cases (Cri.) Page 27.
15.	State of Rajasthan Vs. Bhanwar Singh.	2005(1) CACC Page 137 Supreme Court of India.
16.	Girishbhai Mohanbhai Sharma & Ors. V/s. State of Gujarat.	

My attention is drawn to the judgment 344. of the Hon'ble Supreme Court delivered in the case of Mohammad Iqbal Shaikh (supra) in Criminal Appeal No.97 to 100 of 1997. The Hon'ble Supreme Court while deciding the Appeal, which arose out of an incident of communal riots, has laid down a ratio inter alia to the effect that "when there was material omission and variation in statements made to police under Section 161, Cr.P.C. and those made in Court by eye-witnesses and the testimony of the inherently inconsistent eye-witnesses was and improbable, the same could not be relied upon to convict the accused."

345. Tt. is submitted that the Hon'ble Supreme Court set aside the conviction on such basis and grounds. It is pointed out by Shri Bajpai that the Hon'ble Supreme court has also held that when a Test Identification Parade not. held was to corroborate substantive evidence, the same was fatal to the Prosecution. It is pointed out that even in the instant proceedings, there is no T.I.Parade with regard to the most of the accused concerned and therefore, this is also an aspect which is required be considered favourably in favour to of the defence. It is submitted that even the failure of the eye-witnesses to identify the accused correctly in the Court has, according to the Hon'ble Supreme Court in the said judgment referred to herein above, been fatal to the Prosecution.

346. A judgment of the Hon'ble High Court of Gujarat delivered in the case of Girish Sharma & Others (Supra), which is popularly known as the "Ghodasar Riot Case" and which was decided on 20/04/2012 and is an unreported judgment so to speak, is also relied upon and my attention is drawn to paragraph No.27 of the said judgment wherein the facts of consistency in unnatural circumstances and inconsistencies in natural circumstances has been discussed at length by the Hon'ble High Court of Gujarat. Ιt is submitted that the judgment is applicable on all counts to the present proceedings and the ratios emerging from such judgments, should

benefit the accused and therefore, the Hon'ble Court may appropriately consider the cited judgments.

Proceeding with the inconsistencies 347. and contradictions in the testimony of the eyewitnesses, my attention is drawn to the testimony of PW-106 Imtiyazkhan who has been examined, at the cost of repetition, at Exh.542. It is submitted that his testimony is self-contradictory and contains large scale contradictions and omissions which are provided to the Court in a tabulated form and no 12 contradictions, less than such selfcontradictions and omissions clearly emerge from the testimony of this particular witness and therefore, it is urged that the so-called star witness of the Prosecution is required to be treated as an unreliable witness and it is urged that no attention be paid to the testimony of this witness who according to the defence, is not a credible witness.

348. Drawing my attention to the testimony of PW-116 Sayeedkhan Ahmedkhan Pathan who has been examined as a witness and his testimony is on the record at Exh.584, Shri T.R.Bajpai submits that with regard to the first incident of the burning of an autorickshaw of one Gulam Master, it is pointed out by Shri Bajpai that on page No.4, paragraph No.4 of his examination-in-chief, the present witness has positively identified and provided names of four of the accused as being perpetrators of such offence. The names of Kapil Munna (accused No.50), Dharmesh

Prahlad (accused No.47), Mukesh Pukhraj (accused No.29) and Ambesh Kantilal (accused No.32) have been specifically provided. My attention is drawn further paragraph No.6 of his examination-in-chief, to wherein, in the opening lines of the said paragraph, the witness has reiterated that he can positively identify all the above four persons. However, on page No.5, paragraph No.6 of his examination-inchief itself, the witness has categorically stated that "દું દાજર આરોપીઓ પૈકી કપીલ મુન્નાને ઓળખી શકતો નથી. દું હાજર આરોપીઓ પૈકી ધર્મેશ પ્રહલાદને ઓળખી શકતો નથી. હું હાજર આરોપીઓ પૈકી મુકેશ પુખરાજને ઓળખી શકતો નથી. દું દાજર આરોપીઓ પૈકી અંબેશ કાંતિલાલને ઓળખી શકતો નથી." It is submitted that therefore, this witness was obviously provided with the names of such four persons, but however, the witness has completely exposed himself in his examination-in-chief itself by not being able to identify a single person out of the four so-called accused. It is pointed out that this is so despite the witness confirming that he is in a position to identify all the four accused. It is submitted that is a very serious in such circumstances, this contradiction which is required to test the very credibility of the present witness who also is cited as a star witness and an eye-witness who has seen most of the incident.

349. It is also further pointed out that there are admitted contradictions/omissions inasmuch

as, it clearly emerges from the deposition of I.O. Shri N.D.Parmar (PW-328) at Exh.1164 and the IO, SIT Shri J.G.Suthar (PW-335) at Exh.1289 that the present witness while recording depositions before both such IOs, has not given the names of such four persons as persons who indulged in the act of burning the autorickshaw.

350. It is pointed out that after failing to identify the four accused, the witness has the audacity to give further names of perpetrators of another incident and my attention is drawn to the testimony of the witness in paragraph No.9, page No.7 wherein the witness has referred to nine (09) persons as being a part of the mob of the second incident referred to in his testimony, where the witness has again provided the names of Kapil Munna No.50) and Dharmesh Prahlad (accused (accused No.47). It is submitted that this clearly shows that he is a tutored witness who has been given the names which he has to utter in the course of his testimony and he has done so without actually being able to identify a single so-called accused and it is urged that in such circumstances, this consistency is unnatural and raises suspicion with regard to the credibility of the present witness. It is pointed out that the witness has further in his examinationin-chief in paragraph No.9 on page No.7, clearly identified Kailash Dhobi (accused No.1) as being a part of the said mob and it is submitted that despite giving such a specific name, the witness has

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clearly exposed himself on page No.8 in paragraph No.9 i.e. a continuation of the same paragraph in his examination-in-chief itself when he says that he is unable to identify accused No.1 Kailash Dhobi. It is submitted that this clearly indicates that the witness has been provided names by somebody else which names he is uttering in the course of his is submitted testimony. It that despite categorically stating on oath that he is unable to identify Kailash Dhobi (accused No.1), the witness has proceeded to attribute a very grave and serious incident of his brother Anwarkhan who according to this witness, was attacked with a sword and killed and it is submitted that strangely, the witness has attributed this act to Kailash Dhobi (accused No.1) despite not being able to identify said Kailash Dhobi (accused No.1). It is submitted that in the circumstances, the witness is only repeating what has been tutored.

351. My attention is drawn to yet one more incident, where on page No.7 in paragraph No.9, the witness has attributed one "LAKHIA" i.e. accused No.46 as being a part of the mob whereas in his further examination-in-chief on page No.8 itself, the witness has not been able to identify such accused in the Court. It is submitted that this cements the defence that the witness was merely stating names which were provided to him by somebody else. SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

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352. My attention is drawn to page No.14 of the testimony of this witness where an accused being Lakhia (accused No.46) is attributed with having perpetrated grave and heinous offences like rape and murder and my attention is drawn to page No.14 in paragraph No.15 wherein the witness has deposed that "લાખીયા અને યોગેન્દ્રસિંદે તેમના કપડા કાડી નાખેલા અને તેમની પર બળાત્કાર કરેલ અને તે પછી તેમને મારી નાખેલા." It is pointed out that though serious allegations of a grave and serious offence like rape and murder have been attributed to the accused No.2 and 46, the IO of SIT i.e. Shri J.G.Suthar (PW-335) has clearly admitted on page No.87 of his cross examination inter alia to the effect that in the course of recording his statement before the IO of the SIT, the present witness Sayeedkhan has not given the names of both these accused while narrating the incident of rape and murder.

353. It is pointed out that on page No.3, paragraph No.3 of his testimony, this witness has attributed one Bharat Rajput (accused No.55) as the person who gave a gupti blow to Ayub Cyclewala whereas when asked to identify such Bharat Rajput in the Court, it is clear from page No.4, paragraph No.6 of his testimony, that the witness has identified one Babu Manji Patni (accused No.23) wrongly as Bharat Rajput (accused No.55).

354. It is submitted that there are further

contradictions in the shape of the testimony of the present witness where on page No.7 in paragraph No.9, the witness has clearly identified and named seven (07) perpetrators as being part of the mob which had taken part in the second incident. It is pointed out that the names of accused Nos.43, 61, 55, 46, 2, 59 and 1 were provided in that order by the witness in terms of his examination-in-chief. It is submitted that such examination-in-chief is required to be treated as an improvement or the testimony of a tutored witness inasmuch as, the witness while admitting to have given statements before the IO Shri N.D.Parmar (PW-328) and IO, SIT Shri J.M.Suthar (PW-335), has exposed himself inasmuch as, both these witnesses have clearly stated that in the statement of the present witness recorded before both of them, no such names were provided by the witness. It is pointed out that in any case, the witness has identified only three of the present 07 named accused in the Court and it is pointed out that other than accused Nos.43, 61 and 2, none of the other accused have been identified by the witness even in the Court.

355. Ιt is pointed out that another contradiction emerges with regard to the incident of stone throwing from the terrace of Bunglow No.1 of Gulbarg Society, belonging to Shri Jinger. The witness has testified on page No.9 in paragraph No.11 of his testimony inter alia to the effect that he had identified one Gabbar as of one the

perpetrators. It is submitted that both the IOs i.e. PWs 328 and 335 have clearly stated in their deposition that the witness did not provide such name while his statement was being recorded by both the IOs at different times. It is pointed out that incidentally, the witness has failed to identify the said accused Gabbar in the Court also.

356. It is pointed out by Shri Bajpai that in all, the defence has been able to make out 31 such contradictions where the witness has deposed with regard to an incident where he has named somebody as perpetrators of the incident in his testimony before the Court, but nowhere before the IO or before the SIT's IO has he provided such names while his statement was being recorded.

357. It is pointed out that the present witness has clearly admitted with regard to the fact of giving 15 names before the IO of SIT in the course of recording his statement and has further admitted to have supplied names of 17 or 18 accused in his affidavit. It is also emerging from the testimony of this witness as also the IO that initially the names of only nine (09) accused were provided by the witness and two months thereafter, another eight (08) names were provided. Ιt is submitted that this witness, therefore, is in the habit of adding and improving upon his versions and therefore, it is urged that it would be extremely risky to rely on the testimony of such a witness in

such a grave and serious case.

358. It is pointed out by Shri Bajpai that this witness has further exposed himself inasmuch as, it clearly emerges from the testimony of PW-332 at Exh.1226 i.e. IO Shri S.S.Chudasama that in a statement recorded before such IO, the present witness has conceded that a name of an accused Meghsinh Roopsinh given by the witness as being a part of the mob, was conceded to be incorrect by the present witness. It is pointed out that an affidavit was also sworn in this regard by the present witness which is at Exh.1246. It is submitted that in such circumstances, this is a witness who has established himself as the one who is thoroughly unreliable.

359. Ιt pointed that further is out contradiction emerges from the testimony of this witness with regard to Naran Channelwala (accused No.43) wherein after having firstly provided his name, the witness has himself agreed to have sworn an affidavit before a Notary inter alia to the effect that the said accused was not instrumental in setting afire the residence of the present witness. It is pointed out that such contradictions are also emerging from the testimonies of PWs 332 and 335 with regard to accused No.43 and his role in setting fire to the house of the present witness. It is submitted that therefore, this witness has established himself to be, the of at cost repetition, wholly unreliable and thus cannot be

believed.

360. It is submitted that in any case, it is highly improbable that the present witness who claims to have been all throughout and indulged in stone pelting and who was a witness to most of the incident standing in the open, it is unnatural that such witness could not have suffered any injury and this aspect is also required to be considered while giving weightage to the testimony of such witness.

361. Drawing my attention to page No.14 of the testimony of the present witness, it is pointed out that the witness has cooked up a version which is absolutely unpalatine and cannot be accepted. It is requested and hereby recorded verbatim the testimony of the witness where he has deposed that "તે પછી દું જાફરી સાદેબના પાછળના ભાગે દરવાજો ખોલી ત્યાં આવેલ જાજરામાં સંતાઈ ગયેલો તે સમયે મારી પાછળ મારી ભત્રીજા વદ્ સાજીદાબાનુ આવેલી. તેની સાથે તેનો પાંચ છ વર્ષનો છોકરો સાદાબ હતો. તે સાથે બીજી એક અજાણી સ્ત્રી હતી. અને સાયકલવાળો યુસુફખાન કરીને છોકરો હતો. અમે બધા જાજરુમાં સંતાઈ ગયેલ. જાજરુમાં ભરાઈને અમે અંદરથી દરવાજો બંધ કરી દીધેલ. તે પછી ત્યાં ત્રણ જણાં તલવારો લઈને ઉભા હતા તેમણે આ દરવાજો તોકેલ. પણ દરવાજો તુટેલ નહિ. આ ત્રણમાં, દિનેશ પ્રભુદાસ શર્મા, લાલા યોગેન્દ્રસિંદ અને લાખીયા દતો. આ મેં જાજરુની ઉપરની જાળીમાંથી જોયેલ. એ લોકો ક્યાંક થી કુઠાડી લાવ્યા અને દરવાજો કાપી નાખેલ. દું જાજરામાં અંદરની સાઈડે જતો રહેલ અને આ

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લોકો બાકીના ચાર જણાને ખેંચી ગયેલા. દિનેશે મારા ભત્રીજા વઠુના દિકરાને માર્ચો, યુસુફને માર્ચો, લાખીયા અને યોગેન્દ્રસિંદે તેમના કપડા ફાડી નાખેલા અને તેમની પર બળાત્કાર કરેલ અને તે પછી તેમને મારી નાખેલા આ બધુ મેં જાજરુની જાળીમાંથી જોયેલ." It is submitted that this version clearly further exposes the reliability of the witness.

362. It is pointed out by Shri Bhardwaj who has taken over the course of submissions from Shri Bajpai, that connected to the incident concerning the injured Aslamkhan and his deceased father Anwarkhan, are four more witnesses in the shape of PW-142 - Ashraf Sikandarbhai Sandhi, PW-289 - Nadim Tasaddukhussain Surohi, PW-177 - Sairaben Salimbhai Sandhi and PW-129 - Firozmohammad Gulzarmohammad Pathan. It is submitted by Shri Bhardwaj that all the four witnesses claim to have seen the above referred incident and all the four witnesses claim to have been at that point of time, in the residence of deceased Shri Ehsan Jafri.

363. Drawing my attention to the testimony of PW-142 i.e. Ashraf Sandhi, it is submitted that the witness has not only contradicted the other socalled eye-witnesses, but he has gone to the extent of contradicting his own testimony in the course of his cross examination and a totally confusing and incorrect picture has been painted by the witness in the course of his testimony and three different

versions are supplied by the witness in the shape of the manner in which the incident took place, the location where the incident took place and the time of the actual taking place of the incident, which are all completely contradicted in the testimony of this witness itself. It is pointed out that this witness also exposes the lack of credibility on the part of the witnesses examined by the Prosecution. Drawing my attention to the testimony of this witness on page No.10, paragraph No.8, it is pointed out that th witness has testified to the effect "M બન્ને તરફના ટોળાએ લુંટ ફાટ શરુ કરી આગ લગાડવાનું શરુ કરી જાફરી સાહેબના મકાન તરફ આવેલ. તે વખતે હું જાફરી સાહેબના મકાન પાસે ઉભો દતો. ટોળાએ ચારે બાજુથી જાફરી સાદેબના મકાનને ઘેરી લીઘેલ. આ ટોળામાં મેં, કૈલાશ ધોબી, ગીરીશ પ્રભુદાસ શર્મા, દિનેશ શર્મા, કપીલ મુન્નાભાઈ, ધર્મેશ, અંબેશ, અને ગભબરને મેં ઓળખેલા. આ વખતે કૈલાશ ધોબીના હાથમાં તલવાર હતી. કપીલ તથા અંબેશના હાથમાં કેરબા હતા अने जीलाना हाथमां पार्धप लाइडीओ हती." It is pointed out that the version supplied by the witness clearly indicates that initially the mob entered the Gulbarg Society from both sides i.e. the front side and the rear side and started indulging in arson and looting and thereafter the mob came over to the residence of Shri Ehsan Jafri. It is pointed out that the witness has categorically stated that when the mob converged towards the residence of Shri Ehsan Jafri, he was standing near the residence of Shri Ehsan Jafri and it is further pointed out by the witness that the

mob surrounded the residence of Shri Ehsan Jafri from all four sides. It is pointed out that at this point of time, the witness has testified that he was outside the residence of Shri Ehsan Jafri. It is pointed out that the witness attributes the mob to have entered into the residence of Shri Ehsan Jafri. It is pointed out in the examination-in-chief, more particularly in the paragraph reproduced herein before, the witness has clearly testified that at that point of time, the mob comprising of number of accused, more particularly accused No.1 Kailash Dhobi who is attributed to have been armed with a sword, according to the witness, the said accused No.1 gave a blow of sword on the chest of Anwarkhan who was seated on the ground and it is also the testimony of the witness that at this stage, Aslamkhan tried to intervene and he too was given a sword blow which caused injury to his fingers on the right hand. It is pointed out that the witness has further testified that at that point of time, one Taiyabbhai is attributed to have pulled in said Aslamkhan and shut the grill of the residence of is pointed out that said Shri Ehsan Jafri. It Taiyabbhai is not examined despite being cited as a witness in the chargesheet. It is pointed out that such version attributing the role played by Taiyabbhai is completely contradicting the depositions of all other eye-witnesses with regard to the incident. It is pointed out that on seeing this incident, where the said Anwarkhan was inflicted a number of other sword blows, this

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of

witness went away into the rear portion of the residence of Shri Ehsan Jafri where his mother was also located and it is claimed that since the that he witness has stated was outside the residence of Shri Ehsan Jafri when all this took place, it is required to be presumed that he entered into the rear portion from back side of the residence of Shri Ehsan Jafri though the same surrounded from all four sides by the mob. It is submitted that this version is, therefore, not believable and does not give a correct picture of the state of affairs. It is submitted that further compounding the lack of credibility of the testimony the present witness, is the fact that in paragraph No.12 of his testimony, the witness has proceeded to identify four of the accused in the Court, but has conveniently failed to identify accused No.1 Kailash Dhobi and it has been noted in the deposition of the witness by the Court inter alia to the effect that ten minutes have elapsed in the process of identification of the accused by the

present witness and none of the other accused are in any manner identified by the witness in the Court.

Drawing my attention to the cross 364. examination of this witness, more particularly page No.31, paragraph No.32, it is pointed out that the witness has deposed to the effect "अनपरलाઈ पगे अपंग છે તે હું મારી સમજણથી જાણું છું. અનવરભાઈને મકાનની અંદર લઈ જવા

મને કોઈ સુઝ પડેલ નહિ. હું અંદર ગયો ત્યારે અસ્લમભાઈ અનવરભાઈની નજીક જાફરી સાહેબના મકાનની રવેશની ગ્રીલ પાસે હતા. જાફરી સાહેબના મકાનમાં આગળ કોઈ કંપા. નથી. અનવરભાઈ બેઠા હતા ત્યાંથી જાફરી સાહેબના મકાનમાં પેસવાનો દરવાજો અનવરભાઈથી ચાર થી પાંચ ડગલા $\xi \$ Ed)." It is pointed out that this portion of the testimony clearly establishes the fact that in terms such testimony, the witness was within the of premises of Shri Ehsan Jafri's residence and he saw both Anwarkhan and Aslamkhan where Aslamkhan is claimed to have been standing in the near proximity of Anwarkhan and therefore, it is clear according to Shri Bhardwaj, that in terms of this testimony of the witness, the witness concedes that no incident had taken place before the witness had entered into the residence of Shri Ehsan Jafri. Therefore, it is pointed out that the examination-in-chief indicating that the entire incident took place when the witness was outside the residence of Shri Ehsan Jafri and thereafter the witness went into the rear portion of property where his mother was the seated, is completely contradicted by this version. Ιt is further pointed out that the cross examination of the witness further exposes the hollowness of the testimony. My attention is drawn to page No.58, paragraph No.64 of the testimony of the witness where according to Shri Bhardwaj, the witness has deposed to the effect "हुं जाइरी साहेजना मडानमां टाजल थयो તે પછી અડધાએક કલાકે અનવરભાઈ વાળો બનાવ બનેલ." It is

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submitted that this portion of the testimony further exposes the hollowness of the testimony inasmuch as, the witness now claims that the incident pertaining to Anwarkhan took place nearly half an hour after he entered the residence of Shri Ehsan Jafri. It is submitted that not only has this witness discredited the other witnesses, but he has discredited his own testimony and the testimony of such witness can never be relied upon and ought not to have been relied upon while deciding the fate of such a serious matter. It is pointed out that the witness has deposed in the concluding lines of paragraph No.64 on page No.58 to the effect " 2) ਅ સોસા. માં અંદર આવતા અગાઉ દું જાફરી સાહેબના મકાનમાં અંદર જતો રહેલ." It is pointed out that therefore, this version completely destroys the other three versions which in any case were contradictory to each other. It is submitted that the witness is a tutored witness and not required to be believed in the least.

365. Drawing my attention to the testimony of PW-177 Sairaben who happens to be the aunt of Ashraf Sandhi, it is pointed out that this witness has painted yet another version of the sequence of events whereby it is clearly established that none of these witnesses are actually required to be believed to have been eye-witnesses to the incident that they claim to have seen. My attention is drawn to the examination-in-chief of the present witness on page No.12 in paragraph No.14 wherein the witness

has testified to the effect "हूं भारा अन्ने हेराणी जामे ઝરીનાબેન અને મુમતાઝ, મારો દિકરો મદંમદ, મારા દિયર જદાંગીરભાઈ અને મારો ભત્રીજો અશરફ અમે બધા બચવા જાફરી સાહેબના ઘરમાં જતા Red." It is submitted that this clearly indicates that all six persons went into the house of Shri Ehsan Jafri when the mob entered the Gulbarg Society. It is submitted that therefore, the version supplied by Ashraf Sandhi is completely contradicted by such testimony. It is pointed out that amazingly this witness has given another version with regard to the sequence of events inasmuch as, she claims to have been a witness and privy to Mr.Ehsan Jafri attempting to call up some important dignitaries and she has further testified that subsequent thereto, the mob threw burning embers into the residence of Shri Ehsan Jafri on account of which the residence of Shri Ehsan Jafri caught fire and it is further testified by the witness that the incident of Anwarkhan took place subsequently to such incident taking place.

366. My attention is drawn to page No.13, paragraph No.15 of the examination-in-chief itself wherein the witness has deposed that "ત્યારબાદ જાફરી સાદેબના ઘર પાસે ઓટલા પર અનવરભાઈ બેઠેલા હતા. જે અપંગ હતા. તેમની પર ટોળાના કૈલાશ ધોબીએ તલવારથી ઘા કરેલ. જેથી તેમનો દિકરો અસ્લમ બચાવવા જતા તેના હાથ પર પણ તલવાર મારેલી જેથી અસ્લમને

હાથની આંગળીઓ પર ઈજાઓ થયેલ. ટોળાના માણસોએ અનવરભાઈને ખેંચીને તેમની પર તલવારો અને હથિયારોના ઘા કરીને તેમને મારી નાખેલા." It is pointed out that this completely exposes the hollowness of the Prosecution case.

367. It is pointed out that the witness has further contradicted herself in the course of her cross examination and my attention is drawn to page No.26 in paragraph No.34 wherein the witness has deposed that "आ त्रीस भीनीट दरभियान हुं अने भारा परिपारना સભ્યો જાફરી સાઠેબના મકાન પાસે હતા. emphasis supplied) આ સમય દરમિયાન અનવરભાઈને મેં જાકરી સાહેબના ઓટલા પર જ બેઠેલા હતા. આ સમય દરમિયાન અનવરભાઈને જાતે કે, કોઈ અન્ય વ્યક્તિ જાફરી સાહેબના મકાનમાં અંદર લઈ જવા પ્રચતન કરતુ હોય તે મેં જોયેલ जहि." It is pointed out that the witness has now turned her up a somersault and testified that she was outside the residence of Shri Ehsan Jafri at the time of the incident relating to Anwarkhan taking place. It is pointed out that so many contradictions clearly exposes the hollowness of the Prosecution case. According to Shri Bhardwaj, the witness has the audacity to state when the witness has further testified that "आ त्रीस भीनीट दरभियान आपेल टोणू शूं डरे छे ते होपा अभे ઉભेसा." It is pointed out that this would indicate that the witness claims to have stood outside the residence of Shri Ehsan Jafri with a view to observe the activities of the mob. It is

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submitted that this testimony is, therefore, established to be highly unreliable and has to be given a complete go-by while deciding the rate of the Prosecution case. It is pointed out that the witness has strictly speaking, remained completely silent about what happened to Aslamkhan after he was inflicted injuries with a sword by accused No.1 Kailash Dhobi.

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368. My attention is drawn now to the testimony of PW-289 Nadim Surohi at Exh.995. My attention is drawn in particular to the examinationin-chief on page No.8, paragraph No.11 wherein the witness has deposed that "हूं जाइरी साहेजना मडानमां अंटर આવી ગયેલ. હું અંદર આવ્યો ત્યારે મારી પાસે અનવરખાન ઉભેલા હતા. તે જાળીના દરવાજા પાસે ઊભેલા હતા. તે અંદર આવવાનો પ્રયત્ન કરતો હતો ત્યારે ટોળાએ તેને બહાર ખેંચી લીધેલ અને તેને ટોળાએ તલવારનો ધા મારી દીધેલ. અનવરખાન અપંગ હતો. તેને બચાવવા માટે અસ્લમખાન ગચેલ પણ ટોળાએ તેને ઘા મારેલ. મારી આગળ તૈયબઅલી ઉભો હતો તેણે અસ્લમખાનને અંદર ખેંચી લીધેલ. અને અમે જાકરી સાહેબના મકાનનો દરવાજો અંદરથી બંધ કરી દીધેલ. અનવરખાનનું શું થયુ તે મને ખબર नथी." It is pointed out that this aspect of the deposition of the witness paints a completely different picture inasmuch as, the said Anwarkhan is attributed to have been standing near the grill and not sitting on the otla as has been claimed by a number of eye-witnesses. It is pointed out that this

clearly indicates that Anwarkhan had the ability to stand and was mobile and was not disabled. It is also pointed out that the witness has supplied a version where the said Anwarkhan is attributed to have made the attempts to enter into the residence of Shri Ehsan Jafri by opening the grill, but the witness claims that Anwarkhan was dragged away by mob and thereafter he was the inflicted sword injuries by the mob and no individual is attributed to have indulged in these acts in terms of the deposition of this witness. It is pointed out that at this stage Aslamkhan is attributed to have been within the residence of Shri Ehsan Jafri, who is further attributed to have gone out in an attempt to save his father Anwarkhan and is attributed to have been inflicted an injury on his hand and is further attributed to have been dragged within the residence Ehsan Jafri by one Taiyabbhai. of Shri Ιt is submitted that these aspects completely contradict the testimony of the previous witnesses. It is submitted that the testimony of Aslamkhan completely contradicts the version supplied by this witness, inasmuch as, the said Aslamkhan has, at the cost of repetition, according to Shri Bhardwaj, testified to the effect that when his father was being assaulted by the mob as claimed and when he intervened to save his father and was inflicted further injuries, the said Aslamkhan has testified that at that time, his brother Akhtarkhan was present and both of them attempted to bring Anwarkhan to safety, whereas none of the witnesses has even remotely pointed out the

said role of Akhtarkhan. It is pointed out that even the presence of such Akhtarkhan is not testified to by any of the so-called eye-witnesses. It is pointed out that strangely, this witness while giving a statement before the S.I.T. with regard to the incident pertaining Anwarkhan, to has clearly conceded in his cross examination in paragraph No.32 on page No.19 wherein he has deposed that "એ पात 버纪 છે કે, મેં સીટ સમક્ષના તા.૩૧.૫.૦૮ ના જવાબમાં એમ લખાવેલ છે કે, "મેં રજુ કરેલ ટાઈપ નિવેદનમાં જાફરી સાહેબના ઓટલા પર બેસેલ અપંગ અનવરખાનને તલવાર વડે ઘા મારીને અને ત્યારે તેમનો પુત્ર અસ્લમખાન તેને બચાવવા જતા ટોળાએ તેના હાથ પર પણ તલવારનો ઘા મારેલ ત્યારે તૈયબઅલી સૈયદે તેને રુમમાં ખેંચી લીઘેલ તે હકીકત ખોટી ટાઈપ થયેલ ϑ "." It is pointed out that this aspect throws further mystery with regard to the veracity of the testimony of this witness.

369. It is pointed out that there is also a grave and serious contradiction emerging from the testimonies of the so-called eye-witnesses with regard to the physical state of the victim Anwarkhan and it is pointed out that while largely speaking, a number of witnesses have referred to the said Anwarkhan as being physically handicapped, it is very surprising that his son Aslamkhan who is claimed to have played a pivotal role in attempting to save his father from the mob, has nowhere stated with regard to his father being dragged away and

having been done away with by the mob. It is pointed out that in fact in paragraph No.3 of his testimony, PW-283 has clearly testified that his father was in the habit of walking down to their shop of Metro Men's Wear and was also in the habit of walking down to their previously owned shop. It is pointed out that strangely enough, the PW-289 Nadim has claimed that said Anwarkhan was standing near the grill of Shri Ehsan Jafri's residence, meaning that the supplied by other witness versions that said Anwarkhan being handicapped was sitting on the otla of Shri Ehsan Jafri's residence or the otla of the residence of Imtiyazkhan, are contradicted by PW-177 inasmuch as, said Anwarkhan is claimed to have been standing near the grill of Shri Ehsan Jafri's residence. It is pointed out that amazingly PW-234 Anishaben who is examined at Exh.813, has on page No.8 in paragraph No.17 of her testimony, clearly testified to the effect "आइरी साहेजना जालूना मडानमां ख्यां સઈદખાન રહે છે ત્યાં અનવરભાઈ કરીને અપંગ માણસ રહેતા હતા કે કેમ તે મને ખબર નથી. મને ચાદ નથી કે, અમારી સોસા.માં કોઈ અપંગ रहेता होय तेपाने में कोयेला हे हेम." It is pointed out that such a witness who is claimed to be a reliable eyewitness by the Prosecution, in fact even denies having seen any handicapped person residing within the Gulbarg Society. It is pointed out that this witness is attributed to have been residing in Gulbarg Society for more than last 30 years prior to the incident and therefore, this aspect also is

required to be considered while examining the totality of the evidence produced on the record. It is pointed out that the IO of the SIT Shri J.G.Suthar i.e. PW-335 Exh.1289, has clearly at that PW-289 Nadim in the admitted course of recording his statement before the SIT and more particularly before the said witness PW-335, has clearly stated that "मडाननी जाणीनो हरपाजो जोरथी धड्डो मारी ખોલી નાખતા બંગલા નં.૧૭ માં રહેતા અસ્લમખાન પઠાણે ખોલેલ દરવાજો કરીથી બંધ કરવા જતા ટોળામાંના કોઈએ અસ્લમખાનના હાથ પર તલવાર મારતા તેમના હાથમાંથી દરવાજો છૂટી જઈ ખુલી જતા ત્યાં દરવાજા પાસે ઉભેલ અસ્લમખાનના પિતાજી કે જેઓ અપંગ ઠોઈ જાળી પકડી ઉભેલ ઠતા તેમને ટોળાએ પકડી ખેંચવા લાગેલ જેથી તેમને બચાવવા સારુ શક્જાદ કકીર મદંમદનાઓ જતા તેને પણ ટોળાએ પકડી બહાર ખેંચી લઈ ગયેલ." This version, according to Shri Bhardwaj, clearly establishes that both - Aslamkhan and Anwarkhan were within the house of Shri Ehsan Jafri, and according to such version which has been completely transformed in the course of the testimony of other witnesses who have attempted to give a completely different version inasmuch as, the mob is projected to have done away a person who was sitting on the otla of Shri Ehsan Jafri's residence and a person who was incapable of any movement on account of his physical handicap. It is submitted that there are too many major contradictions emerging from this version and therefore, the entire version as has been projected by the witness, cannot be believed in light of such wholesale contradictions and therefore, the entire version is required to be discarded.

Beginning on a new sub-topic, it is 370. submitted by Shri Bhardwaj, that this is a case where the witnesses have, for ulterior motives, taken up on themselves the role of implicating and exonerating the perpetrators as per their own desires and for obvious malafide reasons. In fact, drawing my attention to the concluding paragraph of the cross examination of PW-106, it is pointed out that though it is a question which was denied by PW-106, a suggestion was made by the defence *inter alia* to the effect that the brother of PW-106 being one Firozmohammad had taken money from a number of the accused with a view to either implicate them or ensure that they are not made accused in the present proceedings. It is submitted that it is unfortunate that the denial is contradicted by the actions and sequence of events that have emerged and are on the record of the proceedings. In support of his contentions, Shri Bhardwaj has drawn my attention to the case of an accused Manish @ Splendour. It is pointed out that this person is named by his full name, by his nick name and the role played by him in specific incidents, the weapon attributed to have been used by him in the incident and the victim who is attributed to have been killed, are all record specifically mentioned on the of the proceedings. It is submitted that despite all this,

the IO of SIT Shri Suthar was compelled to file a report under Sec.169 of the Cr.P.C. seeking to drop the name of such person as an accused from the proceedings. It is submitted that the Court too accepted this report of the SIT and accordingly the said Manish @ Splendour whose full name is Manish Somabhai Patel, is no longer an accused before this Court. It is also pointed out that the orders passed by this Court, when challenged before the higher forum i.e. even the Hon'ble High Court of Gujarat has upheld the findings of the lower court and has not interfered with the order of the lower Court. It is pointed out that in such circumstances and in light of the specific details that the defence shall provide herein after, it is clear that the accused were either implicated or sought to be deleted as accused as per the whims and fancies of the victims who did so for ulterior reasons.

371. It is submitted by Shri Bhardwaj, that corroborating such aspect is the testimony of one Mohammad Ismail Mansuri who is examined as PW-199 at Exh.744, who in the course of his testimony, more particularly on page No.7 in paragraph No.7, has clearly admitted *inter alia* to the effect that three of the so-called victims being one Firoz, one Imtiyazkhan and one Aslamkhan had started a racket of extorting money from the accused and other individuals on the ground that such persons meaning, Firoz, Aslam and Imtiyaz were going to be questioned by the SIT authorities and if adequate amounts were

not paid over to such three individuals, they would point a finger at the persons who did not comply with their demands of extortion. It is pointed out that the witness has in his testimony, referred to the case of accused No.51 Mahesh Ramjibhai Nath as an example of such state of affairs. It is pointed out that furthermore, both Imtiyazkhan and Firoz, have after the year 2008 for the first time, identified some individuals who have subsequently been arrested and made accused in the present proceedings. It is pointed out that prior to 2008, there was no mention of any role played by any of such accused. It is pointed out that amazingly even though there was such single statement connecting the offence, no accused to T.I.Parade was the carried out in respect of some of such accused. It is also pointed out that this witness having come out with such startling accusations with regard to the role of the so-called victims, the Prosecution has left such portion of his testimony as unchallenged and it is submitted that in such circumstances, there is no reason as to why such testimony should not be accepted as adequate corroboration for the basis and defence put up on behalf of the accused, some of them wrongly roped in they failed to comply with the demand of as extortion by some of the interested victims who wanted to exploit their position. It is pointed out specifically that accused No.44 Nagin Hasmukhbhai Patni was made an accused solely on the basis of statement of Imtiyazkhan before the SIT, accused

No.48 Jitendra @ Jitu Pratapji was similarly made an accused on the basis of statement of Firoz, accused No.49 Mahesh @ Pappu Thakor was made an accused on the the basis of statement of Firoz, accused No.51 Mahesh Ramji Nath was made on the an accused strength of statement of Imtiyazkhan, and accused No.53 Sushil Brijmohan Sharma was made an accused on the basis of statement of Altaf Pathan, accused No.56 Pradip Parmar was made an accused on the basis of statement of Salim Noormohammad Sandhi, accused No.60 Bipin Ambalal Patel was made an accused on the basis of statement of Aslamkhan. It is also pointed out that accused No.62 Dilip Jinger was made an accused on the basis of the sole statement of Mohammadali before the SIT who has been examined as PW-192 in the present proceedings and in the course of the testimony of such witness, he has failed to identify the person being accused No.62 whose name he provided to the SIT and on the sole basis of which the person was made an accused in the present proceedings. It is pointed out that accused No.64 Shivcharan Ramji Nath who is the brother of accused No.51, was also made an accused on the basis of statement of Imtiyazkhan. It is yet again pointed out by Shri Bhardwaj that none of these accused was required to undergo a T.I.Parade and none of these accused was, therefore, given a fair deal in the course of the investigation.

372. It is pointed out that PW-106 Imtiyazkhan who is labelled as a star witness by the SCs/152/02,167 & 279/03, 190,191,193,194,195,279/09

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Prosecution, has in his examination-in-chief on page No.16 in paragraph No.16, stated that "આ ટોળાના બીજા માણસો સલીમ અબુબક્કર પઠાણને ખેંચી લાવેલા અને તેમને ત્યાં જ કાપી નાખેલ અને તે ટોળામાં અતુલ પૈદ, ગબ્બર મદનલાલ, કપીલ મુન્ના, ધર્મેશ પ્રદલાદભાઈ, મુકેશ પુખરાજને મેં જોયેલ. આ ઉપરાંત બીજા એક ગુલઝારભાઈને મનીષ પ્રભુલાલ જૈન, મનીષ સોમાભાઈ પટેલ ઉ. મનીષ સપ્લેન્ડરનાઓએ મારી નાખેલા. જે તેમણે તલવારથી મારી નાખેલા." It is submitted that therefore, this star witness of the Prosecution has attributed the said Manish @ Splendour to have been armed with a sword and to have hacked to death with a sword Salim Abubakkar and Gulzar. It is pointed out that the witness has categorically and specifically provided the full name of the said Manish @ Splendour as being one Manish Somabhai Patel and has further attributed th said person to have been armed with a sword with which he perpetrated the offence stated above.

373. My attention is drawn to page No.28 in paragraph No.23 of the examination-in-chief of PW-106 where the said witness has testified *inter alia* to the effect that he knows Manish Somabhai Patel @ Manish @ Splendour and has further stated that the said Manish @ Splendour is not present in the Court today. It is submitted by Shri Bhardwaj that it would, therefore, be significant and is required to be noted that this witness was fully capable of identifying the said Manish @ Splendour and that

there was no room for any doubt in that regard.

374. It is pointed out that it is amazing that in the case of Manish @ Splendour as has been narrated and submitted herein before, though PW-106 and PW-177 have specifically attributed the role played by said Manish Somabhai Patel who is well known to them even by his alias of Manish Splendour and PW-177 has further testified that she is well able to identify Manish Splendour because he was studying with her son. It is pointed out that since none of these witnesses was able to identify the said Manish Splendour in the course of an investigation report, a closure report under Sec.169 of the Cr.P.C. was filed by the SIT before the learned Metropolitan Magistrate, Court No.11 on 04/12/2008 and the basis of such report appears to be the lack of identification by such witnesses, and the learned Magistrate appears to have accepted the report on 18/12/2008 and dropped the said Manish Splendour as an accused in the present proceedings. It is pointed out that if such was the basis for the SIT filing such report, than the other accused were on a much better footing and it is strange that they were continued to be made accused in the present proceedings despite lack of any credible evidence against them. It is submitted that in the circumstances, the theory of extortion and wrong implication is given further corroboration.

375. It is pointed out that similarly two

politically connected persons being an Ex-Mayor Jagrupsing Rajput and an Advocate Meghsinh Chaudhary were sought to be implicated by both PWs 106 and 177 in the course of their testimony and their role was crystallized inter alia to the effect that both of them were standing on the terrace of the property where the office of Meghsinh is located, and both of them were trying to incite the mob to enter into Gulbarg Society. It is pointed out that both these witnesses have also positively indicated that they were in a position to identify both such persons as being the perpetrators and part of the incident which can be described as the main incident. It is that these versions despite pointed out being crystallized, being mentioned in the application Exh.738 seeking their arraignment as accused under Sec.319 of the Cr.P.C., were not accepted by detailed order passed by the predecessor of this court and it is pointed out that thereafter both these witnesses despite giving names, made a somersault and despite having positively indicated firstly to the effect that they were in a position to identify both these persons, in fact PW-177 did not identify either of the two persons and even PW-106 who is touted as a star witness, was not able to identify such persons before the SIT on account of which such persons were chargesheeted. Ιt is submitted that not these aspects are clearly in the order of the Court and therefore, an application under Sec.319 was rejected qua these two persons. It is pointed out that in the circumstances, the fact of the three persons

referred to at the outset of these portions of the arguments, being in position to manipulate and exploit the situation and naming and omitting accused at will, is an aspect which cannot be discarded as a valid defence and it is pointed out that such deliberate and malafide picture and these tactics of these witnesses has resulted in arrest of a large number of accused as wrongly implicated persons. It is submitted that despite such state of affairs, Meghsinh Chaudhary was arrested by the SIT and he is presently before this Court as accused No.58. It is submitted that this completely exposes the hollowness of the Prosecution case.

376. is pointed out by Shri Bhardwaj Ιt that with regard to accused No.29 Mukesh Pukhraj, there is a grave and serious doubt with regard to his presence or role inasmuch as, initially in terms of the testimonies and statements given by PW-106, the person who is attributed to have been a part of the mob which entered into the Gulbarg Society from the rear portion of the Society, was one Mahendra Pukhraj and not Mukesh Pukhraj. It is pointed out that even as per the testimony of PW-106, the role of said Mukesh Pukhraj was inter alia only to the effect that he was present in the mob which set fire to an autorickshaw of one Gulam Master during the period from 10:00 a.m. and 11:00 a.m. It is pointed out that no other role is attributed to said Mukesh Pukhraj. It is submitted that on the other hand, said Mahendra Pukhraj is attributed to have been a

part of the mob and leader of the mob which entered the Society and which incident could be safely narrated as the main incident herein. It is pointed thereafter, the said PW-106 out that has somersaulted inasmuch as, he categorically declared before the SIT that he got mistaken in identifying Mahendra Pukhraj since both Mahendra Pukhraj and Mukesh Pukhraj are similar in looks and on account of their being brothers, and it is submitted that strangely acting on such statement, the said Mahendra Pukhraj was not arrested and it is Mukesh Pukhraj who has been arrested and made an accused herein. It is submitted that these are the instances which establish, at the cost of repetition, that the so-called star witnesses were in the habit of adding, amending, altering and conveniently forgetting the identities of the perpetrators of the incidents as and when it suited to them.

377. It is pointed out that even with regard to accused Nos.51 and 64 who happen to be brothers, it is submitted that the role attributed to have been perpetrated by them, is *inter alia* to the effect that the were indulging in firing with a firearm upon Gulbarg Society on the fateful day. It is submitted that both these accused were identified as such perpetrators by PW-106 Imtiyazkhan though Imtiyazkhan has conceded on page No.103 in paragraph No.102 of his cross examination that he had in fact provided names of three persons as being those indulging in firing upon Gulbarg Society and it is

pointed out that the third person Mukesh Bhadoria was never arrested in the course of the entire investigation despite Imtiyazkhan having admitted and conceded in his statement before the SIT I.O. Shri Suthar *inter alia* to the effect that both the above accused had no firearms with them and that the name of the third person was supplied by him only on the basis of a hearsay evidence gathered by his Firoz who admittedly was at Surat on the date of the incident. It is submitted that if the said Mukesh Bhadoria was not even arrested on the basis of such admission, there is no logical reason as to why the present two accused have been arrested and have been made to undergo the trauma of a trial herein. It is pointed out that in any case, there is absolutely no material which would corroborate the incident of use of firearms by the mob inasmuch as, there is no recovery or discovery of any incriminating weapon nor is any forensic material available which would in any manner, have implicated even remotely the present two accused in such manner. It is submitted that in the circumstances, even these two accused are required to be given the benefit of doubt.

378. It is pointed out by Shri Bhardwaj that there is no recovery or discovery of any weapon or any incriminating evidence against against accused Nos.51 and 64 and therefore, this aspect also should be considered while deciding the fate of such accused.

379. Drawing my attention to the inaccuracies of the testimonies of the witnesses, my attention is drawn to the testimony of Salim Sandhi i.e. PW-191 at Exh.734, to the contents of paragraph No.10 on page No.7 where the names of a number of alleged perpetrators of the offence and the method of their being armed is specifically narrated and amongst others, my particular attention is drawn by Shri Bhardwaj to the fact that the witness has specifically identified one Arun Bhatt who was armed with a sword according to the witness, and who was a part of the mob. It is pointed out that said Arun Bhatt strangely, despite such specific allegation, is not made an accused in the present proceedings and in fact despite such state of affairs, no application has been tendered either by the victims or anybody else seeking the reliefs under Sec.319 of Cr.P.C. vis-a-vis said Arun Bhatt.

is submitted that all the above 380. It instances and illustrations clearly establish the conspiracy on the part of the alleged so-called victims to rope in people as accused and charge them with the commission of grave and heinous offence and thereafter for malafide reasons and obvious considerations, recant from those allegations and not pursue the allegations against some of the socalled perpetrators of the offence and these instances clearly establish that these individuals have been attributed to have been part of the mob, armed with weapons, positively identified as such,

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their positive role in the perpetration of the offence also crystallized, strangely they have not been made accused in the present proceedings nor is in some cases an application under Sec.319 of Cr.P.C. preferred by the so-called victims. It is submitted that in such circumstances and more so when one of the PWs himself has testified that he had heard some of the so-called victims stating that they would implicate persons if their interests were not met, all go to show that the witnesses are unreliable, interested witnesses and their testimony is required to be discarded in toto.

381. It is pointed out that the witness and the Prosecution have endeavoured wholesale in the course of recording evidence to highlight only what is convenient to the Prosecution and have in fact made wholesale attempts to stop the truth from coming up. It is pointed out that one more example of such state of affairs is the fact that it is the case of the Prosecution and supported and corroborated by a large number of PWs inter alia to the effect that members of the mob led by some of accused herein, climbed on the terrace of the bunglow of Gulbarq Society which No.1 also admittedly belonged to one Dayaram Jinger and it is claimed that Gulbarg Society and its residences were pelted with heavy stone throwing from the terrace of the said house of Dayaram Jinger. It is pointed out that giving a complete go-by to this version of the witnesses, is the fact that the Panchnama on the

record of the proceedings at Exh.261 clearly establishes that the residence of Dayaram Jinger was vandalized and sufferred lot of damage in the incident. It is submitted that if this was really so, than there was no question of the mob pelting stones from the residence of Dayaram Jinger. It is also pointed out that it is clearly emerging in the course of the investigation that an individual belonging to the minority community, named Ibrahim Sadiq Shaikh was provided protection and shelter in Bunglow No.1 belonging to said Dayaram Jinger and it has emerged that the said person took shelter by staying hidden for two days in the terrace of the said Bunglow No.1. It is pointed out that if there was actual wholesale stone pelting from the terrace is claimed and if the family members of said as Dayaram Jinger were perpetrators leading the stone throwing, than such a contrary version could not have been possible. It is submitted that the fact that such shelter being provided not only emerges from the statement or a stray piece of evidence, but the same is confirmed in the course of the oral testimony of the SIT IO Shri J.M.Suthar who has in the course of his testimony on pages Nos.122 and 123 testified as such "भें आ गुनानी तपासना डामे गुलजर्ग सोसा.नी આજુબાજુના વિસ્તારમાં રહેતા કોઈ હિન્દુ કોમના માણસોને પુછપરછ કરી કોઈ નિવેદન લીધેલા છે. અને મારી તપાસમાં ગુલબર્ગ સોસા.ની આજુબાજુ રહેતા દિન્દુ કોમના માણસોએ બનાવના દિવસે મુસ્લીમ કોમના માણસોને રક્ષણ આપ્યુ હોય તેવુ પણ ખુલેલ છે. એ વાત ખરી છે કે, બનાવના

દિવસે ગુલબર્ગ સોસા.ના મકાન નંબર એક ના ધાબા પર એક મુસ્લીમ ઈસમ છૂપાયેલ તેનો મેં જવાબ લીધેલ છે." It is submitted that there was no reason for the IO to testify in such fashion if the person was not there. It is submitted that there is further corroboration by one Ali Hussain Ibrahim Shaikh i.e. PW-223 at Exh.780 and my attention is drawn to his testimony more particularly, paragraph No.16 where he admits to have learnt from his father that his father was provided shelter in Bunglow No.1 of Gulbarg Society. It is pointed out that incidentally, the person involved being the said Ibrahim Shaikh though cited in the chargesheet as witness No.123, has conveniently not been examined as a witness on the record of the present proceedings. It is submitted that statements of both - father and son have been recorded by the IO of SIT Shri J.M.Suthar. It is pointed out that in any case, both Dayaram Jinger and his wife Shardaben despite being cited as witnesses, have conveniently been examined as witnesses herein by the not Prosecution.

382. It is submitted that from all the above facts and circumstances, it can be made out that with a view to extract some form of retribution for the events, the witnesses have tried to rope in persons whom they could easily identify and name and the individuals residing in the nearby chawls or Societies only because they were unable to identify or name the real perpetrators, and thus the

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rope in persons witnesses attempted to as perpetrators those individuals who had come from areas outside the vicinity of the incident and not the real perpetrators who had already left after having perpetrated the incident. It is submitted that this aspect cannot be lost track of and the evidence with regard thereto is required to be looked at in its totality. It is submitted that Bunglow No.1 of Gulbarg Society was vandalized is a fact emerging from the Panchnama Exh.261. It is submitted that if the nearby residents belonging to the majority community had really carried out the gruesome incident, then they would have deliberately and definitely not targetted the bunglow of Dayaram Jinger since almost everybody was aware of the fact that bunglow No.1 of Gulbarg Society was belonging to a person of majority community. It is pointed out that this also is suggestive of the fact that persons from outside who were not knowing this state of affairs, have indulged in perpetration of the incident.

383. Tt. pointed is out that some corroboration in the shape of testimony of a single witness being PW-301 at Exh.1046 being one Rashidabanu Dilawer Shaikh is relevant inasmuch as, on page No.20 of her oral evidence, the witness has deposed inter alia to the effect that she saw persons attempting to demolish the rear wall of the Society by trying to explode a gas cylinder, but she has further categorically stated that she was unable

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to identify the perpetrators of such actions since all of them had masked their faces with cloth. It is submitted that this also is a circumstance required to be considered since the witness was herself belonging to the minority community who had sufferred so badly and she had no reason to protect anybody from amongst the real perpetrators. It is pointed out that this aspect coupled with the above referred aspects clearly go to show that there is a serious attempt in subverting the truth and justice and it is urged that in the circumstances, grave doubts arise with regard to the genuineness of the Prosecution version.

384. It is pointed out that all the accused who have been arrested post 2008 by the SIT, have been falsely implicated inasmuch as, there is no recovery or discovery of any incriminating material of whatsoever nature. It is submitted by Shri Bhardwaj that this is also an aspect required to be considered.

385. It is pointed out by Shri Bhardwaj that even the incident of rape perpetrated on two of the victims who according to the star witness of the Prosecution i.e. Imtiyazkhan, were thereafter hacked to pieces i.e. after being raped, is a blatant lie, exaggeration and an obvious malicious afterthought on the part of the Prosecution witnesses. It is submitted by Shri Bhardwaj that this version of rape emerged for the first time six months after the

event and even at that point of time, such emergence was vague and general in nature and did not provide any specific information. It is submitted by Shri Bhardwaj that it was only after about seven or eight years when the SIT came into the picture that this exaggerated and obviously unrealistic and untrue version was provided with a view to create a false sense of outrage amongst the community and it is that however, in concocting pointed out the versions, the star witnesses who claim to have seen the incidents, have badly and very grossly contradicted each other. It is also pointed out by Shri Bhardwaj that the witnesses have supply very different versions and despite there being more than seven or eight witnesses examined on the record of the present proceedings who were admittedly in the residence of Shri Ehsan Jafri at the time of the incident of rape, none of them has in any manner narrated about the incident of rape taking place nor have they in any manner supported the so-called three star witnesses. It is pointed out by Shri Bhardwaj that in such circumstances, it is all the more necessary to treat all the witnesses who have so deposed about the rape, to be guilty of speaking blatant untruth on oath and it is urged that these versions and testimonies are required to be discarded completely.

386. It is pointed out by Shri Bhardwaj that the star witness Imtiyazkhan i.e. PW-106 in the course of his testimony, has also positively claimed

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to have witnessed the incident of rape on his sister-in-law Sajedabanu and an unknown woman whom he knew of, but did not know the name, his nephew Shadabkhan and one Yusuf, all of whom were done to death in continuation of the same incident. It is pointed out by Shri Bhardwaj that the entire incident as also the alleged perpetrators of such incident, is a bogus, got up and concocted version more importantly an afterthought, that and too clearly six years after the incident. It is pointed out by Shri Bhardwaj that PW-106 in the course of his oral testimony in paragraph No.16(a) of his deposition, has identified three of the accused as the perpetrators of the incident, firstly being accused No.2 Lala Mohansing Darbar, accused No.46 Lakhia and accused No.63 Dinesh Sharma as the perpetrators of the incident. It is pointed out by Shri Bhardwaj that it is admitted by the witness that the incident took place after the incident of doing away with Shri Ehsan Jafri. It is pointed out that it is also an admitted position according to Shri Bhardwaj, that this witness PW-106 witnessed incident standing in the the kitchen of the residence of Shri Ehsan Jafri. It is pointed out that it would, therefore, be necessary to examine the accuracy and genuineness as also the veracity of this witness in light of further admitted positions and utter contradictions emerging from his testimony itself. It is pointed out by Shri Bhardwaj that the name of accused No.2 emerged at the very earliest stage and accused No.2 was arrested on 06/03/2002 in

light of the Police FIR and on account of accused No.1 being shown to be present and a part of the mob in the incident by the Police FIR. It is pointed out by Shri Bhardwaj that however, no specifics were attributed to accused No.2 and no specific incident is attributed to have been perpetrated by accused that time. Tt. is submitted that No.2 at. the statements of PW-106 were recorded at that stage, and PW-106 also admits to have forwarded an application and an affidavit to the Commissioner of Police. It is submitted that in such application before the Commissioner of Police, the PW-106 has admitted that he did not provide the names of the perpetrators of rape. It is pointed out by Shri Bhardwaj that for the first time, specific details emerged with regard to the alleged incident of rape and the death of two women as also two young children Shadabkhan and Yusuf when the SIT stepped into the picture in the year 2008, and when prepared affidavits were tendered to concerned authorities. It is submitted that the version as emerging from the testimony of PW-106 is a gross exaggeration and cannot be accepted to be plausible or natural. It is pointed out that according to the witness, the two ladies and the two children were accosted by the mob which comprised of the three accused and the three accused tore the clothes of the two women, committed rape, thereafter hacked them to death with swords and at that stage, the two boys Shadabkhan and Yusuf were standing outside where the incident of rape took place and at the same place these two boys were

the testimony of PW-106 itself.

also hacked to pieces with a sword by accused No.63 Dinesh Sharma. It is pointed out by Shri Bhardwaj that the whole aspect is completely unnatural in light of the contradictions that have emerged from

387. My attention is drawn to the testimony of PW-106 in paragraph No.16(a) on page No.18 where it is deposed "જાફરી સાદેબના મકાનના રસોડામાં આગલાગવા લાગેલી. રસોડાની અંદર જેઓ હતા તેઓ અંદર ભાગવા લાગેલા." It is pointed out that this is an anomaly which has not been explained.

388. It is pointed out that in the course cross examination of of the this witness, the witness has clearly not stated as to who all were present with him when he saw the incident of rape. It is pointed out that however, the rape as it took place, is on account of the two ladies and two children rushing out allegedly on account of the fire that had started in the residence of Shri Ehsan Jafri. It is pointed out that this version is not plausible in light of the testimony of his own father PW-116 Sayeedkhan who claims to have been in a toilet together with six to seven hidden persons of whom the above four victims were also a part of such party hiding in the toilet. It is pointed out further that therefore, there is a grave contradiction emerging and serious from the testimony of PWs 106 and 116 in this regard. It is

further pointed out by Shri Bhardwaj that PW-106 does not recollect having seen his father at the time of the incident but claims to have subsequently seen his father at the time when he i.e. PW-106 went on the first floor portion of the residence of Shri Ehsan Jafri. It is pointed out that if his father i.e. PW-116 was locked in a toilet from which he made good his improbable escape and went into another toilet, then this entire version supplied by PW-106 is not accurate and is far from truth. It is further pointed out by Shri Bhardwaj that it is wholly improbable that when it was an admitted position that the entire Gulbarg Society as also the residence of Shri Ehsan Jafri was surrounded on all sides by a mob of no less than 10000 to 15000 people, it would be improbable that only three of these perpetrators would in the open grounds commit rape on two women and thereafter hack them to pieces as is claimed. It is pointed out that there is no clarity with regard to the two boys who are also alleged to have been done to death in the same incident. It is pointed out by Shri Bhardwaj that one person accused No.63 being attributed with two rapes, thereafter doing away with both the rape victims and thereafter doing away with two children, all in one go and in one breath and that too, named only after six years of the event, is highly improbable and is not required to be considered as worthy evidence to decide the fate of such а gruesome and ghastly incident as claimed by the Prosecution. It is pointed out by Shri Bhardwaj that

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accused No.63 was arrested on 07/03/2009 and that too when his alleged role was crystallized before the SIT and it is submitted that this clearly smacks of an afterthought on the part of the so called victims and further cements the theory that the victims were maliciously including and deleting persons as per their convenience. It is submitted that in such circumstances also, this testimony is required to be scrutinized with grave suspicion.

389. Drawing my attention to page No.38 of the testimony of PW-106, it is pointed out by Shri Bhardwaj that the witness has deposed inter alia to the effect that while entering the residence of Shri Ehsan Jafri for the second time, he thereafter went up where at that point of time he saw 10 persons on the ground floor of whom he does not remember seeing anybody except his father. It is pointed out that in the circumstances, it is clear that the witness does not mention the presence of his sister-in-law, the other lady who was raped and killed as also his nephew Shadabkhan and Yusuf. It is pointed out that therefore, this witness is not required to be believed and it is submitted that it is clear that this witness has not seen any such incident and is merely exaggerating with a view to falsely implicate the accused.

390. It is submitted by Shri Bhardwaj that contradicting the version of PW-106 with regard to such incidents of rape and murder, is the direct

eye-witness testimony of PW-116 Sayeedkhan Ahmedkhan Pathan who happens to be the father of PW-106 and

closely related to one of the rape victims. It is pointed out by Shri Bhardwaj that in the course of his testimony, the present witness PW-116 has given an unbelievable and unacceptable version of events allegedly relating to the rape and murder of two women and the murder of two young boys. It is pointed out that not only is this version entirely got-up and cannot be believed, but even if it is assumed that this version is the correct version, then also it completely contradicts the version supplied by PW-106. My attention is drawn to page No.13 of the testimony of PW-116 wherein in his examination-in-chief itself, the witness has deposed inter alia to the effect "ते पछी हुं आहरी साहेजना पाछणना ભાગે દરવાજો ખોલી ત્યાં આવેલ જાજરામાં સંતાઈ ગયેલો તે સમયે મારી પાછળ મારી ભત્રીજા વદુ સાજીદાબાનુ આવેલી. તેની સાથે તેનો પાંચ છ વર્ષનો છોકરો સાદાબ હતો. તે સાથે બીજી એક અજાણી સ્ત્રી હતી. અને સાચકલવાળો યુસુફખાન કરીને છોકરો હતો. અમે બધા જાજરુમાં સંતાઈ ગયેલ. જાજરુમાં ભરાઈને અમે અંદરથી દરવાજો બંધ કરી દીધેલ. તે પછી ત્યાં ત્રણ જણાં તલવારો લઈને ઉભા હતા તેમણે આ દરવાજો તોડેલ પણ દરવાજો તુટેલ નહિ. આ ત્રણમાં, દિનેશ પ્રભુદાસ શર્મા, લાલા યોગેન્દ્રસિંહ અને લાખીયા હતો. આ મેં જાજરુની ઉપરની જાળીમાંથી જોયેલ. એ લોકો ક્યાંકથી કુઠાડી લાવ્યા અને દરવાજો કાપી નાખેલ. દું જાજરામાં અંદરની સાઈડે જતો રહેલ અને આ લોકો બાકીના ચાર જણાંને ખેચી ગયેલા. દિનેશે

મારા ભત્રીજા વદુના દિકરાને માર્ચો, યુસુફને માર્ચો, લાખીયા અને ચોગેન્દ્રસિંદે તેમના કપડા કાડી નાખેલા અને તેમની પર બળાત્કાર કરેલ અને તે પછી તેમને મારી નાખેલા. આ બધુ મેં જાજરુગ્ની જાળીમાંથી लोयेे." From the testimony of PW-106 as pointed out by Shri Bhardwaj, it emerges that the manner of taking place of the incident as witnessed by the PW-106 is inter alia to the effect that two women including his sister-in-law Sajedabanu and another unknown woman were held and detained by three of the accused referred to above and raped by all three of them, after which accused No.63 is attributed to have killed two young boys. To clarify further, it is submitted that this aspect of the testimony would clearly establish that the rape and murder of the ladies took place first and consequent thereto, the doing away of the two young boys by accused No.63 took place.

391. It is pointed out that in direct contradiction with regard to how the incident took place, who were the perpetrators and the sequence of events, the PW-116 has deposed *inter alia* to the effect that he along with four victims had taken shelter in the WC toilet which was located in the compound of the residence of Shri Ehsan Jafri and the mob of whom the above three accused were members, and all the three of them according to the witness's testimony, were armed with swords and they tried to break open the door of the WC toilet with

their swords but failed to do so. It is pointed out that the witness claims to have seen these aspects from the upper ventilation grill of the toilet. It is pointed out that this witness has further testified that accused these three thereafter procured an axe with which they broke open the door of the toilet and dragged the above four victims outside, after which, it is testified that thereafter, accused No.63 firstly killed the two young boys namely Shadabkhan and Yusuf and after which the remaining two accused referred to above, tore the clothes of the two ladies in question and killed them with their swords after subjecting them to rape and again the witness claims to have seen this entire incident from the upper ventilation grill of the toilet. It is pointed out that in the circumstances, there are two serious contradictions emerging vis-a-vis the eye-witness's account of the star witness PW-106 inasmuch as, this witness claims that the young boys were done to death prior in point of time and subsequently there was rape and killing of the two women. It is pointed out that again, the version contradicts the version of PW-116 inasmuch as, accused No.63 is not attributed to have participated in the rape and killing of the two women whereas according to PW-106, all the three accused had raped and killed the two women. It is submitted that these contradictions are grave and serious and cannot be discarded. It is further pointed out by Shri Bhardwaj that there was no need for the witness PW-116 to continue to witness the

incident from the upper ventilation grill when even according to his own eye-witness testimony, the door of the toilet was hacked open by the perpetrators. It is submitted that such version, therefore, cannot be accepted.

392. It is pointed out by Shri Bhardwaj that the witness PW-116 has further testified that after this incident, he escaped from the WC toilet and took shelter in another toilet which was located opposite to the kitchen of the bunglow of Shri Ehsan Jafri and he locked himself from within till the time the Police arrived at the scene of the incident at about 5:00 p.m.

393. submitted It is that further destroying the veracity and accuracy the of testimony of this witness PW-116, is his cross which completely exposes examination itself the hollowness of the claims of the witness. Μv attention is drawn to his cross examination on page No.28, paragraph No.31, more particularly the concluding line thereof, wherein the witness has clearly deposed inter alia to the effect that the size of the WC toilet was such that only 5 to 6 persons could remain standing in such toilet. It is pointed out that the witness has further conceded and accepted that when the door of such toilet is opened, the entire toilet could be seen from outside. It is pointed out that the witness has strangely denied having seen Yusuf at the time of

so-called incident of murder and rape. It is further pointed that such witness PW-116 out has categorically stated "आ દરમિયાન મેં યુસુફભાઈને જોયેલ નहि." It is also pointed out that even vis-a-vis the two women going out of the WC toilet, the specific words used by the witness PW-116 in his cross examination on page No.29 are inter alia to the effect "Maring બારણું કુઠાડીથી તોડ્યું ત્યારે બે સ્ત્રીઓ અને બાળક બઠાર ગયેલા ત્યારે તે લોકોએ મને જોચેલ નહ." meaning only three persons went out [not dragged out as claimed in the examinationin-chief and not four persons as also claimed in the examination-in-chief]. It is pointed out that in the examination-in-chief, the witness PW-116 has clearly testified *inter alia* to the effect that when he took shelter in the WC toilet, he was followed by two women and two young boys in which the name "HIUSG पाणो यूस्इ" is specifically mentioned. It is submitted that in such circumstances, therefore, the witness having deposed that he did not see "Yusufbhai" at the time of the alleged incident, is self-defeating and contradictory. Ιt is pointed out that thereafter, the witness claims that at that point of time when the WC toilet door was chopped open, the did perpetrators not see the witness. Tt. is submitted by Shri Bhardwaj that this is unrealistic and untrue looking to the size of the WC toilet and the admission that the entire toilet could be seen from outside. It is further pointed out that on page

No.55 of his cross examination, the witness PW-116

has further conceded that after he left his own residence, he came into the residence of Shri Ehsan Jafri wherein he remained and the words specifically stated by the witness PW-116 are inter alia to the effect "હું જાફરી સાઠેબના ઘરમાં ગયો તે પછી તેમના ઘરમાંથી બહાર આવવાનો મને પ્રસંગ પડેલ નहि." It is submitted that this deposition would indicate that the witness did not come out of the residence of Shri Ehsan Jafri and of therefore, the versions qoing to toilet, thereafter going to another toilet, are absolutely contradictory versions and not required to be believed. It is submitted that even the version of the witness going away from the WC toilet into another toilet of Shri Ehsan Jafri's residence and locking himself within till the time the Police arrived, sounds highly improbable inasmuch as, the witness has clearly conceded that there was a distance of about 10 ft. between the two toilets and is highly improbable that a mob which had it indulged in rape and murder, would permit such eyewitness who was in a position to identify them, to walk away in such fashion without causing even slightest injury upon him. It is submitted that this aspect also exposes the witness as being unreliable and not truthful.

394. Τt. is pointed out that further exposing the witness is the fact that there is a denial by PW-116 with regard to the fact giving of statement to the IO of SIT inter alia to the effect that the version of having witnessed the incident from the WC toilet was not correct but he had witnessed the incident from the bathroom, is denied but the IO, SIT Shri J.M.Suthar in the course of his testimony as PW-335 at Exh.1289, has in his deposition on page No.148 in paragraph No.253, inasmuch as, while referring to the

clearly admitted and has deposed that "ओ पात भरी छे કે, સાહેદ સઈદખાન અહેમદખાને મારા રંબરંગના નિવેદનમાં એમ લખાવેલ छे डे, 'में लालरामांथी लोयेतानुं लणापेत ते आले तजापु छुं डे, ते w?w? બાથર>મની જાળીમાંથી જોયેલ Eg.'" It is pointed out referring to page No.59 of the cross examination of PW-116 that the said witness has again contradicted himself statement recorded before the IO of the SIT and a computerized typed application/statement tendered to the IO of the SIT, there are contradictions with regard to the perpetrators of the rape and the witness has stuck to his oral statement given to the IO of SIT Shri J.M.Suthar with regard to the version of events supplied in terms of the statement where accused Nos.2 and 46 are attributed to have been the perpetrators of the rape and killing of two women. It is submitted by Shri Bhardwaj that these aspects are again totally denied by Shri J.M.Suthar, IO-SIT in the course of his testimony. Drawing my attention to page No.59, it is specifically pointed out by Shri Bhardwaj that the witness PW-116 has deposed "ओ

વાત ખરી છે કે, એસ.આઈ.ટી. એ મારા કોમ્પ. નિવેદન સંબંધે પણ પુછપરછ કરેલી. એવુ બનેલ નથી કે, મેં જણાવેલ બળાત્કારના બનાવમાં સંડોવાયેલ આરોપીઓના નામમાં કોમ્પ. ટાઈપ થયેલા નિવેદનમાં આરોપી દિનેશની જગ્યાએ આરોપી લાખીયાનું નામ લખેલ હોય." It is pointed out by Shri Bhardwaj that the witness has further confused the issue by denying on page No.59 inter alia to the effect "अयारे रष्ठ्र हरेल टाઈप निपेहनमां લાલા ચોગેન્દ્ર તથા લાખીચાએ રેપ કરેલાનું લખેલ છે જે સંબંધમાં જણાવુ છું કે, એસ.આઈ.ટી. માં લખાવેલ વિગત સાચી છે. ટાઈપ કરેલ નિવેદનમાં ટાઈપ કરનારે ભૂલથી દિનેશની જગ્યાએ લાખીયાનું નામ લખેલ છે. એ વાત ખરી છે કે, સીટ સમક્ષ રજૂ કરેલા મારા નિવેદનમાં પાન નં. ૮ પર મેં એમ જણાવેલ છે કે, બળાત્કારના બનાવમાં લાખીયા સંડોવાચેલ છે." It is submitted by Shri Bhardwaj that committing a further somersault on the concluding portions on page No.59 and the initial portions on page No.60 of his cross examination, the witness has stated that it was accused No.63 who was allegedly mentioned as the perpetrator of rape and not accused No.46. It is submitted that therefore, this entire version has been changing, varying and improving from time to time as was convenient to the witness and this can never form the basis of being treated as reliable and worthy and credible eye-witness's testimony.

395. It is pointed out that from the cross examination of the witness, an aspect which is denied by the witness, but confirmed by the IOs

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examined on the record of the case, is that it is clear that in his statements dated 05/03/2002, 11/03/2002 and 03/04/2002, the witness has not mentioned about any rape taking place and has in fact attributed to an unknown person having used an axe to chop open the toilet door. It is submitted that the IOs Shri N.D.Parmar, Shri P.N.Barot have clearly contradicted the version of this witness and have accepted that such version and non-mention of rape was narrated during the recording of the statement of PW-116.

It is submitted by Shri Bhardwaj that 396. the witness has further exposed his testimony by conceding on page No.75 in paragraph No.92 of his cross examination wherein the witness has conceded that in his affidavit before the Hon'ble Supreme Court of India or in his application made to the Commissioner of Police which application was accompanied by an affidavit, the witness has not mentioned having been an eye-witness to any incident of rape either from the residence of Shri Ehsan Jafri or from any toilet located therein. Tt. is submitted that these aspects are required to be taken seriously inasmuch as, these are voluntary affidavits emanating from the witness himself, prepare by his own lawyers under expert legal advice and therefore, any omission or contradiction emerging therefrom with regard to this witness having witnessed the incident of rape, has to be considered seriously while considering the question

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of veracity of the evidence of this witness. It is pointed out that there is no re-examination of this witness conducted by the Prosecution which could in any manner, undo the damage to the revelations emerging from the cross examination.

397. It is submitted by Shri Bhardwaj that further in the cross examination of the witness PW-116, on page No.75, paragraph No.92, the witness while referring to his affidavit forwarded to the Hon'ble Supreme Court of India, has more or less admitted that he does not remember as to whether the incident of rape is mentioned therein or not. It is submitted that the witness claims to have been read over and explained the contents of the affidavit and has further claimed that he supplied a Gujarati version of the affidavit which was translated into English and that the version whether it contained the incident of rape or not, is something that he does not remember while deposing in the Court. It is submitted that this aspect cannot be ignored and in fact goes to the root of establishing that the Prosecution witnesses have been tutored, are hollow witnesses and have no credibility.

398. It is submitted by Shri Bhardwaj that despite referring to accused No.46 Lakhia by name, by specific role and by innumerable references during the course of his testimony, statements and affidavits before the initial IOs, IO of the SIT, application/affidavit to the Commissioner of Police

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as also the affidavit to the Hon'ble Supreme Court of India, the witness has interestingly not been able to identify accused No.46 in the Court and that too when the Court permitted the witness to closely study the accused present in the Court. It is submitted by Shri Bhardwaj that in any case, no T.I.Parade also has been conducted with regard to the identification of accused No.46.

399. It is pointed out by Shri Bhardwaj that completely contradicting the testimony of PWs 106 and 116 and further confusing the Prosecution case, is the testimony of PW-283 Aslamkhan who happens to be the real brother-in-law of on of the victims Sajedabanu and the real uncle of deceased young boy Shadabkhan, who has supplied a third version with regard to this alleged incident. He has, according to Shri Bhardwaj, further contradicted the PWs 106 and 116 and has further raised grave and serious doubts about the genuineness of the Prosecution case.

400. It is pointed out that the witness Aslamkhan i.e. PW-283, has testified on page No.6 of this examination-in-chief itself that "પછી આ ટોળાએ જાફરી સાંદેબના ઘર આગળ દતા તેમને પણ મારા બાપુજી સાથે જ મારી કાપીને સળગાવી દીધેલા. અને ટોળાએ જાફરી સાંદેબના મકાનમાં ચારે બાજુથી પેટ્રોલ કેરોસીન અને કોઈ પ્રવાઠી છાંટી સળગાવી દીધેલ.આગ લાગતા ગુંગળામણ થતા અમો, મારા દાદી ખેરગ્નીશા, મારોભાઈ-

અખ્તરખાન, મારા કાકી-જમીલાબાનુ, મારા ભાભી-સાજીદાબાનુ, મારો ભત્રીજો-સાદાબખાન ના બધા ગુંગળામણના લીધે બહાર ભાગવા જતાં ટોળાના માણસોએ તેમને બહાર મારી કાપીને જાકરી સાહેબના બગીચામાં ફેંકી દીધેલા." It is pointed out that by this piece of deposition, the said Aslamkhan has completely destroyed the testimonies of PWs 106 and 116 by completely discarding the version of hiding into the WC toilet vis-a-vis his sister-in-law Sajedabanu an his nephew Shadabkhan. It is submitted that the witness has not mentioned his real uncle PW-116 as being the person with whom four of the victims ran away and took shelter in the WC toilet as claimed by PW-116. It is pointed out that the breaking open of the door of the WC toilet, the rape and the perpetrators of the incident, are all remaining silent in the testimony so supplied by the PW-283. It is submitted that in the circumstances, it would extremely difficult for the Prosecution be to establish beyond reasonable doubt any version of events since there are so many versions supplied with regard to the same incident. It is pointed out that in the circumstances, this version is also required to be discarded. It is submitted that the witness has also strangely remained silent with regard to the presence and death of Yusuf and the rape and death of an unknown woman which has com on the Prosecution board through the testimonies of the father and son duo of PWs 106 and 116.

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It is submitted by Shri Bhardwaj that 401. versions contradicting these even in his own testimony, the PW-283 on page No.8 of his testimony, has again brought into the picture the murder and rape of an unknown woman as also the murder of Yusuf which conveniently makes him forget the earlier version of events supplied in his examination-inchief itself. It is submitted that even here, the witness does not claim that the bodies i.e. the dead bodies of the sister-in-law Sajedabanu and the socalled unknown woman were devoid of clothing nor is any suggestion made with regard to any rape being perpetrated on the two women. However, it is pointed out that this witness has named two other women who ran out of the house with him when the same was on fire, but neither PW-106 nor PW-116 have referred to these women in the course their testimonies. It is pointed out that in his version supplied on page No.6 of his examination-in-chief, this witness has specifically named his grandmother Kherunnisa, one Jamilaben who happens to be his aunt and his brother Akhtarkhan i.e. Sajedabanu's husband, all of whom, according to him, were killed in the same incident and bodies of such victims were thrown in the garden of the residence of Shri Ehsan Jafri. It is pointed out that the version emerging from page No.8 of his examination-in-chief refers to only four bodies and that too of the two young boys Yusuf and Shadabkhan and the two women Sajedabanu and the unknown woman and conveniently forgets to mention about the other dead bodies nor is any version supplied with regard

to the location of the dead bodies of his brother, grandmother and aunt. It is pointed out that the witness claims to have run out of Shri Ehsan Jafri's house on account of the same being set on fire but mysteriously on page No.8 of his own examination-inchief, the witness claims to have descended from the terrace of the said residence at the time of the arrival of the Police force. It is submitted that there is no explanation rendered as to how he managed to go upto the terrace of Shri Ehsan Jafri's residence when he had rushed out of the residence into the compound of Shri Ehsan Jafri's residence and it is submitted that again conveniently the mob has left behind one eye-witness to the incident only to describe and narrate the incident because if all the others who according to the witness, had rushed out of Shri Ehsan Jafri's residence because of the fire, were done away with, then why was this particular witness spared, is a question that has not. been explained satisfactorily the by Prosecution.

402. It is pointed out that on page No.21 of the cross examination of the witness, the witness has clearly mentioned with regard to the location and whereabouts of his brother Akhtarkhan and it is submitted that the witness PW-283 has clearly stated that Akhtarkhan was with him till about 3:00 p.m. and thereafter he got separated. It is submitted that in the circumstances, the version that all of them including the present witness and Akhtarkhan

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rushed from the residence of Shri Ehsan Jafri, only to be done to death outside when the alleged incident of setting fire to Shri Ehsan Jafri's residence took place, is improbable because Akhtarkhan could not have accompanied him if according to his concession made in paragraph No.21 of the cross examination, the two of them got separated. It is submitted that this also is another inconsistency emerging from the testimony of this witness.

403. Drawing my attention to the testimony of PW-177 Sairaben who also claims to be an eyewitness to the incident, it is submitted that in her examination-in-chief on page No.13, paragraph No.15, the witness has testified that "आइरी साहेजना मडानमां આગ લાગતા ધૂમાડો થયેલ અને ખુબ ગુંગળામણ થતા ત્યાં બીજી સ્ત્રીઓ હતી, તેમાં ઝેબુનબેન તેમના દિકરાની વ<u>દ્</u> મદેમુદાબેન, તથા મારી બે દેરાણીઓ નામે મુમતાઝ અને ઝરીના દોડીને બહાર નીકળેલા. તેમને પણ ટોળાના માણસોએ પકડી ખેંચી તલવારો તથા બીજા હથિયારોના ઘા મારી મારી નાખેલ." It is pointed out that this witness has supplied a completely contrary version inasmuch as, she has not referred to any of the four victims emerging from the testimony of PWs 106, 116 and 283. It is submitted that this witness has mentioned the names of four other women and this witness also has not provided any names of any perpetrators of the incident. It is submitted by Shri Bhardwaj that

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strangely when PWs 106, 116 and 283 were all claiming to be present in the residence of Shri Ehsan Jafri and PW-283 further claims to have run out of the residence of Shri Ehsan Jafri when it caught fire, none of these witnesses have, in the course of their elaborate testimonies, referred to the above referred four ladies who the present witness PW-177 has referred to as being done away with by the mob by using swords. It is submitted that this raises a serious question with regard to the presence of the so-called witnesses within the residence of Shri Ehsan Jafri and also raises a serious question with regard to the Prosecution case in its entirety.

404. It is pointed out by Shri Bhardwaj further submitting with regard to the inconsistencies and contradictions emerging from the so-called eye-witnesses' testimony with regard to the incident of rape of the two women and their being done to death thereafter, as also the hacking of young boys Shadabkhan and Yusuf. It is pointed out that another eye-witness PW-107 Mrs.Rupaben Modi has in the course of her testimony, testified that she was in the kitchen when an incident took place whereby attempts were made to explode the gas cylinders in the kitchen of the residence of Shri Ehsan Jafri. It is submitted that she has also specified on page No.53 in paragraph No.71 of her cross examination that there was indeed an explosion of gas cylinders in the kitchen of Shri Ehsan Jafri.

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It is pointed out that amazingly PW-106 Imtiyazkhan also claims to have witnessed the incident of rape and murder from the kitchen of Shri Ehsan Jafri's residence and he has remained completely silent on these aspects of explosion of gas cylinders in the kitchen. It is pointed out that in the circumstances

residence and he has remained completely silent on these aspects of explosion of gas cylinders in the kitchen. It is pointed out that in the circumstances and more particularly when even PW-116 does not. narrate about any incident of explosion of qas cylinder within the residence of Shri Ehsan Jafri, there is a grave and serious doubt with regard to the presence of PWs 106 and 116 within the residence of Shri Ehsan Jafri when number of other witnesses have testified with regard to the explosion of gas cylinder within the residence of Shri Ehsan Jafri. My attention is also drawn again to the testimony of PW-283 Aslamkhan who has on page No.38 of his testimony, as pointed out by Shri Bhardwaj, clearly indicated with regard to the bursting of qas cylinders in the kitchen of Shri Ehsan Jafri's residence. Τt. is pointed out that in the circumstances, if both the PWs 106 and 116 i.e. Sayeedkhan were present in the Imtiyazkhan and residence of Shri Ehsan Jafri, their silence on the bursting of the gas cylinders is eloquent.

405. My attention is drawn to the testimony of PW-289 Nadim Tassaduphussain Surohi at Exh.995 and it is pointed out that the witness in the course of his testimony on page No.21 in paragraph No.38, has admitted with regard to the taking place of explosion of a gas cylinder which resulted in a fire

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taking place at the residence of Shri Ehsan Jafri. My attention is drawn to paragraph No.53 of the testimony of the same witness wherein he has categorically stated that the entire residence of Shri Ehsan Jafri shook on account of the explosion of the gas cylinders.

406. It is submitted that PW-107 Rupaben Modi has not mentioned a single word with regard to the alleged rape being committed on the two women as is claimed by PWs 106 and 116. It is pointed out that if she was inside the kitchen of Shri Ehsan Jafri's residence, and PW-106 claims to have witnessed the incident from the kitchen of Shri Ehsan Jafri, then either of the two is not telling the truth. It is submitted that the presence of any person in the kitchen at the time of explosion of the two gas cylinders and his/her not sustaining any injuries in such explosion itself is unnatural and not believable.

407. My attention is drawn to the testimony of PW-142 Ashraf Sandhi who claims that he was present in the kitchen of Shri Ehsan Jafri when the same started burning and he claims that he immediately rushed to the terrace of Shri Ehsan Jafri's house where he found Mrs.Jafri and others already present. The witness has further testified that in a short while from his coming to the PW-107 Mrs.Rupaben Modi PW-106 terrace, and Imtiyazkhan also came up to the terrace of Shri

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Ehsan Jafri's residence. It is pointed out by Shri Bhardwaj that PW-107 Mrs.Rupaben Modi does not claim to have witnessed any incident of rape and in the circumstances, it is argued that it is required to be inferred that even PW-106 had not witnessed any such incident of rape or murder on account of the fact that he too was never present in the kitchen of the residence of Shri Ehsan Jafri as is falsely claimed. It is pointed out that in the circumstances when PW-283 Aslamkhan and and more so PW-116 Sayeedkhan have provided entirely different versions of the incident, the very presence of PW-106 and his having witnessed any such incident of rape and murder, is required to be nullified on account of the testimony of the present witness Ashraf.

408. is pointed out by Shri Bhardwaj It that strangely enough though PW-106 claims to be star witness and is so touted by the Prosecution, no mention is made in the entire deposition of PW-106 with regard to the alleged rape and killing of one Firdausbanu and the killing of one Shahejadali Fakirmohammad, who is attributed to have rushed to attempt to rescue the said Firdausbanu. Ιt is pointed out that even PW-116 Sayeedkhan and PW-283 Aslamkhan have not mentioned a word about the alleged rape and killing of Firdausbanu and the killing of Shahejadali. It is submitted that another set of so-called eye-witnesses in the shape of PW-289 Nadim Surohi at Exh.995, PW-177 Sairaben at Exh.711, PW-314 Fakirmohammad at Exh.1098, have all

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deposed with regard to the incident rape on Firdausbanu and her attempted rescue and killing of Shahejadali. It is pointed out that none of these witnesses have mentioned a word about the rape and killing of two other victims in the shape of Sajedabanu and an unknown victim as also the killing of Yusuf and Shadabkhan. It is pointed out by Shri in Bhardwaj that the circumstances, the onlv inference that can be drawn is that none of these witnesses, was present as is falsely claimed and in fact they have been tutored to testify only with regard to a particular incident and ignore all other incidents that have taken place. It is submitted that it is unnatural for such witnesses who claim to have been all throughout present in the residence of Shri Ehsan Jafri prior to the incident of Anwarkhan, to have witnessed only one incident and not others. It is pointed out that such a vital aspect as explosion of gas cylinder is also not referred to by all witnesses who claim to have been present in the residence of Shri Ehsan Jafri and this also is a grave and serious lapse on the part of the Prosecution in establishing their version beyond reasonable doubt.

409. It is pointed out by Shri Bhardwaj that while this set of witnesses claims that the said Shahejadali was done away on account of his attempting to rescue Firdausbanu, there is a contradiction emerging from the testimony of PW-289 at Exh.995 and it is pointed out that his testimony

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on page No.33, indicates that he had, in his statement before the IO of SIT Shri J.M.Suthar, disclosed that the said Shahejadali had been killed in an attempt to save Anwarkhan and this aspect though denied by the witness, is confirmed by the IO Shri Suthar in his testimony.

410. My attention is drawn to the testimony of PW-335 Shri J.M.Suthar, IO of SIT, at Exh.1289, where on page No.154 in paragraph No.270 of his testimony, the witness has admitted that Nadim in his statement recorded before him, has stated that "એ વાત ખરી છે કે, સાહેદ નદીમ તસદદુકદુસેન સુરોહીએ મારા રુબરુના નિવેદનમાં એમ લખાવેલ છે કે, 'મકાનની જાળીનો દરવાજો જોરથી ધક્કો મારી ખોલી નાખતા બંગલા નં.૧૭ માં રહેતા અસ્લમખાન પઠાણે ખોલેલ દરવાજો કરીથી બંધ કરવા જતા ટોળામાંના કોઈએ અસ્લમખાનના હાથ પર તલવાર મારતા તેમના હાથમાંથી દરવાજો છૂટી જઈ ખુલી જતા ત્યાં દરવાજા પાસે ઉભેલ અસ્લમખાનના પિતાજી કે જેઓ અપંગ હોઈ જાળી પકડી ઉભેલ ઠતા તેમને ટોળાએ પકડી ખેંચવા લાગેલ જેથી તેમને બચાવવા સારુ શહજાદ ફકીર મહંમદનાઓ જતા તેને પણ ટોળાએ પકડી બહાર ખેંચી લઈ ગયેલ.'" It is submitted that this clearly shows that the entire incident regarding the so-called rape of Firdausbanu also has been got up, is an afterthought and has been disclosed post 2008 by tutoring the witnesses to depose in such fashion.

411. It is pointed out by Shri Bhardwaj

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that further corroborating the defence version that the witnesses were tutored, the witnesses though being present all throughout the incident within Shri Ehsan Jafri's house, as is falsely claimed by them, have very conveniently in the course of their lengthy depositions, stuck to only one incident and have conveniently ignored all other incidents which have taken place in or near the residence of Shri Ehsan Jafri despite the fact that such witnesses claim to have been within the residence of Shri Ehsan Jafri all throughout the ghastly incident. It is pointed out that the witnesses have also conveniently identified persons by name, by description and have attributed an overt act to the identified person and thereafter the witnesses have conveniently failed to identify such person in the Court. It is pointed out that this also supports the theory of the defence that the star witness PW-106 Imtiyazkhan and his brother Firozmohammad were extorting the so-called involved accused and were for obvious malafide reasons, letting go the persons who had acceded to their demands and had falsely implicated the accused for political or other reasons. It is submitted by Shri Bhardwaj that the prime example of such state of affairs is PW-314 Fakirmohammad Nasirali Saiyed who is examined at Exh.1098, who claims to be having strong political affiliations with Shri Ehsan Jafri, who claims to be an important member of the Congress Party and who admittedly was residing in Gulbarg Society for more than 14 years prior to the incident and who claims

to have been all throughout in the residence of Shri Ehsan Jafri when the incident took place. It is pointed out that this witness has in the course of his testimony, clearly exposed himself as a person not fond of truth and who is has not only contradicted himself in the course of his testimony but has also grossly contradicted the star witnesses more particularly Imtiyazkhan - PW-106, Sayeedkhan -PW-116, Mrs.Rupaben Modi - PW-107 and Aslamkhan -PW-283. It is pointed out that this witness PW-314 Fakirmohammad has also conveniently not deposed about any of the main incidents of murder and rape and has deposed in the manner which would raise grave and serious doubts about his very presence in the residence of Shri Ehsan Jafri or his presence per say in Gulbarg Society at the time of the incident. My attention is firstly drawn to the portion of his testimony where the witness claims that he was instructed by Shri Ehsan Jafri to visit the nearby localities and warn the members of his community with regard to the possible disturbances that were to take place. It is claimed that the witness has thereafter testified that he entered into the Gulbarg Society after doing such rounds of localities nearby and the witness further claims that after entering into Gulbarg Society, he straightway went to the residence of Shri Ehsan Jafri. My attention is drawn to paragraph No.15 & 16 of his testimony where the witness has testified that "તે પછી આ ટોળાના માણસોએ સોસા.માં પથ્થર તથા કાકડા

કેંકેલા જેથી સોસા.ના અંદરના માણસોમાં ભાગદોડ થયેલ.અમે પણ સામે પથ્થર ફેંકેલા. તે સમયે જાફરી સાહેબે સોસા.ના નાના ઝાંપા આગળથી આમ न કરવા વિનંતિ કરેલ. પરંતુ ટોળુ ઉગ્ર થયેલ અને ઝાંપો તોડવાનો પ્રચતન કરતુ હતુ જેથી અમે સામા પથ્થર ફેંકેલ. તે પછી હં અને જાફરી સાહેબ તેમના મકાનમાં ગયેલ અને ત્યાંથી પોલીસને અને નેતાઓને ફોન કરેલા. પરંતુ કોઈ મદદ આવેલ નહિ. પોલીસ આવી નહિ કે, નેતાની મદદ આવેલ નહી. તે પછી થોડી વારે પોલીસની એક ગાડી આવેલ અને સોસા.ની બહાર ફાયરીંગ કરેલ, ટીયર ગેસ છોડેલ જેથી અમને ડર લાગતા કે કદાચ ગોળી અમને વાગી જાય તેવો ડર લાગતા અમે જાકરી સાદેબના મકાનમાં જતા રહેલ. પોલીસ ત્યાંથી જતી રહેલ." It is pointed out that with regard to the very first incident of the stabbing of Ayub who was one of the sons of a Cycle Shop owner and whose stabbing according to the Prosecution, was the starting point of the entire incident, is claimed to have been witnessed by this witness PW-314 Fakirmohammad. It is submitted that such witnessing of eye-witness account by PW-314 is light of the fact that the boqus in incident admittedly has taken place outside the premises and compound wall of Gulbarg Society and it is further admitted by the witness in paragraph No.16 on page No.48 that the compound wall of Gulbarg Society in the front portion and the rear portion was of $6\frac{1}{2}$ ft. height. It is pointed out that in paragraph No.16 on page No.48, PW-314 has deposed that " 어 익너 ખરી છે કે, સોસા.ની અંદર ઉભેલ વ્યક્તિ સોસા.ની બહાર ઉભેલ વ્યક્તિને

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if the witness claims to be within the Society at the time of such incident, there is no possibility of the witness having seen the incident with his own eyes and therefore, any aspect with regard to the alleged perpetration of any offence relating to the stabbing of Ayub could not have been witnessed by PW-314 and therefore, his is a got-up testimony with a view to create a false impression that the witness was present all throughout and had thereby been able to provide an accurate and correct version of all events that took place. It is pointed out that further surprising and striking is the aspect that though Taiyabali admittedly is his son, and though it is emerging from the testimonies of number of eve-witnesses that in connection with the fatal incident relating to Anwarkhan and the attack on his Aslamkhan when he tried to intervene, son all witnesses have testified that it was Taiyabali who had dragged Aslamkhan to safety though Aslamkhan himself has not testified in that regard, this witness PW-314 though admittedly being in the residence of Shri Ehsan Jafri at that time, together with his son Taiyabali, has not narrated even a whisper of the events that took place. It is pointed that even the incident narrated by PW-106 out Imtiyazkhan, PW-116 Sayeedkhan and PW-283 Aslamkhan with regard to the killing of four persons being the two boys Shadabkhan and Yusuf and the rape and killing of two women being Sajedabanu and an

unidentified woman, is also not even remotely whispered or narrated in the course of the so-called eye-witness testimony of PW-314. It is pointed out that even the third contradictory version provided in the testimony of PW-177 Sairaben Sandhi with regard to the slaughter of four women, is not narrated by this witness. It is pointed that therefore, this gives much strength to the defence argument that each witness was got-up with a view to narrate only a particular incident and conveniently omit to even mention about other incidents which, according to the Prosecution, admittedly have taken place as continuous events one after the other. It is pointed out that PW-314 has also maliciously wrongly identified three individuals as being part of the mob though no overt act has been attributed to such three persons. My attention is drawn to the testimony of PW-314 in paragraph No.11 of the testimony where the witness claims to have positively identified Chunilal Prajapati (accused No.61), Bharat Talodia (accused No.54) and Raju @ Mamo Ramavatar Tiwari @ Mamo Kaniyo (accused No.42). It is pointed out that the witness has attempted to justify his being in a position to positively identify three such accused on account of firstly named two accused being members of the B.J.P. and Bajrangdal and accused No.42 i.e. Mamo Kaniyo being identified on account of his alleged bootlegging activities which was not liked by PW-314. It is pointed out that since PW-314 has admitted to being a Congress leader of sorts, it is natural that he

was in a position to identify accused Nos.61 and 54 whereas when it came to identifying accused No.42 Mamo Kaniyo, the witness despite attempting to identify such accused in the Court on two occasions, has wrongly identified two other accused as being accused No.42. It is pointed out that this witness has conveniently failed to identify accused No.65 Rajesh Jinger and accused No.14 Jayesh @ Gabbar, despite the fact that the said Rajesh Jinger was an occupant of the bunglow of the same Society and this according Shri Bhardwaj, qives further to corroboration to the defence theory that the witnesses were orchestrated and instructed to conveniently not identify the persons with whom they had arrived at an understanding and thus both these accused were deliberately not identified by PW-314. It is submitted by Shri Bhardwaj that therefore, it would be unsafe to rely on the versions supplied by such witness inasmuch as, the same relate to such a grave, heinous and exceptional incident of violence, and it is urged that in such circumstances, even the testimony of this witness be discarded.

412. It is pointed out by Shri Bhardwaj that another disturbing facet emerging from the investigation carried out into the present offence, is the fact that though PW-314 claims that he and Shri Ehsan Jafri were accompanied by three more Congress workers in the name of Ambalal Nadiya, Kanubhai Solanki and Mangaldas Kapadia, all of whom are claimed to be with Shri Ehsan Jafri and with PW-

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314 during the incident and despite the fact of the IOs including the SIT IO Shri Suthar having recorded the statements of three such individuals, they were witnesses conveniently cited in not as the chargesheet. Ιt is submitted that this also establishes that even the investigation has been carried out with a view to target specific persons having specific political affiliations and therefore also, it is urged that the so-called eye-witnesses are not required to be accepted and believed and the version of PW-314 be discarded even on such counts.

It is also submitted by Shri Bhardwaj 413. that the PW-314 though claims to be within the residence of Shri Ehsan Jafri all throughout the incident, he has conveniently omitted to testify with regard to the explosion of gas cylinders in the kitchen as also the kitchen being set on fire by the mob. It is submitted that therefore, grave and serious doubts arise with regard to the very presence of PW-314 at the residence of Shri Ehsan Jafri as is claimed.

414. It is further submitted by Shri Bhardwaj that the fact of PW-314 being present in the house of Shri Ehsan Jafri is also a matter of grave doubts inasmuch as, the witness claims that Shri Ehsan Jafri attempted to call up political leaders and other persons in an effort to seek assistance and such calls were made from his residence after 1:30 p.m. It is pointed out that

number of witnesses including PWs 106, 107 and 116 respectively being Imtiyazkhan, Mrs.Rupaben Modi and Sayeedkhan, have also attempted to corroborate such version by stating that Shri Ehsan Jafri attempted to call a number of political leaders including the then sitting Chief Minister and other important political leaders of the B.J.P., but however, it is pointed out that from the cross examination of this witness, it clearly emerges that no such incident of Shri Ehsan Jafri attempting to call up such persons disclosed by the witness in his statements was recorded before the IOs on 06/03/2002 and 11/03/2002. It is pointed out that even if it is assumed that the IOs were biased and did not faithfully record what was stated, then it is clearly emerging from the cross examination of the PW-314 that even in his own voluntary application accompanied by supporting affidavit made to the Commissioner of Police, no such fact was narrated. is pointed out that the witness has further It conceded in his cross examination on page No.76 in paragraph No.56 the fact of his having stated before the Nanavati-Shah Commission that the phone lines of Gulbarg Society, more particularly the landline of Shri Ehsan Jafri was not functional after 1:30 p.m. It is submitted that if that was really so, then the question of Shri Ehsan Jafri calling up persons including the then Chief Minister of Gujarat State an getting negative responses from all such persons is a blatant untruth. It is submitted that further supporting the version that this aspect of the

testimony of the so-called eye-witnesses is also got-up, untrue, is the fact of Shri J.M.Suthar, IO-SIT, having investigated into and obtained call details of Shri Ehsan Jafri's landline and it is pointed out by Shri Bhardwaj that Shri J.M.Suthar in the course of his testimony on page No.16 in paragraph No.13, has clearly testified that the call details gathered in the course of the investigation clearly established that only two calls were made from the landline of Shri Ehsan Jafri on the fateful day and these calls were made to one Shri Badruddin Shaikh who was а Congress Corporator and one Noormohammad, both of whose statements were recorded by Shri J.M.Suthar. It is pointed out that in the circumstances, the entire version supplied by these so-called eye-witnesses is not correct and this further raises doubts with regard to the presence of such witnesses within the residence of Shri Ehsan Jafri at the time of the gruesome incident. It is also pointed out that further doubts are raised with regard to the fact of two of the Police witnesses examined on the record of the present proceedings being PW-11 Ramesh Nagji Pandor at Exh.314, PW-22 Shailesh Kalusing Jadeja at Exh.336, who both have testified that the survivors of the aftermath of the incident in Gulbarg Society were pulled out from a residential block which had more than three storeys. It is pointed out that it is an admitted position that the residential block of Shri Ehsan Jafri was consisting of a ground floor and first floor and therefore, there is doubt as to whether the

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survivors were rescued from the residence of Shri Ehsan Jafri or from some other place. It is pointed out that the Panchnama as also the testimony of the number of witnesses clearly establish that the entire residence of Shri Ehsan Jafri was gutted and large number of bodies were found in burnt а condition from within the residence of Shri Ehsan Jafri and therefore, it is improbable that the survivors who were numbering more than 100 persons, could have continued to be in the residence of Shri Ehsan Jafri which was completely gutted and burnt up. My attention is drawn to the testimony of PW-11 i.e. Ramesh Nagji Pandor where in paragraph No.24 of his testimony, the said witness has testified inter alia to the effect that the survivors were rescued from a building which had not been burnt.

415. pointed out that even with Ιt is regard to the testimony of the witness PW-314 inasmuch as, it relates to the so-called incident of rape and killing of one Firdausbanu and also the interconnected killing of the son of PW-314 being one Shahejadali, it is pointed out that even this version suffers from and serious grave contradictions and coupled with the fact that the alleged perpetrator of the killing of the son of PW-314, who is identified as accused No.42 and who is popularly referred to as 'Mamo Kaniyo', has not been identified in the Court by the witness despite being given two opportunities. It is pointed out that further creating grave and serious doubts about the

entire testimony of this witness, is the fact that the witness i.e. PW-314 has deposed on page No.56 in paragraph No.77 as "એવુ બનેલ નદિ કે, દું જાફરી સાદેબના મકાનમાં ગયો અને તરત જ દું અશક્ત દોવાથી દું અને કેટલીક સ્ત્રીઓ જાફરી સાહેબના મકાનમાં પ્રથમ માળે સંતાઈને બેસી ગચેલ. પણ સાહેદ સ્વેચ્છાએ જણાવે છે કે, દું અશક્ત हોવાથી દું અને મારી સાથે કેટલીક સ્ત્રીઓ જાફરી સાહેબના મકાનમાં પ્રથમ માળે બેસીને સંતાઈ ગયેલા જે જાફરી સાહેબના મકાનમાં અંદર ગયા પછી સંતાઈને બેસી ગયેલા. બનાવના દિવસે બપોરના બે સવા બે વાગ્યાના સુમારે અહેસાન જાફરી સાહેબના મકાનમાં આશરે સો થી દોઢસો માણસો હતા ત્યારે પેટ્રોલ કે ડીઝલ કે બીજા જલદ પદાર્થ છાંટીને સોસા. ના મકાનોમાંથી ગેસના બાટલા કાઢી આગ લગાવવામાં આવી ત્યારે બળતા માણસોની કીકીયારીઓ સંભળાતી હતી. આ ભયાનક કૃત્ય ચાર વાગ્યા સુધી ચાલુ રહેલા. અમો પહેલા માળે હતા તે માણસો જીવ બચાવવા માટે સંતાઈને કોઈને ખબર ના પડે તે રીતે લપાઈ ગયા હતા તેવી ઘટના બનેલી." It is pointed out that contradicting himself, this witness PW-314 has testified on page No.72 in paragraph No.107 of his cross examination as "ગુલઝારભાઈની દિકરી ફીરદોશને કેટલા માણસોએ બહાર ખેંચેલ તે હું કઠી શકુ નઠી કારણ કે હું ભોંચતળના ભાગે અંદરના ભાગે હતો. એ વાત ખરી નથી કે, આ બનાવ મેં નજરે જોયેલ નથી. હું ફરી કઠુ છું કે, હું અંદર હતો જેથી કેટલા માણસોએ તેને બહાર ખેંચેલ તે કઠી શકુ નઠિ. એ વાત ખરી છે કે, તેના કપડા ફાડવા વાળા કેટલા માણસ હતા તેની પણ મને ખબર નથી. એ વાત ખરી નથી કે, તે

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બनाप में लोयेल नथी." It is pointed out that if the witness could not identify the persons who had dragged away the said Firdausbanu, only on account of his being located in the inside portion of the room of Shri Ehsan Jafri's residence on the ground floor, then from such position, how could he have identified the perpetrator of the killing of his son Shahejadali since that incident also took place outside the residence of Shri Ehsan Jafri and at the same place where the incident involving Firdausbanu took place. It is pointed out that again it may be repeated that the witness has identified accused Mamo Kaniyo as the perpetrator of No.42 the incident, but has failed to identify him despite being given two opportunities by the Court. It is submitted that it is not so much so as the failure to identify but identifying of two absolutely wrong persons goes to establish that this witness is thoroughly unreliable.

416. Drawing my attention to page No.73, paragraph No.108 of the testimony of PW-314, it has been pointed out by Shri Bhardwaj that the witness has conceded in his cross examination that in his affidavit before the Nanavati-Shah Commission, the incident of Firdausbanu, her clothes being ripped off and the killing of his son Shahejadali, is not referred to at all. It is submitted that it is strange that a father does not find it relevant to mention with regard to the killing of his own son and it, therefore, raises presumptions that PW-314 was never a witness to such incident or episode nor was he present in the residence of Shri Ehsan Jafri at the time of the incident or it presupposes that the killing of Shahejadali and Firdausbanu was not witnessed by him at all. It is pointed out by Shri Bhardwaj that the witness has further conceded in the said portion of his testimony that he has not tendered names of any accused or referred to any accused holding any weapons, in his affidavit made before the Nanavati-Shah Commission. It is pointed out that therefore, his suddenly being able to identify and name persons in the Court in the course of his testimony and that too nearly eight years after the incident, is clearly suggestive of the fact that he too is a tutored witness. It is pointed out that all the three named accused i.e.Chunilal Prajapati (accused No.61), Bharat Talodia (accused No.54) and Raju @ Mamo Ramavatar Tiwari @ Mamo Kaniyo (accused No.42), are all arrested post 2008.

417. It is also pointed out by Shri Bhardwaj that in paragraph No.109 of his cross examination, the PW-314 has further strangely addressed legal admitted to have notices to concerned accused seeking compensation from such accused. It is submitted that it is specifically mentioned in paragraphs No.80 and 81 of the deposition of PW-314 that "Hi Q.E.Y. રાષ્ટ્રીય સ્વયં સેવક, ભા.જ.પ. આરોપીઓ ચુનીલાલ પ્રજાપતિ, ભરત તેલી, રાજેશ દચારામ ર્જીંગર અને મામા કાણીયા પાસેથી વળતર મેળવવા માટે તા. ૨૪. ૨. ૦૫ ના

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રોજ તેમને નોટીસ આપેલ. એ વાત ખરી છે કે, આ નોટીસ મેં મારી પોતાની સદીથી આપેલ. એ વાત ખરી છે કે, આ નોટીસમાં મેં મારા પુત્ર શहજાદને આ લોકોએ બંધનું જે એલાન આપેલ તેનાથી ઉશ્કેરાયેલ દિન્દુજનોના ટોળાએ મારા પુત્રને જીવતો સળગાવી મારી નાખેલ તે બદલ નુકશાની માટે તેમજ માલ સામાનની નુકશાની માટે માંગણી કરેલ. નોટીસ આપ્યા બાદ મેં કોર્ટમાં કેસ કરેલ તે હાલ ચાલુ છે. છેલે હુ બે મહીના પહેલા કોર્ટમાં ગયેલ જે સેશન્સ કોર્ટ છે અને તેમાં મારા વકીલ તરીકે શ્રી વોરા સાહેબ છે. જે આ કેસમાં હાજર થયેલા છે તે જ છે."

418. is pointed out by Shri Bhardwaj Tt. that such notices were issued admittedly in the year 2005 and it is an admitted position that of the many persons to whom such notices were issued, the deceased Chunilal Prajapati (accused No.61), Rajesh Jinger (accused No.65), Bharat Talodiya (accused No.54) and Mamo Kaniyo (accused No.42) were all issued notices on behalf of the victims all seeking compensation from the persons and organizations to whom such notices were served on the ground that they had called a 'Bandh' on 28/02/2002 which resulted in the taking place of the incident at Gulbarg Society amongst other places and since these persons were attributed to have called for the 'Bandh', they were held to be responsible to pay the compensation. It is pointed out that at that point of time, none of these four persons referred to above, were portrayed as accused nor were they in any manner attributed with any overt act related to

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the Gulbarg Society incident. It is pointed out that it is only in the year 2008 i.e. nearly six years after the incident that all of a sudden, these four accused were attempted to be projected as the principal accused and persons who were leaders of the mob which created the mayhem in Gulbarg Society. It is also pointed out that surprisingly post 2008, each of these accused was attributed with specific overt acts. It is submitted that the notice issued through an Advocate is a voluntary act made with a clear and open mind, without any kind of duress and it only goes to show that this further cements the theory propounded by the defence that the accused herein have been selectively and maliciously brought on record as accused with ulterior motives. It is pointed out that this aspect also is something which cannot be lost track of. It is pointed out that all four accused on whom such notices were served amongst others, were arrested post 2008.

419. is pointed out by Shri Bhardwaj It that admittedly as per the Prosecution case, the entire chain of the incident has been initiated from incident involving the alleged stabbing of the Ayubkhan i.e. PW-117 at Exh.588, the burning of an autorickshaw of Gulam Master and it is submitted by Shri Bhardwaj that the star witness PW-106 timed the taking place of the Imtiyazkhan has incident as between 10:00 a.m. and 10:30 a.m. It is pointed out that there are a large number of eyewitnesses who have been examined on the record of

the present proceedings and who have all testified in a manner which only completely destroys the Prosecution case. It is submitted that each of the witnesses examined, only contradicted has not himself but has also contradicted the rest of the witnesses. It is submitted that the contradictions are major, change the entire complexion of the taking place of the incident, change the timing of the incident and more importantly are categorically stated to be far from the truth by the victim himself. It is submitted by Shri Bhardwaj that the contradictions are further damaging the Prosecution case inasmuch as, even the alleged perpetrators of the incident are conveniently differently named by different witnesses. It is submitted that all the witnesses have without hesitation claimed to have known the perpetrators of the incident and have further claimed in their examination-in-chief to be in a position to identify each of the perpetrators on account of the fact that such perpetrators from amongst the present accused have been residing in the same chawls or same vicinity and have good relations for more than a decade with the alleged eye-witnesses. It is pointed out that unfortunately despite claiming such state of affairs, most of the so-called eye-witnesses have not been in a position to identify the accused in the Court. It is pointed out that in fact a version emerging from some of the witnesses appears to be genuine and correct version where some unknown persons attributed to have been wearing some masks over their faces, came over,

attempted to enforce the 'Bandh' and created a disturbance inasmuch as, Ayubkhan i.e. PW-117 was stabbed and an autorickshaw belonging to one Gulam Master was set on fire. It is unfortunate, according to Shri Bhardwaj, that on account of the inability identify the correct perpetrators, PW-106 to Imtiyazkhan for obvious reasons and on account of his close associations with the NGOs who took interest post 2008 and for obvious reasons which have been argued at length herein before, inducted and included those persons whom he desired to include as accused and conveniently did not bring on record the real perpetrators of the incident. It is submitted that the manner of witnessing of the incident is also contradicted by the witnesses who have again given colourful and largely untrue versions of the taking place of the incidents. It is submitted that each testimony completely destroys the version of other witnesses since each testimony supplies a new version. It is submitted that despite such grave and serious contradictions, none of the witnesses has been re-examined nor have such witnesses in any manner been sought to be declared hostile. It is submitted that it is, therefore, required to be accepted that the Prosecution has accepted these versions as being the correct versions. It is submitted that in the circumstances, the veracity, truthfulness and genuineness of the witnesses as also the Prosecution case, is completely destroyed. It is submitted that in such circumstances, it would be required to examine the

testimony of each witness, contradictions emerging therefrom and the fact that none of the witnesses has given a consistent and believable version. It is pointed out that in fact the victim Ayubkhan i.e. PW-117 in his the course of testimony, has completely contradicted all the so-called evewitnesses and has in fact conceded that he took shelter in the residence of a Hindu family and he stayed there till the time of completion of the incident and till he was shifted to the relief camp. It is pointed out that father of this victim has also conceded that his family took shelter in a Hindu family and were provided shelter till the time they were shifted to the relief camp. It is also pointed out that amazingly despite having claimed to have sufferred at least three gupti stab wounds, the said Ayubkhan has avoided going to the Civil Hospital for the treatment of his injuries and has in fact declined to do so and it is urged that in the circumstances and in absence of a medical certificate or an injury certificate from the Hospital authorities or any material as would establish any injury to be inflicted upon the said Ayubkhan, it is, according to Shri Bhardwaj, the case of the defence that no such incident ever took place and the entire version of events and its sequence suffering from such grave contradictions and inconsistencies are required to be discarded in toto, and in support of such argument, my attention is drawn to the testimony of PW-191 i.e. Salim paragraph No.40 wherein, Sandhi, in he has

categorically stated that "એ વાત ખરી છે કે, તા.૨૮/૨/૦૨ ના રોજ અચુબ અને ચુસુફનો બનાવ મેં જોયેલ નદિ પણ મને તે બનાવ બાબત જાણવા મળેલ. આ બનાવ સવારના સાડા દસના સુમારે બનેલ તેવુ

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પણ મને જાણવા મળેલ." It is submitted that thus this so-called eye-witness has conceded in the cross examination that his knowledge was only hearsay and he was not an eye-witness to the incident as he has falsely claimed in paragraph No.7 of his testimony.

420. attention is thereafter firstly My drawn to the testimony of PW-106 Imtiyazkhan, more particularly his examination-in-chief on page No.7 in paragraph No.8 wherein he has testified that "धरे આવ્યા બાદ મેં નાસ્તો પાણી કરેલ. હું અને મારા પિતાજી સવારના દસ વાગે અમારા ઘરની અગાસી પર ઉભા હતા. ત્યારે રોડ પર ચાર થી પાંચ છોકરાઓ દુકાનો બંધ કરાવતા કરાવતા આવતા હતા. તે છોકરાઓ ઓમનગર તરફ ગયેલા. તે છોકરાઓમાં, ૧.ભરત રાજપુત, ૨.ગીરીશ પ્રભુદાસ શર્મા, ૩.ભરત તલોદીચા, ૪.૨મેશ પાંકે, ૫.કપીલ મુન્ના હતા. તે પછી તે ઓમનગરથી થોડી વારમાં પરત આવ્યા ત્યારે તેમની સાથે બીજા દસેક છોકરાઓ હતા. તે લોકો 'જય શ્રી રામ' ના નારા લગાવતા હતા. 'મીંચાઓને મારો કાપો' તેમ બોલતા હતા. આ લોકોએ સંતોકબાઈની ચાલીના નાકે આવેલ અંકુર સાયકલવાળાના છોકરાઓ નામે અયુબ અને યુસૂફ બહાર ઉભેલા હતા. તેમને આ લોકો મારવા લાગેલા. આ બે જણને, ભરત રાજપૂત, ગીરીશ શર્મા અને ભરત તેલી અને રમેશ પાંડે મારવા

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લાગેલા. આ લોકો અમારી સોસા.ની આજુબાજુની ચાલીઓમાં રહે છે અને અમારી સાથે બેસતા ઉઠતા તેથી હું આ તમામને ઓળખુ છું. ભરત તલોદીચા અને ભરત રાજપુત ગીરીશ પ્રભુદાસ શર્માને અવાર નવાર મળવા આવતા હતા તેથી હું ઓળખુ છું. ચુસુફ અમારી સોસા.માં ભાગીને આવી ગચેલઅને અચુબ તેના ઘરમાં ભાગવા જતા ભરત રાજપુતે તેના હાથમાં રહેલ ગુપ્તીથી અચુબને પીઠના ભાગે બે થી ત્રણ ઘા મારેલા. ત્યાં ઉભેલા બીજા છોકરાઓએ બાજુમાં આવેલ ગુલાબ માસ્ટરની રીક્ષાને તોડફોડ કરેલ અને તેને આગ લગાડેલ. તે આગ લગાડનારમાં કપીલ મુન્ના, ઘર્મેશ પ્રહલાદ, મુકેશ પુખરાજ અને અંબેશ કાંતિલાલ હતા. મેં જેના નામ આપ્યા તેમને આજે હું ઓળખી શકું."

421. It is pointed out by Shri Bhardwaj that the defence would now like to submit with regard to the incident of stone pelting as is projected by the Prosecution to have happened from the residence of Shri Dayaram Jinger and from the terrace of the property more particularly known as Bunglow No.1 of the said Gulbarg Society.

422. It is pointed out by Shri Bhardwaj that Shri Dayaram Jinger and his wife - both have been cited as witnesses in the chargesheet, but have obviously not been examined for malafide reasons. It has been pointed out by Shri Bhardwaj that they were th persons who were best equipped to depose with regard to the fact as to whether the Bunglow No.1 was open, was accessible to the mob, or if at all

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there was any incident as is claimed by the Prosecution. It is submitted that both these cited witnesses have been deliberately not examined on the record of the proceedings because had they been examined, the whole truth would have come out and it was obviously inconvenient for the Prosecution to bring such truth on the record of the proceedings.

423. It is pointed out by Shri Bhardwaj that it is emerging on the record of the proceedings that there was a litigation between Shri Jinger and the Society and its other residents and the same had culminated in legal proceedings. It is pointed out that it also establishes that there was bad blood between the other occupants of Gulbarg Society and Shri Jinger. My attention is drawn to the testimony of PW-213 being one Tassaduphussain Surohi, who in paragraph No.17 of his testimony, has *inter alia deposed* that he is aware of a dispute between the owner of Bunglow No.1 and the other members of the Society.

424. It is pointed out by Shri Bhardwaj that cited witness No.113 being one Ibrahim Sadiq Shaikh who was the individual who had been given shelter by Shri Jinger and was saved from the mob, also has not been examined by the Prosecution. It is pointed out that PW-223 AT Exh.780 being one Alihussain Ibrahimbhai Shaikh being the son of Ibrahimbhai, has clearly deposed on the record of the proceedings that his father was given shelter

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and had in fact taken shelter in the residence of Shri Jinger for two days. My attention has been drawn to paragraph No.16 of the testimony of PW-223 wherein he has clearly stated "મારા બાપુજી મને રાહત કેમ્પમાં મળેલા. મારા પિતાજી આ બે દિવસ દરમિયાન ક્યાં હતા તે મને જાણવા મળેલ. મારા પિતા ગુલબર્ગ સોસા.માં જે પોલીસવાળાનું જે મકાન છે તે મકાનના ધાબા પર સંતાઈ ગયેલા. એ વાત ખરી છે કે, તે મકાન દિન્દુનું મકાન છે."

My attention further drawn 425. is to Exhs.260 and 261 which are the Panchnamas relating to the residence of Shri Jinger at Bunglow No.1 of Gulbarg Society, which documents clearly establish significant damage being caused to the property in is submitted that if question. Ιt there is established to be damage to the residence of Shri Jinger more particularly Bunglow No.1 of Gulbarg Society, then it is required to be presumed that the mob that caused the damage, was not aware that the property was belonging to a Hindu. It is submitted that this also lends support to the theory that the persons in the mob were unknown persons who had come from outside localities and not from within the localities where persons were well aware of each other as also their properties.

426. It is pointed out by Shri Bhardwaj that an application Exh.738 was preferred by the victims/witnesses where number of persons were

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be arraiqned as accused sought to application also sought reliefs to the effect that Rajesh Dayaram Jinger who was in fact discharging his duties as a Police Constable on the fateful day, was sought to be arraigned as an accused in the present proceedings on account of his alleged role in pelting stones at the other residents of Gulbarg Society causing injuries to them, from the terrace of his father's property being Bunglow No.1 at Gulbarg Society. It is submitted that in response to the said application, the Prosecution through the IO(SIT) Shri J.M.Suthar, had filed a detailed reply which reply is on the record of the proceedings at Exh.792, and has particularly dealt with the arraignment of accused Rajesh Dayaram Jinger and it is pointed out by Shri Bhardwaj that the reply clearly establishes according to the SIT, that said Rajesh Dayaram Jinger was present all throughout and on duty as narrated in the reply and it is pointed out that the Prosecution has in fact objected to the arraignment of Rajesh Dayaram Jinger as an accused in the present proceedings but however, it is pointed out by Shri Bhardwaj that in light of the orders passed below Exh.738, the Court considered that there was prima facie material which required the arraignment of the accused. It is pointed out that however, post arraignment of the accused Rajesh Dayaram Jinger, there is sufficient evidence to establish that the theory with regard to the said Rajesh Dayaram Jinger having been present on the terrace of the Bunglow No.1 and having indulged in

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stone throwing on the residents of Gulbarg Society incorrect and exaggerated version and is is an required to be discarded. It is pointed out that number of witnesses have deposed in a manner as would establish that such version is obviously an attempt on the part of the victims to settle scores with regard to the disputes interse between the parties with regard to the occupation and purchase of Bunglow No.1 of Gulbarg Society by the father of the accused. It is pointed out by Shri Bhardwaj that Ibrahimbhai S.Shaikh has given a statement one before the SIT inter alia to the effect that he was on the terrace of Bunglow No.1 and that after initially attempting to damage and ransack the property, the perpetrators were informed that the property belonged to a member of their community and therefore, such people did not further damage the property nor did anybody enter into the Bunglow No.1 on account of which the said Ibrahimbhai S. Shaikh remained hidden on the terrace of the property. It is pointed out by Shri Bhardwaj that therefore, the entire version of a mob having gathered on the terrace of Bunglow No.1 and having indulged in the activities alleged, is bogus and exaggerated. It is further pointed out that PW-223 being the son of the said Ibrahimbhai S. Shaikh, has also deposed in a manner which establishes that his father had indeed taken shelter by hiding on the terrace of said Bunglow No.1. It is submitted that therefore, the alleged incident with regard to the stone throwing cannot be accepted. It is submitted that in such circumstances, the said Ibrahimbhai was the only person who could have thrown light on the fact that the terrace was used by the mob as is claimed and a deliberate omission on the part of the Prosecution to examine such witness despite being cited as a witness in the chargesheet, requires an adverse inference to be drawn by the Court in this regard.

427. It is pointed out that the ulterior motives on the part of the victims is further highlighted by the testimony of PW-177 i.e. Sairaben Sandhi who is examined at Exh.711, who has pointed a finger at Ashok Dayaram Jinger being the brother of accused No.65 Rajesh Dayaram Jinger, regarding the alleged role played by the said Ashok Dayaram Jinger in the incident. It is pointed out by Shri Bhardwaj that the IO Shri N.D.Parmar has clearly established in the course of the investigation that the said Ashok Dayaram Jinger was the driver of the vehicle of Shri Parmar and was all throughout present in the company of Shri Parmar and it is pointed out by Shri Bhardwaj that it is only under such circumstances that the said Ashok Dayaram Jinger was not made an accused in the proceedings even by the SIT and nor did the victims prefer any application seeking his arraignment as an accused under Sec.319 of the Cr.P.C. It is pointed out that this clearly shows that the accused have been falsely roped in on account of the personal grievances interse between Jinger and the other residents of Gulbarg Shri Society. It is pointed out that the testimony of PW-

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177 in paragraph No.52 clearly establishes that in her initial statements, affidavits and application before the Commissioner of Police, the witness had not named the said Ashok Dayaram Jinger but only subsequently as an afterthought, she had named the said Ashok Dayaram Jinger in her subsequent affidavit.

428. It is pointed out by Shri Bhardwaj per the star witnesses of that even as the Prosecution including PW-106 Imtiyazkhan, the time of such incident of stone pelting from the terrace of Bunglow No.1 is about 1:30 p.m. or thereabout. It is submitted by Shri Bhardwaj that not only the stone pelting but also interconnected to this incident is the version of the Prosecution that there was private firing upon the residents of Gulbarg Society from adjoining shops located outside the Society.

429. Drawing my attention to the testimony of PW-106 Imtiyazkhan, it is pointed out that the sequence of events as narrated by PW-106 is *inter alia* to the effect that firstly the incident of private firing from the terrace of the shops, took place and consequent thereto, the incident of stone pelting started from the terrace of Bunglow No.1 of Shri Jinger at about 1:30 p.m. It is submitted that it is also clearly emerging from the testimony of PW-106 that at the time when such firing and stone pelting were taking place, the mob had as yet not

entered into the Gulbarg Society, but PW-106 claims that in the interim, he had climbed up on the terrace of Bunglow No.15 of Gulbarg Society where he claims to have seen the mob having surrounded the Society from all sides. It is also pointed out by Shri Bhardwaj that PW-106 has clearly testified in connection with these incidents more particularly on page No.12 in paragraph No.11 of his testimony, *inter alia* to the effect that his aunt's son Sharifkhan was present at the side of PW-106 when the incident of private firing took place. It is pointed out that on page No.13, paragraph No.15, the witness has further testified and provided the names of Irfan Gulzar, Shakil Kasambhai Mansuri, Firoz Bandeali and Rafiq Abubakkar as being present with him at the time of the stone throwing incident. It is pointed out that it is required to be, therefore, established as to whether the said Sharifkhan who is claimed to have been present at the side of PW-106 when the private firing took place, has corroborated such version or not. My attention is drawn to the testimony of PW-284 Sharifkhan who is examined at Exh.987, who has given a completely contradictory version with regard to the time and taking place of events which clearly destroys the version the supplied by PW-106 Imtiyazkhan. It is pointed out that however, PW-284 Sharifkhan has also admitted that PW-106 Imtiyazkhan was present at his side when such incident took place. My attention is drawn to page no.6 in paragraph No.9 of the testimony of PW-

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284 wherein he has deposed "તે પછી હું દોડીને અઢાર અને ઓગણીસ નંબરના મકાનની વચ્ચે આવેલ. તે સમયે મારી સાથે મારા મામાનો દિકરો ઈમ્તીયાઝ હતો. ત્યાં વ્હાઈટહાઉસના મકાનના ધાબા પરથી બે માણસો ફાયરીંગ કરતા હતા. જે સોસા. તરફ ફાયરીંગ કરતા હતા. હું તેમને ઓળખી શકેલ નહિ. આ બધુ બપોરના બે થી અઢી વાગ્યાના સમય દરમિયાન ચાલેલ."

430. Ιt is pointed out that from the testimony narrated herein above, it is clear that according to this witness i.e. PW-284, the mob had already entered into Gulbarg Society even prior to the taking place of the so-called incidents of private firing and prior to the stone pelting. It is pointed out that according to this witness, the private firing took place between the period 2:00 p.m. and 2:30 p.m. and it is pointed out by Shri Bhardwaj that this witness is completely silent about the alleged incident of stone throwing. Μv attention is drawn to paragraph No.10 of the testimony of this witness, wherein he claims to have escaped by jumping over the compound wall of Gulbarg Society and made good his escape.

431. It is pointed out that the version supplied by the witnesses with regard to private firing upon the Society by some unknown persons, is not corroborated by any scientific material in th shape of any FSL reports. It is pointed out that

even the FSL has clearly negated the possibility of such private firing taking place. It is pointed out by Shri Bhardwaj that the Panchnama of the scene of the incident which is on the record at Exh.260, clearly establishes the recovery of empty shells and the recovery of a weapon from within the Society and not outside the Society. It is submitted that no material in the shape of empty shells or weapons were recovered from the alleged terrace from where the firing according to the witnesses, was being effected by unknown persons. It is submitted that on the other hand, the FSL evidence clearly establishes that there was firing from within the Society which is established and would be submitted herein after, to be effect by Shri Ehsan Jafri. It is pointed out that therefore, the theory of private firing is established attempted be the to by victims/Prosecution in an effort to explain the firing effect by Shri Ehsan Jafri with regard to which none of the Prosecution witnesses, has deposed in his examination-in-chief. It is submitted that therefore, this entire version with regard to private firing is bogus, got-up and cannot be accepted to be true.

432. It is pointed out that though the witness claims that around 500 to 600 people were within the Society at the time of the alleged firing, not a single person is established to have sustained injury from such alleged firing which could not have been possible considering the density of people within the Society and therefore also, according to Shri Bhardwaj, the alleged incident of private firing has never taken place as is falsely claimed.

433. It is pointed out that the PW-284 has specified that the so-called private firing took place from a property known as "White House". It is submitted that there is no incriminating material recovered from the said White House.

434. My attention is drawn to page No.12 of the testimony of PW-106 Imtiyazkhan, where accused No.51 and 64 i.e. Mahesh Daruwala and his brother Lallu respectively are specifically attributed to have fired upon the residents of Gulbarg Society from the terrace of a shop outside the Society and both such accused are alleged to have opened fire on the residents. It is pointed out that contradicting PW-106 with regard to the location from which the firing took place, PW-284 has testified that the firing did not take place from the terrace of a shop as is claimed by PW-106, but according to PW-284, the firing took place from the terrace of a building known as "White House". It is pointed out that however, PW-284 has not specifically identified the perpetrators of such firing incident and has categorically stated that he cannot identify such persons. It is pointed out that PW-284 has in his examination-in-chief in paragraph No.1, clearly testified that he was operating a business in

refrigerators and air conditioners from a premises/shop known as "White House". It is submitted that therefore, this is a contradiction required to be considered.

435. It is pointed out that contradicting this state of affairs, the PW-264 Firoz Bandeali Shaikh who is examined at Exh.918, has in his entire examination-in-chief, not referred to any alleged incident of stone throwing from the residence of Dayaram Jinger i.e. Bunglow No.1 of Gulbarg Society though PW-106 Imtiyazkhan claims that at the time of the stone throwing incident, the said witness i.e. one of the four persons PW-264 was who was accompanying PW-106 at such time. It is submitted that PW-264 having not supported the Prosecution about identification of the accused, was sought to be and was in fact declared hostile by the Court and even in the cross examination by the Prosecution, the witness has not deposed any aspect with regard to the alleged stone throwing incident from the terrace of Bunglow No.1 of the Gulbarg Society.

436. It is pointed out by Shri Bhardwaj that though PW-106 Imtiyazkhan has claimed that one Irfan was badly injured on account of such stone throwing from the terrace of Bunglow No.1 on account of which such Irfan collapsed and had to be taken into the residence of Shri Ehsan Jafri, the PW-264 does not mention in his entire deposition regarding any incident concerning the said Irfan, despite the

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Prosecution being given due and adequate opportunity to cross examine such witness on account of his being declared hostile. It is submitted that not even the suggestion was made during the cross examination of this witness with regard to the alleged incident of stone throwing from the terrace of Bunglow No.1 which resulted in such injuries being caused to said Irfan.

437. It is pointed out by Shri Bhardwaj that contradicting the versions supplied by the star witness PW-106 Imtiyazkhan and other so-called eyewitnesses with regard to the incident of stone pelting from the Bunglow No.1 of Gulbarg Society, coupled with the private firing taking place upon the residents of Gulbarg Society from the same Bunglow i.e. Bunglow No.1 of Gulbarg Society, and with regard to the injury which ultimately turned out to be fatal injury sufferred by one Irfan Gulzar, there is completely different version another so-called eye-witness who supplied by according to Shri Bhardwaj, is an important and significant eye-witness at that point of time on account of the fact that the witness not only is closely related to the deceased Shri Ehsan Jafri but is also established to be a Tax practitioner and testimony cannot therefore, his version or be discarded as that of a lay person who has not remembered or has been traumatized by what he saw therefore, slipped into inaccuracies. and My attention is drawn to the testimony of PW-236

Safdarhussain Fazlehussain Ankleswaria who is examined at Exh.815, wherein the witness has clearly admitted being in the residence of Shri Ehsan Jafri since 9:00 a.m. and he has right supplied а completely different version of events. My attention is drawn to the portions of his testimony where the witness claims that the mob had entered into Gulbarg Society and had in fact surrounded the residence of Shri Ehsan Jafri and thereafter set it afire between 10:30 a.m. and 11:30 a.m. though according to Shri Bhardwaj, the witness is very vague with regard to the exact time of the incident. It is submitted that however, the witness is very clear that the mob had surrounded the residence of Shri Ehsan Jafri and had indulged in stone throwing from within Gulbarg Society. It is submitted that the witness has also testified with regard to the said Irfan Gulzarbhai being hit by a stone thrown by the mob and having sustained injuries, whereby he was brought in on the back side of the residence of Shri Ehsan Jafri by the present witness PW-236 as also the deceased Shahejadali. It is pointed out that this witness has not even whispered about the alleged stone throwing or private firing from the residence of Dayaram Jinger which is Bunglow No.1 of Gulbarg Society. This witness, according to Shri Bhardwai, has further specified that it was not Imtiyazkhan or others who brought the said Irfan into the residence of Shri Ehsan Jafri but it is this witness who has himself taken the credit for bringing such injured Irfan into the residence of Shri Ehsan Jafri. It is

submitted that this witness has very clearly stated in the course of his testimony that after the door to the entrance of Shri Ehsan Jafri's residence was shut, it was not possible to see any incident taking place outside and the witness has testified that he did not see any incident related to Anwarkhan only on such account. It is submitted that however, in his cross examination, he has completely changed the sequence of events and claims to have seen Anwarkhan attempting to enter into the residence of Shri Ehsan Jafri when he was done away with. It is submitted by Shri Bhardwaj that this witness has also not testified at all with regard to any version relating incidents taking place outside Gulbarg the to Society including the torching of Gulam Master's autorickshaw, stabbing of Ayubhkan and such related It is submitted that according to this events. witness, on one hand the mob entered into Gulbarg Society between a period ranging from 10:30 a.m. to 11:00 a.m. and when he claims to have been inside the residence of Shri Ehsan Jafri at about 9:00 a.m., the witness is unable to explain as to how he was standing outside with five or six others when the mob started surrounding the Society. It is also pointed out by Shri Bhardwaj that this witness also claims that the Police officers including the Commissioner of Police Shri P.C.Pande came over to Gulbarg Society at 10:30 a.m. It is submitted that this version clearly contradicts the version of others when all other witnesses have testified that incident was taking place when Shri Pande no

allegedly visited Gulbarg Society and met Shri Ehsan Jafri at his residence. It is submitted that this witness has also conceded in his cross examination inter alia to the effect that in his statement before the Police recorded on 03/03/2002, he has not narrated the incident of Anwarkhan and Irfan. It is submitted that in such circumstances, the entire episodes with regard to the alleged stone throwing from the residence of Dayaram Jinger and the private firing therefrom, are totally got-up which are masterminded by somebody else who after visiting the scene of incidents post 2008, tutored the witnesses to testify in such fashion. My attention is drawn to paragraphs Nos.4 to 8 of the examination-in-chief of this witness PW-236 wherein he has testified thus:

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"૪. તા. ૨૮. ૨. ૦ ૨ ના રોજ સવારના નવ વાગે હું મારા ઘરે હતો. અને ચા પાણી નીસ્તો કરી અમે જાફરી સાદેબના ઘરે ગચેલા. ત્યાં અમે બેઠેલા હતા. બહાર બંધ જેવુ હતુ જેથી અમે સોસા.માં જ રહેલા.

પ. તે દિવસે નવ વાગ્યા પછી એવુ જાણવા મળેલ કે, બહાર ટોળુ આવે છે અને દુકાનો બંધ કરાવે છે. તે પછી સાડાદસ વાગ્યાના અરસામાં જાફરી સાદેબને જાણ થયેલ કે, બહાર પોલીસની ગાડી આવેલ છે જેથી તેઓ બહાર ગયેલ. જાફરી સાદેબ સાથે ફકીરમદંમદ, કનુભાઈ સોલંકી, અંબાલાલ નાડીયાનાઓ તેમની સાથે બહાર ગયેલા. પછી તેઓ પાછા આવતા અમારામાંથી કોઈએ તેમને કોણ હતુ તે બાબત પુછપરછ કરેલી. જાફરી સાદેબે જણાવેલ કે,

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પી.સી.પાંકે અને પી.આઈ. હતા. પી.આઈ. ના નામની મને ખબર નથી. જાફરી સાહેબે અમને દરવાજો બંધ કરી અંદર આવી જવા જણાવતા અમે દરવાજો બંધ કરી અંદર આવી ગયેલા. અને સોસા.માં ઉભેલા અને તે પછી અડધો એક કલાક પછી બુમાબુમ થવા લાગેલી જેથી અમો જાફરી સાહેબના મકાનમાં ગયેલા.

5. અમે જાફરી સાહેબના મકાનમાં નીચેના રૂમમાં બેઠેલા હતા. તે પછી કોઈકે કહેલ કે, સોસા.નો મુખ્ય દરવાજો તોડી ટોળુ અંદર આવવા પ્રયત્ન કરે છે જેથી અને જાફરી સાહેબના મકાનમાં બહાર ઓટલા પર આવીને જોચેલ. અમે જોયુ તો ટોળુ દરવાજો તોડીને અંદર આવેલ અને એક પછી એક વાહનો સળગાવેલા. પછી આજુબાજુથી પથ્થરમારો થતો હતો એટલે અમે ઘરમાં રહેલા અને અમે બહાર નીકળેલા નહિ.

૭. ટોળાના માણસો આગળ મકાનોને આગ લગાવ્યા બાદ જાફરી સાઠેબના ઘર આગળ આવેલ. અને ત્યાં સળગતા કાકડા ફેંકી જાફરી સાઠેબના મકાનને આગ લગાડેલી. જાફરી સાઠેબના મકાનમાં આ વખતે ઘણાં માણસો ભેગા થયેલા જેથી હું પાછળથી તેમના મકાનમાં ઉપરના માળે જતો રઠેલ. જાફરી સાઠેબના મકાનના મુખ્ય દરવાજેથી ટોળાના માણસો અંદર ઘુંસવા પ્રયત્ન કરત હતા જેથી અમે દરવાજો બંધ કરીને તે દરવાજાની પાછળ ઉભા રહી ગયેલા. તે સમયે અમારી સોસા.ના અનવરભાઈ મકાનમાં અંદર આવવા પ્રયત્ન કરતા હતા પરંતુ ગ્રીલનો દરવાજો બંધ હતો જેથી તે અંદર આવી શકેલ નહિ. તેમને ત્યાં જ મારી નાખવામાં આવેલ. તે અમે અંદરથી જોઈ

શકેલા નદિ પરંતુ અવાજ સાંભળેલ.

૮. તે દિવસે ઈરફાનભાઈ ગુલઝારભાઈને પેટમાં ઇંટ વાગેલી હતી જેમને બીજા માણસો લઈને જાફરી સાહેબના ઘર પાસે લાવેલા તે ઈરફાનભાઈને અમે અંદરના રૂમમાં લઈ ગયેલા. તેમને હું અને શહજાદભાઈ લઈ ગયેલા. બનાવમાં મને ડાબા હાથ પર ઇંટ વાગેલી."

438. It is pointed out by Shri Bhardwaj that it also emerges from the cross examination of this witness that since he was a resident of Gulbarg Society, he knew almost all the residents of Gulbarg Society. It is pointed out that contradicting his own testimony in paragraph No.8, the witness PW-236 has in paragraph No.22 of his cross examination on page No.13, clearly testified that "आश्री साहेजना મકાનનો આગળનો દરવાજો બંધ કરેલ તે મેં કરેલ નહિ. સાહેદ સ્વેચ્છાએ જણાવે છે કે, તે બંધ કરવામાં અમે ત્રણ જણાં હતાં તેમાં શહજાદ અને ગુલઝારભાઈ પણ તે દરવાજો બંધ કરતી વખતે હતા. આ સમગ્ર સમય દરમિયાન અનવરભાઈ ક્યાં છે તે જોયેલા નહિ. દરવાજો બંધ કર્યો તેના પાંચેક મીનીટમાંજ અનવરભાઈ ઘરમાં આવવા પ્રચતન કરતા હતા. ગુલઝારભાઈ અને શहજાદઅલીએ દરવાજો બંધ કર્યો તે સમયે દું તેમની સાથે જ હતો. તેમજ અનવરભાઈ અંદર આવવા પ્રચતન કરતા હતા ત્યારે હં અંદરના દરવાજા પાસે જ હતો."

439. It is pointed out that though this

witness claims to be standing near the grill and from where he could see the incident of Anwarkhan, he has completely discarded the version with regard to the attempt by Aslamkhan to save his father, the injury sustained by Aslamkhan, perpetrators of the incident and the bringing of Aslamkhan to safety by persons within the residence of Shri Ehsan Jafri. It is submitted by Shri Bhardwaj that this witness has, therefore, remained completely silent about all the remaining incidents including the one relating to Shri Ehsan Jafri and it is submitted that in such circumstances, the veracity of such an important witness is required to be considered qua the socalled eye-witness testimony of other witnesses. It is submitted that this further gives credibility to the defence version that these are all orchestrated and tutored incidents for which each particular tutored to testify only about witness was а particular incident, his role therein, to testify with regard to the perpetrators of the incident, to identify them if possible and to conveniently remain silent about other episodes though even according to his such testimony, this witness claims that he was all throughout within the residence of Shri Ehsan Jafri till the time the Police arrived. It is pointed out that this witness does not depose with regard to the presence of any of the so-called other witnesses present in the residence of Shri Ehsan Jafri despite claiming to know all of them. It is submitted that in such circumstances, the entire incident with regard to the stone throwing from the

residence of Shri Dayaram Jinger, injury to Irfan and alleged private firing from the residence of Shri Jinger are all required to be treated as got-up and bogus and without any basis. My attention is drawn to paragraph No.29 of the cross examination of this witness PW-236, wherein he has deposed that "એ વાત ખરી છે કે, તા.3.3.0૨ ના રોજ પોલીસે મારુ નિવેદન લીઘુ ત્યારે મેં ઈરફાન ગુલઝાર અને અનવરભાઈના બનાવ અંગે જણાવેલ નહિ."

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is pointed out that this witness 440. Ιt has also contradicted himself with regard to the alleged manner of his sustaining an injury on his left hand by a stone being pelted. It is pointed out in paragraph No.39 of his testimony, this that witness has denied that he sustained the injury when the mob pelted stones at the time when he (witness) and Shahejadali were attempting to bring the injured Irfan into the residence of Shri Ehsan Jafri, whereas in paragraph No.40 of his own testimony, he concedes that he has declared before the SIT on 21/06/2008 inter alia to the effect that he received the injury on his left hand during his attempt to bring the injured Irfan to safety. It is pointed out by Shri Bhardwaj that this witness also despite such blatant contradictions emerging and non-support to star witnesses who were examined much the other prior to the examination of this witness, this witness was not sought to be declared hostile nor was any re-examination conducted with regard to his

testimony and therefore, it is required to be accepted that even the Prosecution did not have anything to explain with regard to such blatant contradictions emerging from the testimony of this witness.

441. is pointed out by Shri Bhardwaj It that PW-213 Tassadukhussain Surohi who is examined at Exh.763, has in fact completely destroyed the testimonies of other so-called eye-witnesses and has testified in a manner as would give a completely different version of events and would further create doubts with regard to the taking place of incidents as claimed, the presence of the so-called eyewitnesses within the residence of Shri Ehsan Jafri and the witnessing of such incidents by the socalled eye-witnesses from within the residence of Shri Ehsan Jafri. It is pointed out that the present witness has given a completely different time frame with regard to the incidents and has in fact not incident despite even bothered to narrate any claiming to be present within the residence of Shri Ehsan Jafri at all relevant times. It is pointed out that this witness has also remained very silent about the fate of Shri Ehsan Jafri, the incident relating to Shri Ehsan Jafri, the incident relating Anwarkhan, the incident relating to to stone from throwing and private firing Shri Dayaram Jinger's residence, the incident of rape and subsequent murder of three women, killing of two young children Yusuf and Sadabkhan, the alleged rape

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of Firdausbanu and the killing of Shahejadali, are all given a complete go-by by the present witness, who has also remained silent about the testimony of Sairaben, the attempt of the four women to get out from the burning house and being accosted by the mob. It is submitted that this witness, therefore, a version which makes has set up it highly improbable for any eye-witness to have remained within the residence of Shri Ehsan Jafri and witnessed such incidents one after the other. It is pointed out by Shri Bhardwaj that this witness has testified with regard to the fact of the Commissioner of Police Shri Pande having visited the Society at about 10:30 a.m. and has also narrated as to who all including Shri Ehsan Jafri and the present witness went to meet Shri P.C.Pande and it is pointed out that it is admitted by this witness that no incident had taken place before such visit of Shri Pande. It is submitted that the witness has further claimed that the incident of stone pelting started about half an hour after Shri P.C.Pande and team departed from Gulbarg Society. his Ιt is claimed that Shri P.C.Pande was present at Gulbarg Society for about seven minutes and it is submitted that it is, therefore, required to be presumed that the stone pelting started at about 11:15 a.m. It is pointed out that it is claimed by the witness that such stone pelting went on till about 2:00 p.m. when the witness claims that the front gate of the Society as also the wall of the Society were demolished and the mob thereafter came into the

Society. It is submitted by Shri Bhardwaj that this witness has thus destroyed the version of PW-263 who claims that the Society was invaded at a much earlier point of time. It is pointed out that the thereafter testified that witness has the mob surrounded the residence of Shri Ehsan Jafri and claims further that the ground floor, first room, the second room were set on fire by the mob by using burning rags, burning tyres and inflammable liquids and it is claimed that consequent thereto, when the mob attempted to set afire the first floor of Shri Ehsan Jafri's residence, the present witness together with some three or four named persons, went up on the terrace of Shri Ehsan Jafri's residence and took shelter there. It is submitted by Shri Bhardwaj that if this was the sequence of events as it took place, and if thee rooms on the ground floor of Shri Ehsan Jafri's residence were gutted in the manner testified, there is no question of any person being in a position to remain in such gutted rooms and witness in more detail any incident taking place thereafter. It is pointed out that in any case, this witness has remained silent about all such incidents as stated herein before and this witness has also remained silent with regard to the presence of PW-106 Imtiyazkhan, PW-107 Mrs.Rupaben, PW-116 Sayeedkhan, PW-117 Ayubkhan as also the presence of Taiyebbhai, Aslamkhan and other so-called eyewitnesses and it is urqed that in such and particularly when circumstances, more this witness has not been declared hostile, when no

attempt to remove any ambiguity by re-examining the witness has been attempted by the Prosecution, the version supplied by this witness should stand as it is and it is urged that in such circumstances, the version supplied by the witness completely destroys the version of the other witnesses. It is submitted that such wholesale loss of memory cannot be excused or permitted to be given a go-by. It is pointed out that in the circumstances and more particularly when this witness has not mentioned a whisper of evidence with regard to the alleged stone throwing from the residence of Shri Dayaram Jinger and the private firing taking place therefrom, the entire incident according to Shri Bhardwaj, is bogus and got-up and this aspect further strengthens the defence version in that regard. It is pointed out by Shri Bhardwaj that even the so-called incident pertaining to Irfan is not supported by this witness. It is submitted that despite such totally non-supported version, the witness was not sought to be declared hostile.

442. It is pointed out by Shri Bhardwaj that the present witness also has been a resident of Gulbarg Society since long and he has not identified any of the persons who were alleged to be the perpetrators of the crime that he witnessed. It is pointed out that this strengthens the theory of the defence that none of the present accused who were very well known to the residents of Gulbarg Society, were in any manner involved in the perpetration of the offence. It is pointed out that it was utter

strangers if at all there were any, who had perpetrated the offence an it is claimed by Shri Bhardwaj that therefore, all the accused have been falsely implicated as an afterthought at a later stage. My attention is drawn particularly to paragraph No.12 on page No.9 of the testimony of this witness, wherein he has deposed that "H H બનાવમાં કોઈને ઓળખેલા નાફ." It is submitted by Shri Bhardwaj that this also goes a long way to establish the doubts with regard to the involvement and guilt of any of the accused herein.

443. Ιt is pointed out that directly connected to the incident of stone throwing from the Shri Dayaram Jinger's bunglow, terrace of and interconnected with the private firing allegedly done therefrom, is an incident where one Irfan Gulzarali was fatally injured by a brick allegedly thrown by one of the accused and in respect of which incident, a large number of witnesses have testified and have only succeeded according to Shri Bhardwaj, in exposing the hollowness of such allegation. It is pointed out that no less than six to seven witnesses have been examined with regard to the incident in question and all six or seven witnesses so examined have come out with an entirely different version with regard to the injury sustained by said Irfan. It is pointed out that most of the witnesses have pointed a finger towards accused No.14 i.e. Jayesh @ Gabbar, but it is pointed out that most of the

witnesses have not been able to positively identify accused No.14 as the perpetrator though they have very specifically named him in the deposition. It is submitted that in the circumstances, and more particularly in light of the contradictions that would be pointed out to the Court, none of the witnesses can be believed to have given a correct and truthful version of the alleged incident. It is submitted by Shri Bhardwaj that the star witness PW-106 Imtiyazkhan has in the course of the lengthy testimony given, narrated in details about this incident also wherein not only he claims to be an eye-witness but he also claims to have played an important role in shifting the injured Irfan to the residence of Shri Ehsan Jafri. My attention is drawn to the portion of his testimony where this witness PW-106 has positively stated that he was accompanied by PW-128 Rafig Abubakkar, PW-264 Firoz Bandeali and Shakil Kasam Mansuri and Irfan Gulzar - both of whom are stated to have died in the incident that took place on the fateful day. The witness Imtiyazkhan i.e. PW-106 has testified that the stone throwing from the terrace of Shri Dayaram Jinger's house took place at about 1:30 p.m. whereas this witness in his cross examination has conceded that he was standing together with the above named four persons near the Mosque when the said Irfan was injured by a brick thrown by accused No.14. It is pointed out that amazingly PW-106 has not mentioned the name of Rajesh Jinger as being present on the terrace or having played any role in the incident narrated

herein. It is pointed out that PW-106 claims that he remaining together with the persons who had accompanied him, lifted the injured Irfan and took him to the residence of Shri Ehsan Jafri where PW-106 claims to have given him some preliminary first aid. is pointed out that this version Ιt is contradicted by the witness himself inasmuch as, that the witness PW-106 conceded that he has not narrated this incident in the affidavit accompanying application filed before the Commissioner of an Police, Ahmedabad City. It is pointed out that this aspect is clearly controverted by the other witnesses. My attention is drawn to the testimony of PW-129 Firozmohammad Gulzarmohammad who happens to be the brother of deceased Irfan and my attention is drawn to the testimony of such witness wherein on page No.10 of his testimony, he has deposed that "ત્યારે મને સોસાયટીના એક-બે છોકરાઓએ આવીને કહેલ કે, તારા ભાઈ મદુંમદ ઈરફાનને છાતીના ભાગે પથ્થર વાગેલ છે. બંગલા નં.૧ પરથી થતો પથ્થરમારો થતા તારા ભાઈને છાતીમાં વાગેલ છે અને બંગલા નંબર ૨ પાસે તારો ભાઈ પડી ગચેલ છે. આ સાંભળીને ઠું અને મારી માતા બન્ને બંગલા નંબર બે પાસે જવા દોડેલ. અમે જતા હતા ત્યારે સોસા.ના ત્રણ ચાર છોકરાઓ મારા ભાઈને ઉંચકીને જાફરી સાહેબના ઘર પાસે લાવેવા.તેમના ઘરનો નંબર ઓગણીસ છે. ત્યાં મેં જાણેલ કે, બંગલા નંબર એક પરથી પથ્થરમારો થયેલ તેમાં તેને છાતીના ભાગે પથ્થર વાગેલ છે અને તે બેભાન થઈ ગયેલ છે. પછી મેં તેના મોઢા પર પાણી છાંટેલ પરંતુ તેને ભાન આવેલ નદિ. પછી મેં, મારી મમ્મી અને સોસા. ના છોકરાઓએ તેને

ઉंચडीने आइरी साहेजना घरमां मुडी टीधेल." It is submitted by Shri Bhardwaj that such testimony clearly establishes that the present witness together with his mother and three to four other boys who remained unidentified inasmuch as, no mention is made with regard to the presence of PW-106, who brought the injured Irfan to the residence of Shri Ehsan Jafri and the present witness claims to have sprinkled some water on the face of injured Irfan in an effort to revive him.

444. My attention is further drawn to the testimony of PW-242 Salim Abdulbhai Mansuri, more particularly on page No.5 in paragraph No.9 wherein such witness has stated that "ते पछी थोडी पारे सोसायटीना મકાન નંબર એકના ધાબા પર પચ્ચીસ ત્રીસ માણસો હતા તે લોકો પથ્થર ફેંકતા હતા તે પૈકી એક ગબ્બર નામના છોકરાએ ઇંટ ફેંકેલી જે ઇરફાન ગુલઝાર મદંમદ નામના છોકરાને વાગેલ. તેને ઈંટ વાગતા તે બેઠોશ થઈને ઢળી પડેલ જેથી ઠું અને જેકી ઉ.રફીક તેને ઉપાડીને જાફરી સાઠેબના ઘર તરફ લઈ ગયેલા. અને તેને જાફરી સાદેબના ઘરે મુકીને પાછા આવેલા." is submitted by Shri Bhardwaj that in the It circumstances, this witness also claims to have witnessed the incident where the said Irfan was injured by a brick thrown by accused No.14, but however, this witness also is silent with regard to the presence and role of accused No.65 Rajesh Jinger. It is pointed out by Shri Bhardwaj that this witness claims to have lifted the injured Irfan,

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being helped by one Jacky @ Rafiq and claims that the two of them shifted the injured to the residence of Shri Ehsan Jafri. It is further pointed out that this witness is completely silent about the presence of Firoz Gulzar, mother of Irfan as also silent about the presence of PW-106. It is pointed out that the witness has not been able to identify accused No.14 inasmuch as, despite an observation by the Court that all accused are present, the witness has claimed that accused No.14 was not seen in the Court.

445. It is submitted that the testimony of PW-128 Mohammad Rafig at Exh.633 further contradicts the versions. My attention is above drawn to paragraph No.9 on pages No.7 and 8 of his deposition wherein it is deposed that " आशरे દોઢેક વાગે ટોળુ આગળની સાઈડે રાજેશ જીંગરના ધાબા પર થી પથ્થરમારો કરતુ હતુ તે મકાન નં. ૧ પરથી પથ્થરમારો કરતુ હતુ તેમાં અમે ગબ્બર અને રાજેશ દયારામ જીંગર અને બીજા લોકો હતા. તેઓ ટોળાને અંદર ઘુંસવા માટે ઉશ્કેરણી કરતા હતા. હું ગબ્બર અને રાજેશ દયારામને ઓળખું છું. તે સમયે ગબ્બરે એક છુટી ઇંટ ફેંકતા તે ઇરફાન ગુલઝારભાઈને વાગેલ તેથી ઇરફાન ત્યાં પડી ગયેલ. તેને દું અને સોસા.ના બીજા લોકો જાફરી સાહેબના ઘરમાં લઈ ગયેલા. ત્યાં તેને પ્રાથમિક સારવાર આપેલી." It is pointed out by Shri Bhardwaj that such deposition clearly indicates that it was the present witness and other persons of Gulbarg Society who remain unnamed by the witness, who shifted the injured Irfan to Shri Ehsan

Jafri's residence after the said Irfan sustained injury. It is pointed out that this witness, as above, has discarded the presence of the other witnesses who claim to have been present and who claim to have played a role in shifting the injured Irfan to the residence of Shri Ehsan Jafri. It is conceded that the present witness has identified both accused Nos.14 and 65. It is submitted that the witness has conceded that in all statements recorded upto 11/06/2002, the names of the accused were not provided nor was any particular about the incident provided.

446. It is pointed out that there has been a deliberate attempt to falsely rope in the accused and one more example is with regard to the alleged involvement of accused No.65 Rajesh Jinger into the present offence. My attention is drawn to the testimony of PW-107 Mrs.Rupaben Modi at Exh.548 wherein she has very categorically deposed with regard to the incident of stone throwing, wherein on page No.11 in paragraph No.15, she has deposed that "તે પછી અમને ઘરમાં રહેવાનું જોખમ લાગતા અમે સીડી વાટે જતા હતા ત્યારે જાળી પાસે ઉભેલા ટોળાના માણસો લાકડીઓમાં બાંધેલ સળગતા કાકડાના ગોદા મારતા હતા. સીડી સાંકડી હોવાથી એ લોકોથી બચીને અમે વારા ફરતી ઉપરના માળે જતા હતા. તે સમયે બહારથી એક સળગતો કાકડો મારા મોં પર આવીને વાગેલ. જેનાથી મારુ મોં દાઝી ગયેલ. દું ઉપર જતી હતી તે સમયે સોસા.ની બહારની સાઈડે આવેલ દુકાનોના ધાબા

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પરથી જે જાફરી સાઠેબના ઘરના કોટને અડીને આવેલ છે ત્યાં બઠુ મોટુ ટોળુ ઠતુ. તે લોકો પથ્થર, એસીડની બોટલો અને સળગતા કાકડા ફેંકતા ઠતા. તે સમયે એ બાજુ નજર કરતા મને માથાના ભાગે એક પથ્થર વાગેલ. જે પથ્થર રાજેશ મોચીએ મારેલ. ઠું રાજેશ મોચીને સારી રીતે ઓળખું છું."

447. It is submitted that such deposition would clearly establish that she had identified wrongly and in contradiction to the previous testimony of other eye-witnesses with regard to the location of the place of stone throwing. According to this witness, such stone throwing took place from the terrace of a shop near the compound wall opposite to Shri Ehsan Jafri's residence and the witness has further deposed that she got injured by a stone pelted from such place by one Rajesh Mochi whom she claims to know "very well". It is pointed out that consequent to the arraignment of accused No.65 as accused herein, this witness an conveniently converted the said Rajesh Mochi into Rajesh Jinger which is reflected on page No.59 in paragraph No.72 of her testimony where she claims to have been injured by a stone pelted by Rajesh Jinger whom she further claims to be in a position to identify. It is pointed out that the witness was thereafter directed by the Court to identify the accused from amongst those present in the Court and it is specifically observed by the Court that the person whom she identified as Rajesh Jinger, was

established by due verification by the Court to be one Bharatsinh Laxmansinh Gor - accused No.55. It is submitted that this clearly establishes the blatant and audacious attempt on the part of the witnesses to falsely rope in persons as accused according to their convenience.

448. It is submitted that the witness has further conceded on page No.78 of her cross examination in paragraph No.103 that she had inadvertently omitted to mention the name of accused No.65 as the person who had caused her the injury by stone pelting and that such version was not included in the affidavit of the said witness filed before the Hon'ble Supreme Court of India. It is submitted that though the witness claims to have sufferred some burn injuries and a head injury on account of stone pelting, she is not supported by medical evidence in the form of medical certificate on the record of the proceedings which would support the witness having sustained such injuries.

449. My attention is drawn by Shri Bhardwaj to the testimony of PW-289 Nadim Tassadukhussain Surohi at Exh.995. It is pointed out by Shri Bhardwaj that this witness has supplied yet another version of the sequence of events relating to the alleged stone throwing incident and injury caused to Irfan and the role of his alleged rescuers who are attributed to have shifted the injured Irfan to the residence of Shri Ehsan Jafri. My attention is

firstly drawn to paragraph No.10 of the testimony of PW-289 on page No.6 wherein he has stated that "બપોરના ૧-30 વાગ્યાના સુમારે સોસા.ના મકાન નંબર એક પર કેટલાક માણસો ચઢી ગયેલા. અને ત્યાંથી પથ્થરમારો શરુ કરેલ. પછી ત્યાંથી તેમણે જોયુ તો અંદર વધારે માણસો નથી. જેથી બહાર વાળાને ઘુસી જવા માટે બુમો પાડતા હતા. તે પછી ટોળાએ મોટા દરવાજાથી અંદર પ્રવેશવાની કોશિષ કરેલ. ત્યારે એક નંબરના મકાન પર જે માણસો ચઢેલા તેમાંથી કોઈએ કશુંક માર્યુ તો મારી સાથે જે છોકરો હતો જેનું નામ ઈરફાન ગુલઝારભાઈ છે તેની છાતીમાં તે વાગેલ અને તે નીચે પડી ગયેલ. તે પછી તેને શકીલ મનસુરી, રફીક મનસુરી, ઈમ્તીયાઝખાન તે ત્રણે તેને ઉપાડીને જાફરી સાઠેબના મકાન તરફ ગયેલા. તે પછી હું પણ ત્યાંથી આગળ ગયેલ. મને પણ કપાળ પર સામેથી આવેલ પથ્થરનો એક ઘા થયેલ. જેથી હું પણ જાફરી સાઠેબના મકાન તરફ દોડેલ."

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450. Submitting on this portion of the testimony, Shri Bhardwaj has pointed out that this witness has talked about the mob having climbed on the terrace of Bunglow No.1 but has made absolutely no mention with regard to the persons i.e. either Rajesh Jinger or Gabbar but has attributed an entire mob to have climbed up the terrace of the Bunglow No.1. It is pointed out further by Shri Bhardwaj that according to this witness who also claims to be eye-witness, the witness has specifically an testified that somebody from Bunglow No.1 threw something which caused injuries to Irfan, and no

person has been identified as the perpetrator nor is the element thrown at Irfan identified and a vague reference is made with regard to "somebody" throwing something which caused injury to Irfan. Ιt is pointed out that this eye-witness has shown his ignorance with regard to the perpetrators of the incident. It is pointed out that the present witness Nadim Surohi attributes that one Shakil Mansuri, Rafiq Mansuri and PW-106 Imtivazkhan took the injured Irfan Gulzarbhai to the residence of Shri Ehsan Jafri and that the present witness Nadim also followed them on account of being struck on the head by a stone and he too went into the Bunglow of Shri Ehsan Jafri. It is pointed out that the present witness Nadim is the son of Tassadukhussain Surohi and Tassadukhussain Surohi as stated herein before, has already claimed that he was instrumental in injured Irfan to safety. escorting the It is, therefore, according to Shri Bhardwaj, very strange that a son does not recognize his father who was claimed to be instrumental in taking injured Irfan to safety. It is pointed out that strangely none of the other witnesses recount or have testified having seen Nadim at the place of the incident nor has anybody testified with reqard to any injury sustained by Nadim in such stone throwing. Even his own father Tassadukhussain Surohi, according to Shri Bhardwaj, has not testified with regard to the presence of Nadim nor with regard to any injury sustained by Nadim in such stone throwing.

Judgment

451. It is pointed out by Shri Bhardwaj that on page No.5 in paragraph No.8 of the testimony of this witness PW-289, the witness has clearly identified accused No.14 Gabbar as being present amongst the mob which had gathered outside the Gulbarg Society. It is, therefore, according to Shri Bhardwaj, required to be inferred that the present witness knew and was in a position to identify accused No.14 Gabbar, but however, this witness, at repetition, has not placed either the cost of accused No.65 Rajesh Jinger or accused No.14 Gabbar on the terrace of Bunglow No.1 nor has he attributed either of them to have pelted stones which caused injuries to Irfan. It is pointed out that in such circumstances, it is required to be noted that the witness has denied the fact that in his statement recorded before the SIT on 31/05/2008, the names provided in his examination-in-chief in the Court, were never provided to the officer recording his statement, a fact which is confirmed from the testimony of IO of the SIT Shri J.M.Suthar. It is pointed out that in the circumstances, post 2008, this witness like all other witnesses, was tutored to point fingers at particular persons whose names he had never provided at earlier stage even before the SIT. It is submitted that in such circumstances and more so when this witness is contradicted and the presence of this witness is not acknowledged even by his own father, he cannot be treated as a reliable witness and his testimony also should be discarded.

452. Drawing my attention to the testimony of PW-234 Anisfatimaben at Exh.813, who happens to be the wife of PW-213 Tassadukhussain Surohi and the mother of PW-289 Nadim Surohi, it is pointed out that this witness PW-234 has clearly testified on page No.3 in paragraph No.6 in her testimony that "આ બધા રુમો માણસોથી ભરાઈ ગયેલા હતા. તે સમયે મારા પતિ ક્યાં ગયેલા તે ખબર નથી. તેઓ અમારી સાથે ન હતા. તે પછી મેં મારા पतिने छेह्वे अभे ઉपरथी नीचे उतर्या त्यारे कोचेला." It is pointed out that this means that the witness PW-234 had not seen her husband or son during the period beginning from 11:00 a.m. till after 4:30 p.m. when the Police arrived and all those taking shelter on the terrace of Shri Ehsan Jafri's residence, came down. It is pointed out that this is in direct contradiction to the testimony of PW-213 Tassadukhussain Surohi who has clearly testified on page No.27 in paragraph No.44 of his testimony that "H' જાફરી સાહેબના મકાનમાં પ્રથમ માળેથી જે કાંઈ બનાવ બનેલા જોયા તે મેં તેમના સોસા. તરક આવેલા રુમમાંથી જોયેલ. મેં પ્રથમ માળે આવેલ ગેલેરીની ગ્રીલમાંથી સોસા.ના આગળના ભાગના બનાવ જોયેલા. આ સમયે બપોરના ત્રણેક વાગ્યાનો હશે. આ સમયે મારો દિકરો નદીમ તેમજ મારા પતિન પણ મારી સાથે Edl." It is submitted that it can be, therefore, that PW-213 specifically and categorically seen states that his wife and son were with him when he witnessed the incident from the first floor of the

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residence of Shri Ehsan Jafri.

453. It is reiterated by Shri Bhardwaj that all these witnesses have neither been offered for re-examination to clarify any ambiguity nor they have been in any manner declared hostile by the Prosecution and therefore, it is required to be inferred that the Prosecution has accepted the versions of each witness as genuine and correct.

454. submitted that on the other Tt. is hand, PW-289 Nadim claims in paragraph No.13 of his testimony that he went up to the upper portion of the residence of Shri Ehsan Jafri where he claims to have seen others but strangely does not recount or recollect having seen his own father or mother present at such place. It is submitted that this is extremely strange inasmuch as, the first floor portion of Shri Ehsan Jafri's residence was not so large that he could not have seen either of them amongst the other persons present there. Ιt is submitted that this also goes a long way to show that all the witnesses have deposed in a manner that is counter-productive to the testimony of the previous witnesses.

455. It is pointed out by Shri Bhardwaj that an entirely contradictory and different version is provided by the husband-wife duo of Sairaben Sandhi i.e. PW-177 at Exh.711 vis-a-vis the testimony of her husband Salim Sandhi i.e. PW-191 at

Exh.734, with regard to the incident of stone throwing from Bunglow No.1 and the alleged injuries sustained by them in such stone throwing.

456. My attention is particularly drawn to the testimony of PW-177 Sairaben Sandhi where she has narrated on page No.8 in paragraph No.10 that "સોસા.ના મકાન નંબર એક દયારામ જીંગરનું આવેલ છે. ત્યાં ટોળાના માણસો ધાબા પર ચડી ગયેલા. ત્યાં ધાબા પરથી ટોળાએ સોસા.માં પથ્થરમારો શરુ કરેલ. મેં તે ટોળામાં રાજેશ જીંગર, ગબ્બર અને અંબેશને ઓળખેલા. આ લોકો ટોળાને સોસા.માં ઘુંસી જવા માટે ઉશ્કેરણી કરતા હતા. હું આ ત્રણ જણને ઓળખી શકુ. રાજેશ જીંગર પોલીસની નોકરી કરતો હતો. કોર્ટમાં હાજર આરોપીઓ પૈકી આરોપી ગબ્બરને ઓળખી બતાવું છું આરોપીને તેનું નામ પુછતા ગબ્બર ઠોવાનું જણાવે છે. કોર્ટમાં ઠાજર આરોપીઓ પૈકી આરોપી અંબેશને હું ઓળખી બતાવુ છું. આરોપીને તેનું नाम पूछता अंजेश होपानं अष्टापे છे." It is pointed out that she has further testified on page No.8 in paragraph "મકાન નંબર એક પરથી થતા પથ્થરમારાથી અમારી that No.11 સોસા.ના ગુલઝારભાઈના દિકરા ઈરફાનને છાતીમાં પથ્થર વાગેલ જેથી ત્યાંજ ઢળી પડેલ તેને અમાર સોસા.ના બીજા છોકરાઓ ઉચકીને જાકરી સાદેબના મકાન પાસે લઈ ગયેલ. તે વખતે મારા જમણાં પગના ઘુંટણ પર મને પણ પથ્થરની ઈજા થયેલ. મારા પતિને હાથના તથા પગના ભાગે પથ્થર વાગતા પગમાં ફ્રેક્ચર થયેલ. મારા દિકરા મહંમદદૂસેનને ખભા પર એક ઈંટ વાગેલ. મારા દિચર જહાંગીરભાઈને માથામાં એક પથ્થર વાગતા તે બેહોશ થઈને

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નીચે ઢળી પડેલા. જહાંગીરભાઈને હું તથા તેમના પત્નિ મારા દેરાણીએ ભેગા થઈ ઉંચકીને ફ્લેટ તરફ જવા લાગેલા. પરંતુ ટોળુ અદિ આવી જશે તેવી બીક લાગતા અમે જાફરી સાહેબના ઘર પાસે લઈ ગયેલા. ત્યાં લઈ જઈ તેમના મોં પર પાર્ણી છાંટતા તેઓ હોશમાં આવી ગયેલા." It is submitted that in such circumstances, it can be categorically pointed out that this witness claims to have been injured together with her husband and one Jehangirbhai in the incident of stone throwing that commenced after 1:30 p.m. It is submitted that however, the witness has not identified any perpetrator as specifically having caused injury to Irfan Gulzarbhai. It is pointed out further by Shri Bhardwaj that this witness has also not identified any of the persons who escorted such injured Irfan to safety and to the residence of Shri Ehsan Jafri, as is claimed. It is submitted that the entirely contradictory and self-defeating version is supplied by her husband Salim Sandhi who is PW-191 in his testimony at Exh.734, in paragraph No.9 on page No.5, wherein he has testified that "आ धरभियान रेल्पे લાઈન તરફથી પણ રેલ્વેના પથ્થરોથી પથ્થરમારો થતો હતો. તેથી હું અને મારો દિકરો મહંમદહુસેન ઈન્જર્ડ થયેલા. જેમાં મને દાથે અને પગે વાગેલ હતુ. અને મારા દિકરા મહંમદને માથા પર અને ખભા પર વાગેલ અને લોદી नीडणेत. આ સમયે અગીયાર વાગ્યા हशे." It is submitted that this version clearly destroys the version of his wife Sairaben who claims that her husband was injured in the stone throwing that took place after

11:30 a.m. and from the Bunglow No.1 whereas this witness himself attributes his injury to having been sustained on account of the stone pelting that

sustained on account of the stone pelting that allegedly took place at 11:00 a.m. from the rear portions of the Society where the railway lines were located and the railway ore is claimed to be the weapon thrown which caused the injuries. It is pointed out that even the injuries to the said Irfan according to this witness, took place in such manner at such time since he has further narrated that a separate incident of stone throwing took place at about 1:30 p.m. from the terrace of Bunglow No.1 of Dayaram Jinger. My attention is drawn to such portion of the testimony of the witness in paragraph No.10 on page No.6, wherein he has deposed that "તે પછી અમારી અમારી સોસા.માં ઈરફાન ગુલઝારભાઈને એક પથ્થર છાતીએ વાગતા તે પડી ગયેલ તેથી સોસા.ના છોકરાઓ ઉંચકીને તેને જાકરી સાહેબના ઘરે લઈ ગયેલ. આ સમય દરમિયાન મારા દિકરાને પથ્થર વાગવાથી લોહી નીકળવાથી તે મસ્જીદમાં આડો પડેલ. પછી મેં તેને ત્યાં જઈને પાણી પીવડાવેલ. તે પછી મકાન નંબર એક પરથી પથ્થરમારો થતો હતો. તે સમય બપોરના એક ત્રીસ વાગેલા. જેમાં રાજેશ દયારામ જીંગર હતો. આ ટોળુ પથ્થરમારો કરતુ હતુ અને ટોળાને સોસા.માં ઘુંસી ଏସା ଓ୧ଛି୧ତା ୫୧ଗୁ ଟ୍ରୁ." It is submitted by Shri Bhardwaj that this witness has not identified anybody other than accused No.65 Rajesh Jinger as being present on the terrace of Bunglow No.1 during such incident. It is pointed out that this witness also has not identified or specifically pointed a finger to any

accused much less accused No.14 Gabbar as being the person who inflicted the injury upon Irfan. It is submitted that it is yet again required to be noted that neither of these witnesses, was declared to be hostile nor was any re-examination carried out of such witnesses. My attention is also drawn to the testimony of PW-191 Salim Sandhi on page No.10, paragraph No.15, wherein he has deposed that "भने વાગેલ તે રાહત કેમ્પમાં ચાલતા દવાખાનામાં તેની સારવાર કરાવેલ ત્યાં મને ਪਟਿਗ ਮਹੇਟ **"** มเวเ Τt. is submitted that in the circumstances, the hollowness of the testimony of the wife of this witness is clearly exposed inasmuch as, his wife claims that her husband was injured in the same incident where she was injured as also where her son was injured as also where the deceased Jehangirbhai was injured, but the present witness PW-191 has thus testified that he got news about the demise of his family member Jehangirbhai and others for the first time in the relief camp while undergoing treatment where he met his wife.

457. It is pointed out that PW-191 Salim Sandhi has not narrated any aspect with regard to the alleged incident of the murder and rape of Firdausbanu and the murder of Shahejadali or the murder and rape of any other woman as is testified to by his wife Sairaben i.e. PW-177, and it is submitted that it is unnatural that a husband and wife would not exchange such information if at all they were eye-witnesses to any such incident. It is

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submitted that in such circumstances, the only inference that a prudent man can draw is that they are both got-up witnesses and not have been eyewitnesses to any incident, much less the incident claimed to have been seen during the course of their testimony. It is submitted that such a strange and unnatural conduct is applicable to all sets of husband and wife, mother and son, father and son in the form of so-called eye-witnesses where the incidents not seen by others has never been narrated them by their family members who to are eyewitnesses to such other incidents. It is submitted that such conduct is unnatural and clearly supports the defence theory that each witness was handpicked and selected to testify only about a particular incident and nothing beyond that. It is submitted that in such circumstances, the entire testimony of these witnesses is required to be discarded.

458. It is pointed out by Shri Bhardwaj that there was no pressure or fear at least post 2008 till the time such witnesses came to depose in the Court and in such circumstances, it is all the more unnatural that these witnesses would not in any manner narrate any incident to their near and dear ones.

459. My attention is drawn to the testimony of PW-191 in paragraph No.59 on page No.45, wherein the witness has admitted *inter alia* to the effect that in his statement recorded before the Police on

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06/03/2002, he has not stated about the incident regarding the injury to Irfan which was narrated only subsequently and therefore, it is required to be inferred that the entire incident as narrated by the witness was a tutored version and cannot be believed.

460. attention is drawn Μv to the observations of the Court made on page No.31 of the testimony of PW-191 wherein, the Court has observed inter alia to the effect that the witness has started denying with regard to his statement on 13/03/2002 even before any question was asked with regard thereto. It is submitted by Shri Bhardwaj that this clearly indicates that the witness is tutored beforehand to simplicitor denv any particular statement which could damage their subsequent versions. Ιt is submitted that incidentally PW-191 disclaims any knowledge of any injury to his wife whereas his wife PW-177 Sairaben Sandhi claims that she was injured at about the same time as her husband and son as also deceased Jehangirbhai were injured.

461. My attention is further drawn to the testimony of PW-191 in paragraph No.61 on page No.48, wherein the witness has clearly conceded *inter alia* to the effect that he in his affidavit which accompanied his application to the Commissioner of Police, has not referred to any injuries being sustained by him or his son in the

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alleged incident of stone throwing involving the accused No.65 Rajesh Jinger. It is submitted that it is, therefore, evident that in light of such major contradictions emerging from the testimonies of PWs 191 and 177 despite they being husband and wife, it is clear that neither of them was in any manner present at the time of the incident nor had they been eye-witnesses to the incident as is falsely claimed. It is pointed out that the witness has further conceded in paragraph No.64 of his cross examination that he did not narrate the incident of the injury to Irfan in his affidavit accompanying application to the Commissioner of the Police, Ahmedabad, nor is the presence of accused No.65 Rajesh Jinger narrated in such affidavit.

462. is pointed out by Shri Bhardwaj Ιt that though not strictly speaking, related to the incident of stone throwing involving accused No.14 and 65, the evidence of PW-191 Salim Sandhi at Exh.734 is also required to be examined from the point of view of inconsistencies and unrealistic sequence of events as projected by the witness himself which are subsequently completely exposed and contradicted in the course of his cross examination and an analysis of such evidence would leave no other room for any doubt that the witness has not seen any incident and has only been propped up as a tutored witness. It is pointed out that the witness claims to have been injured in a stone throwing incident that took place at about 11:00

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a.m. and his son is also claimed to have been injured in the same incident where he was escorted to a Mosque for treatment and after which, according to this witness, the son was brought over to the residence of Shri Ehsan Jafri. It is pointed out that it is claimed by his wife Sairaben i.e. PW-177 that she was within the residence of Shri Ehsan Jafri right after being injured in an incident of stone throwing at 1:30 p.m. where even her husband brother-in-law was an injured party and her Jehangirbhai and sister-in-law Zarinaben, all were in the residence of Shri Ehsan Jafri and that Jehangirbhai had sustained serious injuries on his face in the stone throwing but was reviving at the residence of Shri Ehsan Jafri. It is submitted that this is completely contradicted by her husband Salim Sandhi i.e. PW-191 who claims to have seen his sister-in-law Zarina at about 2:30 p.m. near a water tank in the Society and further claims to have seen his wife Sairaben at about 3:00 p.m. near the residence of Shri Ehsan Jafri. It is submitted that the witness further claims to have seen his sisterin-law Zarina and brother Jehangirbhai near their burning autorickshaw at about 2:30 p.m. whereas on the other hand, the witness, as stated above, has admitted in his cross examination that he came to know of the death of Zarina and Jehangirbhai for the first time only when his wife conveyed such news to him at the relief camp. It is submitted that this exposes the hollowness of the claims of PWs 191 and 177 to be eye-witnesses. It is further pointed out

that PW-191 Salim Sandhi on page No.34 in paragraph No.42 of his testimony, has clearly testified that he walked into the residence of Shri Ehsan Jafri at 3:25 p.m. precisely. It is pointed out that if all the other witnesses including the star witnesses are to be believed, this was the time when the incidents of violence were at their peak when the entire Jafri residence of Shri Ehsan completely was surrounded from all sides according to the eyewitnesses, by the mob and the accused who were part of the mob, are particularly attributed to have committed rape and multiple murders during the said peak period of violence. It is submitted that it is unnatural and unrealistic that this witness PW-191 would have been permitted to walk into the residence of Shri Ehsan Jafri from outside without anybody accosting him or without his sustaining any injury whatsoever during such walk into the residence of Shri Ehsan Jafri. It is pointed out that according to some of the so-called eye-witnesses, the entire residence of Shri Ehsan Jafri and more particularly the first floor was gutted and set on fire and therefore, this makes it very difficult to comprehend as to how the witness walked into the residence of Shri Ehsan Jafri at 03:25 p.m. as claimed. It is pointed out that in the it is clear that the witness was circumstances, nowhere near the place of the incident, had no idea of the correct state of affairs and has only testified in a manner only to lend credibility to the case of the Prosecution. It is submitted that in

the circumstances, the testimony of this witness be discarded completely.

463. attention is My now drawn to paragraphs Nos.26 and 27 of the examination-in-chief of PW-177 Sairaben Sandhi, wherein according to Shri Bhardwaj, the witness has conceded that the names of accused No.14 and accused No.32 are introduced or given to the SIT for the first time. It is submitted that this is a convenient way of introducing more accused post 2008. It is pointed out that the witness has further conceded on page No.68 of her cross examination that even in her affidavit before the Shah Commission as also the affidavit dated 14/11/2002, the names of accused Nos.14 and 32 were It is pointed out further that not given. in paragraph No.70 of her cross examination, the PW-177 has conceded that she did not mention the names of accused Nos.14 and 32 in her affidavit filed in November, 2002. My attention is drawn to paragraph No.91 of the cross examination, where the witness in her affidavit before the accepted that has Commissioner of Police, the witness admits that the mob had broken open the walls of the Society and entered into the Society by about 1:30 p.m. It is submitted that this time is inconsistent with her deposition in the Court, and further she has the termity according to Shri Bhardwaj, to state that her affidavit on oath was not correct. It is pointed out that in any case, no medical certificates or medical evidence is available on the record to

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establish the injuries sustained by PWs 177 and 191. It is pointed out that in context of such lack of evidence, is her admission on page No.69 of her cross examination that she had not mentioned to the SIT about her injuries or injuries sustained by her husband including a fracture, which assumes significant importance inasmuch as, these injuries appear to be non-existent and are an afterthought. Τt. is submitted that the TO of the SIT Shri J.M.Suthar has clearly admitted in paragraph No.139 of his deposition that no such injury was disclosed to the SIT by PW-177.

464. My attention is drawn to the testimony of PW-240 Aslam Kasambhai Mansuri at Exh.829 and it is pointed out that this witness in fact is required to be accepted as a truthful witness and a person who has resisted all attempts to wrongly implicate any accused and has tried to remain glued to the correct version of events and it is required to be noted, according to Shri Bhardwaj, that this witness even today contrary to the other so-called eyewitnesses, is still residing in Gulbarg Society and it is pointed out that this witness was on account of his not coming out with a version in the course of recording of his testimony before this Court, in manner not suitable or convenient to the а Prosecution, was sought to be declared hostile. It is submitted that from the testimony of this witness, it clearly emerges that the witness has lost his own mother in the incident and that he was

required to identify the dead half burnt body of his mother which body had lost both legs despite which the witness has chosen not to falsely implicate any of the accused. It is submitted that the witness had no incentive to lie or protect any of the accused more particularly when he had lost his own mother in the incident. It is submitted that this witness has clearly denied pointing a finger at any of the accused herein as being the perpetrators of any incident. It is pointed out that the witness admits to have been present all throughout till the time the incident died down, at Gulbarg Society but rightly has refrained from exaggerating the events and has testified that he was in no position to give any specific details since he was on a terrace of the property of Gulbarg Society and he came down only after the Police arrived. It is submitted that the brother of the present witness Rafiq is attributed by PW-289 Nadim to have helped him (Nadim) to move the injured Irfan to the residence of Shri Ehsan Jafri, but such Rafiq Mansuri was not examined by the Prosecution despite being cited as a witness only because of the version supplied by his brother Aslam and it is urqed that in the circumstances, the testimony of Aslam i.e. PW-240 is required to be accepted as the correct sequence of events where all incidents, as suggested, have indeed taken place, large number of people have lost their lives, large scale damage has been caused to properties and vehicles of the residents of the Gulbarg Society but there is also the inescapable

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fact emerging from the testimony of this witness that none of the perpetrators could be identified by the witness despite the witness staying in the Society long before the incident and being in a position to identify the perpetrators if they were amongst the accused. It is pointed out that this version is required to be treated as a more acceptable version more particularly in light of the contradictions emerging from the testimonies of the witnesses referred to herein before.

465. My attention is now drawn to the testimony of PW-264 Firoz Bandeali who is examined Exh.916, who is also a resident of Gulbarg at Society, and my attention is drawn to the fact that he too like PW-240, has clearly testified in a manner that is not convenient to the Prosecution. It is pointed out that the witness claims to have witnessed all the incidents which have taken place but has not been able to identify any of the perpetrators from amongst the accused. It is pointed out that this witness too had no reason to not identify the accused and naturally not having supported the Prosecution version, this witness also was sought to be declared hostile and even in his cross examination, the Prosecution was not able to bring out names of any of the accused as the perpetrators of any incident. It is submitted that this witness has also not mentioned any role played by accused Nos.14 and 65 or of an incident of stone throwing from Bunglow No.1 of Gulbarg Society. It is

submitted that this witness has, therefore, supported the defence version that the perpetrators were amongst unidentified persons who had com from outside the locality and had perpetrated these offences. It is submitted that looking to the large scale contradictions, this version is required to be treated as a more logical and acceptable version.

466. My attention is drawn to the testimony of PW-241 Firoz Dilawer Shaikh at Exh.831, who according to Shri Bhardwaj, is the only witness who suggestion with regard to has even made а а conspiracy having taken place between the accused and others to perpetrate the offence pertaining to the Gulbarg Society. It is pointed out that this witness does not make any head or tail and in fact solely been instrumental in destroying the has also destroying conspiracy theory and the Prosecution case against accused No.50 Kapil Munna by testifying in the manner that he has done so. It is pointed out that this witness has not been declared hostile and therefore, whatever he has deposed, is required to be accepted as truth and is required to be believed as palatable evidence. My attention is drawn to paragraph No.3 of the testimony of PW-241, where the witness has deposed that "તા. ૨૮/૨/૦૨ ના સવારના સમયે હું મારા ઘરે હતો ત્યારે સવારના નવ દસ વાગે હું મારા ઘરેથી નીકળી બહાર આવી રીક્ષામાં બેઠો હતો. રીક્ષામાં સાથે મારો મિત્ર હતો જેના નામની મને ખબર નથી. હું બેઠો હતો

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તે સમયે અમારી સાથે રહેતો કપીલ નામનો છોકરો અમારી પાસે આવેલ. तेनी साथे तेनो એક मित्र हतो तेना नामनी मने जजर नथी. मारी साथे બેસેલ મિત્ર તેનો મિત્ર હતો તેણે આ કપીલે આવીને જણાવેલ કે, ચાલ આજે મીટીંગમાં જવાનું નથી ચાલ આજે મીટીંગમાં જવાનું નથી. તેમ જણાવેલ. મીંચાકો મારનેકે મીટીંગમાં જાના હૈ તેમ કહેલ. તેમ કહીને કપીલ જતો રહેલ. તે પછી ઠું મારી સાથે મારો મિત્ર એક કાલુ મારવાડી ઠતો તેની સાથે તેના ઘરે જતો રહેલ." It is pointed out that that this testimony clearly establishes that the socalled ingredients and elements of a conspiracy were initiated at about noon on 28/02/2002. Tt is submitted that this sounds ridiculous inasmuch as, it is the Prosecution case supported by a large number of so-called eye-witnesses' testimony that the incident had started around 9:00 a.m. on 28/02/2002. It is submitted that therefore, the version of the witness that accused No.50 Kapil Munna was boasting about attending meeting where it was planned to kill Muslims could not have been done so since the same does not make any logical sense since the same is attributed to have taken place at a time subsequent to 12 noon. It is submitted that there is no support to the version of this witness, material on the aspect of the other three no passengers of the autorickshaw in which the witness claims to have been sitting and if the incident had already started as is the Prosecution case, there was no reason as to why the person who was publicly proclaiming to attend a meeting where it was going

conspire to kill members of the minority to community would not have touched or threatened the present witness. It is submitted that this witness has clearly taken away any role played by accused No.50 since according to this witness, accused No.50 sitting firstly in the autorickshaw was and thereafter he had gone away therefrom. It is pointed out that in such circumstances, the presence of accused No.50 as being a part of the mob since the very beginning, therefore, is contradicted grossly by the testimony of this witness. It is submitted that in such circumstances, this witness makes a laughing stock of the conspiracy theory and it is pointed out that in the circumstances, the defence version that it was a spontaneous action which led to the perpetration of the incident at Gulbarg Society and that too according to Shri Bhardwaj, was instigated only by the firing from a private weapon by the deceased Shri Ehsan Jafri that spurred the mob into taking such actions which resulted in loss of life and destruction of property to the extent that took place in the incident herein. Tt. is pointed out that the defence does not deny the taking place of such incidents, the events which led to such large scale deaths, but it is pointed out that the role of the accused in the incidents is what is being denied. It is submitted that from the contradictions emerging from this entire set of evidence, the entire Prosecution case is now full of grave and serious doubts and it is urged that in the circumstances, benefits must go in favour of the

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defence.

467. My attention is drawn to paragraph No.4 of the testimony of this witness wherein even he concedes that his friend Kalu Marwadi had tried to shield him and protect him but the witness declined to take shelter at the residence of such Kalu Marwadi and in fact chose to come to his own residence. It is pointed out that this also to a great degree supports the defence theory that the persons from the nearby localities belonging to the majority community were not interested in bringing harm to Gulbarg Society and had in fact given shelter to the members of the minority community known to them from the mob. It is submitted that this aspect should be considered while deciding the fate of the present proceedings.

468. Ιt is submitted that the present witness is contradicted by his own father Dilawer Shaikh who is examined as PW-282 and who has clearly testified that after the incident relating to the Ankur Cycle Works stabbing, all the members of the family of Dilawer Shaikh were scared and therefore, at about 9:00 a.m. all the family members took shelter in the residence of Shri Ehsan Jafri. It is submitted that therefore, if all family members had taken shelter as is testified, then the present could not witness have been sitting in the autorickshaw of Hindus at 12 noon as is claimed. It is pointed out that this witness has only referred

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to the incidents where the mob was indulging in violence but has not named a single person as the perpetrator from amongst the accused. It is pointed out that the witness was in a position to at least identify accused No.50 Kapil Munna since he is referred to by name and identity as the person who was the initiator or part thereof of the conspiracy, the witness could have positively identified accused No.50, was he really a member of the mob and it is pointed out that this also is a serious flaw in the Prosecution case. It is pointed out that this witness has further testified that he along with other residents of Gulbarg Society, had climbed upon a terrace and were in turn responding to the stone throwing by throwing stones at the mob from the terrace. It is submitted that this witness has not incident concerning the referred to any stone throwing involving accused Nos.14 and 65 and does not refer to any injury sustained by Irfan despite claiming to be within the Society and indulging in cross stone throwing. It is submitted that in the circumstances, his very presence is doubtful. It is submitted that even the incident of private firing is not supported by this witness. It is submitted that the witness has further testified to have gone into the residence of Shri Ehsan Jafri and despite which the witness has not narrated witnessing any incident that took place related to and concerning the residence of Shri Ehsan Jafri. It is pointed out that the witness also claims to have shut the main door to the residence of Shri Ehsan Jafri and it is

submitted that no explanation is forthcoming as to what transpired thereafter.

469. My attention is drawn to paragraph No.5 of the testimony of the witness PW-241 which runs as "જેથી હું એઠસાન જાફરીના મકાનમાં જતો રહેલ. તે મકાનમાં હું ગયો ત્યારે પાંત્રીસ ચાલીસ માણસો હતા. અમે મકાનમાં ગયા બાદ મકાનનો દરવાજો બંધ કરી દીધેલ. તે સમયે બઠાર ટોળુ આવેલ. તો લોકોએ મકાનને આગ લગાડેલ. તેનાથી ખુબ ધુમાડો થયેલ અને મકાનની અંદર પાંત્રીસ ચાલીસ માણસો હતા તે માણસો મરણ ગયેલ. હું પણ દાઝી ગયેલ."

470. It is submitted that therefore, the entire improbable event of persons being hacked to pieces by the mob when they rushed outside, is completely exposed from the testimony of this witness more particularly in light of the fact that this version has remained unchallenged and if uncontroverted and the witness has not been declared hostile by the Prosecution, it is clear that the Prosecution has accepted this version as the correct version and it is urged that if this is the correct version, then this gives a completely different theory to the incident. It is pointed out by Shri Bhardwaj that according to this witness who is required to be believed, since large number of bodies were recovered from within the residence of Shri Ehsan Jafri, all such persons within the

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residence of Shri Ehsan Jafri died on account of smoke inhalation and asphyxiation on account of the house being set on fire. It is submitted that in the circumstances, this is a completely contrary theory which has come up during the testimony of the witness who supplies a second and third version to the sequence of events as they took place. This witness has again, according to Shri Bhardwaj, not identified any persons from amongst the mob who set the house on fire.

471. My attention is drawn by Shri Bhardwaj to the fact that the so-called conspiracy theory testified to by the witness PW-241 Firoz Dilawer Shaikh, has emerged on the record of the present proceedings in its entirety for the very first time when the witness deposed in the Court. My attention is drawn to paragraph No.17 of the testimony of the witness on page No.9, wherein the witness has testified that "હું રાહત કેમ્પમાં રહ્યો તે દરમિયાન ગુલબર્ગ સોસા.ના આ રઠીશોને કપીલે તેના મિત્રને મીંચાઓને મારવાના છે તેની મીટીંગમાં જવાનું તેવી વાત કરેલ તેવી કોઈ વાત મેં કરેલ નહિ. મેં મારા કુટુંબના પણ કોઈ સભ્યને આ વાત કરેલ નહિ. આ વાત મેં અન્ય કોઈને $\label{eq:constraint} \textbf{YO} \quad \textbf{SUB} \quad \textbf{It is submitted that this testimony},$ therefore, would clearly establish that the theory of conspiracy or involvement of accused No.50 was not pointed out to any persons by the present witness while he was taking shelter at the relief camp together with other residents of Gulbarg

Society. It is also pointed out that the witness had an opportunity to establish the theory of conspiracy in the course of his statement which was recorded by the IOs and my attention is drawn to paragraphs Nos.18 and 28 of his testimony wherein the witness has clearly admitted inter alia to the effect that no such theory of conspiracy was narrated to the IO in the course of recording of his statement on 11/03/2002. It is pointed out by Shri Bhardwaj that thereafter, even in the year 2008, the witness had an opportunity of bringing on the record of the present proceedings when in terms of paragraph No.19 of his cross examination the witness has clearly conceded that he was summoned by the Crime Branch in connection with the 2008 serial bomb blasts. My attention is drawn to a categorical admission that even during his entire interactions with the Police Officers in connection with the present offence as also in connection with the serial bomb blasts, the present witness has not whispered a word about any meeting, the alleged involvement of Kapil Munna i.e. accused No.50 and nor has he identified a single person as a perpetrator of the offence. Ιt is submitted that in the circumstances, this conspiracy theory has been floated for the very first time through this solitary witness and that too when the witness entered into the witness box merely eight years after the incident. It is submitted that in the circumstances, this conspiracy theory is not believable or palatable and since this particular witness also has not been declared hostile, nor any

re-examination of this witness was carried out to remove such ambiguities that were emerging, the veracity of the witness and his credibility are both completely shattered by grave and serious contradictions that have emerged along with his admissions and complete silence with regard to such conspiracy. It is pointed out that the witness has been contradicted by his own father Dilawerkhan as stated herein before and further contradictions emerge according to Shri Bhardwaj, from the contents of paragraph No.20 of his cross examination wherein the witness clearly claims that when he climbed up on the terrace of his building, he found his father present. It is pointed out that since Dilawerkhan in the course of his testimony as stated herein before, has clearly testified that at about 9:00 a.m. his entire family had taken shelter in the residence of Shri Ehsan Jafri, then the present witness Firoz Dilawerkhan Shaikh having gone on the terrace of his building and having seen his father Dilawerkhan on the terrace after 10:30 a.m. is serious а contradiction which the State and Prosecution has failed to convincingly explain. It is submitted that therefore, this entire conspiracy theory which is based on the solitary witness Firoz Dilawerkhan Shaikh, is required to be discarded in toto. Alternatively, it is submitted that in any case, this witness has effectively ensured the exoneration of accused No.50 Kapil Munna since according to this witness, accused No.50 after having the dialogue in the autorickshaw, had gone away to attend the

meeting and it is pointed out that nowhere in the course of his testimony has this witness Firoz testified that he saw Kapil Munna in the mob nor is any overt specific act attributed to have been committed by accused No.50 according to the present witness, and therefore, according to the present witness, accused No.50 is stated to have taken no part in the offence or incidents since he had gone away to attend an alleged meeting. It is submitted that in any case, in all such circumstances, the testimony of this witness is required to be discarded in toto.

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471. It is submitted by Shri Bhardwaj that the most vital aspect of the Prosecution relating to the present incident is in fact a blatant case of suppression of genesis of the entire incident inasmuch as, it is established from the record and an admitted position in terms of the Prosecution case itself that Shri Ehsan Jafri had fired upon the mob causing injuries to no less than 12 persons of the mob and resulting in death of one of the persons of the mob, from his private licensed weapon which was recovered from the scene of the incident. It is also pointed out by Shri Bhardwaj that no less than eight cartridges have been recovered from different places which would indicate and which are in fact corroborated by testimonies of Police witnesses that Shri Ehsan Jafri had fired upon the mob from various different places and it is, therefore, all the more strange that the so-called eye-witnesses who have

claimed to have seen and witnessed all the gory incidents where persons who had taken shelter in the residence of Shri Ehsan Jafri were done away by the mob have all failed to notice or attribute any weapon in the hands of Shri Ehsan Jafri, any firing having done by Shri Ehsan Jafri or any such material connected to the weapon admittedly owned by Shri Ehsan Jafri and for which it has been established on the record, that he was holding a valid license. It is pointed out that it also emerges and would be pointed out subsequently that no less than 20 Police witnesses have testified inter alia to the effect that the mob had gathered outside the Society, there exchange of stone pelting, exchange of an was throwing of burning rags and even exchange of acid bulbs from the mob and by and between the members of the Society. It is pointed out that however, all the Police witnesses have clearly and without anv ambiguity testified inter alia to the effect that the mob stormed into the Society and broke open the gates/walls of the Society only after the firing upon the mob by Shri Ehsan Jafri. It is submitted in such circumstances, and when there that is scientific evidence in the shape of site report of the FSL officer who visited the site of the incident, the recovery of the weapon, the recovery of the cartridges as also the ballistic report with regard to the weapon, it is required to be examined with grave suspicion as to why not a single witness including the star witnesses who claim to have seen all singular incidents as they took place all

throughout the day, none of such witnesses, has in any manner attributed Shri Ehsan Jafri to have been armed with a weapon, Shri Ehsan Jafri to have fired upon such mobs, causing death as also injury to the mob as being the prime instigating factor which could according to the defence, be ascribed to be "grave and sudden provocation" to the mob which led them to lose reason, go berserk and break open the walls or the gates of the Society, storm into the Society and indulge in acts which are attributed to have been indulged into by the mob. It is submitted that it is in such circumstances, that the entire incident of accused No.65 and 14 attributed to have instigating the mob to enter into the Society, is got-up because the storming of the Society by the mob was not on account of any instigation by accused Nos.65 or 14 but on account of the firing done by Shri Ehsan Jafri from his licensed weapon. It is submitted that this gives an entirely different complexion to the incident as а whole and suppression by the so-called eye-witnesses affect their very credibility inasmuch as none of the witnesses have in any stage of the proceedings have indicated to the SIT or to the various IOs or to any authority nor have they deposed in any manner which would even remotely establish their having seen Shri Ehsan Jafri being armed with a weapon or having fired from such weapon having caused injuries to any person or death to any person of the mob and such witnesses have faithfully stuck to a version that they were all throughout present in the residence of

Shri Ehsan Jafri when such incident took place. It is submitted that therefore, the witnesses have lost all credibility and the version emerging from the testimonies of such witnesses that Shri Ehsan Jafri was all throughout attempting to appeal to the mob not to indulge in such violence and he having gone out with folded hands and offered himself to ensure the protection and safety to the lives of other innocent victims, is a portrayal which suggests a deep conspiracy by itself and is a portrayal on the part of the witnesses with a sole view of evoking sympathy. It is pointed out that such witnesses, therefore, cannot be believed when they have supplied a version that Shri Ehsan Jafri upon going out of his residence, was thereupon dragged away by the mob and surprisingly none of the witnesses has testified as to what happened to Shri Ehsan Jafri thereafter and it is an established position that Shri Ehsan Jafri's remains have not been recovered till date. It is pointed out that none of the witnesses who claim to have escaped to the first floor/terrace of Shri Ehsan Jafri's residence, have claimed to have witnessed any aspect or any incident from such terrace or first floor and all that is claimed to have been witnessed is only from the ground floor which also is а strange and unbelievable phenomenon. It is also pointed out that none of the witnesses has even exchanged with each other including the wife of Shri Ehsan Jafri who is established in the terms of the witnesses' testimony to have been on the first floor of her residence, as

having any idea as to what happened to Shri Ehsan Jafri after he was allegedly dragged away by the mob. It is submitted that contradicting such aspect, is a version emerging from a testimony of a socalled eye-witness that the death of Shri Ehsan Jafri took place within the four walls of his residence, which was burnt down by the mob. It is submitted that in the circumstances, this vital suppression, according to Shri Bhardwaj, goes to the very complexion of the incident and goes to the very root of the entire incident and it is submitted that specifics would be placed for the consideration of this Court to support such submissions of the defence that the entire incident took place only on account of grave and sudden provocation caused to the mob by firing upon the mob by Shri Ehsan Jafri by his licensed weapon which resulted in injuries being sustained by no less than 12 persons and death of one person. It is also alternatively pointed out Shri Bhardwaj that even the so-called eyeby witnesses' testimony with regard to the private firing having taken place from "White House" is with a view to cover up the firing done by Shri Ehsan Jafri. It is submitted that such versions only expose the hollowness of the Prosecution case.

472. Submitting further, Shri Bhardwaj points out that the recovery of cartridges, empty shells from the terrace of Shri Ehsan Jafri's residence, near the small gate of the Society, near the Madresa and from near the rear wall of the

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Society, near the railway lines as also the recovery of a shell from within the gun used by Shri Ehsan Jafri, is clearly establishing the fact that Shri Ehsan Jafri was not trying to protect his residence from the mob but was mobile, moving around with the weapon and firing therefrom, from different places. It is submitted that it is, therefore, surprising and shocking that none of the so-called evewitnesses who claim to have seen specific accused and persons of the mob and attributed specific acts to such accused, have not been able to see Shri Ehsan Jafri moving around with a gun in his hands and firing therefrom. It is submitted that in the circumstances, the veracity of these witnesses is further established to be extremely doubtful. It is further pointed out that if Shri Ehsan Jafri, as is established, was possessed of a weapon from which he fired at different places, caused injuries to no less than 12 persons from the mob and caused the death of one of the persons of the mob, it could be said that Shri Ehsan Jafri was fully aware of the consequences of his actions and chose to fire upon the mob which was till then outside the premises of Gulbarg Society and had not made any moves to enter into Gulbarg Society. It is submitted that in the circumstances, the version of the witnesses that Shri Ehsan Jafri was a martyr who went out with folded hands and offered his own life in exchange of safety of others, is a version which is not is submitted acceptable. Ιt that in the circumstances, and more so when all the Police

witnesses who are established to have been present right throughout the incident, having testified that the mob was provoked to enter into Gulbarg Society only after the firing from Shri Ehsan Jafri's weapon and injuries being caused on account of such firing, clearly establishes the fact that the defence that the entire carnage took place only on account of the provocation due to the private firing, is further substantially supported. It is pointed out by Shri Bhardwaj that in such circumstances, the version of the so-called eye-witnesses is and cannot be accepted.

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473. Ιt is further pointed out by Shri Bhardwaj that the Bunglow of Shri Ehsan Jafri i.e. Bunglow No.19 of Gulbarg Society was completely gutted in fire on the ground floor. It is pointed out that it is an established position that no less than 10 dead bodies in a completely burnt condition were recovered from within the ground floor of the residence of Shri Ehsan Jafri and one dead body was recovered from a toilet. It is submitted that further evidence emerging from the testimony of no less than 20 Police witnesses, establishes that all the survivors of the carnage were rescued by a sufficient Police Force not from the Bunglow of Shri Ehsan Jafri but from a property which had three storeys from where all of them were escorted to safety by Police Force. It is pointed out that Shri Ehsan Jafri's residence consisted of only ground floor and first floor and therefore, it could not

have been from Shri Ehsan Jafri's residence from where any survivor could have been rescued. It is pointed out that in such circumstances, when none from the Police Force testifies that a single survivor was rescued from Bunglow No.19, the very presence of these so-called survivors in the Bunglow of Shri Ehsan Jafri from where they claim to have seen specific incidents and attributed specific acts specific accused, is not believable. It is to pointed out that in such circumstances, the very presence of the so-called eye-witnesses becomes extremely doubtful. It is further pointed out that the only inference that can be drawn is that the people who had taken shelter in Shri Ehsan Jafri's residence, had succumbed to burn injuries in the fire caused to the building which led to the entire ground floor being burnt completely. It is submitted that there could not be any survivors from within such burning building and if no less than 10 persons had lost their lives from such fire, there is no question of any so-called eye-witness remaining alive on such ground floor which was burnt in such manner and having survived without any burn injuries. It is submitted that therefore, the socalled eye-witnesses' accounts and versions are required to be discarded and not accepted to be true.

474. It is submitted that the Police witnesses in the shape of following PWs, have all testified that private firing from within the Gulbarg Society took place, and the relevant portion of their respective testimonies, is particularized herein below:-

PW No.	Name of witness	Ex. No.	Paragraph No. in depositi on	Witness having deposed as such	
2	2 Nathusinh Naharsinh Chauhan		4	તે દરમિયાન ગુલબર્ગ સોસાયટી માંથી ખાનગી ફાયરીંગ થયેલ અને ટોળા પર ખાનગી ફાયરીંગ કરેલ અને ટોળામાંથી કેટલાક માણસોને ઈજા થયેલ.	
			19	એ વાત ખરી છે કે, ગુલબર્ગ સોસાયટીમાં થયેલા ખાનગી ફાયરીંગથી ટોળાના ઘણા બધા માણસોને ઈજાઓ થયેલી.	
3	3 Babuji Chhaguji Dabhi		4	આ દરમિયાન ગુલબર્ગ સો.માંથી પણ ટોળા પર પથ્થરમારો શરુ થવા લાગેલ. તેમજ ખાનગી ફાયરીંગ થવા પામેલ. તેમાં ટોળાના કેટલાક ઈસમો ઘવાયેલા આથી ટોળા વધારે ઉશ્કેરાયેલા.	
			30	એ વાત ખરી છે કે, ખાનગી ફાયરીંગમાં ટોળાના ઘણાં માણસો ઈજા પામેલા તેમાં એક વ્યક્તિનું પાછળથી મૃત્યુ થયેલુ.	
4	Rajendrasinh Kallusinh Rajput	269	б	ગુલબર્ગ સોસા.માંથી પણ પથ્થરમારો થતો હતો. અં ગુલબર્ગ સોસા.માંથી ખાનગી ફાથરીંગ થતુ હતુ. ટોળામાંન કેટલાક માણસોને ઈજા થયેલ. તેઓ વધુ ઉશ્કેરાયેલા.	
5	Indrasinh Himmatsinh Gohil	270	3	ગુલબર્ગ સોસા.ના રહીશેઓ પણ સામે પથ્થરમારો કરેલ.તેમજ અંદરથી પણ ખાનગી ફાયરીંગનો બનાવ બનતા હિન્દુ કોમનું ટોળુ વધુ દિંસક બનેલ.	
6	Lalitkumar Ramanbhai Patni	271	6	આ દરમિયાન ગુલબર્ગ સો.માંથી ખાનગી ફાયરીંગ થયેલ. તેમાં કેટલાક માણસોને ઈજા થયેલ. જેથી ટોળુ વધુ ઉગ્ર બનેલ.	
7	Arvindsinh Shankersinh Vaghela	273	4	ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થયેલ. જેથી દિન્દુ કોમના ટોળા વધારે ઉશ્કેરાઈ ગયેલા.	
11	11 Rameshbhai Nagjibhai Pandor		4(a)	સામેથી ખાનગી ફાચરીંગ થયેલ જેમાં કેટલાક માણસોના ઈજા પણ થયેલ. પછી ટોળુ અંદર ઘુંસી ગયેલ. ટોળાના માણસોને ખાનગી ફાચરીંગથી ગોળી વાગતા સોસા.માં ઘુંસી ગયેલ અને ઉશ્કેરાઈ ગયેલ.	
			19	સોસા.ની અંદરથી બપોરના એક થી બે દરમિયાન ખાનગી ફાયરીંગ થયેલ. આ ફાયરીંગ સોસા.ની અંદરથી થયેલ એટલો ખ્યાલ છે.	
			26	ખાનગી ફાયરીંગથી ઈજાઓ થયેલ તે માણસોને દવાપ મોકલવામાં આવેલા.	
12	Sajjansinh Jorubha Jhala	315	7	ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થયેલ. જેથી દિન્દ્ ટોળા વધારે ઉશ્કેરાઈ ગયેલા.	
13	Dhanesinh Becharsinh Kumpawat	316	5	દરમિયાન ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થવા પામેલ. જેને લીદ્યે દિન્દુઓના ટોળા વધુ ઉગ્ર બની તેમજ ગુલબર્ગ સોસા.ના પાછળના ભાગે આવેલ કોટની દિવાલને તોડી અંદર પ્રવેશ કરેલ.	
20	Indrasinh Mansinh Solanki	334	4(a)	ગુલબર્ગ સોસા.માંથી ફાયરીંગ થતુ દોય તેવુ લાગેલ. આ બાજુ એટલે રોડ બાજુના ટોળાના માણસો ઉશ્કેરાયેલ.	
			16	એ વાત ખરી છે કે, સોસા.માંથી ખાનગી ફાચરીંગ થયેલ તેનાથી ટોળાના કેટલાક માણસોને ઈજાઓ થયેલ.	

PW No.	Name of witness	Ex. No.	Paragraph No. in depositi on	Witness having deposed as such	
21	Motibhai Dahyabhai Vaghela	335	5	તે દરમિયાનમાં ખાનગી ફાયરીંગ થયેલ જે ગુલબ સોસા.માંથી થયેલ. જેમા ટોળાના માણસોને ઈજા થયેલ. જે પોલીસ દવાખાને લઈ ગયેલ. તે પછી ટોળુ બેકાબુ બવ ગયેલ. અને ગુલબર્ગ સોસા.ની પાછળની દિવાલ તોડી અંદર ઘુંસી ગયેલ.	
22	Shailendrasinh Kalusinh Jadeja	336	6	તે પછી અંદરથી ખાનગી ફાચરીંગ થયેલ જેથી બહાર ટોળાના કેટલાક માણસોને આ ફાચરીંગથી ઈજા પહોંચેલી. જેથી બહારના ભાગનું ટોળુ વધારે ઉશ્કેરાયેલ.	
28	Pradipsinh Shetansinh Rathod	349	5	ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થતા ટોળાના માણસો ઈજા થતા ટોળુ વધુ ઉશ્કેરાયેલ અને આવેશમાં આવી ગયેલ ત્યારે પણ અમે ફાયરીંગ ચાલુ રાખી ટોળાને વિખેરવા પ્રયત કેરેલ.	
29	Dhananjay Bhaskerrao Bhagwat	351	7	ગુલબર્ગ સોસા.માંથી ટોળા પર ખાનગી ફાયરીંગ થયેલ. જેથી દિન્દુ ટોળાના માણસો વધારે ઉશ્કેરાઈ ગયેલા.	
30	Dharmabhai Ramjibhai Bodat	352	5	ગુલબર્ગ સોસા.માંથી ફાયરીંગ થતા ટોળુ વધારે ઉગ્ર બનેલ. અને સોસા.ની પાછળની દિવાલ તોડી સોસા.માં ઘુંસેલ.	
37	Kavaji Rupaji Asari	385	4	ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થયેલ. જેથી ટોળાના માણસો વધારે ઉગ્ર થયેલા.	
38	Dolatsinh Padamsinh Rathod	386	4	દરમિયાન ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થયેલાનું જણાયેલ.જેથી ટોળુ વધુ ઉશ્કેરાતા અમારા પો.ઈ. સાદેબે હવામાં એક રાઉન્ડ ફાયર કરેલ.	
			8	એ વાત ખરી છે કે, ખાનગી ફાયરીંગમાં ટોળાના માણસોને ઈજાઓ પણ થયેલ.	
39	Chandubhai Vashrambhai Rami	387	6	દરમિયાન ગુલબર્ગ સોસા.માંથી પણ ખાનગી ફાયરીંગ થયેલ. જેના કારણે ટોળુ વધુ ઉગ્ર બનેલ.	
40	Pasabhai Galabhai Solanki	388	4	તેમજ ગુલબર્ગ સોસા. તરફથી સામેથી પથ્થરમારો તેમજ ખાનગી ફાયરીંગ થતા દિન્દુ કોમના કેટલાક મણસોને ઈજા થતા ટોળાએ ઉશ્કેરાઈ જઈ ગુલબર્ગ સોસા. પાછળની દિવાલ તોડી સોસા.માં પ્રવેશ કરી મકાનોમાં આગ લગાડેલ. તે દરમિયાન અમોએ ટોળાને વિખેરવા બે સેલ છોડેલ. તેમજ બીજા પોલીસે સેલ છોડેલ તેમજ ફાયરીંગ કરેલ.	
			13	પોલીસે કરેલા ફાયરીંગ તેમજ ખાનગી ગોળીબારથી ટોળાના ઘણાં માણસોને ઈજાઓ થયેલ.	
41	Rameshbhai Somabhai Solanki	391	б	સોસા.માં અંદરથી પણ ખાનગી ફાયરીંગ થયેલાનું જણાયેલ. જેમાં ટોળામાંથી અમુક વ્યક્તિઓને વાગેલાનું અમે જાણેલ.	
45	Rajeshbhai Kuberbhai Parmar	399	4	આ બાજુ ગુલબર્ગ સોસા.ની અંદરથી ફાચરીંગનો અવાજ સાંભળેલ. તે પછી ટોળા બેકાબુ બનેલ. એરડા સાદેબે ટોળાને વિખેરવા દવામાં એક ફાચર કરેલ. અને સ્ટાફના માણસોને ટોળાને વિખેરવા અને ફાચરીંગ કરવા સુચના આપેલ. જેથી ફાચરીંગ કરેલ. તેમાં પોલીસ ફાચરીંગથી ચાર માણસો મૃત્યુ પામેલા પણ ટોળુ વિખરાયેલ નદિ.	
46	Mavjibhai Hakshibhai Bodar	400	5	તે દરમિયાન ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થતા દિન્દુ ટોળા વધારે ઉગ્ર બનેલા.	

PW No.	Name of witness	Ex. No.	Paragraph No. in depositi on	Witness having deposed as such	
47	Ranchhodbhai Ramjibhai Malavia		3	જેથી ખાનગી ફાચરીંગ થવા પામેલ. જેથી આ ટોળાને વિખરાઈ જવા માટે પી.આઈ.શ્રી એરડા સાહેબે લાઉડ સ્પિકર મારફતે એલાન કરેલ. ખાનગી ફાચરીંગ થવાના કારણે ટોળાએ વધુ ઉગ્ર સ્વરૂપ ધારણ કરેલ. તેમજ ખાનગી ફાચરીંગથી અસંખ્યને ઈજા થવા પામેલ.	
48	Jagatsinh Mulsinh Bhati	402	4	તે દરમિયાન ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થતા ટોળાના માણસો ઉશ્કેરાયેલા. અને સોસા.ના પાછળના ભાગે જઈ કોટ તોડી ટોળાના માણસો સોસા.માં ઘુંસી ગયેલ. તે અંદર ગયા પછી અમને બુમા બુમ સંભળાયેલ.	
55	Balubhai Nathabhai Ninama	418	4	જેથી ગુલબર્ગ સોસા.માંથી દિન્દુઓના ટોળા પર ખાનગી ફાયરીંગ થયેલ. જેથી ટોળુ વધારે ઉશ્કેરાયેલ.	
			15	એ વાત ખરી છે કે, ખાનગી ફાયરીંગથી ટોળાના માણસોને ઈજાઓ પણ થયેલ.	
75	Puransinh Ramsinh Tomar	473	4	ગુલબર્ગ સોસા .માંથી ફાયરીંગ થયેલ અને ટોળુ વધારે ઉશ્કેરાયેલ .	
			13	એ વાત ખરી છે કે, સોસા.માંથી ખાનગી ફાયરીંગ થયુ અને તેમાં ટોળાના માણસોને ઈજા થઈ તે પછી ટોળુ ઉશ્કેરાયેલ.	
254	Prahladji Mangalji	876	6	સોસા.ની અંદરથી ખાનગી ગોળીબાર થયેલ.	
	Barot		17	એ વાત ખરી છે કે, ખાનગી ગોળીબારના કારણે ઘમા માણસોને ઈજાઓ થયેલ.	
269	Natwarji Jawanji Bhati	927	8	ગુલબર્ગ સોસા.માંથી પ્રાઈવેટ ફાયરીંગ થયેલ. આ ફાયરીંગ આશરે બે વાગે થયેલ.	
			9	ખાનગી ફાયરીંગ થતા દિન્દુ કોમના માણસો વધુ ઉશ્કેરાયેલા.અને ફાયરીંગમાં દિન્દુ કોમના માણસોને ઈજા થયેલ.	
305	Bhupendrasinh Karansinh Sisodiya	105 2	7	આ દરમિયાન ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થત દિન્દુ કોમના ટોળાના માણસો પૈકી કેટલાકને ઈજાઓ થત ટોળાના માણસો ઉશ્કેરાટમાં આવી ગયેલા.	
306	Ramvilas Ramlakhan Pathak	105 9	7	તે દરમિયાનમાં ગુલબર્ગ સોસા.ની અંદર તરફથી દિન્દુ કોમન ટોળા પર ખાનગી ગોળીબાર થયેલ. જેનાથી દિન્દુ કોમન માણસોને ટોળામાં ઈજા થયેલ. જેથી ટોળાના માણસો ઉં બની પથ્થરમારો ચાલુ રાખેલ. અને ગુલબર્ગ સોસા.ન પાછળની દિવાલ તોડી ગુલબર્ગ સોસા.માં અંદર ઘુંસી ગયેલા.	

475. It is pointed out by Shri Bhardwaj that the above witnesses and the above referred portions of their depositions, clearly establish that the mob which had no doubt gathered outside Gulbarg Society, was indulging in stone throwing and sloganeering, but however, it is also established from these testimonies that there was retaliation of

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stone throwing by the residents of Gulbarg Society, but however, the vital aspect emerging from the testimony of these Police witnesses, is that the grave and sudden provocation which caused the mob to break open the rear wall of the Society and rush into the Society and cause the carnage, was solely on account of the private firing done by the deceased Shri Ehsan Jafri from his private licensed weapon at different places within the Society which infuriated the mob and caused the mob to enter into the Society and which further resulted in the carnage and large scale deaths within the Society. It is also pointed out by Shri Bhardwaj that these very witnesses have in terms of the details provided herein after, further established that the rescue of the survivors was effected not from Shri Ehsan Jafri's residence, but from a property which was free from any damage, which consisted of a threestoreyed construction and large number of persons were rescued and taken to safety by the Police Force from such building.

Sr. No.	Name of Police witness	PW No.	Exh. No.	Paragraph No. in deposition
1	Shri Rameshbhai Nagjibhai Pandor	11	314	6, 24
2	Shri Shailesh Kalusinh Jadeja	23	336	8, 9
3	Shri Mavjibhai Akshibhai	46	400	6
4	Shri Babubhai Nanabhai Ninama	55	418	6, 7
5	Shri Bhupendrasinh Sisodiya	305	1052	8, 9

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Sr. No.		PW No.	Exh. No.	Paragraph No. in deposition
6	Shri Ranchhodbhai Malavia		401	3
7	Shri Azansinh Zala	12	315	7, 15

476. It is submitted that therefore, the previous submissions of the defence that all the persons within Shri Ehsan Jafri's residence had succumbed to the burns caused to them and could not have survived the burn injuries and the fact that so-called eye-witnesses who claim to the have witnessed all the specific incidents from the ground floor of Shri Ehsan Jafri's residence without sustaining any burn injuries, is something which was possible. It is submitted that not in the circumstances, this also is a vital flaw in the case of the Prosecution which creates grave and serious doubts in the case of the Prosecution.

477. It is pointed out that the testimony of the IO Shri J.M.Suthar appointed by the SIT, post directions of the Hon'ble Supreme Court, clearly establishes that PWs 241, 283, 284, 236, 166 and 107 respectively being Firoz Dilawer Shaikh, Aslamkhan Anwarkhan Pathan, Mohammadsharif Nasiruddin Shaikh, Safdarhussain Fazlehussain Ankleswaria, Sharifkhan Sikanderkhan Pathan and Mrs.Rupaben Modi, all such PWs having been respectively examined at Exhs.831, 981, 987, 815, 697 and 548 have claimed, according to Shri J.M.Suthar, in their statements recorded before the SIT, to have admitted the incident of private

firing by Shri Ehsan Jafri, but have specifically denied having given any such statement before the SIT. It is submitted that such contradiction is clearly admitted and brought on record in the course of the testimony of Shri J.M.Suthar who is examined as PW-335 at Exh.1289. It is submitted that in the circumstances, the memory loss of the so-called eyewitnesses from amongst the victims is not believable and their versions too, therefore, are not required to be believed or accepted.

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478. My attention is drawn to the panchnama Exh.260 which according to Shri Bhardwaj, establishes the recovery of two cartridges from the Shri Ehsan Jafri's residence, three terrace of cartridges from near the Madresa, thus establishing the recovery of five cartridges which are connected with and established by scientific forensic evidence to have been fired from the weapon of Shri Ehsan Jafri. It is pointed out that the weapon owned by Shri Ehsan Jafri and for which he was holding a valid and legal license, was recovered from his residence in terms of the panchnama Exh.262 and it is further pointed out that one empty shell was found within the weapon so recovered. It is pointed out that the panchnama Exh.412 further establishes recovery of one cartridge and a wad near the small gate of the Society, whereas according to Shri Bhardwaj, the panchnama Exh.396 establishes the recovery of one more empty shell from near the Bunglow No.19 of Gulbarg Society, and panchnama

Exh.257 also establishes recovery of one more cartridge from near Bunglow No.19 of Gulbarg Society. It is pointed out that all these physical evidences establish conclusively that there was private firing by Shri Ehsan Jafri which caused serious injuries to large number of persons and caused the death of one person which provoked the mob to indulge into such unnatural degrees of violence. It is pointed out that it was such private firing which resulted in the specifically mob targetting the residence of Shri Ehsan Jafri and the said residence was thereafter set on fire by the mob and it is submitted that the residence of Shri Ehsan Jafri, according to the defence, is the only property that was torched and gutted by the mob and no other properties were damaged to the extent of the damage that was caused to the residence of Shri Ehsan Jafri and even the recovery of burnt and charred bodies from the bunglow of Shri Ehsan Jafri, also establishes that most of the victims were burnt alive on account of such fire taking place in the residence of Shri Ehsan Jafri. It is further pointed out that all the deaths have largely occurred within the residence of Shri Ehsan Jafri and it is urged that in the circumstances, the private firing is required to be accepted as the catalyst which inflammed the mob into committing such heinous acts if at all such acts are established. It is pointed out that the ground portion of Shri Ehsan Jafri's residence has been burnt so badly that it was

impossible for anybody to have survived or to be an

eye-witness to any incident from such portion and it is urged that in the circumstances, it is required to be accepted for such reasons and in light of the contradictions that would be pointed out herein after that the so-called eye-witnesses could never have been within the residence of Shri Ehsan Jafri and not sustained any serious burn injuries and yet be witnesses to specific incidents. It is further submitted by Shri Bhardwaj that in any case, though all the so-called eye-witnesses claim to have been within the residence of Shri Ehsan Jafri, they have either not seen all the incidents, they have either not seen the other eye-witnesses, they have given different and highly improbable versions of the incidents and have selectively witnessed only some incidents and have not witnessed other incidents which is unnatural and unlikely in the circumstances pointed out herein after. It is further pointed out that the witnesses have gravely and grossly contradicted each other and to a great extent have even contradicted their own versions at different stages of their testimony and despite such grave contradictions and inconsistencies which can be classified as wholly untruthful versions, the Prosecution according to Shri Bhardwaj, has not even bothered to re-examine such witnesses, to remove any ambiguities that could have emerged in the cross examination nor are such witnesses despite serious contradicting other eye-witnesses, sought to be declared hostile and their versions according to Shri Bhardwaj, having been accepted in toto by the

Prosecution, such versions go to the root of the burden of establishing beyond reasonable doubt the charges herein and it is urged that in light of such serious inconsistencies grave and and contradictions, the Prosecution cannot be accepted to have discharged the burden of proving beyond reasonable doubt the charges against any of the accused herein. It is submitted that the star witnesses who claim to be inside the residence of Shri Ehsan Jafri at all relevant times, including PWs 106, 107, 177, 116, 283, 289, 314, 236, 213 and 236 respectively being Imtiyazkhan Saeedkhan Pathan, Mrs.Roopa @ Tanaz Daraminu Modi, Sairaben Salimbhai Sandhi, Saeedkhan Ahmedkhan Pathan, Aslamkhan Pathan, Nadim Tasaddukhussain Anwarkhan Surohi. Fagirmohammad Nasirali Saived, Safdarhussain Fazlehussain Ankleswaria and Tasadduk Hussain Mulla Tahir Surohi, have all claimed to have been within the residence of Shri Ehsan Jafri right throughout the incident, but all of them according to Shri Bhardwaj, have seriously contradicted each other about the time of the incident, the taking place of the incident, the victims involved in the incidents and the perpetrators of the incident and further the of taking place of the incident matter and therefore, it would be unsafe to rely on any of these witnesses as credible or reliable witness. It is urged that all these witnesses have selectively remembered a specific incident and have made no claims to have seen other incidents though such incidents took place within the same time frame and

within the same premises where they were located. It is submitted that it could possibly be accepted as natural under exceptional circumstances if strangers did not recognize or mention about others, whom they were only faintly aware of, but it is pointed out that in the present circumstances, the so-called eye-witnesses have conveniently forgotten their own blood relations and have omitted to mention their own blood relations while narrating and establishing their so-called presence as an eye-witness to a particular incident. It is submitted that a husband has conveniently forgotten to mention the presence of his wife, three witnesses have named three different sets of persons who have been victimized by the mob, number of these witnesses talk of rape whereas an equal number of them do not talk of rape at all, a number of witnesses claim that though a mob 5000 strong, had entered from the front of the Society and an equal number had entered from the rear wall of the Society, some of these witnesses were selectively permitted to roam within the Society whereas their immediate group members were all slaughtered. It is submitted that it is too convenient that a mob which was frenzied enough to butcher and slaughter allegedly a large number of men, women and children, it would be too easy to point a finger at the mob. It is submitted that in such circumstances when a mob is attributed to have killed such a large number of innocent men, women and children, there is no logical reason as to why a convenient eye-witness was permitted to roam about

freely within the Society without any person from the mob even pointing a finger - much less causing any injury - to such eye-witness. It is submitted that in the circumstances, and more so when all these versions have cropped up for the very first time post 2008, it is required to be inferred and that is the only inference that can be drawn that these were all tutored witnesses who were tutored post induction and formation of the SIT by the Hon'ble Supreme Court. It is submitted that most of these witnesses have admitted before the SIT and it is a matter of record that none of these witnesses have mentioned about any incident of rape in their previous statements and affidavits filed before the SIT, the Commissioner of Police as also the Hon'ble Supreme Court, all of which were prepared under the guidance of lawyers and NGOs and therefore, there was no chance of any witness being misquoted or improperly quoted in a statement or an affidavit. It is submitted that all these aspects clearly establish that the present accused were wrongly framed and all the accused, according to Shri Bhardwaj are, therefore, required to be given the benefit of doubt. It is pointed out that there are who claim that other eye-witnesses they were surrounded by a mob but were not killed or molested. It is submitted that it is, therefore, required to be accepted that the carnage was only on account of the grave and sudden provocation caused by the private firing from the weapon of Shri Ehsan Jafri. It is pointed out that the witnesses have attributed

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Shri Ehsan Jafri to have made phone calls even after the phone lines were admittedly dead in Gulbarg Society. Ιt is pointed out that in such circumstances, the entire versions are required to be appreciated as being tainted and exaggerated versions of interested witnesses. It is pointed out that each incident would now be taken up and the versions of each of these star witnesses would be pointed out as to how each version of each eyewitness grossly differs and contradicts the versions of the star witness PW-106.

Versions/contradictions regarding Shri Ehsan Jafri's demise

479. It is pointed out that there is no doubt with regard to the demise of Shri Ehsan Jafri. It is pointed out that even the so-called eyewitnesses have claimed that Shri Ehsan Jafri was dragged away by the mob whereas some of them do not mention anything at all about any incident of Shri Ehsan Jafri being dragged away though all of them were present in the same premises at the same time. It is pointed out that these aspects, therefore, are unnatural and do not lend any credibility to the Prosecution case.

480. Making general submissions with regard to the genuineness of the Prosecution evidence, Shri Bhardwaj submits that if the evidence of the star witnesses and all the pervading star witnesses who

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claim to have seen most of the incidents and in fact PW-106 Imtiyazkhan and PW-116 Sayeedkhan who claim to have seen and been eye-witnesses to all the incidents, all of them i.e. all such witnesses have categorically stated that they were within the premises of Shri Ehsan Jafri when they saw each of the incident having taken place. It is submitted that though while dealing with each of the incidents individually, the contradictions emerging from the testimonies of such witnesses has been brought to the notice of the Court. It is submitted that the general submissions with regard to the reliability of these eye-witnesses is seriously contradicted by the eye-witness account of other witnesses who have Prosecution witnesses. is been examined Tt as submitted that the Prosecution witnesses thus examined, the details of which would be provided herein after, were not declared hostile and despite completely different and contradictory this, а version emerges with regard to the incidents as they took place. It is submitted that appreciating the evidence of such witnesses who are about nine in number, it is very difficult to accept and swallow the eye-witness testimonies of the four star eyewitnesses i.e. PWs 106, 107, 116 and 177 respectively being Imtiyazkhan, Mrs.Rupaben Modi, Sayeedkhan and Sandhi. It is submitted that in Sairaben the circumstances, even the totality of the evidence cast grave and serious doubts as to whether these so-called witnesses have actually witnessed any incident that they claim to have witnessed and as to

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whether the state of affairs prevailing at that point of time actually permitted such witnesses to visualize the incidents with accuracy and to also pinpoint with accuracy the role of each of the perpetrators from the accused. It is submitted that it would be unsafe to rely on such evidence more so when the testimony of nine witnesses who would be referred to herein after, give a more plausible and believable explanation with regard to the state of affairs.

481. My attention is drawn to the testimony of PW-241 Firoz Dilawer Shaikh who is examined at Exh.831, who according Shri Bhardwaj, to has admittedly testified with regard to the fact that he was present in the residence of Shri Ehsan Jafri. It is an admitted position according to Shri Bhardwaj, that the witness was a resident of Gulbarg Society and has admitted in paragraph No.16 of his cross examination that he knew all the other residents of Gulbarg Society. It is also pointed out that there is a categorical deposition of this witness that after the mob entered into the Society from both sides, the witness took shelter in the residence of Shri Ehsan Jafri and more particularly in the ground floor of the residence of Shri Ehsan Jafri. It is also pointed out that this witness is a more plausible witness in the sense that after the house of Shri Ehsan Jafri was set afire, according to this witness, there were no survivors and it is pointed out that this witness i.e. PW-241 has admittedly

sustained grave and serious burn injuries all over his body. It is submitted that surprisingly none of the four star witnesses who claim to have been present all throughout in the residence of Shri Ehsan Jafri even when the residence of Shri Ehsan Jafri was set on fire and was burning very badly and when even the gas explosions took place, none of them has sustained any burn injuries. It is pointed out that in the circumstances, an inference is required to be drawn that such four star witnesses were never present in the residence of Shri Ehsan Jafri and were never eye-witnesses to the incident.

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482. Continuing with his submissions, Shri Bhardwaj draws my attention to the examination-inchief of PW-241 Firoz Dilawer Shaikh, in paragraph No.5 on page No.4, wherein the witness has deposed that "જેથી હું અઠેસાન જાફરીના મકાનમાં જતો રહેલ. તે મકાનમાં હું ગયો ત્યારે પાંત્રીસ ચાલીસ માણસો હતા. અમે મકાનમાં ગયા બાદ મકાનનો દરવાજો બંધ કરી દીધેલ. તે સમયે બહાર ટોળુ આવેલ. તે લોકોએ મકાનને આગ લગાડેલ. તેનાથી ખુબ ઘુમાડો થયેલ અને મકાનની અંદર પાંત્રીસ ચાલીસ માણસો હતા તે માણસો મરણ ગયેલ. હું પણ દાડ્રી ગયેલ. મારા બન્ને પગે તથા ખભાના ભાગે હું દાડ્રી ગયેલ.ટોળાના માણસો પાસે ભાલા અને બીજા દથિયારો હતા." My attention is also drawn to paragraph No.6 of the deposition of this witness i.e. PW-241 where he has stated that "તે પછી પોલીસવાળા બહાર આવી વ્હીસલ વગાડતા હતા પરંતુ હું દાડ્રી ગયેલ તેથી

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મને સંભળાતુ નહતુ. તે પછી હું પાછળની બાજુએ બહાર નીકળતા હું પડી ગયેલ. તે પછી મારા પપ્પા અને ભાઈ વગેરે મને ઉપાડીને લઈ ગયેલ. જે ગુલબર્ગ સોસા.ની અંદર આવેલ ખુલા મેદાનમાં લઈ ગટેલ. ત્યાં વાનમાં બેસાડેલા જેને પંચર કરી દીધેલ પછી અમને પોલીસની વાનમાં બેસાડેલા."

483. It is submitted that this witness PW-241 has further testified *inter alia* to the effect be gathered from the deposition and as can herein before, that no incident reproduced of Anwarkhan took place before the residence of Shri Ehsan Jafri was set afire. It is pointed out that the witness has further testified that the smoke on account of the fire was such that all the persons within the house of Shri Ehsan Jafri were suffocated to death. It is submitted that this appears to be more plausible version than the versions supplied by the four star witnesses and it is also pointed out that if there was so much of smoke, it would not be physically and humanly possible to keep your eyes open and pinpoint and identify with clarity any accused and attribute overt acts to such accused. It is submitted that looking to the fact that no burn injuries were sustained by any of the four star witnesses and none of they was attributed to have been present within the residence of Shri Ehsan Jafri according to PW-241, it would be difficult to accept the versions emerging from the testimony of such star witnesses. Ιt is submitted that this witness has further damaged the testimony of PW-283

Aslamkhan inasmuch as, the witness has in paragraphs Nos.20 to 22 of his cross examination, admitted that PW-283 Aslamkhan was with him when he entered the residence of Shri Ehsan Jafri. It is pointed out that the incident of Anwarkhan is not narrated by this witness and it is submitted that this witness has further testified that after they entered into the residence of Shri Ehsan Jafri, the door to the residence was closed which also thereafter discounts all possibilities of there being any eye-witness to the incident of Anwarkhan or that of Aslamkhan trying to intervene and getting injured or any other incidents of the women struggling out and getting butchered or raped or any other children from within the residence of Shri Ehsan Jafri rushing out only to get butchered by the mob. It is submitted that in such circumstances, the testimony of PW-241 is more plausible and believable. It is submitted that in any case, despite this witness being examined much after the testimony of the so-called star witnesses, the Prosecution has not bothered to declare this witness as hostile and therefore, it is required to be inferred that even the Prosecution accepts the version emerging from the testimony of this witness. is submitted that in such circumstances, the It credibility of the Prosecution evidence is seriously controverted by such testimony of this witness.

484. My attention is next drawn to the testimony of PW-117 Ayubkhan Habibkhan who was the brother of Yusuf and about the incident of Ankur

Cycle Works, this witness has already testified and about which submissions are already made herein before. It is submitted that at this stage, a limited attempt is being made to draw the attention of this Court to the fact that this witness does not possess any knowledge with regard to how his brother Yusuf met his end. My attention is drawn to page No.4, paragraph No.4 of the testimony of this PW-117, wherein he has testified that "ਮारा ભાઈ અંગે ਮੇਂ પુછેલ તો જાણવા મળેલ કે તેને જાફરી સાદેબના મકાન આગળ મારી નાખેલ છે. તેની લાશ આજ સુધી અમને મળેલ નથી. તેના વિશે કાંઈ સાંભળ્ય પમ નથી." It is submitted that it is a matter of record that four witnesses being the star witnesses claim to have been eye-witnesses to the incident which led to the death of Yusuf and each of the alleged star witnesses, also has attempted to identify th perpetrators of the incident pertaining to Yusuf and further claim to have identified the accused as the perpetrators. It is submitted that despite there being four such eye-witnesses and despite endeavours made by the present witness to know about the fate of his brother, he got very limited information that his brother was done away with within the residence of Shri Ehsan Jafri and nothing was disclosed beyond that despite his efforts. It is submitted that in such circumstances and more so when there are such grave and serious contradictions, the so-called eye-witnesses cannot be believed to have seen such incident because, it

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is argued, that if it were really so, then they would have informed the present witness with regard to the fate of Yusuf and with regard to the role played by th concerned accused in such incident. It is submitted that all the witnesses had opportunity till about eight years till the time th present witness stepped into the witness box, but it is strange and unnatural that none of the witnesses who claim to have been eye-witnesses, had informed the family members of Yusuf including the present witness about the incident where Yusuf was done away with. Ιt is submitted that in such even circumstances, the veracity of the so-called eyewitnesses is extremely doubtful.

485. My attention is drawn to the testimony PW-152 at Exh.681 i.e. Yousufbhai of Badarbhai Pathan who according to Shri Bhardwaj, has admittedly lost a family member being his wife Zubedabanu. It is pointed out that this witness has also given a more plausible and acceptable version of events inasmuch as, the witness is admittedly the resident of Flat No.5 in Gulbarg Society on the third floor and he claims to have escaped to the terrace of his Flats along with two of his children, all three of whom have admittedly survived the incident. My attention is drawn to the testimony of this witness PW-152 on page No.4 in paragraph No.6 wherein the witness has deposed that "અમે નીચે આવ્યા ત્યારે સોસા.માં પથ્થરમારો થતો હતો જેથી ભાગદોડમાં અમે બચવા માટે

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પાછા ઉપર ચડી ગયેલા. ભાગદોડમાં બપોરના અઢી વાગ્યે મારી દિકરી રુબીના અને મારી પતિન જુબેદા અલગ પડી ગયેલા. તે લોકો જાફરી સાદેબના મકાનમાં જતા રહેલા. હું, મારો દિકરો ઈબ્રાહીમ અને દિકરી અકસાના અમે અમારા કલેટના ધાબા પર ચઢી ગયેલા." My attention is further drawn to paragraph No.8 of his testimony where the witness has deposed that "ते पछी अपोरना अढी વાગે સોસા.માં નીચેથી બચાવો..... બચાવો..... મારો કાપો..... એવી બુમો સંભળાતી હતી. મેં ધાબા પર નાની જાળીમાંથી જોતા ધુમાડો હતો તેથી કાંઈ દેખાતૂ નહિ. મેં ટોળાના કોઈ માણસોને ઓળખેલા નહિ." is submitted that such deposition clearly Tt. indicates that the witness did attempt to see the incident taking place but was unable to do so despite attempting to witness the same on account of the thick screen of smoke which made it impossible for the witness to see anything. It is pointed out that in any case, the witness has categorically stated that he could not identify any of the members of the mob. It is submitted that the witness has further testified that his wife Zubedabanu and daughter Rubina - both took shelter in the residence of Shri Ehsan Jafri, and my attention is drawn to page No.7 in paragraph No.11 of his deposition where the witness has categorically deposed that " ਮਰੇ મદેબુબભાઈએ એવુ જણાવેલ કે, જાફરી સાદેબના મકાનમાં મારા પતિન ઝુબેદાબેનને સળગાવી દીધેલ છે." It is submitted that according to this witness, his wife Zubedabanu was

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burnt alive in the residence of Shri Ehsan Jafri. It is pointed out that however, none of the so-called star witnesses who claim to have been within Shri Ehsan Jafri's residence and who claim to have witnessed all and sundry the incidents with great accuracy and in detail, has whispered even a remote word about the presence and ultimate fate of Zubedabanu. It is submitted that this also leads to an inference to be drawn that the star witnesses were never present within the residence of Shri Ehsan Jafri when the incident took place.

486. My attention is drawn to the testimony of PW-159 at Exh.690 i.e. Gulubhai Sulemanbhai Sandhi, and more particularly paragraph No.15 of his deposition, where the witness has stated that "¿ અસારવા રેલ્વે સ્ટે. ઉભો હતો ત્યાંથી મેં આખી ગુલબર્ગ સોસા.ને આગ લાગેલ જોચેલ અને ધુમાડાના ગોટે ગોટા નીકળતા હતા." It is pointed out that according this witness, the theory and versions supplied by the defence and above witnesses, is corroborated inasmuch as, this witness has also admitted of lot of smoke coming out from the entire Gulbarg Society. It is submitted that in the circumstances, it would have been impossible for any resident of Gulbarg Society to have witnessed any incident in such smoke and it is further impossible for any of these so-called eye-witnesses to have been present within the burning house of Shri Ehsan Jafri and be privy to watching all incidents at separate time frame without sustaining

any burn injuries. It is submitted that this also adds to discrediting the Prosecution witnesses.

487. My attention is further drawn to the testimony of PW-185 at Exh.727 i.e. Rasidabanu Rafiqbhai Shaikh, who according to Shri Bhardwaj, has further destroyed the Prosecution case as emerging from the testimony of the star witnesses inasmuch as, this witness also claims to have been within the residence of Shri Ehsan Jafri when the same was set afire. It is pointed out that the witness on pages Nos.2 and 3 of her deposition, has deposed that "પોણા અગીયાર વાગે પથ્થરમારો શરુ થતા બધાજ તેમજ અમો બધાજ જાફરી સાદેબના મકાનમાં ગયેલા. તે સમયે મારો દિયર અસ્લમ જાફરી સાદેબના મકાનમાં આવી ગયેલ અને મારા પતિ તથા દિચર ઈલ્યાસ છુટા પડી ગયા હતા. તે પછી ટોળૂ અંદર આવી ગયેલ. તે સમયે મારી દેરાણી અને મારો નાનો દિકરો જે બે મહીનાનો હતો તે બધા અમે જાફરી સાદેબના મકાનના રસોડામાં દતા. તે સમયે ખૂબ ધૂમાડો થતા દં બહાર નીકળેલી અને મારી દેરાણી તે રસોડામાં ગયેલ અને ત્યાં રસોડામાં આગ લાગતા રસોડામાં બળી ગચેલ જે મારી દેરાણીનું નામ નસીમબાનુ અસ્લમભાઈ હતુ. બહાર ટોળુ હતુ પછી હું અને મારા સાસુ મારા બાળક સાથે જાફરી સાદેબના સીડીમાં સંતાઈને બેસી ગયેલ. તે સમયે બદારનું ટોળુ આ લોકોને મારો આ લોકોને મારો તેમ કદેતુ દતુ. જેથી અમે ધીમે ધીમે જાફરી સાહેબના મકાનમાં ઉપર જઈને બેસી ગયેલા. ત્યાં અમે અડધો પોણો કલાક બેઠા પછી પોલીસની ગાડીઓ આવેલ. જે વ્હીસલો વાગેલ. તેથી

cui टोणाना भएसो ४ता २हेला." It is submitted that this witness has further confirmed the version that all Shri persons who were within Ehsan Jafri's residence, did not survive and were burnt alive. It is pointed out that this witness claims to have taken shelter beneath the staircase of Shri Ehsan Jafri's residence which led to the first floor of the residence, which is established to be in open view of the rear portion of Shri Ehsan Jafri's residence where the alleged incidents of rape of women and butchering of children has taken place. It is submitted that if really such incidents had taken place, then this witness would have definitely witnessed such incidents. It is pointed out that if in reality there was a mob perpetrating such acts, then this witness would have been very visible beneath the staircase from outside and would not have been spared by the mob. It is submitted that this witness on page No.7 in paragraph No.9 of her location. testimony, has pinpointed her It is submitted that again despite being a resident of the nearby chawl, this witness has identified none of the accused as being the perpetrators of any incident and it is submitted that the testimony of this witness further confuses the issue inasmuch as, this witness claims that her brother-in-law Aslamkhan was found dead within Shri Ehsan Jafri's residence in a mutilated and stabbed condition. It is pointed out that none of the other star witnesses including the eye-witnesses, has mentioned in any

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manner about any incident concerning such Aslam. It is submitted that in such circumstances, it is very doubtful whether such eye-witnesses are genuine eyewitnesses as claimed. It is submitted that this witness has also testified *inter alia* to the effect that her mother-in-law was hiding with her beneath the staircase when the incident took place.

488. It is pointed out that the mother-inlaw of the above witness has been examined as PW-302 at Exh.1047 and my attention is now being drawn to the testimony of Roshanbibi Usmanbhai Silawat, wherein this witness has deposed that she too had taken shelter in the residence of Shri Ehsan Jafri along with her family members, but according to Shri Bhardwaj, this witness has not supplied any details of any incident despite hiding together with her daughter-in-law under the staircase of Shri Ehsan Jafri's residence which was having full access to the rear compound of the residence of Shri Ehsan Jafri where the incidents of rape and multiple murders alleged to have taken place are and allegedly witnessed by the star witnesses. It is submitted that the present witness does not even claim to have seen Shri Ehsan Jafri within his residence during the time when she was present therein and the quality of the testimony of such witness only exposes the hollowness of the Prosecution case.

489. My attention is further drawn to the

testimony of PW-186 at Exh.728 i.e. Mohammadiliyas Usmanbhai Shaikh who has also corroborated the version supplied by the above witnesses with regard sister-in-law Nasimbanu of his fact to the @ Zebunben who according to this witness, was burnt alive in the kitchen of the residence of Shri Ehsan Jafri and my attention is drawn to page No.5 in paragraph No.6 of the testimony of this witness PW-186, wherein he has deposed that "અસ્લમભાઈના પત્નિ જાફરી સાહેબના રસોડામાં બળી ગયેલ. તેની સાથે બીજી બેનો પણ બળી ગયેલ. કેટલી હતી તે મને ખબર નથી. નસીમબાનૂ પ્રેગ્નન્ટ હતી." It is further pointed out that according to this witness, he is not a resident of Gulbarg Society but had tried to take shelter in Gulbarg Society. It is pointed out that this witness has clearly and categorically stated in paragraph No.4 on page No.3 of his examination-in-chief that when he tried to take shelter in Gulbarg Society at about 9:00 a.m. 28/02/2002, he found both the gates of the on it is, according Society closed and Shri to Bhardwaj, the further testimony of this witness that he thereafter attempted to enter into the Society residence of through the Dayaram Jinger by requesting him to permit entry from his residence and it is submitted that even according to this witness, he such granted was access and was permitted to enter into the Society in such fashion. is submitted that in the circumstances, the Tt. entire version with regard to the residence of Shri Dayaram Jinger being used for stone pelting and

private firing and the role allegedly played by the accused therefrom, cannot be accepted. It is pointed out that this witness also claims to have heard the cylinder from explosion of а qas within the residence of Shri Ehsan Jafri. It is submitted that in such circumstances, if such version is required to be accepted more so since even this witness is not declared hostile, then the same completely and utterly contradicts the versions of the star witnesses. It is pointed out that even this witness has not identified a single accused as being the perpetrator of any incident. My attention is drawn to page No.9, paragraph No.13 of the testimony of this witness wherein he claims to have met the injured Aslam (son of deceased Anwarkhan) at the refugee relief camp of Dariakhan Ghummat and his deposition in that regard runs as "अस्तमलाઈ જેઓने હાથની આંગળીએ વાગેલ તેઓ પણ દરીચાખાન ઘુંમટ રાહત કેમ્પમાં અમારી સાથે રદેલા. તેમના પિતાનું નામ અનવરભાઈ છે કે કેમ તેની મને ખબર નથી. અસ્લમભાઈએ તેમના હાથે ક્યા સમયે ઈજા થયેલ તે સમય મને કદેલ નદિ. કઈ જગ્યાએ ઈજા થઈ તે મને કદેલ નદિ પણ તેમને ઈજા ગુલબર્ગ સોસા.ની અંદર જ થયેલ." It is submitted by Shri Bhardwaj that even this clearly establishes that they had no idea about the identity of the accused, about the nature of the incidents and about the role is submitted that of any perpetrator. Ιt this fortifies the defence theory that if at all there were perpetrators, the perpetrators were comprising

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490. My attention is drawn to the testimony of PW-201 Rafiqbhai Usmanbhai Shilavat at Exh.748 accompanied who related to was and PW-186 Mohammadiliyas Usmanbhai Shaikh, and it is pointed out that his version also does not relate to any incident of rape or killing as claimed by the star witnesses nor is this witness also in any position to identify any of the accused as perpetrators of any incident.

491. It is submitted that none of these declared hostile witnesses have been by the Prosecution. It is pointed out that these witnesses were within Gulbarg Society when the alleged incidents took place. It is submitted that they were not within the burning residence of Shri Ehsan Jafri and were in a position to provide genuine and correct eye-witness accounts which they have done so by admitting that they are not able to identify any of the accused. It is submitted that none of these witnesses had any reason to not identify an accused more so when most of these witnesses have lost an immediate family member in the incident. Ιt is submitted that in the circumstances, and more so when none of them have been declared hostile by the Prosecution, their versions cannot be discarded.

492. Further challenging the veracity and pointing out the contradictions emerging from the

testimonies of four or five star witnesses who according to Shri Bhardwaj, are claimed to be witnesses to each and every incident, it is pointed out that not only have such witnesses completely contradicted each other, each of them has given an entirely different sequence of events, each of them refuses to recognize the presence of others though others also claim to be in the same spot, each of them gives an entirely different version with regard to the alleged incident of rape and mass murders, each of them claims to be a part of the group of four or five persons of whom they were conveniently the only survivor and each of them claims that though a large majority of women and children rushed out of the residence of Shri Ehsan Jafri on account feeling suffocated, they confinedly remained of behind - not being suffocated only for the purposes of being thereafter deposing with regard to their so-called eye-witness versions. It is submitted further by Shri Bhardwaj that in their effort to paint the gory picture, the witnesses all of whom are admittedly within the confines of the ground of Shri Ehsan Jafri's residence, floor have conveniently seen only one incident and omitted others or have seen incident where their own blood relations being observed to have been done away with, were not witnessed by such witnesses. It is pointed out that further such witnesses also conveniently have been the sole persons present when Shri Ehsan Jafri allegedly made telephone calls to various dignitaries including the then Chief

Minister of Gujarat State and each of them denies or conveniently omits to mention the presence of other eye-witnesses who also were privy to the conversations or attempts made by Shri Ehsan Jafri to call up Government officials. It is pointed out that such witnesses have also changed the sequence of events as to when such phone calls were made and it is pointed out that most of the witnesses have claimed that the phone calls were made after one or serious incidents had taken two place, more particularly the butchering of Anwarkhan, causing of injury to Aslam, burning of vehicles and attempting to set afire the residence of Shri Ehsan Jafri which compelled some ladies and children to rush out who in turn were butchered by the mob. It is submitted that on the other hand the other witnesses have claimed that Shri Ehsan Jafri had called up much prior thereto whereas while each of these witnesses claims that Shri Ehsan Jafri had made phone calls to a number of dignitaries, only two phone calls are recorded to have been made from the landline of Shri Ehsan Jafri which is an admitted position emerging from the investigation. It is also pointed out by Shri Bhardwaj that the phone calls are also claimed to have been made by PW-107 Mrs.Rupaben, of which there is no record. It is pointed out that nobody has seen PW-107 Mrs.Rupaben making any phone calls, and on the other hand, PW-177 Sairaben Sandhi has given an entirely different version of events and it is submitted that it is amazing that while PW-106 has seen his mother, grandmother and another woman

being slaughtered, his father who admittedly was within the same premises on the ground floor being Shri Ehsan Jafri's residence, has no idea of the slaughter of his wife an mother. It is pointed out that in fact PW-116 Sayeedkhan has even admitted that till the time he entered into the witness box, he had no idea about who had done away with his wife and mother. It is submitted that it is unnatural and extremely strange that though his son PW-106 claims to have been an eye-witness to the slaughter of his mother and grandmother, he would not have narrated any aspect with regard to the perpetrators, to his own father. Tt. is submitted that in the circumstances, it is very difficult to believe these witnesses not only for they grossly contradicting each other, but they have completely exposed the hollowness of the Prosecution case and despite such diametrical contradictory statements emerging in the course of depositions, the State did not even bother to declare them hostile and it is urged that it is possible that a defence lawyer might influence a to depose in a manner hostile to the witness Prosecution version, but according to Shri Bhardwaj, it is extremely strange that the Prosecution itself has set up witnesses who contradict each other. It is submitted that the net effect of such depositions is an inference and conclusion to be drawn that the Prosecution has destroyed its own case.

493. It is pointed out by Shri Bhardwaj that PW-106 Imtiyazkhan has in general established

knowing every aspect about the

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himself to be incident including the alleged conspiracy and it is submitted that this witness has claimed to b present on all occasions where a particular incident has taken place, despite which, it is submitted that this witness has completely exposed the hollowness of the Prosecution case inasmuch as, not only the other witnesses have not supported his versions, but they have in fact testified in a manner which could be said to be diametrically contradictory to the versions supplied by this witness PW-106. It is pointed out that PW-106 has deposed in his testimony with regard to the alleged conspiracy on the part of the VHP and Bajrangdal on 27/02/2002 itself post the news spreading about the train burning incident at Godhra. My attention is drawn to paragraph No.5 on page No.5 of his testimony, where this witness PW-106 has testified that "भारा होઈना દિકરા शरीइलाઈએ भने જણાવેલ કે, તેમની દિકરી મધુરમ ટૉકીઝ પાસે પરિક્ષા આપવા ગયેલ છે. તે ૨૭મી તારીખે સાંજના છ વાગે મને જણાવેલ. તેમણે મને કઠેલ કે, આપણે મારી દિકરીને લઈ આવીએ. જેથી તેમની મારગ્તી કારમાં અમે મધુરમ સીનેમા પાસે સ્કુલે ગયેલા અને ત્યાંથી તેમની દિકરીને લઈને પાછા આવ્યા. અમે પરત આવતા હતા ત્યારે વચ્ચે ચમનપુરા ચકલા પાસે અમુક માણસોના ટોળા ગાડીઓને રોકીને ચોકથી લખાણ લખતા હતા. તેઓ ગડીઓના કાચ પર વિ.દિ.પ. અને બજરંગદળ દ્વારા ગુજરાત બંધનું એલાન તેમ લખતા હતા. આવુ લખાણ અમારી ગાડી પર પણ કરવામાં આવેલ. પછી અમે ત્યાંથી અમારા ઘરે ગયેલા." It is submitted that

thus, according to this witness, the vehicle of his cousin Mohammadsharif in which he was setting, was stopped by VHP and Bajrangdal volunteers at Chamanpura Cross Roads and the alleged 'Bandh' declared was being written by chalk on the vehicle cousin Mohammadsharif according to of the the present witness PW-106. It is submitted that the entire version of PW-106 having accompanied his cousin Mohammadsharif to fetch the daughter of Mohammadsharif when such alleged writing on the vehicle by VHP and Bajrangdal volunteers allegedly place, is completely nullified by PW-284 took Mohammadsharif who is examined at Exh.987 where in his testimony, the said Mohammadsharif has testified in paragraph No.2 on page No.2 that "dl. $\frac{30}{2}$ of રોજ સાબરમતી એક્સપ્રેક્સ પર ગોધરા ખાતે દૂમલો થયેલ તેના અનુસંધાને તા. ૨૮/૨/૦૨ ના રોજ ગુજરાત બંધનું એલાન આપવામાં આવેલ. જેથી બંધના દિવસે મારી બન્ને દુકાનો બંધ રાખેલ. હું અને મારા પરિવારના માણસો તે દિવસે ઘરેજ હતા." It is submitted that not only has the witness PW-284 thus not testified with regard to going out in a Maruti Car to fetch his daughter but no version as emerging from the testimony of PW-106 is even remotely supported by PW-284.

494. My attention is drawn further to the fact that PW-106 claims to have been present on the terrace of his residence along with his father when he saw the incident as an eye-witness where the said

Ankur Cycle Works was inflicted Ayub of stab injuries. My attention is drawn to page No.7 in paragraph No.8 of the testimony of PW-106 wherein he has deposed that "धरे आप्या બाદ में नास्तो पाशी डरेस. हं अने મારા પિતાજી સવારના દસ વાગે અમારા ઘરની અગાશી પર ઉભા હતા. ત્યારે રોડ પર ચારથી પાંચ છોકરાઓ દુકાનો બંધ કરાવતા કરાવતા આવતા હતા.તે છોકરાઓ ઓમ નગર તરફ ગયેલા. તે છોકરાઓમાં ૧.ભરત રાજપુત, ૨. ગીરીશ પ્રભુદાસ શર્મા, ૩.ભરત તલોદીયા, ૪. રમેશ પાંન્ડે, પ. કપીલ મુન્ના હતા. તે પછી તે ઓમ નગરથી થોડી વારમાં પરત આવ્યા ત્યારે તેમની સાથે બીજા દસેક છોકરાઓ હતા. તે લોકો 'જયશ્રી રામ' ના નારા લગાવતા હતા. 'મીંચાઓને મારો કાપો' તેમ બોલતા હતા. આ લોકોએ સંતોકબાઈની ચાલીના નાકે આવેલ અંકૂર સાચકલવાળાના છોકરાઓ નામે અયુબ અને યુસુફ બહાર ઉભેલા હતા. તેમને આ લોકો મારવા લાગેલા. આ બે જણને ભરત રાજપૂત,ગીરીશ શર્મા અને ભરત તેલી અને રમેશ પાંન્ડે મારવા લાગેલા. આ લોકો અમારી સોસા.ની આજુબાજુની ચાલીઓમાં રહે છે અને અમારી સાથે બેસતા ઉઠતા તેથી દું આ તમામને ઓળખુ છું. ભરત તલોદીયા અને આરત રાજપૂત ગીરીશ પ્રભુદાસ શર્માને અવાર નવાર મળવા આવતા હતા તેથી હું ઓળખું છું. યુસુફ અમારી સોસા.માં ભાગીને આવી ગયેલ અને અયુબ તેના ઘરમાં ભાગવા જતા ભરત રાજપૂતે તેના દાથમાં રહેલ ગુપ્તીથી અયુબને પીઠના ભાગે બે થી ત્રણ ઘા भोरेला." It is further pointed out that this witness in paragraph No.10 of his testimony, has testified that "તે બાદ પોલીસની ચારથી પાંચ ગાડીઓ સોસા.ના નાના ઝાંપા

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બાજુ આવીને ઉભી રહેલી. જેથી હું અને મારા પિતાજી નીચે ઉતરેલા. અને જાફરી સાહેબના ઘર પાસે આવેલ નાના દરવાજા પાસે ઉભા રહેલા."

submitted 495. Tt. is that from this testimony, it is clear that the incident of Ayub was allegedly witnessed by this eye-witness PW-106 from the terrace of his residence in the company of his father and he i.e. PW-106 according to this version, all throughout, after taking the breakfast, was present on the terrace of his own residence together with his father when he witnessed such incident and that both of them came down from the terrace only after the Police vehicles had come at the scene of incident. It is submitted that this is diametrically contradictory to the version supplied by another socalled eye-witness Firoz Bandeali i.e. PW-264 who has been examined at Exh.918, who has given an entirely different version with regard to the location and version of PW-106 when the alleged incident of Ayub took place. My attention is drawn to paragraph No.4 on page No.3 of the testimony of PW-264, where he has deposed that "ते दिपसे सपारना साडा દસ અગિયાર વાગ્યાને સુમારે હું અમારી સોસા.ના નાકે બેઠો હતો. તે સમચે કેટલાક અજાણ્યા માણસોને મારી સોસા.ની સામે આવેલ દુકાને અમુક માણસોને મારતા મેં જોયેલ. જેથી હું તરત અંદર આવી ગયેલ. અને સોસા.નો ગેટ બંધ કરી દીધેલ." My attention is drawn to the further testimony of PW-264 on page No.12 in paragraph No.18 wherein, in his cross examination,

the witness has testified that "हुं जनापना टिपसे सपारना સમયે સોસા.ના નાકે ફક્ત દસ થી પંદર મીનીટ બેસેલ. હું તે દિવસે મારા ફલેટની નીચે એક સોનીની દુકાન આવેલ છે ત્યાં બેઠેલ હતો. આ સોસા.ના તેમજ આજુબાજુના રહીશોમાંથી એક બે જણાં તે સમયે મારી સાથે તે દુકાન આગળ હતા. તે બે જણાં કોણ હતા તેના નામ બાબત પોલીસે મારી કોઈ પુછપરછ કરેલ નહિ. તે સમયે મારી સાથે ઈમ્તીયાઝભાઈ અને અમારી સોસા.ના સેક્રેટરી ગુલઝારભાઈ હતા.હું સોનીની દુકાને ગયો તે અગાઉથી આ બન્ને દુકાને બેઠેલા હતા. હું તે દિવસે પ્રથમ તે દુકાનેથી આગળ ગયેલ અને ત્યાંથી પાછો આવી આ સોનીની દુકાને આવેલ.હું તે પછી સોસા.ની અંદર ગયો તે સમયે આ ઈમ્તીયાઝ અને ગુલઝાર બન્ને પણ સોસા.માં મારી સાથે આવેલા.મારે આ બે જણાં સાથે તેઓ કેટલા સમયથી સોનીની દુકાને ઉભા છે તે સમય અંગે વાત થયેલ નહિ. હું, ઈમ્તીયાઝભાઈ અને ગુલઝારભાઈ અમે ત્રણે જણાં સોસા.ની અંદર ગયા બાદ ઓછામાં ઓછો અડધો કલાક સોસા.ની અંદર આવેલ સોસા.ના ગ્રાઉન્ડમાં અમે સાથે રદેલા. આ અમે જાફરી સાદેબના મકાનની બાજુમાં એક નાનો ગેટ આવેલ છે તેની સામે અમે ઉભેલા. આ સમય દરમિયાન મને પથ્થર વાગે. એ સમચે મેં ઈમ્તીચાઝભાઈ કે ગુલઝારભાઈને કોઈ પથ્થર વાગતા જોચેલ નદિ." It is submitted that according to this witness, PW-106 Imtiyazkhan was all throughout located on the ground floor of the Flats of PW-264 more particularly in a shop of a goldsmith together with one Gulzarbhai who was further identified as the Secretary of Gulbarg Society. It is claimed by this witness that he too was present with Imtiyazkhan and

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Gulzarbhai when the incident which is indirectly referred to as the incident relating to Ankur Cycle Works took place, on account of which all three of them i.e. PWs 264, 106 and Gulzarbhai entered back into Gulbarg Society whereupon the small gate near the residence of Shri Ehsan Jafri was shut by PW-264. It is pointed out that the presence of PW-116 Sayeedkhan is nowhere mentioned by this witness and therefore, if this witness is to be believed, then the version of PW-106 that he saw the incident related to Ayub from his terrace cannot be accepted, according to Shri Bhardwaj. It is submitted that in any case, according to PW-106, after being inflicted stab injuries, Ayub according to PW-106, ran away to his own residence (Ayub's residence) whereas, as referred to herein before, Ayub has clearly and categorically mentioned that after he was inflicted injuries, he took shelter into the house of a Hindu family. It is amazing, according to Shri Bhardwaj, that while PW-106 has identified the perpetrators of the stab injuries being inflicted on Ayub, Ayub himself has not identified a single person amongst the accused as perpetrators. It is submitted that therefore, the location of PW-106 at the time of such incident, is extremely doubtful.

496. It is further pointed out that even the claim of PW-106 that he climbed up on the terrace of Bunglow No.15 of Gulbarg Society and thereafter was able to see a mob of about 5000 strong, trying to attack the Society from the rear

portion, of whom PW-106 has conveniently been able to identify accused No.59 Atul Vaidya, one Mahendra Pukhraj who is not an accused in the present proceedings, accused No.25 Mangilal Jain, accused No.44 Nagin Patni, accused No.2 Lala Mohansing Darbar, accused No.63 Dinesh Sharma, accused No.50 Kapil Munna, absconding accused Ramesh Pande and accused No.38 Manish Prabhulal Jain. It is pointed out by Shri Bhardwaj that PW-106 claims that the residents of Bunglows No.15 and 16 came over to him and informed him that such stone throwing and an attempt to break open the rear wall of the Society is being done by the mob comprising of a large as also the above referred number of persons persons, acting upon which the PW-106 went on the terrace of Bunglow No.15. It is pointed out that the two persons who allegedly came over to call PW-106, are Firoz Gulzarbhai i.e. PW-129 who is examined at Exh.635 and Athar Vaid Khan who is missing. It is submitted that on the other hand PW-129 Firoz Gulzarbhai in his entire deposition has nowhere mentioned that he went over to PW-106 and took him to the terrace of Bunglow No.15 and in fact PW-129 Firoz Gulzarbhai has given an entirely different version, but has failed to identify a single accused as being the perpetrator of the incident wherein the Society was attacked from the rear portion as is claimed by PW-106. It is submitted by Shri Bhardwaj that it has been argued while referring to the incident of Irfan as to whether PW-106 was present even during the incident of Irfan and it is urged

that therefore, the presence of PW-106 on the terrace of Bunglow No.15 is not supported and is doubtful. It is pointed out that in any case, PW-106 in his cross examination has on page No.29 in paragraph No.23, clearly conceded that during the entire incidents of 28/02/2002, PW-106 had gone to only two houses in Gulbarg Society, firstly his own house and secondly the residence of Shri Ehsan Jafri. It is submitted that thus PW-106 has himself contradicted the version of his climbing on the terrace of Bunglow No.15 and thus identifying such a large number of accused as perpetrators. It is submitted by Shri Bhardwaj that the persons allegedly accompanying PW-106 to the terrace of Bunglow No.15 are conveniently not available since unfortunately all such persons have lost their lives in the incident. It is submitted that in any case, all such above referred accused who PW-106 claims to have seen from the terrace of Bunglow No.15, were named for the first time by PW-106 post 2008 and it is submitted that in such circumstances, and more particularly when one of the alleged members of the mob named by PW-106 i.e. Mahendra Pukhraj was also on given a clean chit by PW-106, the later reliability of PW-106 is further damaged.

497. It is further pointed out by Shri Bhardwaj that one of the incidents allegedly eyewitnessed by PW-106 after he took shelter along with his father, is the incident narrated by him on page No.16 in paragraph No.15 of his testimony, inasmuch

as, the same relates to the alleged killing of his Zebunben Kasambhai mother, grandmother and one Mansuri. It is pointed out that no rape is alleged to have been committed on the above three women. It is submitted that it is strange and not believable inasmuch as, while the narrative emerging from the testimony of this witness is *inter alia* to the effect that these three ladies rushed out of the residence of Shri Ehsan Jafri on account of the smoke that had arisen due to the fire, it is submitted that the alleged incident according to the witness and as seen by him as an eye-witness, was committed by accused No.55 Bharat Rajput, accused No.54 Bharat Teli and absconding accused Girish Prabhudas Sharma. It is submitted that none of the other so-called eye-witnesses have seen any incident wherein the combination of these three women had rushed out together and were simplicitor killed by the mob. It is submitted that it is incredible that PW-116 Sayeedkhan who happens to be the father of PW-106 Imtiyazkhan, meaning thereby that out of the three ladies killed, one was his wife, the other was his mother and the third was a woman known to him. It is submitted that despite being admittedly in the residence of Shri Ehsan Jafri, PW-116 does not claim to have seen any such incident and instead PW-116 has concocted an incident relating to the alleged killing of Firdausbanu, Shahejadali one and Zebunben, all of whom were simplicitor killed by the mob. It is submitted that PW-116 has testified that all these three persons rushed out of the residence

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of Shri Ehsan Jafri on account of the smoke and he does not attribute any of them to have been dragged by any of the members of the mob. It is pointed out that PW-116 has given and identified the names of totally different set of accused from what has been done so by PW-106. It is pointed out that PW-116 has identified accused No.1 Kailash Dhobi, accused No.43 Naran Channelwala, absconding accused Ramesh Choti and accused No.38 Manish Jain as the perpetrators of the incident.

498. On the other hand, another star witness being PW-177 Sairaben Sandhi who is examined at Exh.711, has given yet another combination of persons who have allegedly accompanied the deceased Zebunben when they were butchered by the mob. According to PW-177 in terms of her testimony on page No.13, paragraph No.15, she has testified inter alia to the effect that Zebunben was accompanied by one Mehmudaben, Mumtazben and Zarinaben, all of whom rushed out of the residence of Shri Ehsan Jafri on account of the smoke and fire and were butchered by the mob, of whom she has identified none of them. It is submitted that no other alleged eye-witness has seen Zebunben being done away with. It is submitted that in such circumstances, when all three eyewitnesses claim different versions and all three claim to be eye-witnesses, it would be difficult to accept such gross contradictions. It is submitted that it is incredible that PW-106 who claims to have witnessed the killing of his mother and grandmother,

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has not narrated anything about the said incident to his own father PW-116 who in any case despite being present in the very same residence of Shri Ehsan Jafri at the relevant point of time, has not seen the incident concerning his wife and mother, but has in fact seen Zebunben being slaughtered along with other sets of persons. It is submitted that while deposing in the Court, PW-116 has clearly testified on page No.21 in paragraph No.25 inter alia to the effect that he has not seen the seven members of his family after the date of the incident nor has he heard anything about them. It is pointed out that it would imply that PW-106 who happens to be the son of PW-116, has not narrated anything about the fate of his mother and grandmother, to his own father which cannot be believed.

499. On the other hand, according to Shri Bhardwaj, PW-283 Aslamkhan who was according to the Prosecution, injured in an attempt to save his father i.e. deceased Anwarkhan, has qiven an entirely different version about this set of three women being done away with in the incident. Μv attention is drawn to the testimony of PW-283 on page No.6 in paragraph No.8. It is pointed out that PW-283 is the first cousin of PW-106 and therefore, the grandmother of PW-106 and PW-283 are the same It is pointed out that on page No.6 in person. paragraph No.8 of his testimony, this witness has grandmother Kherunnisa, testified that his his brother Akhtarkhan and aunt Jamilaben (not the

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mother of PW-106), Sajedabanu and nephew Shadabkhan, all were done away with whereas conveniently PW-283 himself who was also a part of the above referred persons who had rushed out of the residence of Shri Ehsan Jafri, was not harmed at all. It is pointed out that in any case, PW-283 also has not identified any of the perpetrators of such incident. It is submitted that while PW-283 claims that all the above persons were simplicitor killed and none of the women was raped, one of the women referred to as the victims being Sajidabanu i.e. the sister-in-law

of PW-283, is claimed to have been raped by the mob in terms of the eye-witness testimonies of PWs 106 and 116. It is pointed out that this also is a grave and serious contradiction.

500. It is pointed out that PW-106 has thereafter alleged to have in continuation of the being above incident of three women killed, testified to the butchering of one Salim Abubakkar. My attention is drawn to page No.16 in paragraph No.16 of his testimony wherein PW-106 has attributed the killing of Salim Abubakkar to and identified accused No.59 Atul Vaidya, accused No.14 Gabbar Madanlal, accused No.50 Kapil Munna, accused No.47 Dharmesh Prahlad, accused No.29 Mukesh Pukhraj as of the killing of the above the perpetrators referred Salim Abubakkar. It is pointed out that none of the large number of the witnesses who have claimed to have seen all such other incidents from the residence of Shri Ehsan Jafri or other places

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from where they were located, have even remotely mentioned about the doing away of these two persons or the role of any of the accused in the perpetration of any of the incidents. It is pointed out that it emerges from the testimony of the IO appointed by the SIT i.e. Shri J.M.Suthar, PW-335 in paragraph No.237 of his testimony that no such names or no such incident were provided by PW-106 in his statement recorded before the SIT. It is pointed out that strangely PW-128 Rafig Abubakkar who happens to be the real brother of deceased Salim Abubakkar, has testified on page No.15 in paragraph No.15 of his testimony that till the time he deposed in the Court, he had not heard anything about the fate of his brother Salim Abubakkar. It is submitted that if PW-106 was in the same refugee relief camp as PWstrange that PW-106 despite having 128, it is witnessed such incident, would not have narrated anything about the incident or its perpetrators to the real brother of the victim. It is pointed out that PW-106 has further testified that accused No.25 Mangilal Jain and accused Manish Somabhai Patel i.e. Manish Splendour who was given a clean chit and against whom proceedings were sought to be and permitted to be dropped herein, are attributed to have perpetrated the killing of Gulzarbhai (Secretary of Gulbarg Society).

501. It is pointed out by Shri Bhardwaj that PW-129 Firoz Gulzarbhai who happens to be the son of deceased Gulzarbhai, despite being a close

friend of PW-106 and despite staying for a long period in the same refugee relief camp, has testified on page No.14 of his deposition that till the time he deposed in the Court, he was not aware about who had perpetrated the incident pertaining to the killing of his father and other family members.

It is submitted that another incident 502. in continuation of the above incidents and referred to in the course of the submissions made herein before, relates to the alleged rape and killing of one Firdausbanu and the killing of one Shahejadali, simultaneously to t he killing and rape of said Firdausbanu. It is submitted that despite being present all throughout and having witnessed all the incidents, PW-106 has remained totally silent about this incident, whereas the other eye-witnesses have glaringly contradictory and given inconsistent versions with regard to such alleged incident. It is pointed out that PW-116 on the other hand has witnessed such incident wherein, at the cost of repetition, it is submitted that PW-116 merely claims to have witnessed the killing of such persons and no rape is alleged to have witnessed by PW-116. It is pointed out that PW-116 has given the names of accused No.1 Kailash Dhobi, accused No.43 Naran Channelwala, absconding accused Ramesh Choti and accused No.38 Manish Jain as the perpetrators. It is submitted that on the other hand, PW-314 being one Fakirmohammad Nasirali Saiyed who is examined at Exh.1098, being the father of deceased Shahejadali,

has given a different version. My attention is drawn to page No.16 in paragraph No.22 of the deposition of this witness and it is pointed out that this witness claims that the said Firdausbanu was dragged out of the residence of Shri Ehsan Jafri by the mob, her clothes were torn apart and she was thereafter heard to cry for help, responding to which the son of the present witness PW-314, being Shahejadali attempted to help said Firdausbanu, when he too was killed by the mob. It is pointed out that this witness has identified accused No.42 Raju Tiwari @ Mamo Kaniyo as the perpetrator of the incident. It is pointed out that this witness has further deposed alia the effect that after inter to killing Shahejadali, Firdausbanu was taken away by the mob to the rear side of Shri Ehsan Jafri's residence and this witness does not claim to have seen the rape on such Firdausbanu. It is pointed out that accused

No.42 Mamo Kaniyo has been thrice i.e. on three separate occasions, wrongly identified by PW-314 Fakirmohammad.

503. Shri Bhardwaj has drawn my attention to the testimony of PW-289 Nadim Surohi, and has pointed out that in his testimony, while the witness has denied in his cross examination a suggestion that the said Shahejadali was killed while he was attempting to rescue Anwarkhan, it has emerged from the testimony of PW-335 Shri J.M.Suthar that the said witness had in his statement recorded before the SIT, given such information.

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504. My attention is yet again drawn to the testimony of PW-177 Sairaben Sandhi at Exh.711, wherein the witness has claimed mere killing of Firdausbanu and no rape was seen by such witness. It is submitted that PW-107 Mrs.Rupaben Modi despite claiming to be present all throughout, has not made any mention about most of such incidents.

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505. It is pointed out that strangely enough, though large number of eye-witnesses in the shape of PWs 289, 283, 264, 263, 241, 236, 213, 185, 143, 142 and 182 all of whom claim to have been in the residence of Shri Ehsan Jafri at the time of all such incidents, none of these witnesses has even remotely referred to the alleged rape, tearing of clothes of Firdausbanu and it is urged that this also is a glaring omission which goes to the root of the genuineness of the Prosecution version.

506. Another thrust of submissions made by Shri Bhardwaj, is to the effect that even corroborative material sought to be relied upon by the Prosecution is not trustworthy, truthful or believable and it is urged that even such evidence required to be discarded especially while is deciding the fate of the present accused. My attention is drawn to the so-called sting operation which was admittedly carried out during the period 2007 and it is pointed out that the sting May, carried out so-called operation was by а

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investigative journalist of a periodical named 'Tehelka' and the journalist was one Ashish Khaitan who has been examined as PW-313 at Exh.1091 on the record of the present proceedings, and it is pointed out that this witness in the course of his entire lengthy testimony, has established by the so-called sting operation carried out on accused No.25 Jain, accused No.28 Prahlad Raju Manqilal and accused No.30 Madanlal Dhanraj Raval. It is submitted that if the so-called sting operation is required to be accepted as genuine and a reliable piece of evidence and if what has emerged in the course of the sting operation, the transcript of which was read out in the open Court and read out as evidence of PW-313, than such version and an sequence of events completely destroys the so-called eye-witnesses' testimony of the eye-witnesses examined by the Prosecution in an effort to prove the charges against the accused. Ιt is also submitted that if these versions are required to be accepted, then also these versions have no evidentiary value inasmuch as, this is only an attempt made by a so-called journalist who set up a false identity, invited the accused under false and started surreptitiously recording pretext conversation that was taking place and it is pointed in any case, it is very clear that that out questions were put in such a manner that the accused were made to answer to such questions as was convenient to the journalist. It is pointed out that the accused have in any case, denied any role or

involvement in any incident barring their presence and that too, the accused have specifically denied being armed with any weapon or with any material connected to any of the incidents that took place at Gulbarg Society. It is submitted that if the version of these accused as emerging from the so-called accepted, sting operation is than the acts attributed to deceased Shri Ehsan Jafri by such accused, completely destroys the Prosecution version of events that occurred with regard to Shri Ehsan Jafri or for that matter, the role played by Shri Ehsan Jafri in the entire incident. It is pointed out that in such circumstances, the evidence is not required to be accepted inasmuch as, it relates to the sting operation. It is further pointed out by Shri Bhardwaj that in any case, the witness PW-313 has clearly admitted that large parts of his oral evidence with regard to the sting operation, which has surfaced during his examination-in-chief, was never narrated to the IOs of the SIT, who recorded his statements on no less than two occasions. It is submitted that in any case, even the SIT has not investigated into the aspect of the so-called sting operation with great detail inasmuch as, the hard disk containing the entire records of the sting operation though admittedly seized and forwarded to made the FSL, is not а part of the court is pointed out proceedings. Ιt that even the transcript provided by Shri Khaitan, PW-313, is not verified and is not established to be a transcript of the entire recording but admittedly PW-313 has

testified *inter alia* to the effect that he has only provided in the transcript what was thought to be relevant by the witness. It is submitted that it is also an admitted position that no voice samples of PW-313 was collected by the SIT. It is submitted that such circumstances, the entire in sting operation is not required to be considered while deciding the fate of the present proceedings. It is pointed out that out of the three accused involved in the alleged sting operation, two of the accused being accused Nos.28 and 30 are not identified by any of the eye-witnesses as being present at the time of any of the incidents nor is any role attributed to have been played by them in any incident by any witness. It is pointed out that the names of such accused are also not mentioned in any of the statements of any of the witnesses and it is further pointed out that neither of these accused has been identified by any witness as being involved in any of the incidents or as being the perpetrator of any of the incidents. It is pointed out that in any case, both these witnesses were arrested only on account of the injuries sustained by them and it is urged that it is required to be, therefore, accepted such accused had no idea of any of the that incidents since even according to the star witnesses of the Prosecution, their presence at the incidents scene of offence was not established. It is or pointed out that in such circumstances, this is also an aspect of the Prosecution case which weakens greatly the Prosecution case. My attention is drawn

further to paragraph No.62 on page No.92 of the cross examination of PW-313 wherein the witness has admitted that parts of the transcript and a reading thereof more particularly with the number of dots inserted between two sentences by the witness himself would admittedly even according to the witness, require an inference to be raised that there were some parts or sentences which were not elaborated or reproduced verbatim in the transcript.

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507. My attention is further drawn to the accused Prosecution case aqainst No.34 which according to Shri Bhardwaj, is completely negated by the testimony of PW-196 i.e. Ibrahim Nazirbhai Chandel who is examined at Exh.741 whereon page No.3 in paragraph No.4, the witness has testified clearly inter alia to the effect that one Rahimbhai who was a close friend of the witness, met him (the witness) in the relief camp and the witness has further testified that the said Rahimbhai had told him that Rahimbhai took shelter for the whole day and whole night on the date of the incident and was provided shelter and refuge by a lady working in one Shivam Clinic located in Dr.Gandhi's chawl and that lady is identified to be one Champaben and is also established beyond doubt to be the mother of accused No.34 Krishna. It is pointed out that this witness has not been declared hostile nor is this version of his testimony challenged by anyone and therefore, if such version is accepted, then a person who gives shelter to the members of the minority community

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could not participate in such heinous crimes. It is submitted that in such circumstances, this aspect is required to be considered favourable *qua* accused No.34 while deciding the fate of the proceedings against him.

508. Shri Rajendra Trivedi, the learned advocate appearing on behalf of the concerned accused, has firstly attempted to give a brief overview of the facts which have led upto to the trial taking place, evidence being recorded herein and the present stage of conclusion being arrived at. It is submitted by Shri Trivedi that admittedly the incident has taken place on 28/02/2002 and the witnesses/victims who were given shelter admittedly in the refugee relief camps were approached by the then Investigating Officers after registration of an offence and their statements were recorded on a number of occasions upto May, 2002, beginning from is further pointed out by Shri 05/03/2002. It Trivedi that for the first time, the victims came forward and approached the Commissioner of Police by filing an independent affidavit after engaging the services of legal professionals wherein new and additional names of accused, role played by them, and weapons used were highlighted. It is pointed out that the witnesses in their various affidavits, identified and gave names of specific individuals in connection with specific incidents and either the full name of an accused was supplied or his alias supplied or the name of his father or his was

residential whereabouts were described in the affidavits. It is submitted by Shri Trivedi that despite such state of affairs, only limited effort was made by the investigating agency to nail down identity of the the specific accused. Tt. is submitted that nearly six years after such state of affairs, for the first time, the victims supplied fresh names of fresh accused who were arrested post such aspects in 2008 or thereabout and it is urged that this delay of six years is fatal to the Prosecution. It is pointed out by Shri Trivedi that in any case, the SIT was completely dominated upon by the complainant/victims/witnesses who were in turn being led by an NGO and it is pointed out that a practice was adopted by the SIT in the course of further investigation whereby the identity of the accused so named after six years, was sought to be established and upon failure of the witness/victim to positively identify such accused in the course of a T.I.Parade held in that regard, the SIT did not make such accused face the trial and such accused Manish Splendour was dropped from the chargesheet. is submitted that however, the T.I.Parade of Ιt accused No.66 Babu Marwadi was carried out wherein the said accused was positively identified and was, therefore, made an accused in the present proceedings. It is submitted by Shri Trivedi that the names of accused Manish Splendour and accused No.66 Babu Marwadi were given for the very first time post formation of the SIT and the SIT deemed it appropriate therefore, and rightly so to carry out a

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T.I.Parade with regard to such accused. It is submitted that it was apprehended by the interested victims/witnesses that if a similar trend was to be followed by the SIT of carrying out T.I. Parades of all accused subsequently named post 2008, then upon failure to positively identify such accused, the entire hollowness of the Prosecution case could have been exposed, the SIT giving into the pressure of the victims thus not to follow the course of carrying out further T.I. Parades and straightway made such persons accused on the basis of statements of the victims before the SIT. It is submitted that 22 such accused were arraigned as accused by the SIT post investigation handled by them. It is submitted that even such accused, who were specifically named by the witnesses in their statements before the SIT on the basis of which such persons were made accused in the present proceedings and are facing this trial, in the course of their depositions these socalled star witnesses despite being given adequate opportunities, have failed to identify such accused in the Court. It is submitted that such failure of identification on the part of the witnesses has resulted in a complete destruction of the veracity and effectiveness of the depositions of such investigation witnesses as also the and the integrity of the investigation carried out by the SIT. It is submitted that SIT was always acting under the pressure of the witnesses/victims/NGOs and and carry out detailed impartial did not a investigation as it was required under the law to do

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is submitted that computerized Ιt so. typed statements of such witnesses were presented before the SIT and the IO of the SIT was directed to treat such pre-prepared statements and treat them as if the same were statements of such witnesses recorded by the IO of the SIT itself. It is pointed out that it. is emerging clearly from the testimony and depositions of 13 such Prosecution Witnesses as per the details provided herein after that they insisted computerized typewritten that their statements prepared by third party were insisted to have been treated as statements of such witnesses before the IO of the SIT. It is submitted that in such circumstances, the has failed SIT also to effectively discharge its duties which has resulted in innocent persons being dragged into the present trial without there being any basis to proceed against such accused. It is submitted that if an accused who has been named by the star witnesses i.e. Manish Splendour was not chargesheeted only on account of his not being identified, despite which the witnesses have proceeded to talk about the role perpetrated by such accused in the incident. It is submitted that in such circumstances, and more so when 23 of the accused have been misidentified or in the alternative, not identified at all in the Court by the star witnesses, it was not required to drag such accused through the process of a trial and it is urged that in any case even at this juncture, the accused whose case is on such footing, are required to be given a clean acquittal. It is submitted that

in any case, the investigation carried out by the SIT on its appointment by the Hon'ble Supreme Court of India, was not a *denovo* investigation but was a further investigation in terms of Sec.173(8) of the Cr.P.C. It is submitted that even while filing and submitting its final report, at no stage has the SIT genuineness challenged the of the earlier investigation carried out by the IOs then appointed and it is urged that in the circumstances, those statements recorded by such IOs pre-appointment of SIT, cannot be totally discarded since the SIT has not challenged the genuineness or correctness of such statements. It is submitted that the IO of SIT was examined at length in the present proceedings and at no place has he deposed with regard to having doubts with regard to the genuineness, any correctness accuracy of the statements or of victims/witnesses recorded by his predecessor IOs covering the period March, 2002 to upto November, 2002.

Sr. No.	P.W. No.	Name of Witness
1.	106	Imtiyaz Saeedkhan Pathan
2.	107	Rupaben @ Tanazdara Minu Modi
3.	129	Firozmammad Gulzarmammad Pathan
4.	142	Ashraf Sikandarbhai Sandhi
5.	143	Altafkhan Gulabkhan Pathan
6.	177	Sairaben Salimbhai Sandhi
7.	179	Ezazali Fakirmahammad Saiyad
8.	192	Mahammadali Shahejadali Saiyad
9.	191	Salimbhai Noormahammad Sandhi

Sr. No.	P.W. No.	Name of Witness
10.	242	Salim Abdulbhai Mansuri
11.	282	Dilavar Sikanderbhai Shaikh
12.	289	Nadeem Tassaduk Hussain Surohi
13.	301	Rasidabanu Dilavar Shaikh
14.	314	Fakirmammad Nazirali Saiyad

Sr. No.	Accused No.	Name of Accused
1.	42	Raju @ Mamo Kaniyo Ram Avtar Tiwari
2.	43	Narayan Sitaram Tank @ Narayan Channelwalo @ Narayan Kodhiyo
3.	44	Nagin Hasmukhbhai Patni
4.	45	Dashrath @ Geting
5.	46	Lakhansing @ Lakhiyo Bhurio Lalubha Chudasama
6.	47	Dharmesh Prahladbhai Shukla
7.	48	Jitendra @ Jeetu Pratapji Thakor
8.	49	Mahesh @ Pappu Pratapji Thakor
9.	50	Kapil Devnarayan @ Munnabhai Mishra
10.	51	Mahesh Ramjibhai Nath
11.	52	Suresh @ Kali Dahyabhai Dhobi
12.	53	Sushil Brijmohan Sharma
13.	54	Bharat @ Bharat Taili Shitalaprasad Balodia
14.	55	Bharat Laxmansinh God Rajput
15.	56	Pradip Khanabhai Parmar
16.	57	Kiritkumar Govindji Erda
17.	58	Meghsing Dhupsing Chaudhary
18.	59	Atul Indravadan Vaid
19.	60	Bipin Ambalal Patel
20.	61	Chunilal Jethaji Prajapati

Sr. No.	Accused No.	Name of Accused
21.	62	Dilip Kantilal Jinger
22.	63	Dinesh Prabhudas Sharma
23.	64	Shivcharan @ Jitendra @ Lallo Ramjirai

509. Shri Trivedi has relied upon a judgment of the Hon'ble Supreme Court of India, delivered in the case of **Bijoy Singh v. State of Bihar** as reported in **2002(9) SCC 147,** wherein the Hon'ble Apex Court in its opening paragraph, has observed thus:-

"1. Though sad, yet it is a fact people do not hesitate that in resorting to vengeance even on the unfortunate deaths of their nears and dears. There is a tendency to rope in as many people as possible for facing the trial relating to the death or injuries to the unfortunate victims. Sometimes it is over - enthusiasm and many a times designed effort to harass the relations and friends of the real culprits, It has been found that on occasions innocent persons including aged, infirm, ladies and children are booked for standing at the dock and remain confined in jails till the pendency of the cases. Some are

acquitted by the trial Court and many by the appellate Courts but only after their languishing in confinements for vears. Such efforts of unscrupulous survivors of the crime or the relations victims of the invariablv but unfortunately helps the real culprits as it becomes difficult for the Court to sift the grain out of the chaff. Under such circumstances and in view of the prevalent criminal jurisprudential system in the country, the doctrine of presumption of innocence in favour of the accused makes the justice itself a victim which ultimately weakens the criminal justice dispensation system. Be that as it may, on onerous duty is cast upon the criminal Courts in the country to ensure that no innocent is deprived of convicted and his fundamental liberties. However, in cases of group clashes and organized crimes, persons beyond the screen, executing the crime should not be allowed to get scot free. In cases involving number of accused persons, a balance approach by the Courts is required to be insisted upon. Neither any innocent person should be convicted nor a guilty acquitted under the cloak

and cover of the loose and liberal interpretations of the statutory provisions and the technicalities of procedural wrangles. In cases of arson and murder where large number of people are accused of committing the crime, the Courts should be cautious to rely upon the testimony of witnesses speaking generally and in an omnibus way without specific reference to the accused or the role played by them."

510. It is submitted by Shri Trivedi that even in the instant case, just because the victims out of a feeling of vengeance, wanted to rope in as many accused as is possible, with a view to settle scores with the loss of their near and dear ones, came out with the names post 2008 and naturally since the names were supplied by interested third parties, the accused who were arraigned on the basis of such names appearing in the statements of such victims, could not be positively identified by the witnesses who came forward in the witness box to depose in the Court. It is submitted that in the circumstances, large number of accused have thus sufferred the trauma of this trial despite being innocent of the charges that they face. It is submitted that in such circumstances, rather than justice being carried out, there is а maladministration of justice and in fact the real

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culprits are being given the benefit of such shoddy investigation and weak deposition. It is submitted that even the Hon'ble Supreme Court has recognized that every accused is entitled to presumption being raised in his favour with regard to his innocence and it is urged that more so when there are grave and serious contradictions in the depositions where the witnesses have failed to identify an accused or have wrongly identified another from amongst the accused as a specifically named accused, the entire veracity of the testimony of such witness is required to be treated as tainted and it is urged that no tainted testimony or part thereof can form the basis of establishing a case beyond reasonable doubt against any of the accused. It is submitted that even in such circumstances, the accused are required to be given the benefit of doubt and acquitted from all charges levelled against them.

511. It is pointed out by Shri Trivedi that further disturbing and damaging the Prosecution case is the fact that the Prosecution claims that it has examined a large number of witnesses to establish beyond reasonable doubt the presence, involvement and role of the accused in the perpetration of the crime. It is submitted that it can be seen that it is a repetitive process in the course of the present trial that though the alleged eye-witness has named а particular accused as the perpetrator of а particular incident and his specific role has emerged in the course of such testimony, the so-

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called eye-witness who claims to have seen such

accused commit such offence, has thereafter either wrongly identified such accused in the Court or has failed to identify in toto such accused in the Court, despite which in his further deposition more particularly, examination-in-chief, the witness has proceeded yet again to name such accused whom he has not been able to identify in the Court as being seen by the witness to perpetrate further offences. It is submitted that not one but a large number of socalled eye-witnesses have done so in the present case, as per the following details, and it is urged that in the circumstances, the accused herein are required to be given clean acquittal, and more so in light of the observations of the Hon'ble Supreme Court of India in the judgment delivered in the case of Shankerlal Gyarasilal Dixit v. State of Maharashtra as reported in 1981(2) SCC 35, in paragraph No.33, which reads as thus:-

"33. Our Judgment will raise а legitimate query : If the appellant was present in his house at not the material time, why then did so many people conspire involve him to falsely ? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the of different persons minds in the unfounded making of accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin

stories out of strong suspicions. In the instant case, the dead body of a tender girl, raped and throttled, was found in the appellant's house and, instinctively, everyone drew the inference that the appellant must have committed the crime. No one would pause to consider why the appellant would throw the dead body in his own house, why would he continue to sleep a few feet away from it and whether his house was not easily accessible to all and sundry, as shown by the resourceful Shrinarayan Sharma. No one would even care to consider why the appellants name was not mentioned to the police until quite late. These are questions for the Court to consider."

It is submitted by Shri Trivedi that 512. in the said case, the Hon'ble Apex Court turned aside a sentence of capital punishment awarded by the Sessions Court, confirmed by the Hon'ble Bombay High Court and acquitted the appellant of the offences charged. It is submitted that more so when most of the eye-witnesses in the present proceedings have failed to identify the perpetrator before the Court despite specifically naming him, it is required to be inferred that all such witnesses did not really know or were in no position to identify any of the accused and were induced or influenced on account of malafide considerations to wrongly name

and attempt to identify such accused. It is urged that in such circumstances also, the accused are required to be given a clean acquittal. It is pointed out that there are no less than 15 such socalled eye-witnesses examined on the record of the present proceedings. It is pointed out that since 17 eye-witnesses have been examined on the record of the proceedings and 15 of them have so grievously erred in such fashion, then the entire Prosecution case is, according to the defence, without any basis and all the accused are thus required to be given a clean acquittal.

Sr. No.	P.W. No.	Name of Witness
1.	106	Imtiyaz Saeedkhan Pathan
2.	107	Rupaben @ Tanazdara Minu Modi
3.	129	Firozmammad Gulzarmammad Pathan
4.	142	Ashraf Sikandarbhai Sandhi
5.	143	Altafkhan Gulabkhan Pathan
б.	177	Sairaben Salimbhai Sandhi
7.	179	Ezazali Fakirmahammad Saiyad
8.	192	Mahammadali Shahejadali Saiyad
9.	191	Salimbhai Noormahammad Sandhi
10.	242	Salim Abdulbhai Mansuri
11.	282	Dilavar Sikanderbhai Shaikh
12.	289	Nadeem Tassaduk Hussain Surohi
13.	301	Rasidabanu Dilavar Shaikh
14.	314	Fakirmammad Nazirali Saiyad

513. It is submitted that this trial is a strange trial where there is a departure from the

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normal rules of procedure and evidence inasmuch as, when a witness declines his previous statement made before the Police, and in the instant case, there are number of so-called eye-witnesses who have declined with regard to the genuineness of their statements made even before the SIT, the normal course on the part of the Prosecution would have been to declare such witnesses as hostile. It is submitted that though the witness denies а and vital aspect of particular his statement recorded even before the SIT, he has not been declared hostile. It is submitted that it is, therefore, required to be inferred that the witnesses had their aqenda and own were not interested in establishing the truth. It is pointed out that the witnesses and the agenda is different than that of the Prosecution and it is strange according to Shri Trivedi, that despite such state of affairs, the Prosecution did not declare such witnesses as hostile. It is submitted that in such circumstances also, the genuineness of the deposition of such witnesses is extremely doubtful and the benefit of such doubts must go in favour of the accused.

514. It is submitted by Shri Trivedi that another fatal aspect *qua* Prosecution is the fact that despite the incident admittedly taking place in broad daylight and despite a large number of accused being arrested in connection with the present offence, the sole basis of such arrest being

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injuries sustained by the accused in the incident, there is no explanation offerred on the record of the proceedings by the Prosecution which would explain or justify such injuries being sustained by the accused, being linked to the involvement of the accused in the offence. My attention is drawn to a judgment of the Hon'ble Supreme Court delivered in case of D.V.Shanamuqam v. State of Andhra the Pradesh as reported in 1997(5) SCC 349, and the observations made by the Hon'ble Apex Court in paragraphs Nos.11, 12 and 13, wherein the Hon'ble Apex Court has clearly held that it is a fatal failure on the part of the Prosecution if no explanation is offerred with regard to the injuries caused to the accused.

515. A judgment of the Hon'ble Gujarat High Court delivered in the case of Momna Babu Jamal v. State of Gujarat as reported in 1994(2) GLH 99 is also pressed into reliance, wherein it has been held that when the Prosecution has failed to explain injuries sustained by the accused, the Prosecution is said to have suppressed the true origin of the incident as also the authenticity of the version of the Prosecution which cast a material shadow of doubt, benefit of which must go to the accused. It is submitted by Shri Trivedi that no less than 16 amongst the present accused, were arrested, of whom 12 of the present accused are currently facing trial, were chargesheeted solely on the basis of injuries caused to them in the incident and which

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failed to have been has been explained satisfactorily by the Prosecution inasmuch as, not a single eye-witness has deposed with regard to how such accused came to be injured and the entire Prosecution version, more particularly the version supplied by the so-called eye-witnesses suffers from a grave shadow of doubt, the benefit of such doubt is necessarily required to be given to the present accused. It is submitted that not a single eyewitness has deposed about any private firing by any persons nor has any witness given any deposition with regard to the injuries being caused to the accused as a result of such private firing though the chargesheet clearly mentions with regard to the private firing as also Police firing in relation to incident herein. It is submitted that the the injuries thus sustained by the accused are not satisfactorily explained and benefit is required to be given to the accused who are required to be given a clean acquittal. Shri Trivedi supplies a list of the accused who admittedly arrested are and chargesheeted only on the basis of their having sustained injuries in the incident.

Sr. No.	Accused No.	Name of the Accused
1	4	Mangaji Pokerji Marwadi
2	5	Jayesh Ramubhai Patni
3	6	Kishorbhai Mangabhai Patni
4	7	Shailesh @ Kalu Hiralal Patni
5	8	Kanaiya @ Bablu Aiyav Chechau

Sr. No.	Accused No.	Name of the Accused
6	9	Kantibhai Popatbhai Patni
7	10	Shakrabhai Sendhabhai Patni
8	11	Manojkumar Premjibhai Parmar
9	12	Dipakkumar Somabhai Solanki
10	13	Vinodbhai Arvindbhai Solanki
11	15	Ajay Somabhai Panchal
12	18	Sanjay Shakrabhai Patni
13	19	Shailesh Natvarlal Patni
14	20	Naresh @ Nariyo Bansilal Prajapati
15	22	Babubhai Mohambhai Patni
16	23	Babubhai Manjibhai Patni
17	24	Shankerji Hakaji Mali
18	28	Prahladji Rajuji Aasori
19	30	Madanlal Dhanraj Raval
20	33	Prahlad Omprakash Sonagara
21	39	Mukesh Atmaram Thakor
22	40	Parbatsing Karshansing Thakor

516. It is further pointed out by Shri Trivedi that amazingly though four of the accused as per the above details, have been arrested on the basis of injuries sustained by them in the incident, there is no medical certificate on the record of the proceedings *qua* injuries sustained by them and there is no material to establish that any of such four persons sustained any such injuries in the incident. It is submitted that this is a fatal flaw in the Prosecution case *qua* such four accused who should be given a clean acquittal. It is pointed out that two further accused have been arrested solely on the

basis of the injuries sustained by them and the injury certificates at Exhs.623 and 624 clearly establish that such accused have sustained only minor injuries which are not satisfactorily explained and therefore also, such two accused also are required to be given a clean acquittal.

517. It is pointed out by Shri Trivedi that the star witness PW-106 Imtiyazkhan in his testimony on page No.42, paragraph No.36, has clearly denied any knowledge with regard to the deceased Shri Ehsan Jafri possessing a gun or having fired on the fateful day from such weapon and it is submitted that if the witness claims to have seen all such incidents in detail, it is surprising that though it is established on the record that the private firing carried out by Shri Ehsan Jafri caused injuries to persons and resulted into the death of one 15 person, such witness claims that even till date he has no knowledge about such firing. It is submitted that this further establishes that the witness is not a reliable witness.

518. It is pointed out that the father of PW-106 i.e. PW-116 Sayeedkhan has also similarly claimed to have been present in Shri Ehsan Jafri's residence when he claims to have been an eye-witness to a number of incidents but has similarly denied having any knowledge of private firing by Shri Ehsan Jafri from a weapon and it is submitted that in the circumstances, it is required to be inferred that

the witness has never seen any incident or he is deliberately telling untruth on oath which is also fatal to the Prosecution case. My attention is drawn to page No.63 in paragraph No.73 of the deposition of PW-116 Sayeedkhan, in support of such submission. It is further submitted that a large number of eyewitnesses have been posed the present question and all of in the course of their them cross examination, have similarly not admitted to having any knowledge of such private firing or have denied such private firing and therefore also, the genuineness of their version is seriously at doubt. Such eye-witnesses are listed herein below:-

Sr. No.	P.W. No.	Name of the witness	Exh.
1.	106	Imtiyaz Saeedkhan	542
2.	116	Saeedkhan Ahmedkhan	584
3.	142	Ashraf Sikandarbhai Sandhi	654
4.	143	Altafkhan Gulabkhan Pathan	655
5.	166	Sharikhkhan Sikandarkhan Pathan	697
6.	177	Sairaben Salimbhai Sandhi	711
7.	191	Salimbhai Noormahammad Sandhi	734
8.	192	Mahammadali Shahejadali	736
9.	236	Safdar Hussain Fazlu Hussain Ankleshwaria	815
10.	241	Firoz Dilavar Shaikh	831
11.	263	Mahammad Salim Ahmedbhai Shaikh	910
12.	282	Dilavar Sikanderbhai Shaikh	978
13.	283	Aslamkhan Anwarkhan	981

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Sr. No.	P.W. No.	Name of the witness	Exh.
14.	289	Nadeem Tassaduk Hussain Surohi	995
15.	293	Abdulbhai Alanurbhai Mansuri	1039
16.	314	Fakirmammad Nazirali Saiyad	1098
17.	106	Imtiyaz Saeedkhan	542

519. Ιt is pointed out that no less than seven of the present accused persons are simplicitor arrested solely on the basis of they being injured the Police firing during the incident in and consequent to the incident when the Police was engaged in taking the survivors towards relief camp. pointed out that none of the witnesses Ιt is examined by the Prosecution, has deposed with regard to the accused, meaning such seven accused being injured on account of the firing taking place on account of any overt act committed by the specific seven accused. It is pointed out that mere injury in an incident of firing would not by itself be the sole basis of making the accused beyond reasonable doubt, being perpetrators of such serious offence. It is pointed out that in such circumstances, in absence of any specific mention about any overt act on the part of any of such seven accused, even such seven accused are required to be given the benefit of doubt and acquitted herein. It is submitted that there was no curfew or restrictions imposed by any of the authorities and therefore, even if it is any movement of presumed that there was the

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concerned accused near the scene of incident, that, according to Shri Trivedi, could have resulted in injuries being sustained by such accused, but it does not in any manner establish any of the charges or does not even remotely establish their involvement in any of the incidents and thereby involvement in the offence herein.

Submitting further, Shri Trivedi has 520. urged that the Prosecution case against accused No.58 Meghsinh Chaudhary, is required to be rejected as completely got up and treated as a malicious attempt to rope in accused No.58 as an accused. It is submitted that accused No.58 was attributed to be present with one politician-cum-lawyer being one Jagrupsing Rajput at the time of the incident and the main charge levelled against such persons was that they were inciting the mob to enter into Gulbarg Society and were thus successful in the mayhem that followed. It is pointed out that in the course of the investigation by the SIT, a detailed investigation was carried out with regard to the evidence submitted and provided by said alibi Jagrupsing Rajput and since the IO Shri J.M.Suthar found that the said Jagrupsing Rajput had provided a valid alibi which established to the satisfaction of the IO that such individual was never present at the scene of the offence at the time attributed by the so-called eye-witnesses, the said Jagrupsing Rajput was not made an accused in the present proceedings. It is submitted by Shri Trivedi that an application

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under Sec.319 of the Cr.P.C. at Exh.738 was tendered behalf of the victims/witnesses seeking on arraignment of the said Jagrupsing Rajput along with as accused in the some other persons present proceedings and the Court by passing a detailed order, rejected the reliefs qua such accused being Jagrupsing Rajput. It is submitted that the said order of this court was challenged before the Hon'ble High Court of Gujarat and it is an admitted position that Hon'ble High Court of Gujarat too upheld the verdict of the lower Court and thus, the order regarding rejection of arraignment of Jagrupsing Rajput is confirmed and validly operative. It is submitted that the Hon'ble Supreme Court of India in the case of B.N.Singh & Ors. v. State of Gujarat & Ors. as reported in 1990(1) GLH **256**, laid down the ratio *inter alia* to the effect that when the alibi evidence pertaining to the role of a particular accused is accepted, then the other accused who are attributed to have been present with such accused whose alibi is accepted, also cannot be convicted on the strength of such evidence since the entire evidence pertaining to the presence and role of all accused was held to be doubtful by the Hon'ble Supreme Court and the conviction by the the confirmation of lower Court as also such conviction by the Hon'ble High Court, was set aside and all the accused were given the benefit of acquittal. It is urged by Shri Trivedi that in the present case also, accused No.58 likewise is required to be given the benefit of acceptance of

alibi of Jagrupsing Rajput by the IO and likewise is required to be given a clean acquittal.

521. further pointed out that Ιt is in addition to the role played by accused No.58, it is required to be noted that a disturbing facet has emerged inasmuch as, eight other persons were also named by the eye-witnesses as being present at the scene of the offence and having played an active role in perpetration of the offence. The defence seeks to submit a compilation of the names of such persons and the related testimony of the so-called eye-witnesses recorded in the present proceedings. It is pointed out that despite the investigating agency accepting that the so-called eye-witnesses had falsely tried to drag in such nine persons including the said Jagrupsing Rajput, as accused, the investigating agency chose not to chargesheet these nine persons despite which an attempt was made by the victims to arraign only four out of nine such persons inasmuch as, Manish Splendour, Mahendra Pukhraj, Jagrupsing Rajput and Bhuriyo Mafa Patni @ Iniyo Harijan were sought to be arraigned as accused herein and no efforts were made to arraign the other five persons so named. It is submitted that despite such set of circumstances, strangely all the socalled eye-witnesses have proceeded to, in the course of their depositions, refer to such persons despite their not being chargesheeted and attribute a specific role in the incidents. It is submitted some accused are even attributed to have that

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indulged in fire arms more so, a person named Mukesh Bhadoriya and it is urged that in the circumstances, it is required to be inferred and it is the only inference that can be drawn that all the witnesses were made to depose in a parrot like manner and were providing window-dressed evidence which cannot be accepted and therefore also, the so-called eyewitnesses are required to be discarded and the benefit of doubt created must go to the accused.

522. Shri Trivedi has further prepared a large number of compilation where a witnesses including PW-116 Sayeedkhan, have in the course of their various statements, their affidavits before the SIT and their depositions in the Court, have kept on altering the number of persons who according to them, were involved in the perpetration of various incidents which can be clubbed as the entire incident relating to Gulbarq Society. Ιt is submitted that as an illustrative example, PW-116 in his statement recorded on 05/03/2002 identified and named nine persons from amongst the perpetrators; in his statement dated 09/05/2002, it dropped down to eight persons; in his affidavit dated 25/11/2002 and his application to the Commissioner of Police also dated 25/11/2002, the witness named and identified in his statement recorded 15 perpetrators; on 25/02/2008, the same number i.e. 15 persons were named by the witness whereas in his computerized statement presented to the SIT on 22/05/2008, 23 persons were named and identified as perpetrators,

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whereas in his deposition in the Court recorded on 16/11/2009, 19 persons were named as perpetrators, of whom only seven of the accused were identified. It is submitted that it would be natural for an eyewitness to possibly not know all persons, but such witness could be in a position to identify by face any of such accused, however, in the instant proceedings, the witness has provided specific names of 23 persons, of whom as stated above, the witness according to Shri Trivedi, was able to identify only seven persons in the Court despite being given more than adequate opportunities and such conduct of the witness was observed by the Court while recording evidence. Ιt is submitted the that in such circumstances, it is clear that such unnatural variations in the number of persons sought to be roped in as accused, is unnatural and establishes tutoring and an attempt to maliciously prosecute the accused by interested persons. It is pointed out by Shri Trivedi that it would have been acceptable if a solitary witness or so could have made such errors whereas in the instant proceedings, no less than 15 witnesses in the shape of PW-107 at Exh.548, PW-116 at Exh.584, PW-129 at Exh.635, PW-142 at Exh.654, PW-143 at Exh.655, PW-177 at Exh.711, PW-179 at Exh.720, PW-191 at Exh.734, PW-192 at Exh.736, PW-Exh.834, PW-282 at Exh.978, PW-289 242 at at Exh.995, PW-301 at Exh.1046 and PW-314 at Exh.1098 have all made the same lapses in having large scale inconsistencies with regard to naming of the perpetrators and identifying such perpetrators in

Sr. No.	P.W. No.	Name of the witness	Exh.
1.	107	Rupaben @ Tanazdara Minubhai Modi	548
2.	116	Saeedkhan Ahmedkhan Pathan	584
3.	129	Firozmammad Gulzarmammad Pathan	635
4.	142	Ashraf Sikandarbhai Sandhi	654
5.	143	Altafkhan Gulabkhan Pathan	655
6.	177	Sairaben Salimbhai Sandhi	711
7.	179	Ezazali Fakirmahammad Saiyad	720
8.	191	Salimbhai Noormahammad Sandhi	734
9.	192	Mahammadali Shahejadali Saiyad	736
10.	242	Salim Abdulbhai Mansuri	834
11.	282	Dilavar Sikanderbhai Shaikh	978
12.	289	Nadeem Tassaduk Hussain Surohi	995
13.	Ι	-	_
14.	301	Rasidabanu Dilavar Shaikh	1046
15.	314	Fakirmammad Nazirali Saiyad	1098

523. It is submitted that in such circumstances, the Prosecution witnesses have proved themselves to be thoroughly unreliable and therefore, their evidence is required to be discarded and it is urged that in the totality of all circumstances and in light of the consistent judgments of the Hon'ble Supreme Court of India

relied upon by the defence, it is urged that all the accused herein be given a clean acquittal.

524. Shri T.R.Bajpai, the learned advocate appearing on behalf of the concerned accused, adopts the submissions made by learned advocate Shri Abhay

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Bhardwaj as also Shri Rajendra Trivedi, and in addition thereto, submits that in his compilations, he has pointed out the inconsistencies and contradictions of no less than 19 of the eyewitnesses inasmuch as, there has been a contradiction in the statement before the SIT vis-avis their deposition and testimonies in the Court.

Sr. No.	P.W. No.	Name of the eye-witness	Exh.
1.	106	Imtiyaz Saeedkhan Pathan	542
2.	107	Rupaben @ Tanazdara Minubhai Modi	548
3.	116	Saeedkhan Ahmedkhan Pathan	584
4.	142	Ashraf Sikandarbhai Sandhi	654
5.	143	Altafkhan Gulabkhan Pathan	655
6.	177	Sairaben Salimbhai Sandhi	711
7.	179	Ezazali Fakirmahammad Saiyad	720
8.	191	Salimbhai Noormahammad Sandhi	734
9.	192	Mahammadali Shahejadali Saiyad	736
10.	213	Tassaduk Hussain Mulla Tahir Surohi	763
11.	236	Safdar Hussain Fazlu Hussain Ankleshwaria	815
12.	240	Aslam Kasambhai Mansuri	829
13.	241	Firoz Dilavar Shaikh	831
14.	282	Dilavar Sikanderbhai Shaikh	978
15.	284	Mahammad Sharif Nasaruddin Shaikh	987
16.	289	Nadeem Tassaduk Hussain Surohi	995
17.	301	Rasidabanu Dilavar Shaikh	1046
18.	337	Zakia Nasim Ahmed	1463
19.	129	Firozmammad Gulzarmammad Pathan	635

525.

It is urged that in such circumstances

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also, the accused are required to be given a clean acquittal.

526. At this stage, reverting to the aspect of identification of accused No.66 Babu Marwadi by PW-177 Sairaben Sandhi, Shri Bhardwaj has submitted that the reply Exh.792 of the IO of SIT, clearly indicates that PW-177 was present in the Court on some dates of hearing not related to testimony, during which she had seen accused No.66 Babu Marwadi. It is suggested that in such circumstances, the identification of the accused by the concerned witnesses is stage-managed and the accused were shown to the witnesses were shown to the witnesses as and when they came to the Court on due dates of hearing and therefore, any identification anv accused by any of the witnesses is tainted and doubtful more so when PW-177 in the course of her testimony, has not testified with regard to any T.I. Parade being carried out despite a specific order of the Court in that regard.

527. It is submitted by Shri Bhardwaj that even in the chargesheet, accused No.21 Dharmesh is described as an absconder named Dharmesh Dhirubhai Patel, resident of Parth Society, whereas the present accused arrested herein is accused No.47 Dharmesh Prahlad Shukla who in turn has been identified by Aslam before SIT as Dharmesh Mochi.

528. Placing reliance upon the judgment

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delivered by the Hon'ble Supreme Court, as reported in **AIR-1975-SC-1727** and more particularly paragraph No.14 thereof, it has been argued by Shri Bhardwaj that when there are doubts about the weapon with which the inflicting of injuries has been caused and when the expert has not given clear reply, it was dutybound upon the Prosecution to show the weapon to the expert. It is pointed out that in most cases, no weapons have been recovered and only one knife was recovered from accused No.1 Kailash Dhobi and though accused No.1 is attributed to have used a sword in the inflicting of injuries, no questions were posed to the expert or neither was the weapon shown to the expert.

529. is also pointed out Tt. that most persons who are attributed to have been chopped into pieces by the mob, did not have injuries on their body as established from the post-mortems and it is also the case of the eye-witnesses that victims were cut into pieces and then burnt alive. It is pointed that presence of carbon particles in such out victims in the course of post-mortem also suggests that witnesses are not speaking the whole truth. It is pointed out that except one barring incident of Salimkhan Sikanderkhan Pathan whose post-mortem report is at Exh.465, which establishes that some inflammable material was sprinkled on the body, no other dead body indicates that any inflammable or combustible material was sprinkled or thrown at such persons before setting them afire, and that there

were no injuries on most of the bodies that were burnt.

530. this stage, Shri H.L.Jani, the At learned advocate appearing from the Legal Aid on behalf of accused No.64, has made his submissions inter alia to the effect that the Prosecution has not even remotely established any of the charges against the accused No.64 and therefore, not only he deserves a benefit of doubt but the accused No.64 is required to be given a clean acquittal. It is pointed out by Shri Jani that the role allegedly attributed to accused No.64 is inter alia to the effect that he along with his brother, had opened fire from private weapons on the residents of Gulbarg Society. It is submitted that the only witness who has testified to having seen the accused perpetrate such act, is PW-106 Imtiyazkhan. It is submitted that however, it is clear that the said witness had not given the name of accused No.64 while recording his statement on 05/03/2002 nor did provide such names in his application and he accompanying affidavit to the Police Commissioner. It is pointed out that even before the SIT, no cogent explanation has been offerred with regard to omission of such names. It is submitted that in any case, the forensic evidence clearly establishes that there was private firing on the mob from within Gulbarg Society, but there is absolutely no material which in any manner, shows that there was any

private firing from any terrace outside Gulbarg Society. is submitted that under It the circumstances, no role can be attributed to accused No.64 and the accused No.64 cannot be convicted on the strength of such flimsy evidence and it is urged that since there is no recovery or discovery of any incriminating muddamal or material which would in any manner establish the presence of the accused at the scene of the incident, other than the bare testimony of PW-106, it is submitted that grave and serious doubts are created with regard to the veracity of the testimony of PW-106. It is further submitted that accused No.64 has been implicated as an accused only as an afterthought and in such circumstances, the accused No.64 is required to be given a clean acquittal.

Rejoinder arguments by Shri R.C.Kodekar, learned Spl.P.P. appearing on behalf of Prosecution.

531. Having considered the in-depth, lengthy and voluminous arguments and submissions advanced on behalf of the accused, Shri R.C.Kodekar, the learned Spl.P.P. appearing for the State, submits in his rejoinder *inter alia* to the effect that the entire incident relating to Gulbarg Society can be divided into three separate and distinct stages. It is submitted that the first stage of incident took place outside Gulbarg Society, the

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second stage of the incident took place within Gulbarg Society wherein a large number of incidents were perpetrated by the accused concerned and it is submitted that the third stage of the incident could be said to have taken place when the Police at last reached the scene of the incidents and were attempting to take away the survivors and victims to safety. It is submitted that the genus of the entire incident could be said to have been initiated in of the Bandh call given terms by various organizations in support of and as an outrage in response to the horrific train burning incident at Godhra on the previous day. It is submitted that from the deposition of the innumerable eye-witnesses whose depositions are discussed at length in the submissions made on behalf of the State, the first set of accused and persons gathered and formed an assembly with the purpose of enforcing the Bandh and shutting down the shops that were open in the locality. It is submitted that it emerges that a group of about 10 or 15 persons had indulged in such exercise. It is further submitted that it is very clear from eye-witnesses' testimony that the mob swelled in numbers and the offence could be said to have started when the two young boys of Gujarat Cycle Works located outside Gulbarg Society, named Yusuf and Ayub, were attacked by the mob. It is pointed out that the said Yusuf took shelter in Gulbarg Society whereas said Ayub who attempted to run away to his home, was, as is previously stated, stabbed in the back and this according to Shri

Kodekar, is the beginning of the offence and this could, therefore, be said to be an unlawful assembly.

My attention is drawn to the testimony 532. of PW-117 being one Ayubkhan Habibkhan Pathan being an injured victim and PW-194 being Habibkhan who is the father of PW-117 and it is submitted that the versions of both these witnesses corroborate and support each other inasmuch as, Ayubkhan also has testified inter alia to the effect that on being stabbed from behind, he rushed to his residence and thereafter took shelter in the residence of a Hindu family. It is submitted that PW-194 being Habibkhan also has corroborated this version. It is submitted that therefore, it is required to be accepted that Ayubkhan ran towards his home and thereafter took shelter in the residence of a Hindu family and it is submitted that the stabbing of Ayubkhan and his running towards his residence, is the clear and ungualified version provided by all the eyewitnesses who have been examined herein. It is submitted that therefore, there is ample corroboration the Prosecution version to more particularly provided by the injured victim himself and therefore, it cannot be said that the incident or version with regard to the injuries being caused to Ayubkhan are got-up or testified to in a biased and malicious manner by interested witnesses. It is submitted that since the victim Ayubkhan was stabbed in his back, he was naturally in no position to

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identify his attackers. It is submitted that therefore, when other eye-witnesses have seen the version and they were in a position to identify a particular perpetrator, there is no reason to discard or discount the versions of such eyewitnesses.

It is submitted by Shri Kodekar that 533. by not identifying any persons or by not wrongly identifying any persons, it is clearly established that PW-117 Ayubkhan is a credible witness and he does not maliciously want to implicate any of the accused as being the perpetrators. It is submitted that he has narrated the incident as it took place is urged that in the circumstances, the and it witness coupled with the eye-witnesses who have seen the incident, their versions are required to be accepted and the involvement and therefore, the quilt of the persons named in the incident, is according to Shri Kodekar, thus established beyond It is submitted that almost reasonable doubt. simultaneously an incident further occurred outside Gulbarg Society, which is the burning of an autorickshaw belonging to one Gulam Master.

534. It is pointed out that PW-106 has right since the very inception of the incident and even when his statement was recorded before the first IO on 05/03/2002, pointed a finger at accused No.54 and it is submitted that the involvement and role of accused No.54 is consistently pointed out by

PW-106 right upto the various statements recorded before the SIT and even in the Court deposition, the present witness PW-106 has identified accused No.54 as one of the perpetrators of the incidents relating to Ayub. It is pointed out that as far as accused No.55 is concerned, his name is pointed out as the principal perpetrator who inflicted the gupti blows on Ayub and the name of accused No.55 appeared in the application of PW-106 tendered the to Commissioner of Police which was tendered on 25/11/2002 and even before the SIT when statement was recorded on 22/05/2008 of PW-106 and the computerized statement also indicates the name of accused No.55 and clearly points out the role played by him in the incident and accused No.55 was also according to Shri Kodekar, identified in the court by PW-106. It is pointed out that similarly, the role and specific name of accused No.50 also is pointed out in the affidavit of PW-106 dated 18/11/2002 before the Commissioner of Police, also in an application dated 25/11/2002 and 22/05/2008 and also in the computerized statement produced before the SIT and even in the Court, the role played by accused No.50 in the incident is deposed and accused No.50 was also positively identified by PW-106 in the Court. It is pointed out that with regard to setting ablaze of the autorickshaw, PW-106 has provided the names of accused No.47 Dharmesh Prahlad, accused No.50 Kapil Munna, accused No.29 Mukesh Pukhraj and accused No.32 Ambesh Kantilal, all four of whom have been identified in the Court.

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It is submitted that the names of all these accused the application dated 18/11/2002 and in appear 25/11/2002 before the Commissioner of Police, Ahmedabad City, in the statement before the SIT, in the computerized statement before the SIT and even in the Court deposition, all four accused have been identified relating to this incident by PW-106. It is submitted that in such circumstances, there is no merit in the submissions of the defence that there are wholesale contradictions with regard to the role of the accused in the incident. It is pointed out by Shri Kodekar that PWs 301, 142, 179, 192, 216 and 143 respectively being Rasidabanu Dilawar Shaikh, Ashraf Sikanderbhai Sandhi, Ezajali Fakirmohammad Shaikh, Mohammadali Shahjadali Saiyed, Ismailbhai Yasinkhan Pathan and Altafkhan Gulabkhan Pathan, have all supported PW-106 to a great extent.

535. Ιt is pointed out that thus in relation to both the above referred events, the successfully established beyond Prosecution has reasonable doubt the commission of an offence punishable under Sec.307 alternatively read together with Sec.324 of the I.P.C. and the setting ablaze of the autorickshaw establishes beyond reasonable doubt the offences punishable under Secs.427 and 435 of the I.P.C. and since a mob of more than 5 to 10 persons is established beyond reasonable doubt to have participated in both the incidents, the ingredients of Secs.141 and 143 of the I.P.C. are also established beyond reasonable doubt by the

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State.

536. The second incident as the the process, according to continuation of Shri Kodekar, was the gathering and inciting of the mob which swelled in numbers to a mob of anything between 5000 to 10000 persons. It is submitted by Shri Kodekar that the mob was incited by chanting of slogans like "JAI SHRI RAM" and inter alia chanting slogans to the effect that "kill and murder persons belonging to the Muslim community". It is submitted that in the circumstances, all those who responded to such slogan shouting and became a part of the mob could be said to have gathered in furtherance of the common intention and there could be said to be a meeting of minds between such persons which is an essential and vital ingredient to establish the criminal conspiracy. It is submitted that in such circumstances, the persons named as perpetrators of such inciting who resorted to arming themselves with lethal weapons, is an aspect clearly established by the Prosecution by leading cogent and credible evidence in the shape of eye-witnesses' testimony. is submitted that thereafter the mob having It indulged in stone pelting as is pointed out by the Prosecution witnesses, is also required to be credible piece of evidence accepted as which establishes beyond reasonable doubt the Prosecution case. It is submitted that the arguments of the defence that inconsistencies there are and contradictions between the eye-witnesses, is not

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required to be accepted inasmuch as, all the eyewitnesses were not viewing the incident of stone pelting as also the mob from the same place. It is submitted that the eye-witnesses were placed at different locations like terrace, the main gate of Gulbarg Society, small gate of Gulbarg Society, residences and therefore, their viewing angle as also their location would naturally lead to a different perspective. It is submitted that this by itself does in not any manner destroy the Prosecution case nor does it create doubts in favour of the accused as is sought to be pleaded by the defence. It is pointed out that the documents at Exhs.1391, 974, 967 and 968 are Police messages which clearly establish and corroborate the version of the eye-witnesses that a huge mob had gathered and surrounded Gulbarg Society. It is submitted that this event is supported an corroborated in the course of the testimonies of PWs 106, 129, 314, 116, 142, 301, 192, 289, 179 and 166 respectively being Imtiyazkhan Saeedkhan Pathan, Firozmohammad Gulzarmohammad Pathan, Fagirmohammad Nasirali Ahmedkhan Saived, Saeedkhan Pathan, Ashraf Sandhi, Rasidabanu Dilawar Sikanderbhai Shaikh, Mohammadali Shahjadali Saiyed, Nadim Tasaddukhussain Surohi, Ezajali Fakirmohammad Shaikh and Sharifkhan Sikanderkhan Pathan. It is submitted that therefore, there is unshakable corroboration to the Prosecution version with regard to such aspects. It is submitted that from the depositions of these witnesses, the names of accused Nos.14, 43, 61, 32, 50, 54, 42, 55,

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63, 2, 1, 26, 25, 38, 29, 45, 52 and 53 are established. It is submitted that all these accused and the members of the mob are attributed to have further vandalized, looted and ransacked the shops outside Gulbarg Society and also damaging such shops and burning the goods and therefore, offences punishable under Secs.395, 427, 435, 436, 337 of the I.P.C. stand proved and also the offence punishable under Sec.135(1) of the Bombay Police Act also stands proved against such accused.

537. It is pointed out by Shri Kodekar that the next sequence of events relates to the stone pelting from Bunglow No.1 of Gulbarg Society which resulted, according to Shri Kodekar, in the first fatality being the death of Irfan Gulzarmohammad Pathan. It is pointed out that all the eye-witnesses examined by the Prosecution and who have deposed with regard to the injury sustained by the deceased Irfan, have consistently testified that the injury was caused on account of stone pelting from the terrace of Bunglow No.1. It is submitted by Shri Kodekar that even if there is inconsistency with regard to which person escorted the injured into the residence of Shri Ehsan Jafri, it is not so material inasmuch as, the circumstances relating to the recollection of such witnesses are required to be borne in mind. It is pointed out that when there was a huge and endless flow of stone pelting and burning being thrown into Gulbarq Society, raqs the witnesses could not have been in a calm and healthy

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frame of mind while recollecting such incidents. It is submitted that the relevant issue is the injury caused to Irfan which resulted in his death and it is pointed out that accused No.14 is specifically attributed to have pelted a brick which caused injury to Irfan and it is pointed out that there is consistency in the deposition of the witnesses in that regard. It is submitted that therefore, the defence raised in this regard is not acceptable and is required to be discarded. It is submitted that accused Nos.65, 14 and 32 specifically are identified by a large number of eye-witnesses. It is submitted that PWs 191, 177, 106, 179, 192, 128, 116 have identified accused No.65 positively as the person indulging in stone pelting. It is submitted that accused No.14 is specifically identified by PWs 177, 192, 142, 128 and 106 and accused No.32 is identified by PW-177 as being the perpetrators involved in the present incident. It is also pointed out by Shri Kodekar that there is no dispute with regard to the fact that the dead body of Irfan has been recovered from the residence of Shri Ehsan Jafri. It is submitted by Shri Kodekar that in any case, all the relevant witnesses who have been examined with regard to the incident concerning Irfan, injury caused to him and as to who was instrumental in carrying him to the residence of Shri Ehsan Jafri, are not even remotely covered in the course of the cross examination of the concerned Ιt is submitted that therefore, witnesses. in absence of any cross examination in this regard, the

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version supplied by the witness is accepted to be correct by the defence. It is submitted that in the circumstances, the defence cannot be heard to say that there are wholesale contradictions more so when there is no cross examination in that regard. It is submitted that the testimony of the star witness PWis corroborated by a number of Prosecution 106 witnesses examined in this regard, details of which are already provided in the course of arguments advanced on behalf of the State. It is submitted by Shri Kodekar that in absence of effective cross examination of such witnesses by the defence, there cannot be said to be any major contradiction which would bring record the weaknesses on in the version affect Prosecution and thereby the credibility of the witnesses. It is submitted that the injury to Irfan, his collapsing on account of such injury and his being escorted to the residence of Shri Ehsan Jafri, are aspects, therefore, not disputed and are required to be accepted as true and genuine and the role played by the concerned accused emerging from the testimonies of the as eyewitnesses thus cannot be discarded even if there are some variations or minor contradictions emerging from the testimony of such witnesses. It is further pointed out by Shri Kodekar that the atmosphere in the course of the events that had taken place on the fateful day, was such that most of the eye-witnesses were panic-stricken and fearing for their life and therefore, if there are inconsistencies, they are required to be treated and accepted as a natural

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reaction to the course of events and not as aspects which go to the root of the credibility of the witnesses. It is submitted that the post-mortem report relating to victim Irfan is on the record at report, Exh.574 and perusal of the а more particularly with regard to the conclusions and findings with regard to the cause of death, completely corroborates the Prosecution version. It is submitted that the post-mortem report clearly reflects that all injuries found on the dead body are established to be anti-mortem and the death of the victim is attributed to 100% burns, meaning thereby that Irfan was burnt alive when the residence of Shri Ehsan Jafri was set on fire.

538. further Making submissions, Shri Kodekar submits that after the incident of Irfan, was the continuous process where the mob swelled in numbers, broke open the main gate and the other gate as also the rear portion of the wall of the Society and the mob is attributed and established to have entered into the Society, the mob is established to have been armed with lethal weapons like swords and knives and inflammable material and it is pointed out that the eye-witnesses have sufficiently deposed incident with regard to each taking place thereafter. It is pointed out by Shri Kodekar that after entering into the Society, the mob started vandalizing, looting and destroying the properties located in the Society as also the Madressa within the Society and thereafter targetted the residence

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of Shri Ehsan Jafri which related to and gave rise to eight fatal incidents wherein a large number of persons were cut to pieces by the mob and in fact some of the women were subjected to rape before being killed and two young children were also butchered by the mob.

It is submitted that the first such 539. incident relates to death of Anwarkhan Pathan; the second incident relates to the killing of Zehrunnisa, Kherunnisa, Zebunbibi; the third incident relates to the death of Salim Abubakkar; the fourth incident relates to dragging out Shri Ehsan Jafri whose remains have not been recovered or identified and who is presumed to be dead; the fifth incident relates the to rape and murder of Sajedabanu and one unknown lady; the sixth incident relates to the murder of minor Shadabkhan and Yusuf of Ankur Cycle Works; the seventh incident relates to molestation and murder of Firdausbanu and murder of Shahejadali and Zebunben and the last and eighth incident relates to the murder of Mehmudaben, Mumtazben, Zarinaben and Jehangirbhai, all of whom (victims of the last incident) were related to one of the star eye-witnesses i.e. Sairaben Sandhi. It is pointed out by Shri Kodekar that PW-106 is a natural eye-witness and has deposed with regard to each of the above referred eight incidents. It is pointed out that insofar as the incident relating to the death of Anwarkhan is concerned, it is the specific case of the Prosecution and established

through the version of the eye-witnesses that it was accused No.1 Kailash Dhobi who was instrumental in causing the death of the victim Anwarkhan and causing injuries upon the injured Aslamkhan.

540. Shri Kodekar at this stage, refers to and relies upon a judgment of the Hon'ble Supreme Court, delivered in the case of **Krishna Mochi & Ors. v. State of Bihar** as reported in (2002) 6 SCC 81. My attention is drawn more particularly to head note 'L' of the said judgment wherein on page No.89, it has been observed and a ratio has been laid down *inter alia* to the effect that even if there is no recovery of any incriminating material, the same would not have the effect of exonerating an accused when there is ocular account of eye-witnesses.

judgment of the Hon'ble Supreme 541. А Court in the case of State of Rajasthan v. Tejaram & Ors. as reported in (1999) 3 SCC 507 is also relied upon by the learned Spl.P.P. Shri R.C.Kodekar, and my attention is drawn to head note 'A' whereby a ratio has been laid down to the effect that а circumstance arising from the recovery of weapon would not stand relegated to disutility and failure of detecting the origin of blood, the circumstances arising from the recovery of the weapon cannot stand relegated to disutility. It is pointed out by Shri Kodekar that a large number of Police witnesses examined herein have clearly attributed to accused No.1 being armed with a knife, and this aspect is established and corroborated by the recovery of the weapon itself from the concerned accused in terms of the recovery Panchnama and therefore, the same, according to Shri Kodekar, is required to be accepted and the credibility of the witnesses cannot be impacted on account of such recovery.

judgment of the Hon'ble 542. А Supreme Court delivered in the case of Chaudhari Ramjibhai Narasangbhai v. State of Gujarat and Others as reported in (2004) 1 SCC 184 is pressed into Shri Kodekar, wherein the Hon'ble reliance by Supreme Court has laid down a ratio *inter alia* to the effect that there is no duty of the Prosecution witnesses to give clarification with regard to whether the injuries were inflicted by the blunt side or a sharp side of a cutting instrument, when there is direct evidence with regard to the use of the weapon.

543. А judgment of the Hon'ble Supreme Court delivered in the case of Manga alias Man Singh V. State of Uttarakhand as reported in (2013) 7 SCC 629 (head note 'D') is pressed into reliance by Shri Kodekar, wherein the Hon'ble Supreme Court has laid down the ratio with regard to the effect of nonrecovery of empty cartridges/pallets by the IO in the course of the site visit. It is submitted that the Hon'ble Supreme Court has further laid down the ratio herein that when the other circumstances are established in the course of a trial beyond

reasonable doubt including use of weapon by the accused, in the form of eye-witness testimony, mere failure to effect recovery will not be fatal to the Prosecution case.

544. It is submitted by Shri Kodekar that the next incident relates to the killing of the Zerunnisa, Zebunben three women being and Kherunnisa and almost simultaneous killing of Salim Abubakkar. It is submitted that accused Nos.54 and 55 are attributed to have killed the above referred persons as per eye-witness ocular version of PW-106. It is submitted that PW-106 has successfully withstood the cross examination of the defence and even in his statement before the SIT, the names of accused Nos.54 and 55 were provided by PW-106. It is submitted that therefore, the sole testimony of PW-106 would be sufficient to establish the Prosecution case against such accused. It is submitted that PW-106 has attributed the killing of Salim Abubakkar, an incident which happened in quick succession to the deaths of the above named three women and PW-106 has attributed and highlighted the role played by five of the accused in the incident related to Salim Abubakkar and accused No.59 (Atul Indravadan Vaidh), accused No.14 [Jayeshkumar @ Gabbar Madanlal Jinger (Mochi)], accused No.50 (Kapil Devnarayan @ Munnabhai Mishra), accused No.47 (Dharmesh Prahladbhai Shukla) and accused No.29 Mukesh Pukhraj Sankhla (Mochi)] are attributed to have been involved in such incident. It is submitted that the

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State concedes that there was a contradiction emerging from the testimony of PW-106 with regard to the four of the above named five accused. It is submitted that however, the role played by accused No.59 the incident in has been consistently highlighted by PW-106 even in the course of his statement before the SIT and no effective cross examination has been carried out by the defence with regard to the consistency in the role of accused No.59 in this incident. It is submitted that in light of a binding precedent of the Hon'ble Supreme Court as laid down in the case of Masalti (Supra), the case against accused No.59 inasmuch as, it relates to the present incident, is established.

545. It is submitted by Shri Kodekar that the next incident was the dragging away and doing away of Shri Ehsan Jafri. It is submitted that PW-106 has consistently identified the perpetrators of this incident and accused No.43 (NARAYAN SITARAM TANK @ NARAN CHENALWALO @ NARAN KODHIYO), accused No.38 (Manish Prabhulal Jain) and accused No.34 [Krishnakumar @ Krishna (son of Champaben)] are named to be such perpetrators. It is submitted that PW-116 being the father of PW-106, has given a different set of names, but however, there is consistency inasmuch as, the name of accused No.34 is also given by PW-116 in the said incident. It is submitted that other witnesses have corroborated the incident of Shri Ehsan Jafri being dragged away by the mob but have not supplied any particular or

specific names of the accused. It is submitted that the Prosecution has thus reasons to completely refute and discard the allegations and submissions made by the defence that the witnesses examined by the Prosecution are tutored and robotic witnesses. It is submitted that if it was really so, there would not be any contradiction but there would have been a consistent "robot like" testimony coming from all eye-witnesses. It is submitted that such inconsistencies make the depositions of the eyewitnesses natural, believable and are, therefore, required to be accepted by the Court. Ιt is submitted that with regard to the role of accused No.34 in this particular incident, there is no effective cross examination by the State inasmuch as, there is no cross examination of any of the witnesses with regard to the role of accused No.34. It is submitted by Shri Kodekar that the Hon'ble Supreme Court has further in Krishna Mochi's case (Supra), clearly held that even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the quilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction could be maintained.

546. It is pointed out that in the cross examination of PW-116, more particularly in paragraphs Nos.61 and 62, it emerges that affidavits though signed by the witness, where some exoneration was given to some of the accused, the witness has explained that such affidavits could have been signed on account of the threats received by him. It is submitted that this aspect is also required to be borne in mind while appreciating the circumstances in which a traumatized witness had given some facts to the IOs.

547. It is submitted that the sequential events would indicate that the next immediate incident was the rape and killing of Sajedabanu and one unknown lady, which is accurately testified by PW-106 and he has deposed that he saw the incident from the kitchen of Shri Ehsan Jafri's residence. It submitted that accused Nos.2, 63 is and 46 respectively being Yogendrasinh @ Lalo Mohansinh Sekhawat, Dinesh Prabhudas Sharma and Lakhansinh @ Lakhiyo Bhuriyo Lalubha Chudasama, are attributed to have perpetrated this heinous offence of rape and murder. It is submitted by Shri Kodekar that both these witnesses i.e. PWs 106 and 116 have corroborated each other on the aspect of rape. It is submitted that the cross examination of these witnesses does not even suggest a denial of the incident of rape on the part of the accused and it is urged that in such circumstances, the question of rape cannot be debated and there is, according to Shri Kodekar, sufficient material available for the Court to appreciate and uphold the Prosecution version of rape and murder of the above referred four persons in this incident.

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It is submitted by Shri Kodekar that 548. the next incident would relate to the molestation and killing of Firdausbanu and killing of Shahejadali who attempted to rescue Firdausbanu and both, according to Shri Kodekar, are established to have been done away by the mob. It is pointed out by Shri Kodekar that PW-179 Ezajali Fakirmohammad Shaikh has in paragraph No.10 of his deposition, given a clear picture with regard to the incident and the same version is corroborated and set up in the course of testimony of PW-192 Mohammadali Shahjadali Saiyed. It is submitted that the version of the present witness i.e. PW-179 is corroborated by PW-192 who has also narrated about the tearing of clothes of Firdausbanu, her shouting for help and the fact of the deceased Shahejadali attempting to rescue the said Firdausbanu and being cut with a sword by accused No.42 Raju @ Mamo Kaniyo Ramavtar Tiwari. My attention is also drawn to the fact that PW-177 Sairaben Sandhi has in paragraph No.16 of her deposition by testifying inter alia to such effect, given the names of accused Nos.42, 1 and 43 respectively being Raju @ Mamo Kaniyo Ramavtar Tiwari, Kailash Dhobi and Naran Channelwala as also the absconding accused Ramesh Pande, who are all attributed to have delivered sword blows to the said Shahejadali. It is submitted that just because PW-106 has not narrated about the incident, it is not relevant when eye-witness support and eye-witness testimony of three witnesses is brought on record of the proceedings. It is submitted that in any

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case, even PW-314 Faqirmohammad Nasirali Saiyed corroborates the version supplied by the above three witnesses and has provided the names of the perpetrators but however, it is conceded by the State that such witness i.e. PW-314 was not able to identify any of the accused in the Court.

549. It is submitted by Shri Kodekar that the final incident out of the series of eight incidents, is the doing away of Mehmudaben, Mumtazben, Zarinaben and Jehangirbhai by the mob. It is submitted that the sole witness who has testified with regard to this incident is PW-177 Sairaben Sandhi. It is submitted that there is no reason to discard the testimony of a witness only because it is not corroborated by other witnesses. Ιt is submitted that it is settled law that the testimony of a single witness is sufficient to form the basis of conviction of the accused.

550. With regard to the defence raised by the accused with regard to the private firing, it is submitted by Shri Kodekar that the aspect is well covered in the chargesheet itself, there is no effort made by the Prosecuting agencies or the investigating agencies to suppress, for that matter, any material and it is submitted that no less than eight cartridges have been recovered from various places of Gulbarg Society and it is submitted that in the circumstances, and more so when at least no less than 20 Police witnesses have deposed about the fact of firing having taken place, merely because the eye-witnesses have not testified about such incident, it cannot make their depositions any less credible nor can it destroy the Prosecution case. It is submitted that if the Prosecution could have desired, it could have suppressed all these aspects about private firing, but having not done so, it is clear that the Prosecution has nothing to hide and there was no attempt to subvert the truth and in the circumstances, merely because the eye-witnesses have not deposed with regard to the private firing, it cannot make their testimonies any less credible.

<u>Responsive/clarifying arguments by defence - by Shri</u> <u>Bhardwaj and Shri Bajpai</u>

551. Consequent to the submissions advanced by Shri S.M.Vora, the learned advocate appearing for the witnesses/victims, it was felt that the aspects argued by Shri S.M.Vora with regard to the criminal conspiracy as also the specific arguments with regard to the role of accused No.57 i.e. P.I. Shri K.G.Erda, were required to be explained since such arguments were not countered by either the learned Spl.P.P. or the defence for that matter, and in the circumstances, the defence has been called upon to make submissions with regard to these two aspects only.

552. In response thereto, Shri Abhay Bhardwaj, the learned advocate appearing on behalf

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of a large number of accused herein, has advanced submissions with regard to the so-called theory of conspiracy as propounded by Shri S.M.Vora, the learned advocate for the witnesses. It is submitted by Shri Bhardwaj that even if the version supplied by Shri Vora is required to be accepted, there is no material on the record which would suggest as to who were the brains behind the conspiracy, there is no material to indicate as to when and where such conspiracy was hatched and it is also submitted that if the Prosecution version with regard to the alleged taking place of a meeting is required to be believed, then it completely destroys the theory that there was a preplanned conspiracy since as stated herein before, Shri Bhardwaj submits that it has been argued at length as to how such witness i.e. PW-241 who has been examined at Exh.831, who has testified with regard to the conspiracy, is not relied upon even by the Prosecution itself to a great extent. It is submitted that even this witness is to be accepted as corroborating the theory of a conspiracy, then even according to such witness, the alleged meeting was to take place only at 9:00 a.m. or thereabouts on 28/02/2002. It is submitted that on the other hand, the gathering of mobs even in terms of the eye-witness accounts and Police versions, had started much before such alleged meeting. It is submitted that therefore, there is no harmony in the Prosecution version as also in the S.M.Vora. supplied by Shri Ιt version is also further submitted that mere shouting of slogan "JAI

SHREE RAM" cannot by itself suggest any conspiracy. It is submitted that such slogans or utterances are normally uttered by persons when they meet each other or when they want to express something. It is submitted that if at all a mob had gathered, it is with a view to enforce the Bandh call in response to the Godhra incident. It is submitted that even according to the best versions supplied by the Prosecution as also the witnesses, no serious incident took place till about 02:00 p.m., only exception being the attack on one of the injured victims Ayub. It is submitted by Shri Bhardwaj that if there was a preplanned conspiracy to do away with all members of a particular community as is alleged herein, then there is no logical reason as to why the mob would have sat silent and despite best opportunities, did not make any efforts to enter into Gulbarg Society or for that matter, did not make any efforts to kill any other persons of the minority community outside Gulbarg Society. It is submitted that in such circumstances, the theory of a preplanned conspiracy is completely got-up. It is further submitted by Shri Bhardwaj that if there was really speaking such conspiracy as is sought to be made up, the mob which comprised of people from different localities including the persons from the same locality as the Gulbarg Society, the mob would have been aware of residences of Muslims and would have taken appropriate steps to kill them if at all really speaking there was a preplanned conspiracy in that regard. It is submitted that even as per the

Prosecution and eye-witnesses, what largely took place between the period of 08:00 a.m. and 02:00 p.m., was indulging in stone throwing, acid bulbs and even burning rags by both parties. Ιt is submitted that in the circumstances and more so when these aspects are admitted positions canvassed by the Prosecution itself, the theory of a preplanned conspiracy is not established even by reasonable inference. Τt. is submitted that in such this theory is circumstances required to be discarded. It is submitted that in any case, PW-241 himself admits that one of the accused himself entered into the rickshaw and indicated about such alleged meeting and the intention of doing away with Muslims. It is submitted that if this was the real intent, what prevented the mob or the concerned accused from doing away with PW-241 himself who was helpless and very much available if harm was required to be done. It is submitted that therefore, these versions are unnatural and not believable. It is submitted that as has been narrated herein before, some of the witnesses belonging to the minority community, were finding it difficult to enter into Gulbarg Society and it is their version emerging on the record of the proceedings that it was only by gaining access through the residence of Hindus that they could enter into Gulbarg Society. It is submitted that it is, therefore, unnatural that if there was a mob of thousands present, they would have permitted such easily identifiable person of the minority community to get into the Gulbarg

Society and not done away with him when it was very easy for the mob to have done so. It is submitted that the incident pertaining to Gujarat Cycle Works involving the injured Ayub and deceased Yusuf taking place at about 09:00 a.m. is concerned, if it was really a conspiracy upon which the mob was acting, there is no earthly reason as to why Yusuf was permitted to take shelter and run into Gulbarg Society, and was not chased and killed by the mob. It is submitted that all these aspects do away with the theory of the preplanned conspiracy. It is submitted that members of the Muslim community not residing in Gulbarg Society, admittedly took shelter in Gulbarg Society by entering into Gulbarg Society through its gates. It is submitted that if there was a mob of thousands which entered into a preplanned conspiracy to do away with Muslims and such mob had gathered outside Gulbarg Society, then no reason or logical explanation is offered as to how such persons were allowed to enter into Gulbarg Society without their being harmed in any manner whatsoever. It is submitted that therefore, this version does not bear even the remote consideration. is Tt submitted that even the star witness PW-106 has attributed his having gone out to carry out some electrical work in the house of a Hindu and having come back to Gulbarg Society at about 09:00 a.m.. It is submitted that if mobs were roaming around with such intentions as is claimed, it is not possible PW-106 to have back without for come being threatened or accosted by a mob and it is urged that

the entire theory of preplanned conspiracy be given a go-by. It is submitted that the very fact that there was no loss of life from 08:00 a.m. till 02:00 p.m. despite the fact of the versions supplied by the eye-witnesses as also the Police eye-witnesses that there was a mob of thousands in number, right 2 o'clock, would mean that there was till no preplanned conspiracy on the part of the mob to indulge into acts of killing of any sort. It is submitted that it may be assumed without admission on the part of the defence that there was an object or common intention to commit arson and loot and damage to property and nothing beyond that. It is submitted that there was a tiny force of Police officers headed by accused No.57 who even according to the eye-witnesses, had ensured that the mobs were dispersed from time to time and who were to an extent able to contain the situation inasmuch as, no serious efforts were made by the mob to break open the walls or the gates of Gulbarg Society till that stage. It is submitted that therefore, it cannot be said that the mob had come with the preplanned conspired intention of doing away with all Muslims of that locality including those residing in Gulbarg Society. It is submitted that in such circumstances, the theory of preplanned conspiracy to that extent is required to be discarded. It is submitted that the arguments advanced on behalf of the defence with regard to the actions of Shri Ehsan Jafri of firing from his personal weapon which has been submitted in detail herein before, may be repeated as sole reason

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for being the catalyst which led to this unfortunate incident. It is, therefore, submitted that what took place was a reaction of an angry mob who saw their members being felled by firing from the Society. It is submitted that the perception of such mob would be, when an injured person fell down, was that he been killed in firing and therefore, the has perception was that more than 15 people were affected in such fashion and that perception Shri Bhardwaj, has according to led to the unfortunate incident. It is submitted that therefore, such actions cannot be said to be in furtherance of а preplanned conspiracy but individual and collective actions in such circumstances.

553. Shri T.R.Bajpai, the learned advocate appearing on behalf of a number of accused and who has been authorized to argue on behalf of accused No.57, makes his submissions with regard to providing a response to the submissions of Shri S.M.Vora about the involvement and guilt of accused No.57 herein. It is submitted that accused No.57 of having committed offences faces а charge punishable under Secs.201, 217 and 218 of the I.P.C.

554. It is submitted by Shri Bajpai that with regard to the submissions advanced on behalf of the witnesses by Shri S.M.Vora, that accused No.57 maliciously and deliberately made the real brother of accused No.1 as the Panch witness in one of the

Panchnamas, is an unfounded allegation inasmuch as, previous malice presupposes knowledge. Ιt is submitted that there is no material on the record to show that accused No.57 was at any stage aware at that point of time that such Panch witness was the real brother of accused No.1. It is submitted that in any case, the other panch witness who has been cited on the record of the proceedings, has not been examined record, and therefore, adverse on inference is required to be drawn and this aspect cannot be used in any manner to establish any charge against accused No.57. It is submitted that in any case, with regard to the second allegation advanced against accused No.57 inter alia to the effect that the name of accused No.56 which was provided by accused No.57 in his own complaint, was mysteriously dropped and no efforts were made to bring to justice such accused, is, according to Shri Bajpai, baseless and unfounded allegation. Ιt is submitted that accused No.57 had handed over further investigation to other IOs after 08/03/2002 i.e. within ten days of the incident and it is submitted that there was nothing which prevented the other IOs from arresting or taking action vis-a-vis accused No.56. Ιt is submitted that in any case, there is no material on record to suggest that it was accused No.57 who had or in manner filed any report made any any recommendation with regard to dropping the name of accused No.56 as an accused herein. It is submitted therefore, even such allegation is baseless that furthermore in light of the fact that there is no

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material to show that accused No.56 was in any manner associated with the BJP political party. It is submitted that in the circumstances, these arguments are devoid of any basis or merit and are required to be negated. It is submitted that with regard to the allegation that accused No.57 himself became the complainant, disregarding the need to lodge complaints of any of eye-witnesses or victims, is also baseless inasmuch as, it is a matter of record that none of the eye-witnesses or survivors was willing to make any statements or record any kind of complaint before 05/03/2002. It is submitted that it is not alleged or complained of by any of the eye-witnesses including the victims inter alia to the effect that they had attempted to lodge their complaints but accused No.57 or anyone else for that matter, refused to record such complaint. It is submitted that under such circumstances also, the entire allegation or submissions made in this direction are also devoid of merits.

555. It is submitted by Shri Bajpai that the allegation that Shri Erda had deliberately not services attempted to secure the of videographer/photographer to record the state of affairs immediately after the incident, is also baseless. It is submitted that the document Exh.1151 clearly establishes that accused No.57 was instrumental in sending such message to the Control immediately on 28/02/2002 itself at 17:15 Hrs. Room seeking the services of a videographer/photographer.

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It is submitted that if thereafter there was no response to such requisition or demand, the accused no.57 cannot be blamed for such non-happening since he at the very first instance, made attempts to services. Τt. is such submitted secure that such accusation is without any basis therefore, whatsoever. It is submitted that videography of the scene of incident in presence of independent Panchas took place on 01/03/2002 as is emerging from the testimony of the IO Shri J.M.Suthar who is examined as PW-335 and therefore, it cannot be said that there was no effort on the part of accused No.57 to do so.

556. My attention is drawn to the document on the record of the proceedings at Exh.1571 which is the document which establishes and negates the arguments made by Shri Vora that no efforts were made by accused No.57 to avail of services of an expert of FSL at the site of the incident immediately. It is submitted that it clearly establishes the lack of confides on the part of the Prosecution inasmuch as, document Exh.1571 and the testimony of PW-335 IO Shri Suthar on page No.71 in paragraph No.115, clearly establish that the FSL expert had indeed visited the scene of the incident 01/03/2002 and it is urged that on in such circumstances, this allegation also be treated as baseless and be negated.

557. With regard to the allegation that the

inquest Panchnamas were not drawn or carried out by accused No.57 or were carried out in a manner as would be prejudicial to the Prosecution, or would be in any manner helpful to the accused, is also baseless. My attention is drawn to the testimony of PW-335 Shri Suthar who has admitted on page No.103 in paragraph No.162 of his testimony inter alia to the effect that there is no material on record as would even remotely establish that the inquest Panchnamas were drawn in a manner as were counter to the post-mortem reports or were in any manner contradictory to the post-mortem reports. Ιt is submitted that this witness has further admitted that the Police Manual does not provide any time for carrying out such Panchnamas. It is frame submitted that looking at the enormity of the incident and enormity of the incidents that took place on 28/02/2002, it cannot be said that less time attributed to each inquest Panchnama would in any manner establish any criminal intent on the part of accused No.57. It is further submitted that in such circumstances and more so in light of the context of entire sequence of events, such submissions are required to be discarded.

558. With regard to the allegation that accused No.57 was deliberately negligent in not making efforts to bring the Fire Brigade to the scene of the incident and put out the fire raging in the Society, it is submitted that the document on the record of the proceedings at Exh.1153 clearly

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belies and completely contradicts this allegation inasmuch as, it is accused No.57 who has clearly on the date of incident itself, sought the services of Fire Brigade at the scene of incident and it, therefore, cannot be said that no efforts were made by accused No.57 in this regard. It is submitted that in any case, PW-335 in the course of his testimony on page No.70 in paragraph No.112 has clearly admitted *inter alia* to the effect that a message was forwarded to the Control Room *inter alia*

clearly admitted *inter alia* to the effect that a message was forwarded to the Control Room *inter alia* seeking the services of Fire Brigade at the site of the incident on 28/02/2002 itself at about 19:50 hrs. It is submitted that therefore, there is no merit in the allegation levelled against accused No.57 in this regard. It is submitted that Shri Suthar has further admitted in paragraph No.113 on page No.70 itself that even at 05:00 p.m. on the date of the incident, a message was sent to secure the services of the Fire Brigade at the site of the incident. It is submitted that such allegations against accused No.57 are devoid of any basis.

559. It is further argued that the serious allegation with regard to the Panchnamas hurriedly being drawn to a close on 28/02/2002 and a further recovery of more and other bodies right upto 08/03/2002, cannot be attributed as an act of negligence on the part of accused No.57. It is submitted that such allegation is baseless inasmuch as, the entirety of the situation as it prevailed on 28/02/2002 is required to be borne in mind. It is

submitted that this was a situation where nobody could have anticipated such a sequence of events and it is not as if that accused No.57 deliberately chose to ignore what was apparent and evident while drawing the Panchnamas. It is submitted that the subsequent recovery of bodies was much after the raging fire was put out and efforts were required to be made to find and recover such bodies which were recovered after efforts were made to sift through the rubble and embers of the burnt fire which led to recovery of more bodies, and therefore, no overt malice could be attributed to accused No.57 who made the best possible efforts to carry out the investigation herein. It is submitted that if the accused really wanted to derail the investigation, he would not have provided names in his complaint and would not have attributed acts to such names. It is submitted that the bodies recovered and referred to in the Panchnama on the fateful day, also cold have been not referred to if there was anv deliberate intention on the part of the accused No.57 to subvert the investigation process. It is submitted that therefore, looking to the totality of the circumstances and the entirety of the offence that took place in Ahmedabad on 28/02/2002, accused No.57 is required to be not attributed with any malafides or charge for any criminal intent or any offence punishable under any of the provisions of the I.P.C. and it is submitted that all submissions made by the other side in this regard be discarded.

560. It is submitted that the allegation with regard to accused No.57 not taking any preventive steps prior to the Bandh call, is also PW-281 falsified from the testimonies of Shri P.B.Gondiya who is examined at Exh.972 and who is a senior Police officer examined herein, who clearly establishes that efforts were made to arrest antisocial elements of respective localities but antisocial elements were not found available despite due efforts of accused No.57. It is also pointed out that PW-278 being Ratansinh B. Chavda who is examined at Exh.963 and who is a P.S.I., and PW-274 being Ramaji Gangaji Katara who is examined at Exh.946 and who is also a P.S.I. - both were attached to the Meghaninagar Police Station, have testified inter alia to the effect that they made anti-social efforts to arrest elements on 27/02/2002, but not successful their were in efforts. It is submitted that in such circumstances, the Prosecution has not only failed in establishing beyond reasonable doubt any inaction on the part of accused No.57 in this regard but the PWs themselves disapprove this theory. It is submitted that in such circumstances also, this allegation also be negated.

561. It is pointed out by Shri Bajpai that with regard to the allegation that despite having eight Police personnel as reserved force, accused No.57 did not utilize their services and kept on demanding more force, itself establishes the criminal intent on the part of accused No.57, is

also an allegation which is devoid of merit and is required to be discarded. My attention is drawn to the testimony of PW-243 being Pratapji Siraji Waghela at Exh.838 who is a P.S.I., who has clearly admitted on page No.10 in paragraph No.11 of his testimony inter alia to the effect that he was allotted two personnel from the reserve force. My attention is also drawn to the testimony of PW-92 being Baldevbhai Jivabhai Chavda who is examined at Exh.505 and who was the Crime writer Head Constable of Meghaninagar Police Station at the relevant time and my attention is drawn in paragraph No.11 on page No.6 of the testimony of this witness where he has clarified and explained inter alia to the effect that the members of the reserve Police force were required to provide Police protection to Muslims who took shelter in the Police Station. It is submitted that therefore, there is no basis in the allegation that the services of eight reserve Police personnel were not utilized by accused No.57. My attention is drawn to the testimony of PW-245 being Udesinh Pratapsinh Baraiya who is examined at Exh.840 and who was the PSO of the Meghaninagar Police Station, and who has clearly admitted that of the members of the reserve force, there were some Police personnel who were physically handicapped. It is submitted this is also а factor that required to be considered. My attention is drawn to the document at Exh.1470 which is a communication from the Commissioner of Police to the concerned Police Stations where the need to keep Police personnel in

reserve, is clearly reflected. It, therefore, according to Shri Bajpai, cannot be heard to be said that accused No.57 thereby deliberately chose not to press for the services of the eight reserve Police personnel, as is charged.

Judgment continued in Part-IV.....

<u>PART - IV</u>

Reasons, findings, final order and judgment

562. The first aspect required to be considered by this Court is as to whether there was a pre-planned conspiracy entered into by all the accused which resulted in the incident at Gulbarg Society and which according to the learned advocate for the victims/witnesses, was a part of the greater conspiracy entered into by the highest political authorities together with senior Police Officers and therefore, it has been urged by the Prosecution that all the accused are required to be treated as members of a criminal conspiracy to indulge in such horrific acts which have bordered on genocide and all the accused according to Shri R.C.Kodekar, are therefore, required to be meted out exemplary punishment, and these are all aspects which I am required to consider herein after.

It is submitted by Shri Kodekar, the 563. learned Spl.P.P. appearing on behalf of the State, that the accused are all required to be held to be involved in a pre-planned conspiracy which was entered into by the accused to commit the carnage at Gulbarg Society of as an act vengeance in retaliation to the Godhra incident. It is submitted that the law with regard to criminal conspiracy is quite clear that a conspiracy can never be or very

rarely be proved by direct evidence, but the same can always be proved by circumstantial evidence or by the conduct of the accused themselves. It is submitted that in the instant proceedings, the conduct of the accused clearly indicates that the had armed themselves with accused weapons, inflammable substances and had entered into Gulbarg Society after demolishing the compound walls from both - the rear portion as also the front portion which indicates a meeting of minds on the part of the conspirators to perpetrate the carnage. It is submitted that the fact of there being a meeting is established from the testimony of PW-241 Firoz Dilawer Shaikh who has been examined at Exh.831 and it is submitted that this is a witness who has given direct evidence about the meeting which was to take place with regard to effecting such incidents of which Gulbarg Society carnage was one of them. It is submitted that there is no reason to disbelieve such witness more so in light of the events that have followed after this witness came to know of such meeting. It is submitted that in such circumstances, the State has clearly established from the conduct of the accused that there was a meeting of minds between all the accused and that they had entered into a conspiracy to effect the carnage at Gulbarg Society.

564. Shri Kodekar has further relied upon the testimony of PW-313 Ashish Khaitan at Exh.1091 and the contents of the transcript of the sting operation in support of his contentions made, in an effort to establish the elements of a pre-planned conspiracy existing between the accused which resulted in the carnage at Gulbarg Society. I propose to deal with these submissions in detail at a later stage herein.

565. In addition to the submissions of Shri Kodekar, an opportunity as has been stated above, has been given to the learned advocate appearing on behalf of the victims/witnesses and Shri S.M.Vora, the learned advocate for the witnesses, has made detailed submissions over and above general submissions made by Shri Kodekar, in an effort to establish the elements of a pre-existing, preplanned conspiracy entered into between the accused which ultimately resulted and others in the perpetration of the carnage at Gulbarg Society.

566. It is submitted by Shri S.M.Vora, learned advocate appearing on behalf of the victims/witnesses, that from the circumstantial evidence which is required to be considered as the only inference that can be drawn, is that right since the incident of 27/02/2002, the atmosphere had become communally surcharged which was further aggravated by the Bandh call given on 28/02/2002 and it is submitted that the entire present incident has taken place in the presence of senior Police Officers who chose to do nothing with regard to the incident and it is, therefore, urged that this

clearly establishes the criminal conspi propose racy emerging herein between the accused. It is submitted that the conduct of the accused itself is suggestive of the existence of the conspiracy. It is submitted that the defective investigation carried out by the Police authorities itself furthers the stand of the victims that there was an existence of a criminal conspiracy behind the entire incident. Τt. is submitted that the evidence on record establishes that all senior Police Officers including those of the rank of Commissioner of Police, had visited the site of the incident on the fateful day itself and it is required to be inferred, according to Shri Vora, that being such senior Police officers, they would have realized the gravity of the situation and would have definitely considered the possibility of such incident taking place despite which no steps were taken by them, which also suggests that there was criminal conspiracy behind the incident. It is submitted by Shri Vora that all the star witnesses including PWs 106, 107, 116, 177 have consistency testified that even on 27/02/2002, they had sought for Police protection and right throughout the taking place of the incident, consistent efforts were being made to avail of Police protection which was denied to them and it is urged that it is under such circumstances also that inaction on the part of the Police authorities would suggest and infer a larger criminal conspiracy. It is submitted that the evidence establishes that even on the last moment, Shri Ehsan Jafri had attempted to contact the Chief

Minister, but no help was provided.

is 567. Tt. submitted that in such circumstances, the testimony of PW-241 has been misinterpreted by the defence and in fact the testimony of PW-241 Firoz Dilawer Shaikh is required to be read in the correct context and it is submitted that such testimony clearly establishes the criminal conspiracy that was existing on the date of the incident. It is submitted that the testimony of PW-171 Ismailbhai Ibrahimbhai Pathan, is also required to be considered inasmuch as, he admits that he was not an eye-witness to the incident at Gulbarg Society, but he saw a mob of persons making preparations to attack Gulbarg Society, as is emerging from his testimony. It is submitted that under such circumstances, it is the only inference that can be drawn that the mob had started making preparations in furtherance of a meeting of minds and therefore, if there was а minds, that itself establishes meeting of the criminal conspiracy. It is submitted that thus PW-171 also establishes the criminal conspiracy.

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testimony, corroborative testimony, clearly establishes that there was only one thing in the mind of the mob and that was to do away with the members of the minority community and therefore also, such testimonies are clearly suggestive of the fact that there was criminal conspiracy entered into by the accused in the present incident. It is submitted that PWs 161, 192, 198, 207, 210, 230, 231 and 303 have all provided corroboration and support to the testimonies of the above referred witnesses with regard to what was being uttered by the mob.

569. According to Shri S.M.Vora, PW-181 Riyazuddin Siyazuddin Saiyed has clearly testified that he was warned by his neighbours with regard to there being some incident about to take place and therefore, the previous warning given to such witness clearly suggests that his neighbours were also aware of what was to transpire and take place on that day and this also establishes that there was a previous meeting of minds and this also further establishes the conspiracy herein. It is submitted that PW-208 Akbarhussain Abdulbhai Mansuri has in the course of his deposition, also testified that he was provided shelter by a Marwadi Hindu family and while taking shelter in their residence, he heard the shouting of slogans of "JAI SHRI RAM" and slogans inter alia to the effect that "kill the members of the minority community". It is submitted that this also goes to show the criminal conspiracy. It is submitted that in terms of the testimony of

PW-212 Abbasbhai Ayubbhai Kadir, the target of the mob was property and life of members of the particular community which also establishes meeting of minds with regard to the action to be taken on such date and therefore, also, criminal conspiracy is established.

570. My attention is drawn to the testimony of PW-3 Babuji Chhaquji Dabhi, who in the course of his testimony in paragraph No.6, has narrated thus:-મુસ્લીમોની માલ મિલ્કતો દુકાનોની તોડફોડ કરી આગ ચાંપી ۳۶. સળગાવી દેવાના બનાવો બનતા અમો એ ચોકી વિસ્તારમાં સખત પેટ્રોલીંગ રાખેલ અને બંદોબસ્ત વધારેલ. દરમિયાનમાં જણવા મળેલ કે, ચમનપુરા ચોકી વિસ્તારમાં બપોરના દોઢેક વાગે જાણવા મળેલ કે, ગુલબર્ગ સોસાયટી આગળ દિન્દુ કોમના લોકોના મોટી સંખ્યામાં ટોળા એકઠા થયા છે અને રોડ પરની મુસ્લીમોની દુકાનો, મિલ્કતોની તોડફોડ કરી રોડ પર સળગાવી દેવામાં આવેલ છે. અને વધારે પોલીસ બંદોબસ્તની જરુરીયાત છે. આવુ જાણતા અમો અમારી સાથેના બંદોબસ્તના પોલીસના માણસો સાથે રીકવીઝીટ વાઠનોમાં રત્નસાગર ચાર રસ્તાથી મીનાબજાર, કલાપીનગર છેલા બસ સ્ટેન્ડ થઈ ઓમ નગર ત્રણ રસ્તા ગયેલા. ત્યાં જઈ જોયુ તો રોડપર વાઠનો અવર જવર ન કરે તે સારુ પથ્થરો લાકડા મૂકી આડશો કરેલ. ઓમ નગરથી ચમનપુરા ચકલા રોડ ઠેર ઠેર આગ સળગતી જણાયેલ. લોકોના ટોળા રોડ પર એકઠા થયેલા હતા. અમો ગુલબર્ગ સોસાયટી પઠોંચવા આડશો દુર કરતા ગુલબર્ગ સોસા. પઠોંચ્યા. ત્યાં ગુલબર્ગ સો. ની સામે રોડ પર મેઘાણીનગર પો.સ્ટે. સી.પો.ઈ.શ્રી કે.જી.એરડા

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સાહેબ, પી.એસ.આઈ.શ્રી ભાટી સાહેબ તથા પોલીસના માણસો બંદોબસ્તમાં ઠાજર ઠતા. અમોએ શ્રી એરડા સાઠેબને બંદોબસ્ત અંગે રીપોર્ટ કરેલ. આ દરમિયાનમાં રોડ પર મોટી સંખ્યામાં ટોળા એકઠા થઈ ગયેલા અને 'જય શ્રી રામ' તેમજ 'મુસલમાનોને મારી નાખો, કાપી નાખો, સળગાવી નાખો' ના સુત્રોચ્ચાર કરતા. ટોળાના માણસો પાસે તલવારો, પાઈપો, લાકડીઓ ચપ્પા જેવા જીવલેણ દૃથિયારો તથા પ્લાસ્ટીકના કેરબાઓ ધારણ કરેલા હતા. ટોળા ઉગ્ર બનતા અમોએ અમારી સાથેના પો.કો. ઈન્દ્રસિંહને ટીચરગેસ છોડવા માટે દુકમ આપવા ઓમનગર ત્રણ રસ્તા બાદ પ્રથમ ત્રણ સેલ છોડેલા. ટીયરગેસથી ટોળાપર થોડી અસર થવા પામેલી પણ થોડી જ વારમાં ટોળા એકઠા થયેલા અને પોલીસ પર સખત પથ્થરમારો ચાલુ કરી દીધેલ. તેમજ ગુલબર્ગ સોસાયટી પર પણ પથ્થરમારો શરુ કરી દીધેલ. આ દરમિયાન ગુલબર્ગ સો.માંથી પણ ટોળા પર પથ્થરમારો શરુ થવા લાગેલ. તેમજ ખાનગી કાયરીંગ થવા પામેલ. તેમાં ટોળાના કેટલાક ઈસમો ઘવાયેલા આથી ટોળા વધારે ઉશ્કેરાયેલા અને એસીડના બલ્બ, સળગતા કાકડા ગુલબર્ગ સોસા. પર ફેકવા લાગેલા અને ટોળા ખુબજ દિંસક સ્વરુપ ધારણ કરેલ.આ વખતે પો.ઈ.શ્રી એરડા સાદેબે ટોળાને વિખેરાઈ જવા માટે ટીચર ગેસ છોડવામાં આવશે, લાઠી ચાર્જ કરવામાં આવશે, તથા ફાયરીંગ કરવામાં આવશે તેવી વારંવાર ચેતવણી આપેલી પરંતુ તેની ટોળા પર કોઈ અસર થવા પામેલ નહિ. આથી ટીયરગેસના સેલ સંખ્યાબંધ છોડવામાં આવેલા તેમજ મેં મારી સાથે ના પો.કો. ઈન્દ્રસિંહને દુકમ આપી સાત ટીચરગેસના સેલ છોડેલ. તેની ટોળા પર અસર થવા પામેલી નહિ."

571. It is submitted that the witness is an independent witness and there is no reason to disbelieve such witness and that the testimony of such witness clearly establishes the objective of the mob and meeting of minds of the members of the mob. It is submitted that the witness has further testified inter alia to the effect that the mob was with deadly weapons like armed swords, knives, armed with cans of inflammable sticks and was material.

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572. It is submitted by Shri Vora that PW-177 Sairaben Sandhi has also corroborated the testimony of the above witness, and she has also narrated in paragraph No.13 of her testimony as thus:-

"૧૩. અમે જાફરી સાહેબના ઘર પાસે ઉભા હતા ત્યારે બપોરના બે અઢી વાગે પાછળથી પણ વીસ્ફોટનો અવાજ આવેલ. તે વખતે અમે જાફરી સાહેબના મકાન પાસે ઉભા હતા. મારી સાથે મારા પતિ સલીમભાઈ અને મારા દિચર જહાંગીરભાઈ તથા મારો દિકરો મહમદહુસેન હતો. પાછળની દિવાલ તોડીને પણ તે પછી ટોળુ અંદર ઘુંસી આવેલ. ટોળા પાસે તલવારો, ગુપ્તી, લાકડીઓ, ત્રીશુળો અને પાઈપો હતા. આ ટોળાએ અમારી સોસા.માં પથ્થરમારો કરેલ. સળગતા કાકડા ફેંકેલ અને પાછળની બાજુ આવેલા મકાનો તોડફોડ કરી લુંટફાટ કરી સળગાવેલા. આ ટોળાએ સોસા.ના આગળની બાજુના ભાગે આવેલ મકાનોમાં પણ તોડફોડ કરી લુંટફાટ કરી મકાનોને આગ લગાડવાનું ચાલુ કરેલુ. આંગણામાં વાહનો

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પડેલા તેને આગ લગાડવાનું ચાલુ કરેલ. આ ટોળાએ મારા દીકરાની બાઈક અને મારા દિચરની રીક્ષા પણ જ્વલનશીલ પ્રવાહી નાખી સળગાવી દીધેલ. જેથી મારા દિચર દોડતા દોડતા મારા ઘર તરફ ગયેલા પરંતુ મારા પતિ તેમની પાછળ જઈ તેમને લઈને જાફરી સાહેબના મકાનમાં આવી ગયેલા. પછી મારા પતિ મકાન નંબર સોળમાં જતા રહેલા. જે મકાન ખાન સાહેબનું છે."

573. It is submitted by Shri Vora that accused No.29 has admitted in the sting operation with regard to the slogans being shouted by the mob with regard to killing of Muslims and it is urged that this is an aspect corroborated from the version emerging from the testimony of PW-313 Ashish Khetan and therefore also, this is a good and seriously incriminating piece of evidence which establishes criminal conspiracy and the role of accused No.29 in the incident.

It is submitted that there is clear 574. evidence emerging that the Commissioner of Police and senior Police Officers had visited the scene of the incident prior to any incident taking place and had gone away after giving reassurances to the residents of Gulbarg Society. It is pointed out by Shri Vora that immediately within half an hour of such senior Police officers going away, a mob had gathered outside Gulbarg Society, which also establishes that there was something unnatural going on, on that day which in view of the greater context of the submissions made herein, is required to be

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accepted as further corroborative material with regard to existence of a criminal conspiracy. It is submitted that Shri Tandon coming over to the scene of incident with a strike force, is also established in the course of testimony of PW-7 and it is submitted that despite being present with such strike force, no efforts were made to disperse the mob or prevent any incident, which also suggests a greater conspiracy.

575. Shri S.M.Vora has relied on a judgment of the Hon'ble Supreme Court delivered in the case of **Gulam Sarbar v. State of Bihar (now Jharkhand)** as reported in **2014 Cr.L.J. 34 (SC)** wherein reliance is placed on head note 'A' of the judgment, which reads as "Penal Code (45 of 1860), S. 120B-Criminal conspiracy-Essential ingredients-Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague."

576. It is urged by Shri S.M.Vora that in the circumstances, the evidence is overwhelming and believable and credible in respect of the role played by all the accused in the present offence and it is urged that since all the accused are established to be a part of the criminal conspiracy, all of them are required to be held guilty and given harshest punishment to provide justice to the victims.

Judgment

577. In response to the arguments advanced on behalf of the victims/witnesses, Shri Abhay Bhardwaj, the learned advocate appearing on behalf of a large number of accused herein, has advanced submissions with regard to the so-called theory of conspiracy as propounded by Shri S.M.Vora, the learned advocate for the witnesses. It is submitted by Shri Bhardwaj that even if the version supplied by Shri Vora is required to be accepted, there is no material on the record which would suggest as to who were the brains behind the conspiracy, there is no material to indicate as to when and where such conspiracy was hatched and it is also submitted that the Prosecution version with regard to the if alleged taking place of a meeting is required to be believed, then it completely destroys the theory that there was a preplanned conspiracy since as stated herein before, Shri Bhardwaj submits that it has been argued at length as to how such witness i.e. PW-241 who has been examined at Exh.831, who has testified with regard to the conspiracy, is not relied upon even by the Prosecution itself to a great extent. It is submitted that even this witness is to be accepted as corroborating the theory of a conspiracy, then even according to such witness, the alleged meeting was to take place only at 9:00 a.m. or thereabouts on 28/02/2002. It is submitted that on the other hand, the gathering of mobs even in terms of the eye-witness accounts and Police versions, had started much before such alleged meeting. It is submitted that therefore, there is no

harmony in the Prosecution version as also in the version supplied by Shri S.M.Vora. Ιt is also further submitted that mere shouting of slogan "JAI SHREE RAM" cannot by itself suggest any conspiracy. It is submitted that such slogans or utterances are normally uttered by persons when they meet each other or when they want to express something. It is submitted that if at all a mob had gathered, it is with a view to enforce the Bandh call in response to the Godhra incident. It is submitted that even according to the best versions supplied by the Prosecution as also the witnesses, no serious incident took place till about 02:00 p.m., only exception being the attack on one of the injured victims Ayub. It is submitted by Shri Bhardwaj that if there was a preplanned conspiracy to do away with all members of a particular community as is alleged herein, then there is no logical reason as to why the mob would have sat silent and despite best opportunities, did not make any efforts to enter into Gulbarg Society or for that matter, did not make any efforts to kill any other persons of the minority community outside Gulbarg Society. It is submitted that in such circumstances, the theory of a preplanned conspiracy is completely got-up. It is further submitted by Shri Bhardwaj that if there was really speaking such conspiracy as is sought to be made up, the mob which comprised of people from different localities including the persons from the same locality as the Gulbarg Society, the mob would have been aware of residences of Muslims and would

have taken appropriate steps to kill them if at all really speaking there was a preplanned conspiracy in that regard. It is submitted that even as per the Prosecution and eye-witnesses, what largely took place between the period of 08:00 a.m. and 02:00 p.m., was indulging in stone throwing, acid bulbs and even burning rags by both parties. Ιt is submitted that in the circumstances and more so when these aspects are admitted positions canvassed by the Prosecution itself, the theory of a preplanned conspiracy is not established even by reasonable is submitted inference. Ιt that in such circumstances this theory is required to be discarded. It is submitted that in any case, PW-241 himself admits that one of the accused himself entered into the rickshaw and indicated about such alleged meeting and the intention of doing away with Muslims. It is submitted that if this was the real intent, what prevented the mob or the concerned accused from doing away with PW-241 himself who was helpless and very much available if harm was required to be done. It is submitted that therefore, these versions are unnatural and not believable. It is submitted that as has been narrated herein before, some of the witnesses belonging to the minority community, were finding it difficult to enter into Gulbarg Society and it is their version emerging on the record of the proceedings that it was only by gaining access through the residence of Hindus that they could enter into Gulbarg Society. It is submitted that it is, therefore, unnatural

that if there was a mob of thousands present, they would have permitted such easily identifiable person of the minority community to get into the Gulbarg Society and not done away with him when it was very easy for the mob to have done so. It is submitted that the incident pertaining to Gujarat Cycle Works involving the injured Ayub and deceased Yusuf taking place at about 09:00 a.m. is concerned, if it was really a conspiracy upon which the mob was acting, there is no earthly reason as to why Yusuf was permitted to take shelter and run into Gulbarg Society, and was not chased and killed by the mob. It is submitted that all these aspects do away with the theory of the preplanned conspiracy. It is submitted that members of the Muslim community not residing in Gulbarg Society, admittedly took shelter in Gulbarg Society by entering into Gulbarg Society through its gates. It is submitted that if there was a mob of thousands which entered into a preplanned conspiracy to do away with Muslims and such mob had gathered outside Gulbarg Society, then no reason or logical explanation is offered as to how such persons were allowed to enter into Gulbarg Society without their being harmed in any manner whatsoever. It is submitted that therefore, this version does the remote consideration. not bear even Tt. is submitted that even the star witness PW-106 has attributed his having gone out to carry out some electrical work in the house of a Hindu and having come back to Gulbarg Society at about 09:00 a.m.. It is submitted that if mobs were roaming around with

such intentions as is claimed, it is not possible for PW-106 back to have come without being threatened or accosted by a mob and it is urged that the entire theory of preplanned conspiracy be given a go-by. It is submitted that the very fact that there was no loss of life from 08:00 a.m. till 02:00 p.m. despite the fact of the versions supplied by the eye-witnesses as also the Police eye-witnesses that there was a mob of thousands in number, right till 2 o'clock, would mean that there was no preplanned conspiracy on the part of the mob to indulge into acts of killing of any sort. It is submitted that it may be assumed without admission on the part of the defence that there was an object or common intention to commit arson and loot and damage to property and nothing beyond that. It is submitted that there was a tiny force of Police officers headed by accused No.57 who even according to the eye-witnesses, had ensured that the mobs were dispersed from time to time and who were to an extent able to contain the situation inasmuch as, no serious efforts were made by the mob to break open the walls or the gates of Gulbarg Society till that stage. It is submitted that therefore, it cannot be said that the mob had come with the preplanned conspired intention of doing away with all Muslims of that locality including those residing in Gulbarg Society. It is submitted that in such circumstances, the theory of preplanned conspiracy to that extent is required to be discarded. It is submitted that the arguments advanced on behalf of the defence with

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regard to the actions of Shri Ehsan Jafri of firing from his personal weapon which has been submitted in detail herein before, may be repeated as sole reason for being the catalyst which led to this unfortunate incident. It is, therefore, submitted that what took place was a reaction of an angry mob who saw their members being felled by firing from the Society. It is submitted that the perception of such mob would be, when an injured person fell down, was that he been killed in firing and therefore, the has perception was that more than 15 people were affected in such fashion and that perception Shri according to Bhardwaj, has led to the incident. is submitted unfortunate Ιt that therefore, such actions cannot be said to be in furtherance of preplanned conspiracy а but and collective actions individual in such circumstances.

578. Τt. is submitted further by Shri Bhardwaj that the theory of the pre-planned conspiracy is further shot down by the Prosecution material itself. Shri Bhardwaj further submits that it is established from the record and an admitted position in terms of the Prosecution case itself that Shri Ehsan Jafri had fired upon the mob causing injuries to no less than 12 persons of the mob and resulting in death of one of the persons of the mob, from his private licensed weapon which was recovered from the scene of the incident. It is also pointed out by Shri Bhardwaj that no less than eight

cartridges have been recovered from different places would indicate and which which are in fact corroborated by testimonies of Police witnesses that Shri Ehsan Jafri had fired upon the mob from various different places and it is, therefore, all the more strange that the so-called eye-witnesses who have claimed to have seen and witnessed all the gory incidents where persons who had taken shelter in the residence of Shri Ehsan Jafri were done away by the mob have all failed to notice or attribute any weapon in the hands of Shri Ehsan Jafri, any firing having done by Shri Ehsan Jafri or any such material connected to the weapon admittedly owned by Shri Ehsan Jafri and for which it has been established on the record, that he was holding a valid license. It is pointed out that it also emerges and would be pointed out subsequently that no less than 20 Police witnesses have testified inter alia to the effect that the mob had gathered outside the Society, there an exchange of stone pelting, exchange of was throwing of burning rags and even exchange of acid bulbs from the mob and by and between the members of the Society. It is pointed out that however, all the Police witnesses have clearly and without anv ambiguity testified *inter alia* to the effect that the mob stormed into the Society and broke open the gates/walls of the Society only after the firing upon the mob by Shri Ehsan Jafri. It is submitted that in such circumstances, and when there is scientific evidence in the shape of site report of the FSL officer who visited the site of the

incident, the recovery of the weapon, the recovery of the cartridges as also the ballistic report with regard to the weapon, it is required to be examined with grave suspicion as to why not a single witness including the star witnesses who claim to have seen all singular incidents as they took place all throughout the day, none of such witnesses, has in any manner attributed Shri Ehsan Jafri to have been armed with a weapon, Shri Ehsan Jafri to have fired upon such mobs, causing death as also injury to the mob as being the prime instigating factor which could according to the defence, be ascribed to be "grave and sudden provocation" to the mob which led them to lose reason, go berserk and break open the walls or the gates of the Society, storm into the Society and indulge in acts which are attributed to have been indulged into by the mob. It is submitted that it is in such circumstances, that the entire incident of accused No.65 and 14 attributed to have instigating the mob to enter into the Society, is got-up because the storming of the Society by the mob was not on account of any instigation by accused Nos.65 or 14 but on account of the firing done by Shri Ehsan Jafri from his licensed weapon. It is submitted that this gives an entirely different complexion to the incident as а whole and suppression by the so-called eye-witnesses affect their very credibility inasmuch as none of the witnesses have in any stage of the proceedings have indicated to the SIT or to the various IOs or to any authority nor have they deposed in any manner which

would even remotely establish their having seen Shri Ehsan Jafri being armed with a weapon or having fired from such weapon having caused injuries to any person or death to any person of the mob and such witnesses have faithfully stuck to a version that they were all throughout present in the residence of Shri Ehsan Jafri when such incident took place. It is submitted that therefore, the witnesses have lost all credibility and the version emerging from the testimonies of such witnesses that Shri Ehsan Jafri was all throughout attempting to appeal to the mob not to indulge in such violence and he having gone out with folded hands and offered himself to ensure the protection and safety to the lives of other innocent victims, is a portrayal which suggests a deep conspiracy by itself and is a portrayal on the part of the witnesses with a sole view of evoking sympathy. It is pointed out that such witnesses, therefore, cannot be believed when they have supplied a version that Shri Ehsan Jafri upon going out of his residence, was thereupon dragged away by the mob and surprisingly none of the witnesses has testified as to what happened to Shri Ehsan Jafri thereafter and it is an established position that Shri Ehsan Jafri's remains have not been recovered till date. It is pointed out that none of the witnesses who claim to have escaped to the first floor/terrace of Shri Ehsan Jafri's residence, have claimed to have witnessed any aspect or any incident from such terrace or first floor and all that is claimed to have been witnessed is only from the

floor which also is ground а strange and unbelievable phenomenon. It is also pointed out that none of the witnesses has even exchanged with each other including the wife of Shri Ehsan Jafri who is established in the terms of the witnesses' testimony to have been on the first floor of her residence, as having any idea as to what happened to Shri Ehsan Jafri after he was allegedly dragged away by the mob. It is submitted that contradicting such aspect, is a version emerging from a testimony of a socalled eye-witness that the death of Shri Ehsan Jafri took place within the four walls of his residence, which was burnt down by the mob. It is submitted that in the circumstances, this vital suppression, according to Shri Bhardwaj, goes to the very complexion of the incident and goes to the very root of the entire incident and it is submitted that specifics would be placed for the consideration of this Court to support such submissions of the defence that the entire incident took place only on account of grave and sudden provocation caused to the mob by firing upon the mob by Shri Ehsan Jafri by his licensed weapon which resulted in injuries being sustained by no less than 12 persons and death of one person. It is also alternatively pointed out by Shri Bhardwaj that even the so-called eyewitnesses' testimony with regard to the private firing having taken place from "White House" is with a view to cover up the firing done by Shri Ehsan Jafri. Ιt is submitted that such versions only expose the hollowness of the Prosecution case.

579. Submitting further, Shri Bhardwaj points out that the recovery of cartridges, empty from the terrace of Shri Ehsan Jafri's shells residence, near the small gate of the Society, near the Madresa and from near the rear wall of the Society, near the railway lines as also the recovery of a shell from within the gun used by Shri Ehsan Jafri, is clearly establishing the fact that Shri Ehsan Jafri was not trying to protect his residence from the mob but was mobile, moving around with the weapon and firing therefrom, from different places. It is submitted that it is, therefore, surprising shocking that none of the so-called eyeand witnesses who claim to have seen specific accused and persons of the mob and attributed specific acts to such accused, have not been able to see Shri Ehsan Jafri moving around with a gun in his hands and firing therefrom. It is submitted that in the circumstances, the veracity of these witnesses is further established to be extremely doubtful. It is further pointed out that if Shri Ehsan Jafri, as is established, was possessed of a weapon from which he fired at different places, caused injuries to no less than 12 persons from the mob and caused the death of one of the persons of the mob, it could be said that Shri Ehsan Jafri was fully aware of the consequences of his actions and chose to fire upon the mob which was till then outside the premises of Gulbarg Society and had not made any moves to enter into Gulbarg Society. It is submitted that in the

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circumstances, the version of the witnesses that Shri Ehsan Jafri was a martyr who went out with folded hands and offered his own life in exchange of safety of others, is a version which is not It is submitted that acceptable. in the circumstances, and more so when all the Police witnesses who are established to have been present right throughout the incident, having testified that the mob was provoked to enter into Gulbarg Society only after the firing from Shri Ehsan Jafri's weapon and injuries being caused on account of such firing, clearly establishes the fact that the defence that the entire carnage took place only on account of the provocation due to the private firing, is further substantially supported. It is pointed out by Shri Bhardwaj that in such circumstances, the version of the so-called eye-witnesses is and cannot be accepted.

580. Having considered the rival submissions, I am required to reflect yet again that the case of the Prosecution as also the advanced on behalf of arguments the victims/witnesses, which is to the effect that the entire incident was on account of a conspiracy, albeit a deadly conspiracy, which was hatched post the burning of the Train Coach No.S/6 at Godhra Railway Station and that in furtherance of the conspiracy, planned incidents such as the present incident at Gulbarg Society, were orchestrated with

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a view to do away with large number of members of a community, particularly particular more the minority community as an act of revenge for the burning of the Train Coach at Godhra. It is no doubt, not attempted to be established by the Prosecution that the Government machinery and senior Police Officers were in fact part of the conspiracy on account of their not having taken any action even when such carnages were taking place is the case of the victims that and it even Government machinery and Police officials were complicit and thereby by their inaction are be held to be members required to of the conspiracy. In my opinion, it would, therefore, be necessary to firstly decide as to whether there was a conspiracy, a pre-planned conspiracy and that the entire carnage at Gulbarq Society was in furtherance of and in execution of the pre-planned conspiracy that was arrived at between the accused. It would, therefore, be necessary to reproduce the provisions contained in Sec.120-A of the Indian Penal Code which defines "criminal conspiracy" and Sec.120-B which prescribes the punishment for "criminal conspiracy".

<u>"Section 120-A:</u> When two or more persons agree to do, or cause to be done,-

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated

a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

<u>Explanation -</u> It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120-B:

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

581. The Hon'ble Supreme Court has right since the landmark judgment delivered in the case of **Masalti & others v. State of Uttar Pradesh** as reported in **AIR-1965-SC-202**, has consistently held that there must be a prior concert, meaning to say, a prior meeting of minds between the persons to have agreed directly or indirectly to commit and perpetrate the offence ultimately committed. The agreement can be explicit or implicit, but there must be an agreement.

582. It has also been held by the Hon'ble Supreme Court in the case of **Hiralal Jain v. Delhi** Admn. as reported in (1973) 3 SCC 398, as thus:-

"Where the only charge against the appellant was of conspiracy under S. 120-B, IPC in the committal proceedings and the prosecution produced only documentary evidence and no oral evidence was given and there was no prima facie evidence in respect of this charge, the documentary evidence only showing that the appellant made applications on behalf of the other accused, that he filed their vakalatnamas that he identified them as the and real claimant, it cannot be said that the appellant did anything beyond what a lawyer is authorised to do in a court of law. In the absence of any evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants whom he identified as such and there was no evidence whatsoever that there was any concert between him and the other accused antecedent the filing of to the applications and vakalatnamas in court by him and on the contrary there are circumstances showing his bona fides, it cannot be said that there is prima facie evidence for the offence

of conspiracy against him."

583. The Hon'ble Supreme Court has in number of judgments, more particularly in the landmark judgment of Mohd. Khalid v. State of West Bengal as reported in (2002) 7 SCC 334, held as under:-

"Offence of conspiracy can be proved by either direct or circumstantial evidence. However, conspiracies are not hatched in the open, by their nature, they are secretly planned. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is therefore seldom available. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the the objectors set object, which before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Where trustworthy evidence establishing all links of circumstantial evidence is available

the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. It can in some cases be inferred from the acts and conduct of the parties."

584. The Hon'ble Supreme Court in the case of **Devendar Pal Singh v. State of NCT of Delhi** as reported in (2002) 5 SCC 234 has held thus:

"For an offence punishable under 120-B, the prosecution Section need not necessarily prove that the perpetrators expressly agree to do or cause to be done an illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

The ingredients of the offence of

conspiracy are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means, an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act. The elements of a criminal conspiracy have been stated to be; (a) an object to be accomplished, scheme embodying means *(b)* a plan or to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out; all this is necessarily a matter of inference. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct or circumstantial evidence or both."

585. The Hon'ble Supreme Court in the case of **P.K.Narayanan v. State of Kerala** as reported in (1995) 1 SCC 142, has held that:

"The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has

successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inference from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation.

An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

Motive and preparation by themselves do not amount to conspiracy."

586. It can, therefore, be seen that to establish the element of a criminal conspiracy, the statute as also the law laid down by the highest Court of this land, has made it incumbent on the prosecution to establish by direct or circumstantial evidence as the case may be, that there was a meeting of minds between the alleged co-conspirators and such meeting of minds was with full knowledge that the offence for which the conspiracy is alleged to have been hatched, was to be committed.

587. In my opinion, the accused also face

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charge of having committed offences punishable under Secs.147, 148 and 149 of the Indian Penal Code which relate to rioting which is defined in Sec.146 of the Indian Penal Code. The provisions contained in Sec.149 would, therefore also, indicate the need to establish as to whether the members of the unlawful assembly had committed the offence in furtherance of the common object of such assembly or whether all the members of the unlawful assembly were aware of the fact that such offence was likely to be committed in prosecution of that object. The evidence, in my opinion, therefore, becomes extremely crucial and the non-explaining of certain aspects by the Prosecution would also have a vital bearing on establishing these aspects. If one examines from the voluminous evidence which is, in my opinion, exceptional for a trial, even the learned Special P.P. Shri R.C.Kodekar has not been able to advance for the Prosecution evidence which would directly establish the elements of a preplanned conspiracy having been hatched which resulted in the carnage at Gulbarg Society. In the first place, Shri R.C.Kodekar has in an attempt to establish the conspiracy and the Prosecution, in my opinion, has examined PW-241 Firoz Dilawer Shaikh Exh.831 purely as a witness to set up the at elements of a conspiracy that was hatched. I am required to carefully scrutinize paragraph No.3 of the testimony of PW-241 wherein what such witness has deposed, is reproduced in vernacular language

in paragraph No.187 of this judgment, but however, it is required to be interpreted that such witness has inter alia deposed to the effect that on the morning of 28/02/2002 between 09:00 a.m. and 10:00 a.m., the PW-241 came out of his residence and sat in a parked autorickshaw which was, according to this witness, belonging to his friend which friend was also sitting in the autorickshaw with another friend and it is quite amazing that the witness claims that he does not know the names of both such friends. Now, the witness has further been bold enough to depose that when all the three were sitting in such fashion, accused No.50 Kapil Munna came over to the autorickshaw, sat with PW-241 and his friends who remained unknown and the said Kapil Munna i.e. accused No.50 is attributed to have uttered the words to the effect that he was to attend a meeting where it was going to be decided inter alia to the effect that members of the Muslim community were to be attacked and killed. One but this piece of evidence cannot term as uninspiring and downright ridiculous. I am of the opinion that the defence has clearly and completely answer to the efficacy and given a fitting reliability of the testimony of PW-241 where it is pointed out that even according to the star witnesses of the Prosecution, the flash point and the beginning of the incident was around 09:00 a.m. thereabout or any time prior thereto or and therefore, it is ridiculous to suggest that at 10

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o'clock, an accused would come loitering and openly disclose to a member of the minority community which PW-241 was, and further disclose that he was to attend a meeting and that too further specify that the meeting was for the purpose of doing away with members of the Muslim community. It is funny that if at all PW-241 was present during such utterances, how and why did he escape the wrath of the members of the majority community, who were the unknown friends in whose autorickshaw PW-241 sat and where all and at what address was the meeting going to take place, are all questions that remain unanswered in the course of the voluminous evidence led by the Prosecution in an attempt to establish the charges. In my opinion, therefore, the evidence of PW-241 is required to be termed as extremely doubtful and uninspiring and cannot form the sole basis of coming to a conclusion as to whether there was a conspiracy as is claimed by the Prosecution. In fact, PW-241 is contradicted by his own father Dilawer Shaikh who has been examined as PW-282 wherein the witness PW-282 has clearly submitted that after an incident where a young boy was stabbed took place, the witness (PW-282) became scared and at about 09:00 a.m. he and all the <u>members</u> <u>(emphasis supplied)</u> of the family took shelter in the residence of Shri Ehsan Jafri. Now if this version of PW-282 is required to be accepted, all members would include his son PW-241 and therefore, if all of them had taken shelter in

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the residence of Shri Ehsan Jafri at about 09:00 a.m., then in such case, the entire incident testified to by the PW-241 with regard to his going to the autorickshaw and the alleged conversation with accused No.50 Kapil Munna could not have taken place. In my opinion, this, therefore, further damages the Prosecution version with regard to there being a pre-planned conspiracy arrived at with a view to do away with members of the minority community as is claimed and in execution of which the carnage at Gulbarg Society has taken place. Again, the law with regard to proving a conspiracy abundantly clear and it hardly needs is anv elaboration that there is a consistent plethora of judicial precedents which establish that one need not prove criminal conspiracies by examining eyewitnesses. In fact, the eye-witnesses' evidence is accepted as extremely rare while proving cases of criminal conspiracy. Criminal conspiracy can be proved largely by conduct and inference and is required be established when to а set of circumstances comes to light wherein the only inference that can be drawn by a prudent man is that there was a conspiracy and meeting of minds and the offence that took place was a consequence of such conspiracy and in execution thereof. In my opinion, there is absolutely no material other than the stray evidence and that too uninspiring and untrustworthy evidence of PW-241 which would in any manner indicate the hatching of the conspiracy

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wherein all the accused herein were members since the beginning or were roped in at a later stage. In fact it is unfortunate that the Godhra burning incident took place on 27/02/2002 and the present incident at Gulbarg Society has taken place, beginning from 09:00 a.m. in terms of the eyewitnesses' evidence, on 28/02/2002 and therefore, there is no material which would indicate that the accused were not only interconnected with each other but had entered into a conspiracy to commit the offence with which they stand charged herein, i.e. to say, the complete destruction of Gulbarg Society and the barbaric and heinous death of no less than 69 victims, of whom many were charred to death, many have been hacked to death by weapons and many of whom are not traceable even today.

588. Another circumstance which is sought to be pressed into reliance by the Prosecution in an effort to prove and establish the elements of a criminal conspiracy, is the fact that the Police officers including the highest Police Officers being the Commissioner of Police Shri P.C.Pandey, the Joint Commissioner of Police Shri M.K.Tandon and other senior Police officers, all of whom having come over to Gulbarg Society before any serious incident had taken place and despite having promised adequate Police bandobast to protect the members of the minority community, deliberately chose to stay away when the carnage was taking

place and thereby had given indirect corroboration to the theory of a criminal conspiracy involving ranking Government officials, hiqh political figures and Police. In my opinion, much attempts have been made to rake up this issue time and again, applications were tendered in the course of the present proceedings and independent proceedings have been initiated to seek reliefs under Sec.319 of the Cr.P.C. to arraign as co-accused senior Police officers and other Government officials, and such proceedings have been found to be without merit by all Courts at all levels including the Hon'ble Supreme Court of India. No material has been considered even prima facie worthwhile to arraign such senior Police Officers and Government officials and politicians in power as accused in a number of proceedings including the present proceedings and in my opinion, therefore, it would be unsafe and improper to even have a further discussion on this aspect. The controversy in my opinion, has been laid to rest and is required to be given its due burial. In my opinion, therefore, I am required to hold that even these aspects of the eye-witnesses' testimonies of PWs 106, 107, 116, 128, 129, 142, 143, 177, 179, 191, 192, 241, 283, 284, 289, 301 and 314 with regard to the presence and assurances of senior Police Officers at Gulbarg Society and their conduct thereafter has not been of such evidentiary value as would make this Court come to a conclusion that the conduct

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and events both would necessarily require an inference to be drawn that the conspiracy existed and that such senior police officers were members of such conspiracy and that any inaction on their part was on account of execution or prosecution of such conspiracy.

589. The third aspect which the Prosecution has attempted to use as corroborative material, flittingly is the alleged sting operation by a journalist Ashish Khaitan who has been examined as PW-313 herein and who according to Shri Kodekar, has in the course of his testimony, established as to how he (PW-313) was able to successfully carry out a sting operation which establishes and points to a conspiracy arrived at between the three accused i.e. accused No.25 Mangilal Jain, accused No.28 Prahaladji Asori and accused No.30 Madanlal Dhanraj Raval, who were a part of the sting operation carried out by PW-313 which corroborated and established the role of accused No.59 Atul Vaidya, accused No.54 Bharat Teli, accused No.58 Meghsing Roopsing and accused No.57 P.I. Shri K.G.Erda in the offence. It is pointed out that the testimony of such witness is reliable and has withstood the test of cross examination and cannot discarded and be therefore, is an added corroboration to other evidence which points at the conspiracy being hatched which resulted in the present incident. I cannot agree with such aspects

since it is clearly emerging from the arguments of the defence which are reproduced at paragraph Nos.506 onwards herein before in this judgment, which need not be reproduced herein, that the entire transcript of the recordings carried out by PW-313 has not been tendered either to the investigating agency nor has been placed for the benefit and consideration of the Court, but only those aspects deemed relevant by the witness have been placed for the consideration of the Court. The testimony of PW-313 at Exh.1091 is very clear that the witness has clearly admitted that what he has presently deposed in the Court as part of his oral evidence, was never narrated to any of the Investigating Officers who were officers of the S.I.T. appointed by the Hon'ble Supreme Court of India and who (the Officers) have recorded the statement of PW-313 on two occasions. It is submitted that since no such material at length was provided to the IOs, the S.I.T. has not made a thorough investigation into the sting operations and in fact the voice samples and relevant material was handed over to the officers of the CBI who have no role herein and who had played no role in the investigation related to the present offence. In my opinion, therefore, as has been rightly pointed out by Shri Bhardwaj, the witness PW-313 has clearly admitted that the transcript is not a complete transcript of the entire recording produced either before the Court or before the investigating agencies and I am required to reproduce paragraph No.62 on page No.92 of the cross examination of PW-313, wherein it clearly emerges *inter alia* to the effect that there are a number of dots i.e. "......" in the transcript where material parts of the recordings have not been reproduced in the transcript.

"દ્ર. એ વાત ખરી છે કે, સામાન્ય રીતે કોઈપણ લખાણમાં વાક્ય પુરુ થાય ત્યાં પૂર્ણ વિરામ મુકવામાં આવે છે અને એક થી વધુ ટપકા કરવામાં આવતા નથી જેથી મેં તૈયાર કરેલ ટ્રાન્સકીપ્ટમાં દરેક જવાબમાં બે વાક્ય વચ્ચે જે એક થી વધુ ટપકા કરેલ છે તેનો અર્થ સામાન્ય સંજોગોમાં તે જગ્યાએ બીજી કોઈ વાતચીત હશે તેવો થાય. સાહેદ સ્વેચ્છાએ જણાવે છે કે, મીડીયા માંના લીટરેચરમાં આ પ્રકારે લખાણ થાય છે અને તેથી બે વાક્ય વચ્ચે એક કરતા વધુ ટપકા મેં ટ્રાન્સકીપ્ટમાં બતાવેલ છે. એ વાત ખરી છે કે, મેં સીટ સમક્ષ રજુ કરેલ ટ્રાન્સકીપ્ટના લખાણમાં બે વાક્ય વચ્ચે જે એક કરતા વધુ મીડા કરેલા છે તે જણાવેલ નથી અને તેથી વાંચનારને ડોટ ડોટનો અર્થ ખબર પડે નહી. એ વાત ખરી નથી કે, એક કરતા વધુ મીડી અંગેની મેં જે વાત જણાવી તે મેં ખોટી જણાવી છે. એ વાત ખરી નથી કે,ડોટ ડોટ વાળી જગ્યાએ મેં ચેડા કરેલા છે."

590. No doubt, the PW-313 has carried out the sting operation upon three of the accused herein, but the material emerging therefrom does not inspire much confidence and it is settled law emerging from the judgments of the Hon'ble Supreme Court delivered in the case of R.K.Anand v. Registrar, Delhi High Court as reported in 2009 LawSuit(SC)1191 and Rajat Prasad v. C.B.I. as reported in 2014 LawSuit(SC) 337, that a sting

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operation can at the best be good corroborative material against the accused who are "stung" by the operation. It cannot be used against the accused other than such persons who feature in the sting operation, since in my opinion, any material emerging from such sting operation against accused who are not a part of the operation, would constitute to be a statement simplicitor of a coaccused which has no evidentiary value. Again, if we look at the real intention and purpose of the sting operation, the same is clearly to implicate and establish the role of more accused in the alleged greater conspiracy which has been very zealously pursued by some of the victims more particularly Mrs.Zakia Jafri, widow of late Shri Ehsan Jafri. However, all this material in mv opinion, was always available with the S.I.T. which was an independent team of investigators set up by Hon'ble Supreme Court of India and whose the investigation was being closely monitored by the of India Hon'ble Supreme Court with utmost regularity. Even such S.I.T. has, as is a matter of record, made much headway in such not investigation, nor is any material brought for consideration of this Court which would establish a larger conspiracy and therefore, the sting operation in my opinion, has no much role to play nor has, in my opinion, any material value in deciding the guilt or otherwise of the accused herein.

591. opinion, therefore, In my such transcript and such recordings cannot be relied upon as trustworthy or substantial evidence to conspiracy establish any herein. In such circumstances, the evidence on the record of the proceedings with regard to the elements of criminal conspiracy is extremely flimsy and cannot be relied upon and I cannot under such circumstances, come to the conclusion that the only inference that can be drawn from such evidence is with regard to the fact of a pre-planned conspiracy being hatched between the accused and it was in execution of such conspiracy that the Gulbarg Society incident has taken place.

592. Having dealt with the aspect as to whether the entire incident at Gulbarg Society was on account of a pre-planned conspiracy on the part of the accused or persons who are not accused in the present proceedings as is claimed by the victims and having answered such question in the negative, I am required to point out as to what was in my opinion, the catalyst which converted an incident where a mob of persons had surrounded a residential locality where largely members of the minority community were residing and were having shops and also their vehicles were being parked in such locality, from merely indulging in acts of stone-throwing, arson and largely speaking attempts to enforce the Bandh

call in response to the incident that had taken place at Godhra on the previous day, and such mob being easily controlled by a small Police Force right from 09:30 a.m. till 01:30 p.m., is an aspect which clearly emerges from the record of the proceedings. I may state that referring to the depositions of no less than 17 of the star witnesses who are eye-witnesses to all the incidents, it can be seen on a careful scrutiny of their evidence which has been done time and again in the course of the present proceedings, that as per the tabulated given herein below data and in the relevant paragraphs referred to therein, each of these witnesses, has clearly deposed in a manner as would establish that right from 09:00 a.m. till 01:30 p.m., there was an attempt to enforce the Bandh, other than the instances of stone-pelting and causing damage to some vehicles by some members of the mob and barring the stray incident where one Ayub of Ankur Cycle Works was stabbed by one of the accused, it can be seen that there was no fatality during that time frame of 09:00 a.m. to 01:30 p.m. Again, it can be seen that during that entire time frame, there was retaliatory stone-pelting from within Gulbarg Society by the residents of Gulbarg Society. The list of relevant witnesses, the relevant portion of their depositions are provided in this tabulated form herein below.

Sr. No.	PW No.	Name of		Exh. No.	Paragraph Nos. in deposition
1	106	Imtiyazkhan Sayeedkhan Pathan		542	8 to 13

Sr. No.	PW No.	Name of witness	Exh. No.	Paragraph Nos. in deposition
2	107	Mrs.Rupaben Modi	548	3 to 8
3	116	Sayeedkhan Ahmedkhan Pathan	584	3 to 10
4	128	Mohammadrafiq Abubakkar Pathan	633	3 to 8
5	129	Firozmohammad Gulzarmohammad Pathan	635	3 to 8
6	142	Ashraf Sikanderbhai Sandhi	654	5 to 6
7	143	Altafkhan Gulabkhan Pathan	655	3 and 4
8	177	Sairaben Salimbhai Sandhi	711	4 to 9
9	179	Ezazali Fakirmohammad Shaikh	720	4 to 8
10	191	Salimbhai Noormohammad Sandhi	734	6 to 9
11	192	Mohammadali Shahejadali Saiyed	736	3 to to 11
12	241	Firoz Dilawer Shaikh	831	3 and 4
13	283	Aslamkhan Anwarkhan Pathan	981	3 to 5
14	284	Mohammadsharif Nasiruddin Shaikh	987	3 to 5
15	289	Nadim Tasaddukhussain Surohi	995	3 to 9
16	301	Rasidabanu Dilawar Shaikh	1046	3 to 9
17	314	Faqirmohammad Nasirali Saiyed	1098	6 to 16

593. The cumulative effect of further appreciation of the evidence of these eye-witnesses also is establishing the fact of such eye-witnesses being able to move freely within Gulbarg Society between 09:30 a.m. and 01:30 p.m. There were, as is clearly established from the deposition of these witnesses, no attempts whatsoever to demolish the compound wall or the gates of Gulbarg Society were made by the mob nor was there any attempt on the part of the mob to rush into Gulbarg Society. Even the size of the mob in terms of the testimony of

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these witnesses during such time frame, was not huge. Therefore, it can be seen that if there really was a pre-planned conspiracy to commit such carnage, if the perpetrators had known beforehand that the Police force would turn a blind eye and make no serious attempts to protect the members of the minority community, there was no reason in mγ opinion, for this mob to have refrained from committing acts of violence, break into Gulbarg Society, arm themselves with deadly weapons and inflammable substances and perpetrate the carnage. In the circumstances and at the cost of repetition, I am required, therefore, to conclude that it is unnatural that no grave untoward incident took place between 09:30 a.m. and 01:30 p.m. and all of a sudden, things got ugly after 01:30 p.m. as if some tap was turned on which resulted in a flood of water and the carnage was perpetrated.

594. the circumstances In above, Ι am constrained to reflect and ask as to what was the catalyst that provoked the mob into perpetrating a wholesale carnage where so many innocent men, women and children lost their lives and which resulted in the entire Bunglow of Shri Ehsan Jafri being gutted, required souqht for, explained is to be and established. Ιt is in my opinion, therefore, relevant to refer to the submissions made by the defence, the relative material cited and pointed out by the defence and which strangely has been

selectively erased from the memory of all the victims and also from the submissions of learned Shri advocate S.M.Vora who appears for the victims/witnesses and very barely finds a grudging mention in the submissions of Shri Kodekar, the learned Spl.P.P. appearing on behalf of the State. In my opinion, a clear fact emerges from the forensic reports, recovery Panchnamas and discovery of a weapon from Gulbarg Society which provides opinion, which complete answer in my can conclusively establish as to why the mob which was largely involved in stone-throwing and attempting to burn and damage the vehicles and properties of members of the minority community outside Gulbarg Society, suddenly turned into an ugly mob which indulged in the massacre of so many men, women and children of the minority community. The answer is categorically found, in my opinion, in the incident of private firing on the part of deceased Shri Ehsan Jafri which resulted in some deaths from amongst the members of the mob and injuries to a number of persons of the mob which infuriated the mob who saw persons belonging to the majority community falling to the bullets being fired from the private weapon by Shri Ehsan Jafri. The evidence discussed herein after, in my opinion, categorically establishes that there was private firing by Shri Ehsan Jafri from a number of locations within Gulbarg Society and upon the mob which had gathered outside Gulbarg Society. Exh.260 further establishes Panchnama The the recovery of empty cartridge shells which are

established ballistically to have been fired from the muddamal weapon recovered from the Bunglow of Shri Ehsan Jafri, and a large number of Police witnesses have categorically in the course of their testimonies, testified with regard to their specific knowledge regarding the incidents of private firing from within Gulbarg Society which led the mob to be so incensed and provoked that it indulged in the The Police witnesses have as per the carnage. details provided herein after, specifically stated in their opinion after such incidents of private firing causing deaths and injuries to persons of the majority community, that the mob according to the Police witnesses "went out of control", meaning thereby that frenzy overtook the mob which а thereafter did not listen to any reason and it can be seen from the material on record that it was only the residence of Shri Ehsan Jafri that was selectively targetted by the mob, surrounded by the mob and attempted to be burned down which resulted in a lot of deaths of innocent persons on account of the burns sustained in the residence of Shri Ehsan Jafri and those unfortunate few, who could not withstand the smoke and fire and could not escape to the first floor of the Bunglow of Shri Ehsan Jafri, in their attempts to escape the flames, are established to have rushed out of the residence and in the process were hacked to death by the angry mob. I am, therefore, required to firstly bring on record the basis for my arriving at a conclusion that it was the private firing by Shri Ehsan Jafri

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that acted as a catalyst and which infuriated the mob to such an extent that the mob went out of control, the limited Police Force available thereat had no means to control or disperse such mob which had gathered in larger numbers post the incident of private firing and having gone out of such control, the mob in my opinion, was instrumental in burning down the ground floor portion of Shri Ehsan Jafri's residence after surrounding the residence of Shri Ehsan Jafri on all sides.

595. Further, I am also required to consider the fact that no less than 20 Police personnel examined as Prosecution Witnesses herein, have all testified with regard to the taking place of private firing from within Gulbarg Society and the resultant effect of the mob going out of control on account of injuries/death being sustained in such private firing.

PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
2	² Nathusinh Naharsinh Chauhan		4	તે દરમિયાન ગુલબર્ગ સોસાયટી માંથી ખાનગી ફાયરીંગ થયેલ અને ટોળા પર ખાનગી ફાયરીંગ કરેલ અને ટોળામાંથી કેટલાક માણસોને ઈજા થયેલ .
			19	એ વાત ખરી છે કે, ગુલબર્ગ સોસાયટીમાં થયેલા ખાનગી ફાયરીંગથી ટોળાના ઘણા બધા માણસોને ઈજાઓ થયેલી.
3	Babuji Chhaguji Dabhi	266	4	આ દરમિચાન ગુલબર્ગ સો . માંથી પણ ટોળા પર પથ્થરમારો શરુ થવા લાગેલ .તેમજ ખાનગી ફાચરીંગ થવા પામેલ .તેમાં ટોળાના કેટલાક ઈસમો ઘવાચેલા આથી ટોળા વધારે ઉશ્કેરાચેલા .

PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
			30	એ વાત ખરી છે કે, ખાનગી ફાયરીંગમાં ટોળાના ઘણાં માણસો ઈજા પામેલા તેમાં એક વ્યક્તિનું પાછળથી મૃત્યુ થયેલુ.
4	Rajendrasinh Kallusinh Rajput	269	6	ગુલબર્ગ સોસા.માંથી પણ પથ્થરમારો થતો હતો. અને ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થતુ હતુ. ટોળામાંના કેટલાક માણસોને ઈજા થયેલ. તેઓ વધુ ઉશ્કેરાયેલા.
5	Indrasinh Himmatsinh Gohil	270	3	ગુલબર્ગ સોસા.ના રઠીશેઓ પણ સામે પથ્થરમારો કરેલ.તેમજ અંદરથી પણ ખાનગી ફાચરીંગનો બનાવ બનતા દિન્દુ કોમનું ટોળુ વધુ દિંસક બનેલ.
6	Lalitkumar Ramanbhai Patni	271	б	આ દરમિયાન ગુલબર્ગ સો . માંથી ખાનગી ફાયરીંગ થયેલ . તેમાં કેટલાક માણસોને ઈજા થયેલ . જેથી ટોળુ વધુ ઉગ્ર બનેલ .
7	Arvindsinh Shankersinh Vaghela	273	4	ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થયેલ. જેથી હિન્દુ કોમના ટોળા વધારે ઉશ્કેરાઈ ગયેલા.
11	Rameshbhai Nagjibhai Pandor	314	4(a)	સામેથી ખાનગી ફાયરીંગ થયેલ જેમાં કેટલાક માણસોના ઈજા પણ થયેલ. પછી ટોળુ અંદર ઘુંસી ગયેલ. ટોળાના માણસોને ખાનગી ફાયરીંગથી ગોળી વાગતા સોસા.માં ઘુંસી ગયેલ અને ઉશ્કેરાઈ ગયેલ.
			19	સોસા . ની અંદરથી બપોરના એક થી બે દરમિયાન ખાનગી ફાચરીંગ થયેલ . આ ફાચરીંગ સોસા . ની અંદરથી થયેલ એટલો ખ્યાલ છે .
			26	ખાનગી ફાચરીંગથી ઈજાઓ થયેલ તે માણસોને દવાખાને મોકલવામાં આવેલા.
12	Sajjansinh Jorubha Jhala	315	7	ગુલબર્ગ સોસા . માંથી ખાનગી ફાયરીંગ થયેલ . જેથી હિન્દુ ટોળા વધારે ઉશ્કેરાઈ ગયેલા .
13	Dhanesinh Becharsinh Kumpawat	316	5	દરમિયાન ગુલબર્ગ સોસા.માંથી ખાનગી ફાયરીંગ થવા પામેલ. જેને લીદ્યે દિન્દુઓના ટોળા વધુ ઉગ્ર બની તેમજ ગુલબર્ગ સોસા.ના પાછળના ભાગે આવેલ કોટની દિવાલને તોડી અંદર પ્રવેશ કરેલ.
20	Indrasinh Mansinh	334	4(a)	ગુલબર્ગ સોસા . માંથી ફાયરીંગ થતુ હોય તેવુ લાગેલ . આ બાજુ એટલે રોડ બાજુના ટોળાના માણસો ઉશ્કેરાયેલ .
	Solanki		16	એ વાત ખરી છે કે , સોસા . માંથી ખાનગી ફાચરીંગ થયેલ તેનાથી ટોળાના કેટલાક માણસોને ઈજાઓ થયેલ .
21	Motibhai Dahyabhai Vaghela	335	5	તે દરમિયાનમાં ખાનગી ફાયરીંગ થયેલ જે ગુલબર્ગ સોસા . માંથી થયેલ . જેમા ટોળાના માણસોને ઈજા થયેલ . જેને પોલીસ દવાખાને લઈ ગયેલ .તે પછી ટોળુ બેકાબુ બની ગયેલ . અને ગુલબર્ગ સોસા .ની પાછળની દિવાલ તોડીને અંદર ઘુંસી ગયેલ .

PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
22	Shailendrasinh Kalusinh Jadeja	336	6	તે પછી અંદરથી ખાનગી ફાયરીંગ થયેલ જેથી બહાર ટોળાના કેટલાક માણસોને આ ફાયરીંગથી ઈજા પહોંચેલી. જેથી બહારના ભાગનું ટોળુ વધારે ઉશ્કેરાયેલ.
28	Pradipsinh Shetansinh Rathod	349	5	ગુલબર્ગ સોસા.માંથી ખાનગી ફાચરીંગ થતા ટોળાના માણસોને ઈજા થતા ટોળુ વધુ ઉશ્કેરાચેલ અને આવેશમાં આવી ગચેલ. ત્યારે પણ અમે ફાચરીંગ ચાલુ રાખી ટોળાને વિખેરવા પ્રચત્ન કરેલ.
29	Dhananjay Bhaskerrao Bhagwat	351	7	ગુલબર્ગ સોસા.માંથી ટોળા પર ખાનગી ફાચરીંગ થચેલ. જેથી દિન્દુ ટોળાના માણસો વધારે ઉશ્કેરાઈ ગચેલા.
30	Dharmabhai Ramjibhai Bodat	352	5	ગુલબર્ગ સોસા.માંથી ફાયરીંગ થતા ટોળુ વધારે ઉગ્ર બનેલ. અને સોસા.ની પાછળની દિવાલ તોડી સોસા.માં ઘુંસેલ.
37	Kavaji Rupaji Asari	385	4	ગુલબર્ગ સોસા . માંથી ખાનગી ફાયરીંગ થયેલ . જેથી ટોળાના માણસો વધારે ઉગ્ર થયેલા .
38	Dolatsinh Padamsinh Rathod	386	4	દરમિયાન ગુલબર્ગ સોસા . માંથી ખાનગી ફાયરીંગ થયેલાનું જણાયેલ . જેથી ટોળુ વધુ ઉશ્કેરાતા અમારા પો . ઈ. સાઠેબે હવામાં એક રાઉન્ડ ફાયર કરેલ .
			8	એ વાત ખરી છે કે, ખાનગી ફાચરીંગમાં ટોળાના માણસોને ઈજાઓ પણ થયેલ.
39	Chandubhai Vashrambhai Rami	387	б	દરમિયાન ગુલબર્ગ સોસા .માંથી પણ ખાનગી ફાયરીંગ થયેલ . જેના કારણે ટોળુ વધુ ઉગ્ર બનેલ .
40	Pasabhai Galabhai Solanki	388	4	તેમજ ગુલબર્ગ સોસા. તરફથી સામેથી પથ્થરમારો તેમજ ખાનગી ફાચરીંગ થતા દિન્દુ કોમના કેટલાક મણસોને ઈજા થતા ટોળાએ ઉશ્કેરાઈ જઈ ગુલબર્ગ સોસા. પાછળની દિવાલ તોડી સોસા.માં પ્રવેશ કરી મકાનોમાં આગ લગાડેલ. તે દરમિયાન અમોએ ટોળાને વિખેરવા બે સેલ છોડેલ. તેમજ બીજા પોલીસે સેલ છોડેલ તેમજ ફાચરીંગ કરેલ.
			13	પોલીસે કરેલા ફાયરીંગ તેમજ ખાનગી ગોળીબારથી ટોળાના ઘણાં માણસોને ઈજાઓ થયેલ .
41	Rameshbhai Somabhai Solanki	391	6	સોસા .માં અંદરથી પણ ખાનગી ફાચરીંગ થયેલાનું જણાયેલ . જેમાં ટોળામાંથી અમુક વ્યક્તિઓને વાગેલાનું અમે જાણેલ .

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PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
45	Rajeshbhai Kuberbhai Parmar	399	4	આ બાજુ ગુલબર્ગ સોસા.ની અંદરથી ફાયરીંગનો અવાજ સાંભળેલ. તે પછી ટોળા બેકાબુ બનેલ. એરડા સાદેબે ટોળાને વિખેરવા દવામાં એક ફાયર કરેલ. અને સ્ટાફના માણસોને ટોળાને વિખેરવા અને ફાયરીંગ કરવા સુચના આપેલ. જેથી ફાયરીંગ કરેલ. તેમાં પોલીસ ફાયરીંગથી ચાર માણસો મૃત્યુ પામેલા પણ ટોળુ વિખરાયેલ નરિ.
46	Mavjibhai Hakshibhai Bodar	400	5	તે દરમિયાન ગુલબર્ગ સોસા . માંથી ખાનગી ફાયરીંગ થતા દિન્દુ ટોળા વધારે ઉગ્ર બનેલા .
47	Ranchhodbhai Ramjibhai Malavia	401	3	જેથી ખાનગી ફાચરીંગ થવા પામેલ. જેથી આ ટોળાને વિખરાઈ જવા માટે પી.આઈ.શ્રી એરડા સાહેબે લાઉડ સ્પિકર મારફતે એલાન કરેલ. ખાનગી ફાચરીંગ થવાના કારણે ટોળાએ વધુ ઉગ્ર સ્વરૂપ ધારણ કરેલ. તેમજ ખાનગી ફાચરીંગથી અસંખ્યને ઈજા થવા પામેલ.
48	Jagatsinh Mulsinh Bhati	402	4	તે દરમિયાન ગુલબર્ગ સોસા .માંથી ખાનગી ફાયરીંગ થતા ટોળાના માણસો ઉશ્કેરાયેલા . અને સોસા .ના પાછળના ભાગે જઈ કોટ તોડી ટોળાના માણસો સોસા .માં ઘુંસી ગયેલ .તે અંદર ગયા પછી અમને બુમા બુમ સંભળાયેલ .
55	Balubhai Nathabhai	418	4	જેથી ગુલબર્ગ સોસા . માંથી દિન્દુઓના ટોળા પર ખાનગી ફાચરીંગ થચેલ . જેથી ટોળુ વધારે ઉશ્કેરાચેલ .
	Ninama		15	એ વાત ખરી છે કે, ખાનગી ફાયરીંગથી ટોળાના માણસોને ઈજાઓ પણ થયેલ .
75	Puransinh Ramsinh Tomar	473	4	ગુલબર્ગ સોસા.માંથી ફાયરીંગ થયેલ અને ટોળુ વધારે ઉશ્કેરાયેલ.
			13	એ વાત ખરી છે કે, સોસા.માંથી ખાનગી ફાચરીંગ થયુ અને તેમાં ટોળાના માણસોને ઈજા થઈ તે પછી ટોળુ ઉશ્કેરાયેલ.
254	Prahladji	876	6	સોસા . ની અંદરથી ખાનગી ગોળીબાર થયેલ .
	Mangalji Barot		17	એ વાત ખરી છે કે, ખાનગી ગોળીબારના કારણે ઘમા માણસોને ઈજાઓ થચેલ.
269	Natwarji Jawanji Bhati	927	8	ગુલબર્ગ સોસા .માંથી પ્રાઈવેટ ફાયરીંગ થયેલ .આ ફાયરીંગ આશરે બે વાગે થયેલ .
			9	ખાનગી ફાયરીંગ થતા દિન્દુ કોમના માણસો વધુ ઉશ્કેરાચેલા.અને ફાયરીંગમાં દિન્દુ કોમના માણસોને ઈજા થચેલ.
305	Bhupendrasinh Karansinh Sisodiya	1052	7	આ દરમિયાન ગુલબર્ગ સોસા . માંથી ખાનગી ફાયરીંગ થતા દિન્દુ કોમના ટોળાના માણસો પૈકી કેટલાકને ઈજાઓ થતા ટોળાના માણસો ઉશ્કેરાટમાં આવી ગયેલા .

PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
306	Ramvilas Ramlakhan Pathak	1059	7	તે દરમિચાનમાં ગુલબર્ગ સોસા.ની અંદર તરફથી દિન્દુ કોમના ટોળા પર ખાનગી ગોળીબાર થયેલ. જેનાથી દિન્દુ કોમના માણસોને ટોળામાં ઈજા થયેલ. જેથી ટોળાના માણસો ઉગ્ર બની પથ્થરમારો ચાલુ રાખેલ. અને ગુલબર્ગ સોસા.ની પાછળની દિવાલ તોડી ગુલબર્ગ સોસા.માં અંદર ઘુંસી ગયેલા.

596. It can be seen that an analysis of the such witnesses, has testimony of all clearly attributed private firing from Gulbarg Society which is further established to be from the weapon of Shri Ehsan Jafri, which caused injuries to members of the Hindu community and which incensed the mob which further according to these witnesses, gathered in larger numbers, demolished the walls on both sides of Gulbarg Society, entered thereat and perpetrated the carnage.

597. At the cost of repetition, I mav mention that all these witnesses have largely deposed to the fact that the mob was greatly and gravely provoked by such incident of private firing.

598. Carefully considering the contents of Panchnama Exh.260, the said Panchnama in my opinion, establishes the recovery of two cartridges from the terrace of Shri Ehsan Jafri's residence, three cartridges from the Madresa which near were established by FSL evidence to be fired from the weapon of Shri Ehsan Jafri. The weapon owned by Shri Ehsan Jafri which was a legal, valid and licensed

weapon, was recovered in terms of the Panchnama Exh.262 from the residence of Shri Ehsan Jafri. A Panchnama Exh.412 further establishes recovery of a cartridge from near the small gate of Gulbarg Society and Panchnama Exh.396 further establishes the recovery of one more empty shell from near Bunglow No.19 of Gulbarg Society (Shri Ehsan Jafri's residence) and further a Panchnama Exh.257 also establishes the recovery of one more cartridge near Bunglow No.19 of Gulbarg Society, all of which establish in my opinion, clearly that Shri Ehsan Jafri had fired on at least eight occasions from his rifle which is established from the recovery of cartridge shells as stated above. I am required to observe that the document Exh.1245 written by the Assistant Commissioner of Police, Crime Branch, Ahmedabad, informs the P.I. of Meghaninagar Police Station inter alia to the effect that the late Shri Ehsan Jafri, resident of 19, Gulbarg Society, was possessed of а 12-bore gun which qun bore registration No.50253 SBBL and which license was upto 31/12/2003. The Panchnama renewed Exh.260 corroborates the registration number and the make of the weapon as reflected in document Exh.1245 and the FSL report Exh.178 and more particularly page No.6 thereof establishes and corroborates the registration number on the barrel of the weapon forwarded by the I.O. The report more particularly in terms of pages No.7 and 8 thereof, clearly and conclusively establishes that the injury caused upon some of the victims was by the licensed weapon of

Shri Ehsan Jafri which is in my opinion, conclusive evidence to establish that Shri Ehsan Jafri was licensed owner of a 12-bore shotgun which was used to fire a number of times causing injuries to 15 persons, of whom one person died on account of such injuries sustained.

599. am, therefore, required to accept Ι the submissions of Shri Bhardwaj that it was not as if that Shri Ehsan Jafri was immobile and could not move out of his Bunglow and was done away to death when the mob dragged him out of his bunglow, but the private firing as has been pointed out by Shri Bhardwaj, the learned advocate appearing on behalf of the concerned accused, conclusively establishes that Shri Ehsan Jafri had perpetrated acts of firing from his weapon from different locations within Gulbarg Society upon the mob, causing injuries and death of one person which in my opinion, was the catalyst which provoked the mob to such proportions that it went out of control and thus resulted into the killing frenzy where a large number of innocent persons lost their lives. Again, in my opinion, therefore, this aspect cannot in any manner excuse or condone the acts of the mob which perpetrated the violence needlessly upon innocent men, women and children and hacked them to death and ensured that many others were burnt to death in the carnage that followed such private firing. In my opinion, while the actions on the part of the mob, again in no manner be excused or condoned, it is selective

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amnesia on the part of all the eye-witnesses who claim to have seen and specifically pointed out in great detail each incident as it took place between 01:30 p.m. and 05:00 p.m., and the role played by each of the specific accused thereat, in such graphic detail, while conveniently losing all memory with regard to private firing from Shri Ehsan Jafri's weapon, makes me come to a conclusion that the testimony of these witnesses is to be dealt with cautiously.

contradicting 600. Aqain, further the theory of a criminal conspiracy, is the testimony of the I.O. appointed in compliance of the directions the Hon'ble Supreme Court which ordered the of setting up of a Special Investigation Team (S.I.T.) i.e. Shri J.M.Suthar being PW-335 herein who has clearly in the course of his testimony, admitted the fact of Shri Ehsan Jafri having fired from his weapon though in all fairness, the words used by Shri J.M.Suthar are inter alia to the effect that such firing was done in self-defence. However, this aspect clearly emerges from the testimony of Shri J.M.Suthar on page No.46 in paragraph No.74 wherein such aspect is clearly emerging from his testimony and it further also emerges from the testimony that no less than 15 persons were injured in such private firing, of which one person fatally succumbed to the injuries sustained in such private firing. I see no reason to discard such aspect of the testimony of a responsible and senior Police Officer appointed

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under the directions of the Hon'ble Supreme Court of India. This witness has also in the course of his cross examination, testified in paragraph No.50 thereof that while recording the statement of PW-241 Firoz Dilawer Shaikh, such witness according to the IO, had in the course of his statement recorded before the S.I.T. on 20/06/2008, admitted to Shri Ehsan Jafri firing from a double-bore weapon.

601. I am required also to point out the testimony of PW-236 Safdarhussain Fazlehussain Ankleswaria at Exh.815 who in paragraph No.18 of his cross examination, categorically admitted that there was a case of private firing with regard to Shri Ehsan Jafri on the fateful day. It emerges from the deposition of PW-236 that he was the brother-in-law of the deceased Shri Ehsan Jafri, as is clearly reflected in paragraph No.1 of his deposition.

602. I am required, therefore, in a further effort to test the theory of criminal conspiracy and thus the charge under Sec.120B which the accused face, to scrutinize minutely the submissions advanced by all parties who have relied upon the eye-witness testimony to highlight that the entire incident at Gulbarg Society is in fact a culmination of a series of incidents which happened at different time frames where specific names of accused are being pointed out and where even according to the Prosecution and the eye-witnesses, a series of incidents were perpetrated which ultimately

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graduated from an attempt by a mob of persons to enforce the Bandh, to indulge in acts of arson and attempted looting and exchange of stone-throwing between the mob the residents of and Gulbarg Society, as also an exchange of burning rags between such parties, which suddenly transgressed into this grave and heinous carnage which has resulted in the death of such large number of women, children and even aged persons who have been done away by the mob by either being hacked with weapons like swords and guptis or were burnt to death by the mob. It would, therefore, be required in my opinion, to highlight the time frame of each sub-incident which I propose to do so as herein after follows.

603. The first incident according to а large number of witnesses, more particularly the victims, began when the mob of a few persons came near the Gulbarg Society and attempted to forcefully shut down some of the shops that were open. The testimony of PW-106, PW-116, PW-142, PW-179 and PW-289 in this regard is noteworthy where all of them have given an approximate time frame of such attempt to forcefully close the shops by a section of a mob which comprised of few persons, between the time frame 09:00 a.m. and 09:15 a.m., and PW-106 and PW-116 have in fact indicated that such incident took place between 10:00 a.m. and 10:30 a.m. In the circumstances, generally speaking, this incident in my opinion, of the mob attempting to forcefully shut

down shops, took place between the period 09:15 a.m. and 10:30 a.m.

604. The next incident according to such witnesses, has taken place again between almost the same time frame and can be seen in terms of the testimony of a number of eye-witnesses, to have taken place almost as an extension or continuation of the first incident where the mob attempted to forcefully shut down the shop of Ankur Cycle Works. witnesses have testified in terms of their The testimony discussed herein before and which I need not repeat, and have positively stated that an altercation took place between Ayub and Yusuf who were the sons of the owner of Ankur Cycle Works and the mob and it is the eye-witness testimony of number of witnesses that both Abub and Yusuf were manhandled by the mob and when both of them attempted to run away from the incident, the eyewitnesses claim that it was accused No.55 Bharat Rajput who had stabbed Ayub with a gupti, but however, the mob appears to have permitted the said Ayub to escape from its clutches whereas the other boy Yusuf was allowed to escape from this incident unscathed and uninjured where he took shelter in Gulbarg Society more particularly in the residence of Shri Ehsan Jafri. The testimonies of PW-106, PW-116, PW-191, PW-177, PW-283, PW-314, PW-179, PW-289, PW-128, are required to be borne in mind and all these witnesses have not pinpointed a specific time

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frame but largely sifting through the evidence, it emerges that such incident was in continuation of the mob attempting to shut the shops, there were not more than 10 to 15 persons in such mob, and such incident took place somewhere between 10:00 a.m. and 10:30 a.m.

605. The next important occasion and incident which also in my opinion, is an extension of the above two incidents, was the damage, destruction and setting on fire the autorickshaw of one Gulam Master. Again, the same set of witnesses referred to herein above, have specified that generally speaking the incident took place in the early hours of morning between 10:00 a.m. and 10:30 a.m. and that initially the first attempt to destroy and set on fire the said autorickshaw was foiled by the arrival of a Police Jeep which successfully dispersed the mob and it can be seen that thus, in terms of the time frame, this incident also took place in the early hours of the morning after 10:00 a.m. and before 10:30 a.m.

606. The next important incident required to be considered, is the fact of the Prosecution Witnesses all testifying in one breath with regard to the visit of senior Police Officials of the highest rank, coming over to Gulbarg Society and specifically meeting with Shri Ehsan Jafri and other leaders of the community. The time frame in terms of

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the testimonies of all the witnesses referred to above, with regard to such meeting again is between 10:30 a.m. and 10:45 a.m. In the circumstances, I am required to hold that from the evidence of the witnesses referred to above, it is clear that the senior most Police officers had visited Gulbarg Society and at that point of time, between 10:30 a.m. and 10:45 a.m., there was total mobility on the part of the residents of Gulbarg Society where it emerges from the testimony of all witnesses that Shri Ehsan Jafri went out of the gate of Gulbarg Society to meet such officials and that they could conduct a discussion thereat. This again defeats the theory of the pre-planned conspiracy and lack of Police presence or any inaction on the part of the Police officers which would suggest in any manner a greater conspiracy though the same in my opinion, is not relevant for the purposes of the present trial since the same is not the subject matter of the trial.

607. From the testimonies of all the eyewitnesses, it can be seen that thereafter, i.e. between the period 10:30 a.m. and 01:30 p.m., there was sporadic incident of stone-throwing from outside Gulbarg Society which was retaliated in turn by the residents of Gulbarg Society and no attempts were made by the mob to demolish the compound wall or break open the gates of Gulbarg Society from any direction and no serious untoward incident even

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according to the eye-witnesses, had taken place during such period. I am, therefore, in a position to observe that even the size of the mob during such period was not so significant and there is enough material on the record to show that the Police were effecting steps to ensure that the mob was made to disperse from time to tome and no serious incident took place between such time frame and even the size of the mob was not so large nor was any indication emerging till that time that there would an absolute carnage which would result in the loss of a large number of innocent lives of men, women and children of the minority community and also loss of lives of persons killed both in private firing and Police firing.

608. It is required to be noted that the grave and serious offences even in terms of the eyewitness testimony and the Police witness testimony, started only after 01:30 p.m. and the mob having grown exponentially to a mob of huge numbers, which varies from a mob of 5000 persons to 20000 persons, is attributed to have demolished the compound wall and the gates of Gulbarg Society from the front portion as also simultaneously from the rear portion and there was an influx of a large number of persons comprising of the mob, armed with lethal weapons, which entered into Gulbarg Society and started wholesale damage and destruction to the vehicles and properties of the residents of Gulbarg Society and

more particularly, it can be seen from the testimony of all eye-witnesses that a large number of members of Gulbarg Society, in fact entire families, had taken shelter in the residence of Shri Ehsan Jafri. It is also emerging from the eye-witness testimonies of the witnesses referred to above, that even the stone-pelting had increased heavily and the mob had armed itself with lethal weapons as also cans of inflammable substances with an intent obviously to cause damage and destruction as also setting on fire the vehicles and properties in Gulbarg Society. The incidents that took place after 01:30 p.m. consist of the murder of one Anwarkhan outside the OTLA of Ehsan Jafri's residence, the of Shri murders Jebunnisa, Kherunnisa and Zebunben, Jehangirbhai, the killing of Firdausbanu and Shahjadali, murder of Salim Abubakkar and Gulzarmohammad, the dragging away of Shri Ehsan Jafri and doing him to death, stones and bricks being pelted so violently having resulted in the death of one Irfan, the alleged rape and murder of Sajedabanu, one unknown woman and the killing of Sadab and Yusuf. These are all incidents of the eye-witness which took place in terms testimonies, in or around Shri Ehsan Jafri's residence. It can be seen that this mob had swelled from few persons to thousands of persons. In my opinion, therefore, it can be seen that while the mob was insignificant in numbers and controllable not really interested in causing deaths of and persons between the period 09:00 a.m. and 01:30

p.m., suddenly was attributed to have completely gone out of control and indulged in the senseless butchery and killing of large number of men, women and children. I have stated herein before and I intend to state herein after that there had to be a catalyst or some reason which could pinpoint and explain the drastic change in the behaviour of the mob, where the mob from merely indulging in stonepelting and causing minor damage and of loot vehicles and shops belonging to the minority community, entered into frenzy where such large number of men, women and children were done away to death. It can be seen at the cost of repetition, that unfortunately all the so-called eye-witnesses who have claimed to see the entire incident in minute detail, have attempted to pinpoint the specific roles and overt acts to number of accused herein, have attempted to attribute a particular weapon with which a particular accused was armed, have given graphic details in respect thereof, have all selectively and conveniently erased from their memory the inescapable evidence that has emerged from the evidence that has unfolded in the course of this trial, that it was Shri Ehsan Jafri who had started firing from his private licensed 12-bore shotgun which caused a large number of injuries to persons from amongst the mob and also caused the death of one of the persons from amongst the mob in such firing. I am, therefore, inclined to fully agree with the defence version that the mob got

incensed and grew in numbers only after such incident, which is established from the medical the shape of injury certificates evidence in Exhs.613, 823, 796, 512, 514, 619, 616, 516, 823, 596, that such firing and injuries were caused between the period 01:15 p.m. and 01:30 p.m. In such circumstances, the testimony of such eyewho have witnesses claimed to have graphic recollection of each incident which thev had witnessed, largely from within the residence of Shri Ehsan Jafri, where such witnesses have further claimed that Shri Ehsan Jafri had in fact come out with folded hands and requested the mob to stop such acts of violence and had in fact offerred himself and gone out with folded hands despite the pleas of PWs 106 and 107 not to do so and was thus dragged out and butchered by the mob, cannot for a moment be accepted especially when these very eye-witnesses despite there being overwhelming material on record discussed herein before, which clearly establishes the firing from his licensed weapon by Shri Ehsan Jafri from within Gulbarg Society in all directions causing death and injuries to number of persons being conveniently forgotten by such witnesses, and in fact in some cases being denied by these eyewitnesses, cannot be lost track of. In such circumstances, I am yet again constrained to note that there was no pre-planned conspiracy to commit the carnage at Gulbarg Society and in fact it was such private firing by Shri Ehsan Jafri which

resulted in the news spreading which further resulted in a large mob gathering, getting frenzied and the ultimate unfortunate outcome resulted in the mob breaking into Gulbarg Society from both the front and the rear portions and causing the ultimate carnage which is a black day for civil society and is required to be condemned in the strongest terms which I hereby do so. I am, therefore, required to come to a conclusion which may reappear in the course of my judgment herein after also, that it can be seen that all the grave and heinous offences that took place, have taken place post 01:30 p.m. and between 01:30 p.m. and 05:00 p.m., when according to most of the eye-witnesses, a large number of Police personnel converged on the scene and rescued more than 150 members of Gulbarg Society who had escaped the carnage by hiding or surprisingly taking shelter on the first floor of Shri Ehsan Jafri's residence as per the say of the eye-witnesses themselves, though there is some difference and contradiction emerging from the testimony of Police witnesses who claim to have rescued such victims and survivors from some other building.

609. Again, before parting with regard to my conclusions with respect to the charge of there being a pre-planned criminal conspiracy between the accused and other not named persons, I may also negate the submissions made by Shri Vora that the fact of some of the witnesses having testified to

the mob shouting slogans like "JAI SHREE RAM" and slogans *inter alia* to the effect that "kill the members of the minority community" do not in my opinion, establish the elements of the criminal conspiracy since as can be seen from the testimony of the witnesses, such slogan shouting was routinely done by the mob right since 09:30 a.m. till 01:30 p.m. without any action being taken on the basis of such slogans, meaning thereby that there was no fatality, there was no attempt to break into Gulbarg Society nor was the entire incident beyond the control of the Police authorities till that stage.

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610. In my opinion, therefore, I am yet required to conclude that in again the circumstances, there was absolutely no pre-planned conspiracy to butcher or kill members of the minority community more particularly at Gulbarg Society, but the entire sequence of events reflected herein above, clearly establishes in my opinion, that the carnage took place on account of а spontaneous gathering of a large mob on accounts of the news having spread that number of persons of the majority community have been injured/killed in a private firing by Shri Ehsan Jafri, which further resulted in the entire carnage taking place.

611. In the circumstances above, I further conclude that the elements of Sec.120-A of the I.P.C. are not established and it is required to be

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held which I hereby do so, that the mob which was in large numbers and in any case, sufficient to qualify for the definition of a riot as prescribed under Sec.146 of the I.P.C., had gathered on account of the circumstances which, as discussed herein above had not gathered in furtherance of a pre-planned conspiracy to do away with members of minority community as is sought to be claimed by the Prosecution and therefore, without any further discussion, I negate the charges of a conspiracy under Sec.120-B of the I.P.C. against all the accused herein.

612. next question required to The be ascertained is as to whether there was a riot and whether the provisions of Sections 144 to 149 of the I.P.C. are required to be made applicable to the facts and circumstances herein and whether it is required to be held that the Prosecution has conclusively established that the mob of whom the accused are attributed to be members of, can be said to be an unlawful assembly as defined under Sec.141 of the I.P.C., which had carried out the carnage at Gulbarg Society in prosecution of a common object of such assembly or that the Prosecution has further established beyond reasonable doubt that as such, all members of such assembly knew with regard to the likely to offence that was be committed in prosecution of that object and thus every person who at the time of committing of such offence, is a

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member of the same assembly, is quilty of such offence. I would, therefore, be required to place on record the definition of "an unlawful assembly" as provided under Sec.141 of the I.P.C. and more particularly the provisions contained in Sec.149 of the I.P.C., and after due consideration of the enormous and complex material placed on the record in terms of evidence - both oral as well as documentary, I am required to thereafter come to a conclusion as to whether all the accused could be said to be the members of the same unlawful assembly and had knowledge with regard to the offence that was likely to be committed and there was a common object of such unlawful assembly comprising of the mob of which all the accused were members, and that all the acts committed thereafter were in furtherance of such object, is the highly complex question that I am required to answer and which I herein after do so as follows.

Section 141 of the I.P.C.

"141. An assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is-

<u>First</u>- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

<u>Second-</u> To resist the execution of any law, or of any legal process; or

<u>Third-</u> To commit any mischief or criminal trespass, or other offence; or

<u>Fourth-</u> By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or <u>Fifth-</u> By means of criminal, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do."

Section 146 of the I.P.C.

"146. Whenever force of violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

Section 149 of the I.P.C.

"149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the

committing of that offence, is a member of the same assembly, is guilty of that offence."

613. In the circumstances, it would firstly be necessary to observe that upon a careful scrutiny of the eye-witness versions of the star witnesses, it is quite clear that between the period starting from 09:30 a.m. to 01:30 p.m., there was a mob that was not so large in numbers, which was indulging in stone-throwing and at the cost of repetition, there was no attempt by the mob to break into Gulbarg Society or enter into Gulbarg Society by any means. can also be seen that the witnesses Tt. have testified with regard to the atmosphere having taken a turn for the worse and having changed completely only after 01:30 p.m. when according to these witnesses, the Society was surrounded from all sides and heavy stone-pelting had started taking place from the front portion, the rear portion and the terrace of Bunglow No.1 of Gulbarg Society which as would be reflected herein after, belonged to one Dayaram Jinger who happens to be the father of accused No.65.

614. A detailed perusal of the testimonies would also establish that a part of the mob demolished the front walls and front gate of Gulbarg Society and entered therein and started a series of incidents including the beginning of the killings in the shape of the killing of Anwarkhan Pathan which was done so in terms of the eye-witness testimony of all the star witnesses by accused No.1 Kailash Dhobi. It can obviously be seen from a very careful scrutiny of the testimonies that it was only after some interval that the Bunglow of Shri Ehsan Jafri came to be surrounded by the mob which had entered into the Society from the front portion and thereafter only after an interval, in terms of the eye-witness testimonies, did a mob demolish the rear wall of Gulbarg Society and rushed therefrom into the Society and this mob is attributed to have indulged in various acts of arson, destruction of residences within vehicles and burning of some Gulbarg Society. A third mob is attributed to have remained on the terrace of Dayaram Jinger i.e. on the terrace of Bunglow No.1 of Gulbarg Society wherefrom they continued to indulge in heavy stonepelting and instigating other members of the mob to get into Gulbarg Society and wherefrom accused No.14 threw a brick which caused a fatality on Mohammad Irfan, all of which would be dealt with at length herein after while deciding the fate of each of the accused in the discussion to follow herein after. In such circumstances, more so when all the mobs referred to above comprise of persons more than what is defined in Sec.141 of the I.P.C. which constitutes an unlawful assembly, since all the mobs were armed with weapons and inflammable substances, mobs had since all the indulged in separate activities, I cannot for a moment not accept that

the entire mob which had entered into Gulbarg Society, of which the accused persons admittedly were members, were members of an unlawful assembly and had the common object and had the knowledge that an offence was to be committed in prosecution of such common object and in such circumstances, I am required to hold that the accused whom I find guilty of having committed offences herein after, would necessary be required to be convicted under the provisions of Sec.149 of the I.P.C. However, for the reasons ascribed herein after, I cannot come to the conclusion that all accused who are established to be members of an unlawful assembly, are required to be treated at par. It can be seen from the perusal of the testimonies of the eye-witnesses referred to herein after, that while the mobs entered into Gulbarg Society from different directions post 01:30 p.m., the time frame of such entry is obviously different and it can be seen that while some members of the mob formed themselves into groups of persons damage indulged in and destruction and to properties, vehicles and torching of some houses in Gulbarg Society, only some members from amongst the accused who admittedly were armed with deadly weapons, are established to be a part of the group who had started killing the victims as has been detailed by the eye-witnesses in the course of their respective testimonies which would be dealt with herein after and further at length while deciding the fate of each of the individual accused which

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would be decided at a later stage in this judgment. In the circumstances, again I may state that being seen as a part of the mob, without any overt act being attributed to him, would not necessarily, therefore, make an accused a member of such unlawful assembly which would attract the highest punishment and would necessarily render him guilty of all the charges that are framed against him.

615. would now refer to the necessary Ι paragraphs of the testimonies of some of the star witnesses to establish that the sequence of events that took place after 01:30 p.m., the entry of the mob from different directions into Gulbarg Society happened at series of intervals and at different times and such rushing into Gulbarg Society by the mob from all directions, is established from the testimonies of such witnesses who are claimed to be star witnesses of the Prosecution, to have entered into Gulbarg Society from different directions and therefore, all such accused cannot be held to be, at the cost of repetition, members of the same unlawful assembly.

PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
106	Imtiyazkhan Saeedkhan Pathan	542	14	તે પછી આશરે બપોર ના દોઢ વાગ્યા ના સુમારે ગુલબર્ગ સોસા. ના મકાન નં. ૧ જે દયારામ જીંગરનું આવેલ છે તેના પર ટોળાના માણસો ચડી ગયેલ અને અમારી સોસાયટી ઉપર પથ્થરમારો કરી બહારના ભાગે આવેલ ટોળાને સોસાયટીની અંદર ઘુસી જવા જણાવતા હતા
				તે બાદ હું જાફરી સાહેબના દરવાજા પાસેથી બહાર નિકળેલ અને હું મોટા દરવાજા તરફ મારી સાથેના છોકરાઓ સાથે હું જતો હતો ત્યારે અમે આગળની બાજુએ મોટા દરવાજાની પાસે જોરદાર ઘડાકાનો અવાજ સાંભળેલ. અમે જોતા મોટા દરવાજા પાસેની દિવાલ રાંઘણગેસના બાટલાથી તોડી અને સોસાયટીમાં ઘુસેલ જાફરી સાહેબના ઘર પાસે હું આવ્યો તે સમયે સોસાયટીની પાછળની બાજુએ ઘડાકાનો જોરદાર

PW No.	Name of witness	Ex. No.	Paragraph No. in deposition	Witness having deposed as such
				અવાજ આવેલો. અવાજ આવતા અમે તે તરફ ગયેલ. ત્યાં જોયું તો ટોળાના માણસોએ રાંધણગેસના બાટલાથી તે તરફની દિવાલ તોડી પાડેલી અનો ટોળુ સોસાયટીમાં ઘુસી ગયેલુ.
116	Sayeedkhan Ahmedkhan Pathan	584	11	તે પછી દોઢ વાગ્યાના અરસામાં ટોળાના માણસો અમારી સોસાયટીના એક નંબરના મકાનની અગાસીમાં ચડી ગયેલા. તે દયારામ જીંગરનું મકાન છે. તે લોકો પથ્થરમારો કરતા હતા અને બહારના લોકોને ઉશ્કેરણી કરતા હતા.
			13	પઠેલા આગળની દિવાલ તોડેલી અને ટોળુ અંદર ઘુસી ગયેલુ.
			14	તે પછી થોડી વારે પાછળથી બઠુ મોટો વિસ્ફોટ થયેલ . ગેસના બાટલાથી કોટ તોડી નાખેલ અને ત્યાંથી પણ ટોળુ અંદર ઘુસી ગયેલ .
128	Mohammadrafiq Abubakar Pathan	633	9	આસરે દોઢેક વાગે ટોળુ આગળની સાઈડે રાજેશ જીંગરના દાબા પરથી પથ્થરમારો કરતુ હતુ તે મકાન નં. ૧ પરથી પથ્થરમારો કરતુ હતુ પછી હું સાસાચટીના આગળના ભાગે ગયેલ હતો અને ટોળાને અંદર આવતુ રોકવા પથ્થરમારો કરતા હતા. તે પછી ટોળુ ગેટની બાજુમાં આવેલ દિવાલ તોડી અંદર આવી ગયેલ પછી હું ત્યાંથી જાફરી સાહેબના ઘરેથી મારા ઘરે ગયેલ હતો. મારી ત્રણેય બહેનો સલમા, સમસાદ, સમીમ અબુબકરને જાફરી સાહેબના ઘરમાં જવાનું કહેલ. એ સમયે અમારી સોસાયટીની પાછળની બાજુ રેલ્વે લાઈન તરફથી ટોળુ કોટ તોડી વિસ્ફોટ કરીને ટોળુ અંદર આવી ગયેલુ હતુ.
129	Firozmohammad Gulzarmohammad Pathan	635	10	પછી બંગલા નં.૧૪ માં રહેતા સલીમ અબુબકરે આવીને કહેલ કે, આપણી સોસાયટીના ગેટ નંબર-૧ ની બાજુનો કોટ તોડી ટોળુ અંદર ઘુસી ગયેલ છે
			11	અમે ઘરમાં હતા અને મેં એકદમ જોરથી ઘડાકાનો આવાજ સાંભળેલ. જેથી અમે બધા ઘરની બહાર નીકળેલા પછી અમે જોયુ તો ગેસના બાટલાવડે ટોળાએ ગેંસના બાટલા વડે કોટ તોડી નાખેલ અને કોટ તોડીને ચારપાંચ જણાં અમારી સોસાથટીમાં ઘુસી આવેલ પછી આગળથી અને પાછળથી બધુ ટોળુ સોસાથટીમાં ઘુસી ગયુ.
177	Sairaben Salimbhai Sandhi	711	10	સોસાયટીના મકાન નં.૧ દયારામ જીંગરનું આવેલ છે. ત્યાં ટોળાના માણસો ઘાબા પર ચડી ગયેલા. ત્યાં ઘાબાપરથી ટોળાએ સોસાયટીમાં પથ્થરમારો શરુ કરેલો.
			12	દું જાફરી સાહેબના ઘર આગળ હતી ત્યારે ટોળાએ સોસાયટીનો આગળનો ઝાંપો અને દિવાલ ગેસના બાટલાનો વિસ્ફોટ કરી ટોળુ સોસાયટીમાં ઘુસી આવેલ.
			13	અમે જાફરી સાદેબના ઘર પાસે ઉભા હતા ત્યારે બપોરના બે અઢી વાગે પાછળથી પણ વિસ્ફોટનો અવાજ આવેલ. તે વખતે અમે જાફરી સાહેબના મકાન પાસે ઉભા હતા. મારી સાથે મારા પતિ સલીમભાઈ અને મારા દિયર જહાંગીરભાઈ તથા મારો દિકરો મહંમદહુસેન હતો. પાછળની દિવાલ તોડીને પણ તે ટોળુ સોસાયટીમાં ઘુસી ગયેલ.
179	Ezazali Fakirmohammad Shaikh	720	8	આ ટોળુ અમારી સોસાયટીના નાકે આવેલ મકાનના ધાબા પર ચડી ગયેલ. તે મકાન રાજેશ જીંજરનું હતુ જેનો મકાન નં.૧ છે.
			9	પછી આ ટોળુ ઝાંપો તોડવા લાગતા દિવાલ તુટી ગયેલી અને પછી ટોળુ અંદર ઘુસી આવેલ મેં બારીમાંથી જોયુ તો પાછળની બાજુએ એક ધડાકો થયેલ અને પછી રેલ્વે બાજુથી ટોળુ અંદર આવેલ.
191	191 Salimbhai 7 Noormohammad sandhi		10	તે પછી મકાન નં. ૧ પરથી પથ્થરમારો થતો હતો. તે સમચ બપોરના એક ત્રીસ વાગેલા આ ટોળુ પથ્થરમારો કરતુ હતુ અને ટોળાને સોસાયટીમાં ઘુસી જવા ઉશ્કેરણી કરતુ હતુ. અને પછી વિસ્ફોટનો અવાજ આવેલ અને આ ટોળુ સોસાયટીની અંદર ઘુસી આવેલ.
			12	દું વિસ્ફોટનો અવાજ આવવાથી મકાન નં.૧૬ કે જે ખાન સાદેબનું છે તેના ધાબા ઉબર ચડી ગયેલ.આ વિસ્ફોટનો અવાજ પાછળથી રેલ્વે લાઈન તરફથી આવેલ.

616. Ιt can be seen that from the testimonies of the witnesses referred to above, it is evident that even after entering into Gulbarg Society from different directions, not all members of the mob which is claimed to be, in terms of the deposition of these eye-witnesses, numbering more than 5000 and according to some, even nearing 10000, the entire mob is not attributed to have converged upon and surrounded the residence of Shri Ehsan Jafri, but even according to these witnesses, at the cost of repetition, it may be stated that the mob had split into separate groups which were indulging in damage and destruction to property as also setting fire to vehicles and houses in Gulbarg Society. Under such circumstances also, it cannot be said that the mob, of which the accused were attributed to be members of, were those members of a single unlawful assembly which had the common object of perpetrating the carnage at Gulbarg Society which largely centered around the residence of Shri Ehsan Jafri.

617. I am further required to note that since I have personally visited Gulbarg Society, I may state that the two ends of Gulbarg Society i.e. the front portion which is the main entrance, and the rear portion of Gulbarg Society are abut the railway tracks, though if travelled from within, Gulbarg Society can be crossed in a very short span

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of time. One has to travel and take a long route of about 1½ kilometre which would take at least 15 to 20 minutes to reach from the front portion of Gulbarg Society to the rear portion of Gulbarg Society near the railway tracks. Even in such circumstances, it would be difficult for two sets of mobs who were at such different directions, to have in had а common object more SO when the circumstances narrated and highlighted herein before, it can clearly be seen that there was a spontaneous gathering of huge mobs, both in the front portion and in the rear portion of Gulbarg Society after 01:30 p.m. i.e. after the news spread with regard to the firing from within Gulbarg Society by the late Shri Ehsan Jafri and the result thereof.

618. In the circumstances, I may conclude that while the accused who are, in my opinion, required to be held guilty of charges levelled against them including a charge under Sec.149 of the I.P.C., cannot for the reasons set forth herein above, be held to be members of a single unlawful assembly which in furtherance of a common object and with full knowledge of the events that were to follow, had perpetrated the offences herein. I may state that while some amongst the accused are required to be held as members of an unlawful assembly who had the common object and in fact in prosecution thereof, proceeded to kill a large

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number of innocent men, women and children, they are required to be held guilty of the more serious charges that they face, whereas other sets of accused who are in fact, in my opinion, required to established to be members of unlawful be an assembly, are required to be held to be having the common object and knowledge of the fact that there was an intention to prosecute and perpetrate an offence which resulted in destruction of vehicles and properties and torching of residences of members Gulbarg Society. Therefore, at the cost of of repetition, I may conclude that all the accused are not required to be at par though required to be held quilty of an offence under Sec.149 of the I.P.C.

619. Having firstly come to a conclusion with regard to the fact that in my opinion, there is no element brought on the record of the proceedings which would establish а pre-planned criminal conspiracy entered into between the present accused and others who had allegedly masterminded the events on 28/02/2002, I am required to come to a conclusion as to whether the accused who are charged with being members of unlawful assembly, were indeed members of an unlawful assembly with a common intention to commit murder of such large number of persons or whether it was isolated groups of persons of whom some of the accused herein were part of such groups could be said to have been members who of an unlawful assembly with a common intention to commit

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murder or were members of an unlawful assembly constituted with the common intention of causing damage and destruction to property, and the distinction in my opinion, would largely depend on the eye-witness testimony which would in turn reflect the conduct of the accused concerned which would help this Court draw its own conclusions.

620. Having considered the testimony of all star witnesses including PWs 106, 107, 116, 128, 129, 142, 143, 177, 179, 191, 192, 241, 283, 284, 289 and 301, all of whom claim to be star witnesses, have said that they have seen incidents of murder, incidents of arson and destruction, where groups of persons were involved and each of the eye-witnesses has refrained from naming more than five or seven of the present accused as being part of the group that indulged in the perpetration of a particular incident. In my opinion, therefore, all the accused cannot cumulatively be said to be members of an unlawful assembly with the common intention and common object of committing murder and therefore, only some of the accused as is reflected herein after, who upon unfolding and appreciating the evidence herein, are established to be members of the unlawful assembly and had the common intention of committing murder, could be held guilty of an offence punishable under Secs.147, 148, 149 of the Indian Penal Code, read together with the more serious offence punishable under Sec.302, 307 of the

Indian Penal Code, with which all the accused stand collectively charged. In my opinion, therefore, the test of whether a person is a member of an unlawful assembly, has been laid down by the Hon'ble Supreme Court in the landmark judgment in Masalti's case (Supra), which is still good and which has been faithfully followed by the subsequent judgments delivered by the Hon'ble Supreme Court, and the Hon'ble Supreme Court has held thus:-

".....The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common specified by S. 141. objects While as determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. In fact, S. 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by S. 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly....."

This, in my opinion, makes it clear 621. that all the concerned accused herein, of whom some are, in fact, as is concluded herein after, required to be given an acquittal, as also those who have been held to have been guilty in the opinion of this Court, of some of the offences that they stand charged with, cannot all be clubbed together at the cost of repetition, and be established to be members of the unlawful assembly sharing the common intention of murder, loot, rape etc. which they stand charged with. It is in such circumstances, that I propose to deal with the case of each individual accused and come to a conclusion as to whether he was a member of a particular unlawful assembly of a group of persons exceeding five in number, and also conclude as to what was the common object and common intention of such group while perpetrating the offence herein.

622. Having dealt with all the above aspects, including the question as to whether there was a pre-planned, pre-existing criminal conspiracy in furtherance of which the present incident and the entire heinous incident was perpetrated by the

concerned accused, having considered this extremely voluminous highly contentious and set of submissions from the Prosecution, the defence as learned advocate for the victims, also the it becomes necessary in my opinion, to take up the case of each of the accused, examine very carefully the role each of them is claimed to have played in the entire incident and examine the evidence, the veracity thereof, the contradictions emerging if any, and scrutinize the evidence against each of such accused and thereafter, come to a conclusion in light of the foregoing analysis, whether the Prosecution has successfully established beyond reasonable doubt the charges that each of the accused faces. In order to do that, I am of the clear opinion that a detailed analysis is required to be carried out with regard to the oral evidence tendered in the course of the trial by large number of witnesses who claim to be eye-witnesses and who are in terms of the Prosecution case touted to be their witnesses who star were present all throughout the entire gory incident and have been eye-witnesses to each and every incident that has taken place. The corroborating material in the shape of forensic evidence, medical evidence is, in light of the extremely disturbed circumstances that have prevailed after the taking place of the incident, not collected in the manner that it ought to have been. Again, it appears that most of the the victims bodies of were charred beyond

recognition or were hurriedly disposed of, with regard to their burials to avoid the decomposition further taking place. It also emerges that the investigation has also progressed in bits and phases on account of innumerable changes in the investigating team and the final investigation has taken place after a considerable length of time after the appointment of the S.I.T. in light of the orders passed by the Hon'ble Supreme Court of India Special Writ Petition (Criminal) No.109/2003, in which investigation in my opinion, was a bit too late in the day. Nonetheless, the eye-witnesses' accounts of a large number of victims who have seen a number of members of their family being done away with in the gory incident on the fateful day, have the incident etched in their memories and which has been faithfully reproduced in the course of the trial when such witnesses/victims entered into the witness box. In such circumstances, I am required to and I intend to herein after take up the case of each of the accused separately and distinctly with regard to their involvement, presence, role played and as to whether, at the cost of repetition, the Prosecution has been successful in proving beyond reasonable doubt the charges that each of the accused faces. At the cost of repetition, I may state that I now propose to take up the relative merits of the Prosecution case qua different sets of accused, consider the defence put up by the learned advocates appearing on behalf of the

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accused, weigh and appreciate the evidence that has unfolded before this Court and thereafter come to a conclusion as to whether the Prosecution could be said to have established beyond reasonable doubt the charges against each of the concerned accused whose case is dealt with herein after.

may state that out of the 623. Ι 60 surviving accused who are on the record, 59 of the charged with having accused are actuallv participated in and perpetrated the heinous offence which has resulted in the death of 69 innocent lives. The 60th accused is accused No.57 P.I. Shri K.G.Erda who was arraigned as an accused in the proceedings observations upon of the present Hon'ble Supreme Court of India as also the findings in the course of the investigation by the S.I.T., which prima facie suggested that accused No.57 Shri Erda had abused his authority and by his conduct the accused No.57 was attributed and alleged to have aided the perpetrators of the incident by not manner and by deliberately not acting in а discharging his duties and responsibilities of providing security and protection to the victims who had taken shelter in or were residents of Gulbarg Society. In the circumstances, I firstly propose to take up the role of the 59 alleged perpetrators of the incident and as stated herein above and at the cost of repetition, I propose to take up the relative merits of the version supplied

by both - the Prosecution as also the defence, consider the material evidence on record and thereafter arrive at a conclusion with regard to whether the Prosecution has proved beyond reasonable doubt the charges against such sets of accused.

Accused Nos.4, 11, 13, 19, 20, 30 and 39

624. The first set of accused comprises of 7 (seven) of the accused being as per the following details:-

Sr. No.	Accused No.	Name of the accused	Date of arrest
1	4	Mangaji Pokalji Marwadi	12/03/02
2	11	Manojkumar Premjibhai Parmar	18/03/2002
3	13	Vinodbhai Arvindbhai Solanki	19/03/2002
4	19	Shailesh Natwarlal Patni	26/05/2002
5	20	Naresh @ Nariyo Bansilal Prajapati	26/05/2002
6	30	Madanlal Dhanraj Raval	25/06/2002
7	39	Mukesh Atmaram Thakor	21/07/2004

625. It is pointed out by the learned Spl.P.P. Shri R.C.Kodekar that the accused are required to be established to be a part of the mob that committed the offence only on account of the strong circumstance that has emerged in the course of the incident inasmuch as, all these sets of accused have been established to be injured in the

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Police firing at the scene of the incident. In corroborative support of such contention, it appears that the Prosecution has relied heavily on injury certificates of the Civil Hospital, the Ahmedabad where these concerned accused were allegedly treated on different dates as per the details provided in the certificates and a clear diagnosis of the Medical Officer of the Civil Hospital, Ahmedabad, indicates clearly to the effect that the concerned accused had injuries which were in the nature of bullet injuries which were found in the course of the treatment, to have been suffered by the concerned accused. It is submitted that this itself is enough to establish that the accused concerned and referred to herein above, were present at the scene of the incident especially when the most heinous of offences was perpetrated which resulted in Police firing and which has caused injuries to concerned accused and therefore, according to the Prosecution, and more particularly according to Shri R.C.Kodekar, the learned Spl.P.P. appearing on behalf of the State, this by itself establishes beyond reasonable doubt the presence, participation and perpetration on the part of the accused with regard to the present offence.

626. I have carefully scrutinized the injury certificates of the concerned accused, which in terms of the seriatim as per the details of the

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eight accused stated herein above, is said Exhs.594, 617, 616, 615, 618 and 621. Ι am constrained to observe that there are no injury certificates with regard to accused No.4 Mangaji Pokalji Marwadi and accused No.39 Mukesh Atmaram Thakor. There is absolutely no material other than the injury certificate to establish that all the concerned accused referred to herein before, had sustained bullet injuries. It could, therefore, be said that there is no material in the shape of injury certificates to establish bullet injuries being caused to accused Nos.4 and 39.

627. On the other hand, carefully considering the injury certificate Exh.594 which relates to accused No.11 Manojkumar Premjibhai injury certificate of Parmar, the the Civil Hospital, Ahmedabad, only establishes "history of firearm injury" as also a conclusion which reads "Diagnosis: Bullet injury over left shoulder record to show as to whether the present accused in terms of the injury certificate Exh.594 was injured in Police firing or in the alleged private firing by Shri Ehsan Jafri which is a matter of record, and there is nothing on the record or emerging from the injury certificate Exh.594 to suggest that the present accused had sustained injury in the Police firing and that too at the scene of the incident herein i.e. at Gulbarg Society. I may state that it

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is a matter of record, of which this Court can and in fact has taken judicial notice that there was wide spread violence and grave and serious communal incidents all over the State of Gujarat wherein hundreds of people were injured in Police firing, in certain cases, in private firing. Ιt is or unfortunate that no history has been recorded by the doctor who examined and treated the present accused No.11. It is clearly emerging from Exh.594 that the accused No.11 was treated by Dr.G.V.Nayak who incidentally has been examined as a witness herein and the testimony of Dr.Nayak is on the record at Exh.593 and the said Medical Expert has been examined as PW-118 herein. There is, on perusal of the testimony of Dr.Nayak - PW-118, nothing emerging that the accused No.11 was injured in Police firing and that too at Gulbarg Society. A perusal of the very short testimony of PW-118 only establishes that he treated the accused who was presented before him by a Police Constable and that the injured had sustained bullet injuries. There are no details about the nature of bullet injuries, whether any bullet was extracted from the body of the injured accused or for that matter, whereat the incident had taken place. In fact the then learned advocate appearing for the concerned accused, has not even bothered to cross examine this witness since in my opinion also, it appears to have been rightly felt by the defence that there is nothing damaging emerging from the testimony of PW-118 as

far as accused No.11 is concerned. In my opinion, therefore, this cannot be said to be conclusive evidence to establish that the accused No.11 sustained injuries in the Police firing at Gulbarg Society. It is further required to be noted that the present accused was not mentioned at all by any of the victims or witnesses in the course of their various applications firstly given to the Commissioner of Police immediately after the date of the incident, in their application tendered to the Nanavati-Shah Commission or in their statements recorded by the S.I.T. post taking over of the investigation in compliance of the directions of the Hon'ble Supreme Court in Special Writ Petition (Criminal) No.109/2003.

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628. On careful scrutiny of the testimony of PW-118, the only alleged history even in terms of such independent witness, is inter alia to the effect that the accused had sustained bullet injuries. There is no whisper emerging from the testimony of such witness as to where such injury sustained. Further damaging the Prosecution was case in my opinion, with regard to the present accused, at the cost of repetition, is the fact that none of the witnesses or none of the victims in their earlier applications at the pre-trial stage, have even remotely mentioned the name of accused No.11 as being present or seen at Gulbarg Society, let apart being a part of the mob which

took part in any of the incidents that started right since 10:30 a.m. and ended beyond 06:30 p.m. No witness has mentioned the name of accused No.11 in connection with the present incident or any part of the incident. There is no material to show other than the fact of the accused No.11 having sustained bullet injuries, that he is in any manner connected to the present offence or the incident that took place at Gulbarg Society, at any stage. Again, it can be seen that while the State has not examined no less than 338 witnesses, not a single witness including the eye-witnesses have not only not named accused No.11 but have not identified him in the Court. I may state at the cost of repetition that despite being given ample opportunities, none of the witnesses examined herein, have identified accused No.11 in the Court. Again I may state that the investigation also has been lax inasmuch as, there is no T.I. Parade being carried out which have enabled the identification of could the accused and interlinked accused No.11 with the incident or the offence. None of the eye-witnesses examined on the record of the proceedings, has in any manner attributed any overt act on the part of the accused No.11 or even the presence of accused No.11 during any overt act in the entire course of the incident. Furthermore, no explanation has been rendered by the investigating agencies that when the present accused was arrested as early as on 18/03/2002, why no material was gathered against

such accused or why no efforts were made to have a positive identification of the accused vis-a-vis participation his role or in the incident especially when the incident is so grave and serious. Even the S.I.T. in my opinion, has not carried out any T.I. Parade more particularly in light of the fact that even in the course of the further statements of the victims and eye-witnesses before the S.I.T., the name of such accused being accused No.11 has not been disclosed. Ι am conscious that statements before the Police including the S.I.T. are hit by Sec.161 of the Cr.P.C. and cannot be appreciated or considered to be of any evidentiary value, but, I am of the opinion that a reference is required to be made only with a view to reflect as to why no T.I. Parade was carried out with regard to the present accused No.11. Again, even in the Court in the course of the trial, none of the witnesses has identified accused No.11 in any manner linking the accused with the incident. It is, in my opinion, therefore, unsafe to conclude that merely because accused No.11 is attributed to have sustained a bullet injury, the accused could be said to be quilty beyond reasonable doubt in the offence that he stands charged with. There is, in my opinion, no material worth considering and which inspires confidence to firstly show beyond reasonable doubt that the alleged bullet injury was sustained at Gulbarg Society by accused No.11 or

that accused No.11 was present at Gulbarg Society on the fateful day which resulted in his being injured in the Police firing. No material from amongst the voluminous oral evidence has been pointed out by the learned Spl.P.P. Shri Kodekar to establish the identification of the concerned accused by any Police Officer also in the Court, and it is all the more strange that when according to the injury certificate the accused No.11 was produced in the Civil Hospital, Ahmedabad by a Police Constable bearing Buckle No.7374, there is no material emerging with regard to the positive identification of accused No.11 even by the Police Constable concerned. In my opinion, therefore, there is no room for further discussion and I am of the opinion that the material against the accused i.e. accused No.11 is extremely flimsy and does not inspire much confidence. Ιt emerges from the testimonies of the concerned eye-witnesses and victims that they knew large number of persons who were a part of the mob since most of the persons were residing in the near vicinity of Gulbarg Society.

629. I may further opine that there is no extraction of any bullet from the body of the accused No.11 which in turn could have been corroborated by forensic evidence in the shape of a forensic report which could have established that accused No.11 was injured by a bullet fired upon by one of the Police Officers who was present on duty at Gulbarg Society on the fateful day and therefore also, even this bullet injury does not in any manner help the Prosecution case.

630. Again there is no material on the record of the proceedings, gathered in the course of investigation and placed for the consideration of this Court which would establish that accused No.11 was residing or working or in any manner justifiably presumed to be in the vicinity of Gulbarg Society on the fateful day.

631. The cumulative effect of the foregoing discussion, at the cost of repetition, is that grave doubts have arisen with regard to the involvement and role of accused No.11 in the entire incident and more so when there is absolutely no recovery or discovery of any incriminating material by or at the behest of the present accused. There is no other conclusion that can be arrived at but to conclude that the present accused No.11 is not established beyond reasonable doubt to have been present at Gulbarg Society on the fateful day i.e. on 28/02/2002 at any stage during the entire incident that has taken place in the course of almost eight to ten hours. There is, therefore, no room for any other interpretation that the benefit of grave doubts that have cropped up with regard to the merits of the Prosecution case against accused

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benefitting the present accused No.11 and therefore, accused No.11 in my opinion, is required to be given benefit of doubt and acquitted of all charges levelled against him.

632. With regard to the merits of the Prosecution case against accused No.13 Vinodbhai Arvindbhai Solanki, it is pointed out by Shri Kodekar that the concerned accused had sustained a bullet injury in the Police firing at the scene of the incident and therefore, the accused could be said to be involved and be construed to be a part of the mob that perpetrated the incident at Gulbarg Society. It emerges from the injury certificate Exh.617 that the accused No.13 was examined by Dr.J.S.Kanoria and the said medical expert has furnished the injury certificate Exh.617 which is corroborated by his oral evidence in the shape of his testimony at Exh.612 and the said medical expert is examined on the record of the proceedings PW-123. It is pointed out that the injury as certificate clearly provides that the injurv sustained by accused No.13 was a bullet injury and my attention is drawn to paragraph No.11 on page No.8 of the examination-in-chief of PW-123 i.e. Dr.J.S.Kanoria wherein the said witness has clearly stated that accused No.13 came over to the hospital all by himself for treatment and had informed the i.e. the witness Medico PW-123 about having

sustained a bullet injury in Chamanpura area before 15 minutes. However, strangely all such details have not been mentioned in the injury certificate Exh.617 and having realized his folly, PW-123 has conceded that all such details were provided as history by the accused but were inadvertently omitted from being mentioned in the injury certificate. Again, this witness has testified in paragraph No.12 of his testimony that the injury was in the nature of a gunshot wound in the right shoulder. It also emerges from paragraph No.12 that the bullet appears to have been extracted from the body of the accused, but however, there is no evidence or material emerging from the testimony of PW-123 that such bullet extracted from the injured accused No.13 was sealed and forwarded to the Police Constable or to the Police for further analysis and tests. It is however, submitted by Shri Kodekar that in the circumstances, there is in the sufficient material shape of injury certificate Exh.617 coupled with the testimony of PW-123 to establish the injury being bullet sustained by accused No.13 at Chamanpura which is the locality where the Gulbarg Society is situated and therefore, it is required to be held that the Prosecution has established beyond reasonable doubt the fact of accused No.13 being present at Gulbarg Society at the time of the incident and having sustained injuries thereat and therefore, it is required to be accepted and the only inference

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according to Shri Kodekar, is that the accused was a part of the mob which perpetrated the offence and therefore, the State according to Shri Kodekar, has discharged the burden of establishing beyond reasonable doubt the involvement and guilt of accused No.13 herein.

633. I do not wish to repeat verbatim the defence arguments in this regard since the same have been extremely short and limited and have been recorded herein before, but however, I do not, for a moment, subscribe to or agree with the arguments made on behalf of the State with regard to the State having successfully discharged its burden of proving beyond reasonable doubt the guilt of the accused.

Now if the injury certificate Exh.617 634. is closely scrutinized, which I have done so, it can be sen that according to the certificate, accused No.13 was brought over to the Civil Hospital at Ahmedabad, accompanied by a Police Constable bearing Buckle No.6462. Now if one considers paragraph No.11 of the testimony of PW-123 who has authored the injury certificate Exh.617, it is very clear that the witness has deposed that accused No.13 came unaccompanied and any Police yaadi and without in fact Police Constable bearing Buckle No.6462 was subsequently informed by PW-123 about accused No.13 after he

being examined and treated. In the circumstances, this is a serious contradiction which bears close scrutiny. Again, even more damaging according to this Court, is the fact that when there was a specific information provided by accused No.13 to PW-123 that he had sustained the injurv at Chamanpura, there was no reason to not record the same in the injury certificate and such grave and serious omission cannot be treated lightly and passed off as an inadvertent omission to provide such details in the injury certificate. Again, further damaging on the part of the Medical Officer is the fact that when he claims to have extracted the bullet from the right shoulder of accused No.13, there was no reason as to why such important piece of evidence was not preserved or forwarded to the Police Constable who even according to PW-123, was present and was thus informed about accused No.13. This in my opinion, is another fatal flaw in the Prosecution case against accused No.13.

635. It is further damaging for the Prosecution and is once again, at the cost of repetition required to be noted that the present accused was not mentioned at all by any of the victims or witnesses in the course of their various earlier applications given at the pre-trial stage, have even remotely mentioned the name of accused No.13 as being present or seen at Chamanpura area or Gulbarg Society, let apart being a part of the

mob which took part in any of the incidents in question. No witness has mentioned the name of accused No.13 in connection with the present incident or any part of the incident. There is no material to show other than the fact of the accused No.13 having sustained bullet injuries, that he is in any manner connected to the present offence or the incident that took place at Gulbarg Society, at any stage. Again, it can be seen that from the 338 witnesses examined by the Prosecution, not a single witness including the eye-witnesses have not only not named accused No.13 but have not identified him in the Court. I may state at the cost of repetition that despite being given ample opportunities, none of the witnesses examined herein, have identified accused No.13 in the Court. None of the evewitnesses examined on the record of the proceedings, has in any manner attributed any overt act on the part of the accused No.13 or even the presence of accused No.13 during any overt act in the entire course of the incident. Furthermore, no explanation has been rendered by the investigating agencies that when the present accused was arrested as early as on 19/03/2002, why no material was gathered against such accused or why no efforts were made to have a positive identification of the accused vis-a-vis his role or participation in the incident especially when the incident is so grave and serious. Even the S.I.T. in my opinion, has not carried out any T.I. Parade more particularly in

light of the fact that even in the course of the further statements of the victims and eye-witnesses before the S.I.T., the name of such accused being accused No.13 has not been disclosed.

636. At the cost of repetition, I may state emerges from the testimonies of that it the concerned eye-witnesses and victims that they knew large number of persons who were a part of the mob since most of the persons were residing in the near vicinity of Gulbarg Society. Therefore, further fact that again there is damaging is the no specific material on the record of the proceedings, gathered in the course of investigation and placed for the consideration of this Court which would establish that accused No.13 was residing or working or in any manner justifiably presumed to be within the vicinity of Chamanpura area on the fateful day.

637. I may further opine that there is no extraction of any bullet from the body of the accused No.13 which in turn could have been corroborated by forensic evidence in the shape of a forensic report which could have established that accused No.13 was injured by a bullet fired upon by one of the Police Officers who was present on duty at Gulbarg Society on the fateful day and therefore also, even this bullet injury does not in any manner help the Prosecution case.

638. In my opinion, therefore, the cumulative effective of all these flaws in the Prosecution version and the Prosecution case against accused No.13 leaves this Court with grave doubts about the accuracy of the version supplied by the Prosecution and as is settled in criminal law, the benefit of such doubts must and always is required to go in favour of the accused and therefore, even accused No.13 is required to be given the benefit of doubt and is required to be acquitted herein.

639. Now so far as accused No.19 Shailesh Natwarlal Patni is concerned, Shri R.C.Kodekar, the learned Spl.P.P. has submitted that even the alleged history of injury being a gunshot would is referred to in the injury certificate Exh.616 itself. It is also submitted that the fact that the accused No.19 sustained such injury in the Chamanpura area, is also referred to in the injury certificate Exh.616, and therefore, this itself is sufficient to establish that the accused No.19 was present at the scene of offence on the fateful day and it is proved beyond reasonable doubt that the accused No.19 participated in and was one of the perpetrators of the present offence. It is further submitted that accused No.19 sustained a gunshot wound, is fully corroborated in terms of paragraph No.10 of the testimony Exh.612 of PW-123

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Dr.J.S.Kanoria. It is submitted that thus, there is a strong case against accused No.19 where the said accused is required to be proven beyond reasonable doubt to have been present and a part of the mob at Gulbarg Society where he sustained injury in the Police firing.

640. Again, I do not propose to repeat verbatim the defence arguments in this regard since the same have been extremely short and limited and have been recorded herein before, but however, having considered all the above referred aspects and having scrutinized the evidence minutely, there is firstly, in my opinion, evidence emerging from the testimony of the Investigating Officer Shri J.M.Suthar who is examined as PW-335 and whose testimony is on the record of the proceedings at Exh.1289, that there was not only Police firing but also private firing from the weapon of Shri Ehsan Jafri which resulted in injuries being sustained by number of persons in the mob. There is, in my opinion, no material to show that the accused No.19 was hit if at all, in private firing or in Police firing. There is again no material emerging to show that the accused was indulging in or perpetrating in any overt act during the entire incident. There are also antecedents where innocent persons have been struck down or even killed by Police bullets on account of the notoriously poor aim of the Police Constables. It is also required to be noted

that especially when no witness has named the accused No.19 at any stage, nor has he been identified in the Court nor has any Police identified the accused No.19 as being the part of the mob, nor any T.I. Parade is carried out for the purpose of identification of the accused, in my opinion, there is no ground to accept that the State has proved beyond reasonable doubt the involvement and guilt of accused No.19 in the present offence.

641. Again, one more circumstance which goes against the Prosecution theory, is the fact that in terms of the injury certificate Exh.616, the accused No.19 was brought over for treatment, Police Constable bearing Buckle No.6462 was informed, and the accused No.19 despite being treated on 28/02/2002 itself, despite being in the hospital upto 11/05/2002 as per the injury certificate Exh.616, came to be arrested only on 26/05/2002 which defies all logic that if the Police was really informed about the injuries sustained by accused No.19 on 28/02/2002, on that very day itself there is no reason as to why the accused No.19 came to be arrested nearly three months after the incident.

642. Again, there is no T.I. Parade carried out, no identification or naming of accused No.19 at any stage pre-trial and during the course of the

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trial as also with regard to his involvement in any overt act, by any of the witnesses including eyevictims, witnesses or and there is also no sufficient corroboration from the Police as far as the involvement of accused No.19 in the present offence is concerned. Moreover, at the cost of repetition, there is even absolutely no recovery or discovery of any incriminating material by or at the behest of the accused No.19, and therefore, even though the case of the Prosecution with regard to accused No.19 is on a slightly better footing as compared to that with regard to accused Nos.11 and 13, there still, in my opinion, exists more than enough doubts with regard to the involvement of the accused No.19 in the present offence, the benefit of which must go in favour of the accused No.19 and therefore, the accused No.19 also, in my opinion, required to be given the benefit of doubt and be given an acquittal, which I hereby do so.

643. Almost identical is the scenario of the medical as well as oral evidence with regard to accused No.20 Naresh @ Nariyo Bansilal Prajapati.

644. It is pointed out by Shri R.C.Kodekar, the learned Spl.P.P. that the alleged history of injury sustained by the accused No.20 on account of an assault by firearm, is clearly reflected in the injury certificate Exh.615 and that in fact the said accused sustained such injury in Chamanpura

area, is also referred to in the said injury certificate Exh.615, and therefore, there is no reason to disbelieve that the accused No.20 was indeed present at the scene of offence and also was a part of the mob which perpetrated the present offence. It is also submitted that this fact is amply corroborated by the testimony of PW-123 Dr.J.S.Kanoria, more particularly by the contents of paragraphs No.7 and 8 of his testimony at Exh.612, and thus, according to Shri Kodekar, the Prosecution can be said to have proved beyond reasonable doubt the involvement and guilt of the accused No.20.

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645. Having minutely considered the entire set of evidence available with regard to accused No.20, I am of the clear opinion that there is again no material emerging to show that the accused was indulging in or perpetrating in any overt act during the entire incident. At the cost of repetition, it is required to be noted here also that especially when no witness has named the accused No.20 at any stage, nor has he been identified in the Court nor has any Police identified the accused No.19 as being the part of the mob, nor any T.I. Parade is carried out for the purpose of identification of the accused, in my opinion, there is no ground to accept that the State has proved beyond reasonable doubt the involvement and guilt of accused No.20 in the

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present offence.

646. Again, the same circumstance which has gone against the Prosecution theory with regard to involvement of accused No.19, is the fact that the injury certificate Exh.615 reflects the alleged history of the accused No.20 being treated for injury sustained by him by a firearm "before 15 minutes in Chamanpura area". The same PW-123 Dr.J.S.Kanoria in terms of his testimony Exh.612 and more particularly paragraphs No.7 and 8 thereof, appears to have treated the said accused No.20, pursuant to which again the same Police Constable bearing Buckle No.6462 was informed. The accused No.20 despite being treated on 28/02/2002 itself, despite being in the hospital upto 09/05/2002 as per the injury certificate Exh.616, came to be arrested only on 26/05/2002 and this fact clearly emerging from the injury certificate Exh.615, once again defies all logic that if the Police was really informed about the injuries sustained by accused No.20 on 28/02/2002 itself i.e. on the fateful day, there is again no reason as to why the accused No.20 came to be arrested nearly three months after the incident.

647. Again, as far as accused No.20 is concerned, there is no T.I. Parade carried out with regard to proper identification of the accused No.20, none of the victims or witnesses has named

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him in any of the applications given by them to various authorities referred to herein above, none of them has even identified the accused No.20 in the Court during the course of trial, there is material the record of neither any on the proceedings nor gathered during the course of investigation and placed for the consideration of this court to establish that accused No.20 was either a resident of or working within the vicinity of Chamanpura area or Gulbarg Society.

648. The cumulative effect of the foregoing discussion, at the cost of repetition, is again that grave and serious doubts have also arisen with regard to the involvement and role of accused No.20 in the entire incident, more so in absence of any recovery or discovery of any incriminating material by or at the behest of the present accused No.20, and therefore, I am once again of the clear opinion that the only conclusion that can be arrived at with regard to accused No.20 is that the accused No.20 is also not established beyond reasonable doubt to have been present at Chamanpura area or near Gulbarg Society on th fateful day and that too more particularly at any stage during the course of the entire incident that has taken place. In my opinion, therefore, as aforesaid, there being many loopholes in the theory of the Prosecution, again the benefit of grave doubts must and should be given to accused No.20 and it is on such basis that

he is required to be given a clean acquittal, which I hereby do so.

649. far as accused No.30 i.e. Now SO Madanlal Dhanraj Raval is concerned, he also clearly appears in terms of injury certificate Exh.621, to have supplied the alleged history of the injury sustained by him to the same PW-123 squarely on similar footing as that of accused No.20 i.e. Naresh Bansilal Prajapati, i.e. according to such alleged history, the accused No.30 also sustained firearm injury in Chamanpura "before 15 minutes" prior to presenting area himself before PW-123 for treatment. The Prosecution has advanced almost identical theory as narrated herein before, with regard to the involvement of accused No.30 in the incident, and it is therefore, argued that accused No.30 is thus proven beyond reasonable doubt to be present and to have been involved in the present incident.

Now having considered the entire set of evidence with regard to accused No.30, in my opinion, it appears that the accused No.30 was treated as an outdoor patient and was possibly discharged on the same day, in terms of the injury certificate Exh.621. Despite necessary intimation having been given to the Police i.e. Police Constable bearing Buckle No.6462 with regard to treatment and discharge of accused No.30 as per the

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testimony of PW-123 at Exh.612, the accused No.30 appears to have been not at all arrested till 25/06/2002 i.e. nearly four months after the incident. There is no explanation coming forth from the Prosecution on this count.

651. There is again no recovery or discovery of any nature of incriminating material with regard to accused No.30, there is no T.I.Parade carried out, there is even no identification or naming of accused No.30 by any of the victims or witnesses at any stage prior to or during the course of the trial with regard to the accused No.30 either being involved in any kind of overt act or even as one of the perpetrators involved in the incident, there is also nothing to show that the accused No.30 was the resident of Chamanpura area.

652. All these aspects, in my opinion, grave doubts clearly raise with regard to involvement and participation of accused No.30 in the present incident, and again, it is needless to say that the benefit of such doubt should go to accused No.30, and therefore, accused No.30 is required to be given benefit of such doubt and is required to be acquitted, which also I hereby do so.

653. The case of accused Nos.4 and 39 being

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Mangaji Pokalji Marwadi and Mukesh Atmaram Thakor respectively, is on a much weaker footing inasmuch as, there is no injury certificate with regard to accused No.39 Mukesh Atmaram Thakor and there is absolutely no material to show that he was injured in Police firing at the time of incident. Furthermore, not a single victim or witness including the eye-witnesses, has identified or named the accused No.39 pre-trial or during the course of trial, there is no T.I.Parade carried out. The accused No.39 came to be arrested only on 21/07/2004 i.e. 2¹/₂ years after the incident and there is no justifying basis emerging for such late arrest of accused No.39 and despite when no witness has identified him, no victim has named him and there is no material to show even in the form of an injury certificate, that he sustained the bullet injury in the Police firing, I have no doubt in coming to the conclusion that the State has miserably failed in proving the charges beyond reasonable doubt against accused No.39.

As far as accused No.4 is concerned, there are grave and serious contradictions in the name of such accused himself as emerging from the testimony of PW-123, more particularly in paragraph No.4 which relates to treatment given to one "Meghaji Pokalji Prajapati". The injury certificate Exh.614 issued by PW-123 refers to one "Meghaji Kokalji Prajapati" whereas the name of accused

No.4 as reflected in the Police records as also in the chargesheet as also on the record of the proceedings, is "Mangaji Pokalji Marwadi". Now even if it is assumed for the sake of argument which cannot be done so and is unsafe to do so in such grave and serious criminal matters, that "Meghaji" and "Mangaji" are one and the same and it is only a slip of pen, then also in terms of certificate Exh.614 and paragraph No.4 of the testimony of PW-123, the bullet injury was sustained by accused No.4 at his residence. Therefore, there is no room for any further discussion or interpretation that the material against accused No.4 is extremely flimsy and inspires no confidence, and the benefit of contradictions that have cropped up, must go to accused No.4. Moreover, it is required to be noted that as per the alleged history of injury provided by the patient i.e. accused No.4, in terms of injury certificate Exh.614, such injury was sustained by the accused No.4 not within or anywhere near Gulbarg Society, but in his residence and there is nothing to show that the accused No.4 was residing in the vicinity of Gulbarg Society. is also T.I.Parade carried out, There no no identification or naming of accused No.4 by any of the witnesses or victims regarding his involvement either in any kind of overt act or as one of the perpetrators of the present incident. Therefore, in my opinion, the benefit of all such omissions, doubts, contradictions must go to the accused No.4

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and accordingly, I hold that the Prosecution has failed in proving beyond reasonable doubt the involvement and guilt of accused No.4, and therefore, the accused No.4 also is given a clean acquittal on the basis of he being given the benefit of grave doubts.

655. I am constrained to note with regard to all the above referred accused that the alleged history provided by the accused themselves to PW-123 Dr.J.S.Kanoria, is absolutely parrot-like inasmuch as, almost all the accused claim to have given history "vice भीनीट voen anoyerni olun and and anoyer, which loosely translated, it means that each of the accused has provided the history that he was injured only 15 minutes before he presented himself for treatment by PW-123. This is unnatural and such certificates more so, in light of the foregoing discussions, cannot be made the sole basis of convicting an accused, more so when the witness who has authored such injury certificates, also does not inspire much confidence as discussed herein above.

Accused Nos.5, 12, 22, 24 and 31

656. Having taken up the relative merits of the Prosecution case of the first set of seven accused, I now propose to take up the relative merits of the Prosecution case vis-a-vis the set of

Sr. No.	Accused No.	Name of accused	Date of arrest
1	5	Jayeshbhai Ramubhai Patni	12/03/02
2	12	Dipakkumar Somabhai Solanki	18/03/2002
3	22	Babubhai Mohanbhai Patni	02/01/03
4	24	Shankerji Hakaji Mali	05/06/02
5	31	Mahendra Mulchandbhai Parmar	27/06/2002

5 (five) accused as per the following details:-

657. It is required to be noted that these five accused have not sustained any kind of bullet injury even as per the Prosecution case. It is pointed out and submitted by Shri Kodekar that the accused have been arrested on account of the accused sustaining injuries which could have resulted either from stone-pelting or from any other source and since it is presumed on account of the fact that the accused are the residents of localities near Gulbarg Society and since their injuries were sustained on 28/02/2002, the injuries could not have been sustained in any other incident but in the retaliatory stone-throwing by the residents of Gulbarg Society and in the circumstances, the accused are required to be held to be members of the mob that perpetrated the offence at Gulbarg Society and the accused are required to be held guilty of the offences that they stand charged with and are required to be

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suitably penalized.

658. is however, required to be noted Ιt defence has made only flitting that even the arguments with regard to the relative merits of the Prosecution case against these five accused. Having attempted to scrutinize and place on record the material emerging against such five accused, I am pained and constrained to note that there is no injury certificate produced on the record of the proceedings qua three of such five accused i.e. accused Nos.5, 24 and 31. Again at the cost of repetition, I am pained to state that despite 338 witnesses being examined on the record of the proceedings, there is no oral evidence also which in any manner places any of the above five accused at Gulbarg Society any time during the entire incident which began at about 09:30 a.m. and ended about 06:30 p.m. on the fateful day i.e. at 28/02/2002. It is also unfortunate that there is no T.I.Parade carried out with respect to any of these five accused which would in any manner have the outcome of the positive identification of any of these accused being established which would in any manner even remotely establish the presence of the accused at the scene of the incident. So far as accused Nos.5, 24 and 31 are concerned, since there is no injury certificate, there is naturally no corroborative material to support the version that the said three accused had taken treatment for

their injuries on 28/02/2002 or that they were injured on 28/02/2002 itself. Again, in absence of such injury certificate with regard to these three accused, there is no independent material in the form of testimony of a Medical Officer of a Government hospital who could have examined such accused and who could have, in the course of his treatment of such accused, recorded the history given by such accused with regard to how, where and when they sustained the injuries in question.

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659. It is further unfortunate to note that stated above that the Prosecution having has examined no less than 338 witnesses comprising of eye-witnesses, Panch witnesses, Police witnesses or medical experts who had treated the accused for their alleged injuries sustained in the incident, none of the 338 examined on the record, have identified any of the accused in the Court. Again, none of these accused appear to have been named by any of the victims in their applications before the Commissioner of Police immediately subsequent to incident, the their subsequent affidavits/applications filed before the Nanavati-Shah Commission, any affidavit tendered before the Hon'ble Supreme Court of India in Special Writ Petition (Criminal) No.109/2003, and consequent upon the appointment of S.I.T. and taking over of investigation by the S.I.T., no witness has in their statement before the S.I.T., identified or

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named any of the said three accused. In such circumstances, it would be difficult for me to swallow what Shri Kodekar has urged that the State has established beyond reasonable doubt that the injuries were sustained by the accused only on account of their being a part of the mob which perpetrated the heinous offence herein. Even their Gulbarg Society does presence at not emerge remotely. The nature of their injuries also is not brought record and therefore, Ι on cannot understand as to how the State claims to have discharged the extremely heavy burden of claiming to proved beyond reasonable doubt have the involvement, participation and guilt of the above three accused. Again, none of the eye-witnesses or any person who has deposed before this Court, has attributed any overt act to any of these accused. Again, there is no panchnama on the record of the proceedings which suggests or establishes in any manner recovery or discovery of any any incriminating material by or at the behest of any of the above accused. It is in such circumstances that I am constrained to conclude that even in the these of accused, the Prosecution has case miserably failed in establishing even remotely their presence at Gulbarg Society, let apart their guilt in the charges that they face.

660. Again as in the case of earlier set of eight accused, I may state that there is no

material which establishes that the above accused were residing at any place near the vicinity of Gulbarg Society and in the circumstances, I can very safely say that there is absolutely no material to show that such accused were in any manner involved in the present incident. Ι mav state that even if it is assumed that there was the part of the first laxitv on team of investigating agencies prior to the appointment of S.I.T., even then it was the bounden duty of the S.I.T. to thoroughly investigate and attempt to the loopholes left by previous pluq the investigators, in an effort to establish the involvement and guilt of the accused. Ιt is unfortunate that not only have the accused been arrested in a period ranging from nearly one month after the incident to one year after the incident, but there is no material which would even suggest or justify the basis of their arrest. Even the S.I.T. Investigating Officers who were specially chosen officers, more because of their SO neutrality and investigative skills, have not bothered to conduct the T.I. Parade of any of the above accused. I may state so that this might seem repetitive but I am required to emphasize that even the S.I.T. appears to have been not successful in obtaining positive identification proof of the presence of the accused at Gulbarg Society at any time during the entire incident. Therefore, in my opinion, there is no material to show that the

accused were present and were a part of the mob within the entire time frame on 28/02/2002 when the present incident has taken place. In my opinion, therefore, and more so when none of the victims have named any of these accused as being the perpetrators and more so when none of these accused have been identified in the Court by any victim, eye-witness, Panch witness or Police witness for that matter, I cannot but come to a conclusion that there is absolutely no material emerging against these three accused which can result only in their acquittal.

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However, with regard to accused Nos.12 661. and 22, they appear to have gone to the Civil Hospital, Ahmedabad, for the treatment of their alleged injuries and the injury certificate issued by the Civil Hospital, Ahmedabad with regard to accused No.12 Dipakkumar Somabhai Solanki, is on the record of the proceedings at Exh.623 whereas the injury certificate of accused No.22 Babubhai Mohanbhai Patni is on the record of the proceedings at Exh.624. Again, both these accused appear to have presented themselves at the Civil Hospital at 03.30 02.20 p.m. respectively p.m. and on 28/02/2002. Co-incidentally, both these accused have been treated by Dr.J.S.Kanoria, PW-123 who is alleged to have recorded the history in such injury certificates. It is required to be noted that the Prosecution has failed to produce for consideration

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of this Court accompanying medical case papers pertaining to these two accused. It is clear upon perusal of the testimony of PW-123 at Exh.612 that with regard to the treatment given to accused No.12, the witness has testified in paragraph No.21 on page No.15 of his testimony *inter alia* to the effect that accused No.12 had come to the Civil Hospital for treatment without any Police yaadi and was given treatment as an outdoor patient by PW-123. The accused, according to the testimony of PW-123, is claimed to have stated and provided the history *inter alia* to the effect that before half

an hour, the accused was injured by "સામાવાળા" meaning the opposite party "near Omnagar Railway Crossing" and it appeared that according to the witness and according to the injury certificate Exh.623, the injured had an incised wound on his left wrist. Now even if the Prosecution case is required to be taken at its very best, it is nobody's case that any inmate, resident or person who had taken shelter in Gulbarg Society, is claimed to have been armed with any sharp cutting weapon or instrument which could have been capable of inflicting an incised wound on any person, much less the present accused. Again, the history alleged to have been narrated by the accused is strange enough inasmuch as, the accused claims to have been assaulted by an opposite party near Omnagar Railway Crossing. In my opinion, it is nobody's case that any of the

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residents of Gulbarg Society or any person belonging to the minority community had stepped out of Gulbarg Society as a counter offensive or in any retaliatory attack or that any of such persons were armed with any weapons like knives or swords or any sharp cutting instrument which could have inflicted the incised wound on accused No.12. In my opinion, therefore, it is even more surprising that again the accused appears to have been referred to the Police Constable on duty at the Civil Hospital, Ahmedabad, bearing Buckle No.6462 and appears to have been admittedly treated as an outdoor patient and discharged on the same day i.e. on 28/02/2002 despite which the present accused came to be only on 18/03/2002. arrested There is no explanation emerging as to why the Police Constable did not detain the accused or forward him to the concerned Police Station with a yaadi or if on account of large number of accused being brought over to the Ahmedabad Civil Hospital or having come over to the Ahmedabad Civil Hospital, it was not physically possible for one Police Constable to detain such a large number of accused, there is no reason why a yaadi or an immediate phone call was not made by such Police Constable to the P.S.O. of the Meghaninagar Police Station. It appears that upon the closest scrutiny of the evidence of all Police witnesses, no Constable bearing Buckle the Civil duty No.6462 and on at Hospital, Ahmedabad on the fateful day, has been examined by

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the Prosecution herein. In my opinion, therefore, adverse inference is required to be drawn against Prosecution even such the on count. In the circumstances, the entire version and sole material in the shape of injury certificate Exh.623 and testimony of PW-123 is not required to be accepted as trustworthy and reliable. Extremely short oneparagraph cross examination by the defence clearly establishes that the witness PW-123 has not produced any case papers in the course of his testimony since no such material is available for consideration of this Court.

662. With regard to accused No.22 i.e. Babubhai Mohanbhai Patni, it appears that the said accused had again like accused No.12, presented himself at about 02.20 p.m. at the Ahmedabad Civil Hospital and co-incidentally this injured accused was also treated by PW-123 Dr.J.S.Kanoria who issued an injury certificate which is on the record of the present proceedings at Exh.624. Again, the accused is alleged to have given a history of assault by - strangely speaking the word used in the injury certificate is a Gujarati word "કાચ" which means "glass" and again co-incidentally this accused too claims to have been assaulted by the opposite party before half an hour at Chamanpura. The testimony of PW-123 in this regard is found on page No.16 in paragraph No.22 of his deposition Exh.612, wherein the nature of the injury in the

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injury certificate is not mentioned at all. In the circumstances, I fail to understand as to how PW-123 could testify in detail with regard to the nature of the injuries sustained by accused No.22 when the Medical Officer PW-123 more SO was examined and was deposing in the Court after more than 71/2 years of the taking place of the present incident, without any accompanying case papers. It strange that a second injury certificate is providing such details with regard to the nature of his injuries which appears to be in the shape of a carbon copy wherein the original is missing, is produced on the record at Exh.625. It emerges from reading the certificate Exh.625 that though both injury certificates Exhs.624 and 625 are issued by the same person i.e. Dr.J.S.Kanoria i.e. PW-123, the injury certificate Exh.625 appears to be a carbon copy whose original is missing and was unfortunately ordered to be read in evidence by my predecessor. Be that as it may, no explanation is offered as to why two injury certificates in such fashion were issued with regard to the same individual. Be that as it may, the injury mentioned in Exh.625 is as per the following details:-

"3 x 2 c.m. CLW at right hand."

663. The testimony of PW-123 more particularly in paragraph No.22, has clearly indicated that the injury was "छुंदायेली अने सुलायेली" meaning

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thereby that it was a crush injury and there was the inflammation on injury which is contraindicative of the alleged history that the assault was by a piece of glass which would have resulted, in my opinion, in a cut injury. In fact, it has been noted by my predecessor in the course of recording of evidence of PW-123 on conclusion of paragraph No.22 of the deposition that the testimony in this regard raises suspicion on of the fact that account no case papers accompanying the certificates have been produced the testimony raises suspicion. and In such circumstances, despite there being some material, it cannot for a moment, be said that even with regard to both these accused i.e. accused Nos.12 22, the Prosecution has in and anv manner established their presence at Gulbarg Society or in any manner established their presence in the course of the incident. Again, it is nobody's case that accused No.22 who claims to have been attacked and assaulted by the opposite party at Chamanpura, suggests as a counter offensive or an attempt by the residents of Gulbarg Society to come out of the Society and attack the persons who were part of the mob. It is not the Prosecution case nor is it the case of any of the witnesses. In fact, the star witnesses examined by the Prosecution, have all conceded and justified that they also indulged in retaliatory stone throwing and none of them claims to have stepped out of Gulbarg Society as a counter

attack or counter offensive in an effort to disperse the mob. In my opinion, therefore, the do injury certificates not hold aooq the Prosecution case in any manner whatsoever. At the cost of repetition, I may further state that since none of the accused meaning the entire set of five accused have been identified by any Police witness, medical expert or any eye-witness as being a part of the mob, since there is no recovery or discovery of any incriminating material by or at the behest of any of the accused, I do not want to prolong the discussion any further with regard to the merits of the Prosecution case against these five accused and I may conclude by stating that grave doubts have arisen with regard to the genuineness of the Prosecution case against such accused and as а natural consequence, the benefit of such doubts must go in favour of such accused and therefore, I conclude that accused Nos.5, 12, 22, 24 and 31 herein are required to be given the benefit of doubt and are required to be given a clean acquittal which I hereby do so.

Accused Nos.26 and 62

664. I now propose to consider the relative merits of the Prosecution case against a set of two accused being accused No.26 Pannalal @ Prabhu Premchand Sisodiya (Mochi) and accused No.62 Dilip Kantilal Jinger.

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665. It is required to be noted that the names of neither of these two accused emerge from the complaint filed by Shri K.G.Erda which is on record at Exh.267, or any material in the form of any application, affidavit or statement of any of the victims or eye-witnesses or Police Officers for that matter, in the course of the entire investigation. Again, no overt act can be naturally attributed to either of these two accused in light of the fact that their names do not figure in any material as stated herein before.

666. Again, at the cost of repetition, I am to point out that accused No.26 was at pains arrested nearly four months after the incident i.e. on 20/06/2002 whereas accused No.62 was arrested nearly seven years after the incident i.e. on 26/02/2009. In such circumstances, I fail to understand as to on what basis both these accused have been arrested since they were not named by any of the victims or not named in the complaint and therefore, their arrest itself is strange and no satisfactory or worthwhile explanation is forthcoming from the Prosecution in this regard. Again, I may state that there is no recovery or discovery of any material by or at the behest of either of these two accused. The very presence of the accused at Gulbarg Society during the fateful time frame on the fateful day i.e. on 28/02/2002,

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is also not even remotely established. None of the eye-witnesses or the Police witnesses have identified either of the accused as being the members of the mob or perpetrators in any particular incident at Gulbarg Society when given such opportunity to identify the accused in the Court of law. It is also required to be noted that as is true in almost all cases pertaining to the accused herein, there is no T.I.Parade carried out either by the previous investigating agency or by S.I.T. after having taken over the the investigation post orders passed by the Hon'ble Supreme Court. In such circumstances, I fail to understand as to how any case whatsoever has been made out against the present two accused and why these accused have been made to undergo the trauma of such a long trial in such a grave and serious offence and why such accused are required to be traumatized by being linked with such a heinous offence, let apart being arrested in connection thereof. Again, there is absolutely no material which would show that either of these accused had sustained any injury which would even remotely lead to raising of a presumption with regard to their presence of involvement in the offence at Gulbarg Society. Again, as is true in most of the cases, there is no material on record to establish that either of the accused herein, was a resident of any locality in the nearby vicinity of Gulbarg Society any manner established to have been or was in

present or had any justifiable reason to be found present in the locality of Gulbarg Society on the fateful day. It is further more disturbing that there is no independent witness or corroboration in the form of some medical evidence or the testimony independent witnesses of some which can even remotely point a finger at either of the two accused. In my opinion, therefore, it is extremely unsafe for this Court to come to any conclusion that the Prosecution has even remotely established any charge, let apart the charges that are framed against the present accused. It is possibly because of such reasons that Mr.Kodekar in the course of his extensive and voluminous submissions, has made no effort to advance any semblance of an argument to the relative merits of with regard the Prosecution case against either of the present two accused. It appears that naturally being faced with serious argument forthcoming from no the Prosecution, the defence too has gone through the motions of setting up a defence and has sought for an acquittal of both the accused. I am at a loss to understand as to how such state of affairs has resulted in two such accused facing the trauma of such a trial for so many long years. In my opinion, there is no need to reflect upon any legal statute or legal precedents to determine the outcome of the present proceedings qua both these accused and without any further discussion, I hold and conclude that both these accused are entitled to a clean

No.26 Pannalal @ Prabhu Premchand Sisodiya (Mochi) and accused No.62 Dilip Kantilal Jinger be acquitted of all charges levelled against them.

Accused Nos.6 to 10, 15, 18, 28, 33 and 40

667. I now propose to take up the relative merits of the Prosecution case with regard to a set of 10 accused as per following details:-

Sr. No.	Accused No.	Name of accused	Date of arrest
1	6	Kishorbhai Mangabhai Patni	12/03/02
2	7	Shailesh @ Kalu Hirabhai Patni	13/03/2002
3	8	Kanaiya @ Bablu Chaichau	13/03/2002
4	9	Kantibhai Popatbhai Patni	13/03/2002
5	10	Shakrabhai Sendhabhai Patni	14/03/2002
6	15	Ajay Somabhai Panchal	20/03/2002
7	18	Sanjaykumar Shakrabhai Patni	26/05/2002
8	28	Prahlad Rajuji Asori	24/06/2002
9	33	Prahlad Omprakash Songara	28/06/2002
10	40	Parbatsinh Tarsangsinh @ Darshansinh Darpansinh	18/04/2008

668. It may be noted that a reference is made in the injury certificate Exh.619 of accused

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No.18 wherein the name "Sanjaybhai Chikubhai Patni" is shown, but it is clear that Shakrabhai, the father of Sanjay is also known as Chikubhai Patni and therefore, a reference to "Chikubhai" or "Shakrabhai" is required to be treated as a reference to accused No.18.

Taking up the contentions advanced on 669. behalf of the Prosecution in a nutshell vis-a-vis this set of 10 accused which I need not elaborate in light of the fact that the detailed arguments by the Prosecution are noted at an early stage, I may state that in a nutshell, the Prosecution has advanced its arguments against this set of 10 accused and Shri R.C.Kodekar, the learned Spl.P.P. appearing for the State, has submitted inter alia to the effect that the above set of 10 accused has some common aspects inasmuch as, all of them have account of arrested on and in further been investigation to the records of the Civil Hospital, Ahmedabad, where a detailed investigation was carried out with regard to all such persons who had come over or were brought over to the Civil Hospital, Ahmedabad for treatment of bullet or other injuries sustained on the fateful day i.e. on 28/02/2002 and who in the course of the treatment had provided history personally inter alia linking their presence and further establishing their presence at the Gulbarg Society or its nearby vicinities which form the basis of their arrest. It

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is submitted that such material is obtained from the injury certificate of each of such accused and corroborated from the available medical case papers with regard to narration of the history and further corroboration in the form of oral evidence emerging from the recorded depositions of the Medical Officers attached to the Ahmedabad Civil Hospital at the relevant time who in turn provided treatment and/or gave the injury certificate or recorded the history provided by the accused in the course of their duties at Civil Hospital on 28/02/2002. The submissions indicate that the learned Spl.P.P. has taken up the case of each of the set of 10 accused as herein after follows.

670. Taking up the case of accused No.6 Kishorbhai Mangabhai Patni and accused No.18 Sanjaykumar Shakrabhai Patni who were arrested on 26/05/2002 12/03/2002 and respectively, my attention is drawn to the injury certificate of such accused which is on the record of the proceedings at Exhs.613 and 619 respectively. The injury certificates detailed said on perusal thereof, appears to have been issued by PW-123 Dr.J.S.Kanoria who appears to have examined the accused No.6 at about 03.45 p.m. and accused No.18 at 06:50 p.m. on 28/02/2002 and bullet injuries were found on the body of accused No.6 whereas the injury certificate Exh.619 in respect of accused No.18 reflects history of assault as provided by

said accused No.18 in connection with the the alleged injuries sustained by him. The injury certificate Exh.613 has clearly indicated that the history provided by the concerned accused himself was with regard to sustaining of injuries in the form of bullet injury and that injury certificate Exh.613 clearly establishes that the history was provided by the patient himself. The injurv certificate only indicates the findings or taking X-ray of the injured parts of the body of the concerned accused which established the presence of multiple pellet wounds. The witness Dr.J.S.Kanoria i.e. PW-123 has deposed about the accused Nos.6 and 18 respectively in paragraphs Nos.1 to 3 and paragraph No.14 of his deposition Exh.612 and in an almost parrot-like deposition, the said witness has clearly deposed that the accused were brought over at about 03.45 p.m. and 06.50 p.m. respectively and with regard to the injuries sustained, detailed investigations were carried out in the form of Xrays and C.T. Scans and presence of large number of pellets was found in the body of the accused. It is submitted that there is sufficient corroboration to the Prosecution case and it is established from the nature of injuries and the history recorded, that the accused sustained injuries at Omnagar where firing took place. It is submitted that therefore, the presence of the accused at the scene of the incident herein is automatically established and the fact of the history being provided by the

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patient i.e. accused himself, being further corroborated by PW-123, clearly establishes beyond reasonable doubt the involvement of the accused in the present incident and the accused being a part of the mob which had perpetrated this heinous offence is also thus established beyond reasonable doubt. It is submitted that the accused Nos.6 and 18 therefore, be suitably penalized.

671. On the other hand, the defence argument in this regard considered in a nutshell, is inter alia to the effect that the entire set of eye-witnesses, victims have at all times and all places very conveniently forgotten and lost memory with regard to the private firing established to have been done by the late Shri Ehsan Jafri. The defence has in any case submitted that the injury itself is not conclusive proof to perpetration of the offence and it is also urged that in the course of the brief submissions made on behalf of the defence with regard to the present accused as also the remaining set of 8 accused, that none of the eye-witnesses have in any manner mentioned the names of any of this set of 10 accused at any stage right from their initial application before the Police, applications/affidavits Commissioner of before the Nanavati Shah Commission or anv statement before any Police authority - pre-S.I.T. stage and even post-S.I.T. stage. It is also pointed out that none of the present set of 10

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accused has been identified positively as being present on the fateful day at Gulbarg Society by any of the eye-witnesses including the Police witnesses and it is submitted in terms of the defence arguments that under such circumstances, the State could not be said to have proved beyond doubt the guilt of the accused Nos.6 and 18 or any of the present set of 10 accused herein.

672. I am in complete agreement with the learned advocates appearing on behalf of the defence that the Prosecution has completely failed in establishing the presence of the accused or any overt act on the part of the accused including accused Nos.6 and 18 and the remaining set of 8 accused, to have indulged in any overt act which could tantamount to or could be construed as participation, involvement and therefore, guilt in the perpetration of the present offence.

673. Having carefully considered Exhs.613 and 619 which is the injury certificate of accused No.6 and accused No.18 respectively, it is required to be noted that the said accused No.6 underwent treatment at the Civil Hospital for the period from 28/02/2002 to 07/03/2002 as per the document Exh.613, and accused No.18 underwent treatment from 28/02/2002 till 15/03/2002. It is unfortunate that no accompanying case paper has been produced to show the nature of treatment on the part of the

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Hospital authorities, whether pellets found to be present in large numbers in terms of the injury certificates were removed or extracted from the body of accused Nos.6 and 18, whether such pellets were thereafter forwarded to the FSL for analysis and whether the said pellets were ballistically tested upon at the FSL to interlink the same with a weapon recovered from Gulbarg Society in terms of the Panchnama Exh.262, and which in terms of the certificate Exh.1245 is established to have been the licensed weapon of Shri Ehsan Jafri. In absence of interlinking of such material, I cannot come to a conclusion that the presence of the accused Nos.6 and 18 is established beyond reasonable doubt at Gulbarg Society. I am required to note with concern that all star witnesses [it is in fact the learned Spl.P.P. who has referred to the eye-witnesses as his star witnesses] have had selective amnesia i.e. a selective memory loss with regard to the fact of Shri Ehsan Jafri having fired from a number of locations within Gulbarg Society upon the crowd alleged to have gathered outside Gulbarg Society. Be that as it may, all these star witnesses have explained at great length and in great detail, the details of each incident that took place right from 09:30 a.m. and ended at about 06:30 p.m., the entire series of incidents being required to be treated as the Gulbarg Society incident. The names of none of this set of accused including accused Nos.6 and 18 emerges from the testimony of any of

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the eye-witnesses or even the Police witnesses for that matter. In fact the learned Spl.P.P. has indirectly conceded that these accused were arrested only from the hospital records since they were found to have sustained gunshot injuries. Be that as it may, I am required to note that as far as accused Nos.6 and 18 are concerned, there are no accompanying medical case papers and in fact it is conceded by PW-123 in paragraph No.3 of his testimony that he is not aware as to whether the pellets were extracted from the body of accused No.6 or not. Again at the cost of repetition, I may state that as is similarly found in previous discussions relating to other sets of accused, the investigating agencies including the investigating agencies prior to the formation of the S.I.T. and post formation of the S.I.T., have not bothered to undertake the exercise of carrying out T.I. Parade with regard to any of the accused including accused Nos.6 and 18. Again even in the course of their depositions, none of the eye-witnesses including the Police witnesses have identified any of the present set of 10 accused. Again, at the cost of repetition, I am constrained to observe and I am observe that the investigation has pained to floundered inasmuch as, no efforts are made to establish that any of the accused belonging to this set of 10 accused, was a resident of a locality located near Gulbarg Society and there is no effort establish the interlinking of any of the present

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Gulbarg Society. In my set of 10 accused to opinion, therefore, a mere medical evidence unsupported by forensic material or eye-witness testimony or other corroborative material, cannot make this Court come to a conclusion that the Prosecution is successful in establishing beyond reasonable doubt the charges against the concerned accused. In fact, I am constrained to observe that the injury certificates Exhs.613 and 619 do not indicate as to where the accused Nos.6 and 18 were prior respectively to 03:45 p.m. and 06.50 p.m. and there is no material to establish that accused Nos.6 and 18 were involved in any overt act which would tantamount to perpetration of the offence herein and there is again no recovery or discovery any incriminating material from the present of accused. In my opinion, therefore, this gives rise to grave doubts with regard to the Prosecution case and the benefit of such doubts must necessarily go to the accused Nos.6 and 18 despite the injury certificates Exhs.613 and 619 showing that the accused did not sustain bullet injuries which were in the nature of pellet injuries on 28/02/2002. It is unfortunate that though PW-123 as also the injury certificates Exhs.613 and 619 clearly indicate that Police Constable bearing Buckle No.6462 was informed about the injury to the concerned accused, no further action is taken by the police authorities to bring forward a Police force to control and arrest such injured persons or

take appropriate action in furtherance thereof and in fact the accused No.6 after being discharged on 07/03/2002, came to be arrested only on 12/03/2002 and accused No.18 after being discharged on 15/03/2002, came to be arrested only on 26/05/2002. Therefore, at the cost of repetition, I may say that there are serious doubts with regard to the Prosecution case, the benefit of which must go to the accused Nos.6 and 18.

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674. Even if a presumption is raised with regard to the fact of accused Nos.6 and 18 or any of the accused belonging to this set of 10 accused, present in and around Gulbarg Society, was in absence of any specific material which in fact is provided by the eye-witnesses in the course of their testimonies, a presumption cannot be raised that they were indulging in any overt act, or were part of the mob or were in any manner required to be held to have perpetrated the offence. In fact, a reasonable presumption could also be raised that the accused could be innocent by-standers injured in the firing, more so when none of the eyewitnesses have in any manner named or identified any of this set of 10 accused.

675. It is likewise pointed out by Shri Kodekar that accused Nos.9. 15 and 28 have all presented themselves at the Ahmedabad Civil Hospital on 28/02/2002 between 01:35 p.m. and 02:10

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and all the three p.m. were treated bv Dr.D.B.Jadhav, whose testimony is on the record of the proceedings at Exh.511 and the said Dr.Jadhav who has been examined as PW-93, has clearly in the course of her examination-in-chief, testified with regard to the nature of injuries sustained by accused Nos.9, 15 and 28 as being firearm injuries narration by the in terms of the accused themselves. According to Shri Kodekar, the said PW-93 has proved all the three injury witness certificates Exhs.512, 514 and 516, all of which have been containing a history of the concerned patient meaning the concerned accused herein providing the history themselves of firearm is submitted that the concerned injuries. Ιt accused having provided such history, the same is also recorded in the medical case papers which are also proved by PW-93 and which also clearly indicate the history about injury by firearms and therefore, the presence of the said three accused Omnagar, Chamanpura in terms of such injury at certificates is clearly established therefrom which further clearly establishes the presence of the accused at Gulbarg Society. It is submitted that in the circumstances, the inference is required to be drawn that all the three accused were part of the mob and therefore, sustained injury in the incident and therefore, they could be said to be proven beyond reasonable doubt to be present at the scene of the incident and the very fact of their

sustaining injuries leaves no room for any doubt that they were a part of the mob that had indulged in the carnage at the Gulbarg Society. It is further pointed out that PW-93 having recorded the history of all three accused, is an independent witness having no reason to falsely implicate anybody and therefore, it is required to be established that the accused were a part of the mob and their presence itself being established, the could be said to have discharged the State responsibility of proving beyond reasonable doubt the involvement and guilt of the three accused being accused Nos.9, 15 and 28 in the offences that they stand charged with.

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676. Again, if one looks at the defence submissions, the same are very limited inasmuch as, а repetition of the arguments is advanced in respect of these three accused as was advanced in the case of accused No.6. It is pointed out that since no witness has identified any of the accused in the Court, the names of none of these accused emerge in the statements of any witness or victim in the investigation stage pre-S.I.T. and post-S.I.T., and in the circumstances, there is no conclusive proof with regard to the presence of the accused at the scene of the incident and therefore, the accused could be said to be innocent bysustained injuries in the standers who random firing carried out by Shri Ehsan Jafri and

therefore, the accused are required to be given a clean acquittal.

677. Having considered such submissions, I am required to state that yet again, I am of the opinion that the defence herein is more palatable than the submissions of the Prosecution with regard to the merits of the Prosecution case against accused Nos.9, 15 and 28. I have carefully gone through the testimony of PW-93 Dr.D.B.Jadhav who has issued the injury certificates as also recorded the history in the medical case papers in respect of all the three accused, which documents are on the record of the proceedings at and from Exhs.512 to 517. It is no doubt clearly emerging from all such medical case papers that all the three accused have sustained firearm injuries and were treated as indoor patients. However, there are some doubts which are created by these very documents relied heavily upon by the Prosecution. The injury certificate of accused No.28 at Exh.516 does not indicate as to when the said accused was discharged from hospital. It also does not show the presence of pellets but instead makes a reference to some foreign body noted on an X-ray being taken. It is required to be noted that the said accused No.28 was arrested only on 24/06/2002 and therefore, there is in my opinion, no material which indicates that whether the pellets were extracted from the body of accused No.28 or not. In fact PW-93 has

conceded that she is not aware as to whether such pellets were extracted from the concerned accused or not. No other doctor has been examined with regard to extraction of pellets from these three accused. In the circumstances, it can be safely inferred that no pellet extracted from the body of these three accused was forwarded to the FSL for analysis and tests thereupon nor were any ballistic tests carried out with regard to such pellets which would have determined as to whether these injuries caused to the accused were on account of Police firing or was on account of random firing by late Shri Ehsan Jafri. The case papers pertaining to accused No.9 at Exh.513 are extensive and in detail but none has been examined with regard to the extraction of the pellets and it can be seen on pages Nos.6 and 7 of Exh.513 that there are lot of interpolations and cancellations made therein. Again, there is nothing to show as to who performed th extraction if at all any, was performed on accused No.9 also. Again, the PW-93 has expressed ignorance about the subsequent treatment of accused No.9 and it can be said that there is no conclusive material to show as to from what distance the injuries were sustained. It is also required to be noted here that other than this medical evidence, there is no material worth the name to establish in any manner that any of the three accused was present at Gulbarg Society on the fateful day.

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Furthermore, in the instant facts and 678. circumstances also, I am required to note with concern at the cost of repetition that all star selective witnesses have had amnesia i.e. а selective memory loss with regard to the fact of Shri Ehsan Jafri having fired from a number of locations within Gulbarg Society upon the crowd alleged to have gathered outside Gulbarg Society. Be that as it may, all these star witnesses have explained at great length and in great detail, the details of each incident that took place right from 09:30 a.m. and ended at about 06:30 p.m., the entire series of incidents being required to be treated as the Gulbarg Society incident. The names of none of this set of accused including accused Nos.9, 15 and 28 emerges from the testimony of any of these star eye-witnesses or even the Police witnesses for that matter. In fact the learned Spl.P.P. has indirectly here also conceded that these accused were arrested only from the hospital records since they were found to have sustained gunshot injuries. Be that as it may, I am again at the cost of repetition, required to note that as far as accused Nos.9, 15 and 28 are concerned, there are no accompanying medical case papers. Again at the cost of repetition, I may state that is similarly found in previous discussions as sets of accused, relating to other the investigating agencies including the investigating agencies prior to the formation of the S.I.T. and

post formation of the S.I.T., have not bothered to undertake the exercise of carrying out T.I. Parade with regard to any of the accused including accused Nos.9, 15 and 28. Again even in the course of their depositions, none of the eye-witnesses including the Police witnesses have identified any of the present set of 10 accused. Again, at the cost of repetition, I am constrained to observe and I am pained to observe that the investigation has floundered inasmuch as, no efforts are made to establish that any of the accused belonging to this set of 10 accused, was a resident of a locality located near Gulbarg Society and there is no effort establish the interlinking of any of the present set of 10 accused to Gulbarg Society. In mν opinion, therefore, a mere medical evidence unsupported by forensic material or eye-witness testimony or other corroborative material, cannot make this Court come to a conclusion that the Prosecution is successful in establishing beyond reasonable doubt the charges against the concerned accused. In fact, I may observe that the there is no material to establish that accused Nos.9, 15 and 28 were involved in any overt act which would tantamount to perpetration of the offence herein and there is again no recovery or discovery of any incriminating material from the present three accused.

679. In my opinion, therefore, there are

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grave doubts with regard to the Prosecution case and therefore, the Prosecution could not be said to have established it case against accused Nos.9, 15 and 28 also beyond reasonable doubt, merely on the strength of incomplete and unsubstantiated medical reports which are not corroborated by any forensic material and more so when none of these three accused has been identified by anv of the witnesses, no T.I. Parade has been carried out for positive identification of the accused. no incriminating material as aforesaid has been recovered or discovered by or at the behest of any of these three accused, and therefore, I am of the opinion that the benefit of doubts would extend even to these three accused also, and therefore, even these three accused i.e. accused Nos.9, 15 and 28 are also required to be given a clean acquittal.

680. Taking up the case of accused Nos.7 and 33 respectively being Shailesh @ Kalu Hirabhai Patni and Prahlad Omprakash Songara, it is again pointed out by Shri Kodekar that accused Nos.7 and 33 have both presented themselves at the Ahmedabad Civil Hospital on 28/02/2002 between 01:35 p.m. and 01:45 both accused were treated p.m. and by Dr.P.R.Vaghela, whose testimony is on the record of the proceedings at Exh.818 and the said Dr.Vaghela who has been examined as PW-237, has clearly in the course of her examination-in-chief, testified with regard to the nature of injuries sustained by

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accused Nos.7 and 33 as being firearm injuries in terms of the narration by the accused themselves. According to Shri Kodekar, the said witness PW-237 has recorded the history in the injury certificate Exh.823 with regard to accused No.33 to the effect that "ਅਝਟੀએ ਝਾਪਟੀગ કરતા વાગેલ છે." meaning thereby that the injuries were sustained in the firing by Shri Ehsan Jafri. It is submitted that the said witness PW-237 has also recorded the history given by accused No.7 in his injury certificate Exh.824 which are shown as injuries sustained by pellets, and thus the PWboth the injury certificates 237 has proved Exhs.823 and 824, all of which have been containing history of the concerned patient meaning the а concerned accused herein providing the history themselves of firearm injuries, and therefore, the presence of the said accused Nos.7 and 33 at Omnagar, Chamanpura in terms of such injury certificates is clearly established therefrom which further clearly establishes the presence of the said accused at Gulbarg Society. It is submitted that in the circumstances, the inference is required to be drawn that both the said accused were part of the mob and therefore, sustained injury in the incident and therefore, they could be said to be proven beyond reasonable doubt to be present at the scene of the incident and the very fact of their sustaining injuries leaves no room for any doubt that they were a part of the mob that

had indulged in the carnage at the Gulbarg Society. It is therefore, submitted that it is required to be established that the accused were a part of the mob and their presence itself being established, the State could be said to have discharged the responsibility of proving beyond reasonable doubt the involvement and guilt of the accused Nos.7 and 33 in the offences that they stand charged with.

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681. The defence submissions are a mere repetition as were advanced in the case of accused Nos.9, 15 and 28. It is pointed out that since no witness has identified any of the accused in the Court, the names of none of these accused emerge in the statements of any witness or victim in the investigation stage pre-S.I.T. and post-S.I.T., and in the circumstances, there is no conclusive proof with regard to the presence of the accused at the scene of the incident and therefore, the accused could be said to be innocent by-standers who sustained injuries in the random firing carried out by Shri Ehsan Jafri and therefore, the accused Nos.7 and 33 are also required to be given a clean acquittal.

682. Having considered the rival submissions herein, I am constrained to note that Exh.823 is the only certificate in which there appears to be a mention of firing i.e. use of a firearm by late Shri Ehsan Jafri inasmuch as, the

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history narrated by accused No.33 upon which Shri has heavily relied upon, R.C.Kodekar clearly mentions the name of Shri Ehsan Jafri. However, conveniently no medical case papers of this injured accused, have been produced herein. Again, the incident is alleged to have taken place at 10:15 a.m. and it is nobody's case that Shri Jafri was constrained to fire at about 10:15 a.m. In fact, it has been pointed out in the cross examination that the mention of time of the incident as narrated in the history appears to be a mistaken time and the response thereto appears to have been inconclusive and circumspect. Again, the injured appears to have absconded on 28/02/2002 itself despite there being mentioned in the injury certificate Exh.823 that Police Constable bearing Buckle No.6462 was informed about such accused. Again, the fact of the said accused No.33 having been arrested on 28/06/2002 is also required to be considered and there is no material to show that he was indulging in any overt act. Similarly, as in the case of other accused, there is nothing on record to show that any pellets were extracted from the body of the concerned accused. The concerned doctor i.e. PW-237 is also silent on this aspect in terms of her testimony Exh.818.

683. Furthermore, I am required to note with concern at the cost of repetition that again as far as the present two accused i.e. accused

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Nos.7 and 33 are concerned, all star witnesses have had selective amnesia i.e. a selective memory loss with regard to the fact of Shri Ehsan Jafri having fired from a number of locations within Gulbarg Society upon the crowd alleged to have gathered outside Gulbarg Society. Be that as it may, all these star witnesses have explained at great length and in great detail, the details of each incident that took place right from 09:30 a.m. and ended at about 06:30 p.m., the entire series of incidents being required to be treated as the Gulbarg Society incident. The names of none of this set of accused including accused Nos.7 and 33 emerges from the testimony of any of these star eye-witnesses or even the Police witnesses for that matter. In fact the learned Spl.P.P. has indirectly here also conceded that these accused were arrested only from the hospital records since they were found to have sustained gunshot injuries.

Be that as it may, I am again at the cost of repetition, required to note that as far as accused Nos.7 and 33 are concerned, there are no accompanying medical case papers. Again at the cost of repetition, I may state that as is similarly found in previous discussions relating to other sets of accused, the investigating agencies including the investigating agencies prior to the formation of the S.I.T. and post formation of the S.I.T., have not bothered to undertake the exercise

of carrying out T.I. Parade with regard to any of the accused including accused Nos.7 and 33. Again even in the course of their depositions, none of the eye-witnesses including the Police witnesses have identified any of the present set of 10 accused. Again, at the cost of repetition, I am constrained to observe and I am pained to observe that the investigation has floundered inasmuch as, no efforts are made to establish that any of the accused belonging to this set of 10 accused, was a resident of a locality located near Gulbarg Society and there is no effort establish the interlinking of any of the present set of 10 accused to Gulbarg Society. In my opinion, therefore, a mere medical evidence unsupported by forensic material or eyewitness testimony or other corroborative material, cannot make this Court come to a conclusion that Prosecution is successful in establishing the beyond reasonable doubt the charges against the concerned accused. In fact, I may observe that the there is no material to establish that accused Nos.7 and 33 were involved in any overt act which would tantamount to perpetration of the offence herein and there is again no recovery or discovery of any incriminating material from the present accused Nos.7 and 33.

685. In my opinion, therefore, there are grave doubts with regard to the Prosecution case and therefore, the Prosecution could not be said to

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have established it case against accused Nos.7 and 33 also also beyond reasonable doubt, merely on the strength of incomplete and unsubstantiated medical reports which are not corroborated by any forensic material and more so when none of these accused has been identified by any of the witnesses, no T.I. Parade has been carried out for positive identification of the accused, no incriminating as aforesaid has been recovered material or discovered by or at the behest of any of these accused, and therefore, I am of the opinion that the benefit of doubts would extend even to these three accused also, and therefore, even these two accused i.e. accused Nos.7 and 33 are also required to be given a clean acquittal.

686. with regard to the relative Now, merits of the Prosecution case against accused No.8 being one Kanaiya @ Bablu Chaichau, the said accused also appears to have provided history of injury through firearm which is clearly reflected in the injury certificate Exh.796. The said accused had presented himself at the Civil Hospital and was treated by Dr.S.S.Vyas. However, the injury certificate Exh.796 is sought to be proved by one Dr.R.R.Patel who is examined as PW-228 at Exh.795 on the record of the present proceedings. The learned Spl.P.P. Shri Kodekar has again argued that the history provided by the patient i.e. the accused No.8 is that of a firearm injury as

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reflected in the injury certificate Exh.796. It is therefore, argued that therefore, the presence of the said accused No.8 at Omnagar, Chamanpura in injury certificate is terms of such clearly established therefrom which further clearlv establishes the presence of the accused at Gulbarg Society. It is submitted that in the circumstances, the inference is required to be drawn that the accused No.8 was also a part of the mob and therefore, sustained injury in the incident and therefore, he could be said to be proven beyond reasonable doubt to be present at the scene of the incident and the very fact of his sustaining firearm injuries leaves no room for any doubt that they were a part of the mob that had indulged in the carnage at the Gulbarg Society. It is, therefore, submitted the State could be said to have discharged the responsibility of proving beyond reasonable doubt the involvement and guilt of the three accused being accused No.8 in the offences that he stands charged with.

687. Now, as far as the defence arguments in this regard are concerned, again, the same are very limited inasmuch as, a repetition of the arguments is advanced in respect of accused No.8 as was advanced in the case of accused No.6 and 18. It is pointed out that since no witness has identified any of the accused in the Court, the name of accused No.8 none does not emerge in the statements

of any witness or victim in the investigation stage pre-S.I.T. and post-S.I.T., and in the circumstances, there is no conclusive proof with regard to the presence of the accused No.8 at the scene of the incident and therefore, the accused No.8 could be said to be innocent by-stander who sustained injuries in the random firing that took place at the time of the incident and therefore, the accused No.8 also is required to be given a clean acquittal.

Having considered 688. the rival submissions herein, I am constrained to note that Exh.796 the only certificate in which there is appears to be a mention of alleged history of firearm injury as the history narrated by accused No.8 upon which Shri R.C.Kodekar has heavily relied upon. However, conveniently no medical case papers of this injured accused, have been produced herein. Again, in the injury certificate Exh.796, there are a couple of interpolations and cancellations as regards the date on which the injured accused No.8 is said to have been examined by the concerned doctor for treatment at the Civil Hospital. According to the said injury certificate Exh.796, the examination of the accused No.8 was done on 01/03/2002 at 01:50 p.m. whereas he was admitted in the Civil Hospital on 28/02/2002 and discharged on 07/03/2002. Again, the fact of the said accused No.33 having been arrested on 13/03/2002 is also

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required to be considered and there is no material to show that he was indulging in any overt act. Similarly, as in the case of other accused, there is nothing on record to show that any pellets were extracted from the body of the concerned accused. The concerned doctor i.e. Dr.S.S.Vyas has not been a witness in the proceedings examined as and medical expert examined instead the is one who Dr.R.R.Patel is PW-228 at Exh.795 herein. According to his testimony, he has deposed in paragraphs Nos.1 to 4 of his deposition that he was working under Dr.S.S.Vyas at the relevant time and that the patient who was brought for treatment on 28/02/2002 was first examined by Dr.S.S.Vyas on the said day itself, and thereafter at 01:50 p.m. on 01/03/2002 the said patient was examined by the present witness i.e. Dr.R.R.Patel, PW-228. It is further deposed by the PW-228 that according to the case history of the patient, there was a firearm injury and presence of pellets was found upon X-ray being taken of the concerned patient. It is further deposed by the said witness PW-228 that the injury certificate Exh.796 issued in respect of the concerned patient, is signed by one Dr.Satapara. It is surprising to note that nowhere in his entire testimony, the said PW-228 has mentioned the name of the patient examined by him.

689. Be that as it may, I am again at the cost of repetition, required to note that as far as

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8 is accused No. concerned, there are no accompanying medical case papers. Again at the cost of repetition, I may state that as is similarly found in previous discussions relating to other of accused, the investigating agencies sets including the investigating agencies prior to the formation of the S.I.T. and post formation of the S.I.T., have not bothered to undertake the exercise of carrying out T.I. Parade with regard to any of the accused including accused No. 8. Again even in the course of their depositions, none of the star witnesses including the eye-witnesses and the Police witnesses have identified any of the present 10 accused. of Again, at the cost set of repetition, I am constrained to observe and I am pained to observe that the investigation has floundered inasmuch as, no efforts are made to establish that any of the accused belonging to this set of 10 accused, was a resident of a locality located near Gulbarg Society and there is no effort establish the interlinking of any of the present set of 10 accused to Gulbarg Society. In my medical evidence opinion, therefore, a mere unsupported by forensic material or eye-witness testimony or other corroborative material, cannot make this Court come to a conclusion that the Prosecution is successful in establishing beyond reasonable doubt the charges against the concerned accused. In fact, I may observe that the there is no material to establish that accused No.8 was

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involved in any overt act which would tantamount to perpetration of the offence herein and there is again no recovery or discovery of any incriminating material by or at the behest of present accused No.8.

690. In my opinion, therefore, there are grave doubts with regard to the Prosecution case and therefore, the Prosecution could not be said to have established it case against accused No.8 also beyond reasonable doubt, merely on the strength of incomplete and unsubstantiated injury certificate which is not corroborated by any forensic material and more so when the accused No.8 has not been identified by any of the witnesses referred to herein above, no T.I. Parade has been carried out for positive identification of the accused, no incriminating material as aforesaid has been recovered or discovered by or at the behest of accused No.8, and therefore, I am of the opinion that the benefit of doubts would extend even to accused No.8 also, and therefore, even the accused No.8 is also required to be given a clean acquittal.

691. Now, with regard to the relative merits of the Prosecution case against accused No.40 being one Parbatsinh Tarsangsinh ß Darshansinh Darpansinh, the said accused also appears to have provided history of injury through

firearm which is clearly reflected in the injury certificate Exh.596. The said accused had presented himself at the Civil Hospital and was treated by Dr.N.G.Joshi. The injury certificate Exh.596 is sought to be proved by Dr.N.G.Joshi who is examined as PW-119 at Exh.595 on the record of the present proceedings. The learned Spl.P.P. Shri Kodekar has again argued that the history provided by the patient i.e. the accused No.40 is that of a firearm injury as reflected in the injury certificate Exh.596. It is therefore, argued that therefore, the presence of the said accused No.40 at Omnagar, Chamanpura in terms of such injury certificate is clearly established therefrom which further clearly establishes the presence of the accused at Gulbarg Society. It is submitted that in the circumstances, the inference is required to be drawn that the accused No.40 was also a part of the mob and therefore, sustained injury in the incident and therefore, he could be said to be proven beyond reasonable doubt to be present at the scene of the incident and the very fact of his sustaining firearm injuries leaves no room for any doubt that they were a part of the mob that had indulged in the Gulbarg Society. the carnage at Ιt is, therefore, submitted the State could be said to have discharged the responsibility of proving beyond reasonable doubt the involvement and guilt of the three accused being accused No.40 in the offences that he stands charged with.

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692. Now, as far as the defence arguments in this regard are concerned, it is pointed out that since no witness has identified any of the accused in the Court, the name of accused No.40 does not emerge in the statements of any witness or victim in the investigation stage pre-S.I.T. and post-S.I.T., and in the circumstances, there is no conclusive proof with regard to the presence of the accused No.40 at the scene of the incident and therefore, the accused No.40 could be said to be innocent by-stander who sustained injuries in the random firing that took place at the time of the incident and therefore, the accused No.40 also is required to be given a clean acquittal.

693. Having considered the rival submissions herein, I am constrained to note that Exh.596 is the only certificate in which there appears to be a mention of alleged history of firearm injury as the history narrated by accused No.40 upon which Shri R.C.Kodekar has heavily relied upon. However, conveniently no medical case papers of this injured accused, have been produced herein.

694. I am again at the cost of repetition, required to note that as far as accused No.40 is concerned, there are no accompanying medical case papers. Again at the cost of repetition, I may

state that as is similarly found in previous discussions relating to other sets of accused, the investigating agencies including the investigating agencies prior to the formation of the S.I.T. and post formation of the S.I.T., have not bothered to undertake the exercise of carrying out T.I. Parade with regard to any of the accused including accused in the of No.40. Aqain even course their depositions, none of the star witnesses including the eye-witnesses and the Police witnesses have identified any of the present set of 10 accused. Again, at the cost of repetition, I am constrained to observe and I am pained to observe that the floundered inasmuch investigation has as, no efforts are made to establish that any of the accused belonging to this set of 10 accused, was a resident of a locality located near Gulbarg Society and there is no effort establish the interlinking of any of the present set of 10 accused to Gulbarg Society. In my opinion, therefore, a mere medical evidence unsupported by forensic material or eyewitness testimony or other corroborative material, cannot make this Court come to a conclusion that Prosecution is successful in establishing the beyond reasonable doubt the charges against the concerned accused. In fact, I may observe that the there is no material to establish that accused No.40 was involved in any overt act which would tantamount to perpetration of the offence herein and there is again no recovery or discovery of any incriminating material by or at the behest of present accused No.40.

695. In my opinion, therefore, there are grave doubts with regard to the Prosecution case and therefore, the Prosecution could not be said to have established it case against accused No.40 also beyond reasonable doubt, merely on the strength of incomplete and unsubstantiated injury certificate which is not corroborated by any forensic material and more so when the accused No.40 has not been identified by any of the witnesses referred to herein above, no T.I. Parade has been carried out for positive identification of the accused, no incriminating material as aforesaid has been recovered or discovered by or at the behest of accused No.40, and therefore, I am of the opinion that the benefit of doubts would extend even to accused No.40 also, and therefore, even the accused No.40 is also required to be given a clean acquittal.

696. Taking up the case of accused No.10 being Shakrabhai Sendhabhai Patni, Shri R.C.Kodekar has made absolutely no efforts to make submissions on behalf of the Prosecution and it is very evident as to why no such efforts are made. There is no medical certificate, no injury certificate, no medical case papers, and there is absolutely no eye-witness material which even whispers the name

of accused No.10 as being present at Gulbarg Society on the fateful day and being a perpetrator of any of the incidents that took place thereat. Nobody has identified accused No.10, no efforts have been made to identify him inasmuch as, none of the star witnesses has identified accused No.10 in the Court. Again, no T.I.Parade is carried out with regard to the positive identification of accused No.10 and it appears that accused No.10 is arrested on 14/03/2002 by the then I.O. Shri P.N.Barot who is examined as PW-276 and whose testimony is on the record of the present proceedings at Exh.954, and I read paragraph No.14 required to of the am testimony of the said witness which has a stray three-line reference which only records the fact of accused No.10 being arrested on 14/03/2002 and nothing else. There is no basis or no material to justify the arrest of accused No.10. There is no medical evidence, no forensic evidence, none of the star witnesses has named or identified accused any stage, there is no recovery of No.10 at discovery of any incriminating material by or at the behest of accused No.10, and therefore, without even considering the defence arguments in this regard, I am of the opinion that the Prosecution needlessly proceeded against accused No.10 has without providing any basis to this Court and therefore, without any further discussion herein, I give accused No.10 a clean acquittal.

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697. Before parting with regard to these sets of accused, I may state that some of my findings and observations may appear to be near identical and repetitive, but I am constrained to observe that it is done so since the Prosecution case as also the defence versions as also my findings are near identical with regard to such concerned accused and therefore, if there is similarity, it is co-incidental and not nonapplication of mind.

698. Having taken up the Prosecution case with regard to the above referred sets of accused, now I am required to take up the case of the remaining accused separately one after the another, weight the relative merits of the Prosecution version as also the defence supplied, consider the material evidence - oral, documentary, forensic as well as physical, and thereafter I propose to come to a conclusion as to whether the Prosecution case could be said to have been established beyond reasonable doubt inasmuch as, it relates to the particular accused discussed therein.

Accused No.36

699. I now propose to take up the case of accused No.36 Chirag Dilipbhai Shah.

700. It is required to be noted that the

submissions made by Shri R.C.Kodekar, the learned Spl.P.P. are by themselves quite clear with regard to the strength of the Prosecution case against accused No.36.

701. Firstly my attention is drawn to the testimony of PW-4 at Exh.229 being an A.S.I. Shri Rajendrasing Kallusing Rajput, who is the person having positively identified accused No.36 as amongst the persons who were armed with a sword outside Gulbarg Society, and who has been positively identified by PW-4 even in the Court. It is submitted that there is no effective cross examination of this witness and therefore, there is no reason to doubt the Police witness who had no axe to grind against accused No.36. It is submitted that not only that but in the course of the Panchnama Exh.1259, the muddamal sword in question recovered and discovered in terms of the was Panchnama drawn under Sec.27 of the Evidence Act, at the instance of accused No.36 and none else and terms of the Panchnama according to in Shri Kodekar, the weapon being a sword was recovered from the residence of accused No.36 himself. It is submitted that this is а strong circumstance against the accused No.36. It is submitted that the testimony of PW-177 Sairaben Sandhi at Exh.711, PW-192 Mohammadali Shehjadali Saiyed at Exh.736 and PW-14 Fakirmohammad Nasirali Saiyed at Exh.1098, have all named the accused No.36 as being a member

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of the mob that was armed with deadly weapons and was involved in the perpetration of the offence at Gulbarg Society. It is submitted that mere presence is enough since the accused No.36 was harbouring common intention with other members of the mob and the fact of the accused No.36 being armed with a sword being further corroborated by the recovery of the said weapon, and that too from his own residence, clearly establishes the involvement, participation and thereby the guilt of the accused No.36 in the offence that he stands charged with.

702. I may state herein that the detailed and lengthy submissions made by Shri R.C.Kodekar are produced herein before in the course of the judgment and I, therefore, need not reproduce verbatim the submissions wherein there is wholesale reproduction of the depositions of the concerned witnesses referred to herein above and therefore, I have only reproduced the necessary submissions so as to make my considering the relative merits thereof more convenient herein.

703. From the extensive arguments made on behalf of the defence, there is no specific mention with regard to a defence being set up on behalf of the accused No.36. In my opinion, therefore, I am required to consider the submissions of Shri R.C.Kodekar carefully, scrutinize and examine the material on record and thereafter base my findings

and arrive at a conclusion with regard to the fate of accused No.36 herein which now I proposed to do so.

704. Having considered the rival submissions, in my opinion, there is no room for any doubt that PW-4 at Exh.269 i.e. A.S.I. Shri Rajendrasing Kallusing Rajput in the course of his testimony, has positively named and furthermore positively identified the accused No.36 in the Court and that too being armed with a sword from amongst the mob. However, the said witness PW-4 has not provided any reason as to how he could know such accused by name and why he was in a position to identify him after such a long lapse of time inasmuch as, the witness was examined not less than seven years after the incident. Again, what is further in my opinion, relevant, is the fact that the Prosecution despite being in a position to make available the muddamal sword which was even in terms of the Prosecution case recovered in terms of Panchnama Exh.1259, such muddamal sword was not shown to the witness PW-4 in the course of his testimony. Again I am constrained to note that the Panchnama Exh.1259 clearly mentions therein on page No.2 thereof that the sword was recovered from a property which was referred to as the residence of accused No.36 himself. However, there is no in course of material gathered the the investigation to show that the property from which

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the sword was recovered, was of the ownership or in possession of accused No.36 or anyone closely connected to accused No.36. Again in my opinion, not showing the muddamal weapon to this witness for identification, Ι am required to draw adverse inference against the Prosecution since I feel that this was deliberately not done so on account of the fact that the Prosecution itself was not very confident about the entire recovery process. Again I am further fortified by the fact that the Panch witness Himanshu Jayantilal Vyas being the Panch of Panchnama Exh.1259, has been examined as PW-84 at Exh.496 herein and the Panch has in fact not supported the Prosecution case in the least. The only mentioned about affixing Panch has his signature on a document without being taken to any place in the presence of and as directed accused No.36 as it emerges from the Panchnama. The Panch has further denied the recovery of any weapon and examination of the Panch the cross witness permitted to be carried out on account of the witness being declared hostile, the Prosecution has not brought on record any material which would support the recovery. Again I am constrained to note and further pained to note that the laxity in the investigation process at all stages i.e. pre-S.I.T. stage and post-S.I.T. stage is further evident from the fact that the muddamal article sword recovered in such fashion, was not forwarded to the FSL for analysis and in absence of any

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incriminating telltale signs on the weapon, I believe that the Prosecution has not taken its case to the logical conclusion.

705. It is evident that one of the IOs in the present proceedings at the pre-S.I.T. stage being PW-332 Shri S.S.Chudasama whose testimony is on the record at Exh.1226, has in the course of his deposition more particularly in paragraph No.38, clearly testified with regard to the muddamal article No.6 recovered at the instance of accused No.36 which muddamal article is identified by the witness PW-332 in the course of his testimony. I may point out that the reasons why I am drawing adverse inference against the Prosecution with regard to the alleged recovery of the muddamal article No.6 is on account of the fact that in the first place, none of the eye-witnesses including PW-4 who claims to have seen the sword in the hands of accused No.36, have been shown the muddamal article in the Court, meaning thereby no effort has been made by the Prosecution to get this muddamal weapon inasmuch as it relates to accused No.36, identified by any of the relevant eye-witnesses. Again despite such detailed deposition being tendered by the PW-332, there is no material to show that PW-332 who was instrumental in the recovery of muddamal article No.6 sword, has made any attempt to forward the same to the FSL for analysis or tests. Again, a further instance which

damages the Prosecution version in my opinion, is the fact that despite the Panch No.2 of the Panchnama Exh.1259 being PW-84 at Exh.496 Shri Jayantilal Vyas being hostile to Himanshu the Prosecution case, no effort was made to examine the other Panch despite such state of affairs. In my opinion, therefore, no weightage can be given to the recovery Panchnama and therefore, by necessary implication to the recovery of the muddamal sword in light of such state of affairs. I am conscious that mere non-support by Panch would not render a recovery Panchnama meaningless, but however, in the foregoing circumstances discussed, I am of the opinion that the Panch not supporting the Prosecution case, raises serious doubts about the recovery Panchnama itself coupled with the fact of no effort made to establish that the alleged residence from which such muddamal article No.6 was recovered, was in fact linked to accused No.36. In all such circumstances, I am required to hold that there are doubts and the Prosecution could not be said to have proved its case beyond reasonable doubt with regard to the recovery of the muddamal article sword.

706. Again with regard to the testimonies of PW-177 Sairaben Sandhi, PW-192 Mohammadali Saiyed and PW-314 Fakirmohammad Saiyed, all of whom have given lengthy and extensive deposition with regard to all incidents that they claim to have

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witnessed as eye-witnesses at Gulbarg Society, and in spite of the fact that all such witnesses have named accused No.36 as being part of the mob and armed in the fashion claimed by the Prosecution, none of these witnesses has been able to positively identify accused No.36 in the Court. In fact, I am required to note that each of the above referred witnesses barring PW-4, has misidentified i.e. wrongly identified accused No.36 when called upon do so. Furthermore, despite the fact to that accused No.36 was arrested on 15/07/2002, no efforts were made to carry out T.I.Parade to positively establish the identity of the accused. Again, while the name of Chirag Dilipbhai Shah i.e. accused No.36, at the cost of repetition, has emerged from the testimonies of all the witnesses referred to herein before, no overt act has been attributed to accused No.36.

707. Further emerging as a contradiction is the testimony of PW-177 wherein more particularly in paragraph No.19 of her testimony, the PW-177 has clearly attributed accused No.36 to be armed with a gupti and it appears that on page No.10 of her testimony, the PW-177 has clearly stated that the mob was armed with sticks, swords, guptis etc. In my opinion, therefore, this witness was clearly aware of the difference between a sword and a gupti. Therefore, this also is a contradiction which I am required to consider. I am, therefore,

constrained to state that when there is serious proof with regard to the identity, where there is no effort to get the muddamal weapon allegedly brandished by the accused at the time of the incident by the concerned eye-witnesses, where the forensic evidence does not show any material like blood on the weapon, more so when the weapon was never forwarded to the FSL at all, I am of the opinion that again there are serious doubts which require a decision in the manner that benefit of doubt must go to the accused more so in light of the case that the only damaging piece of evidence is the presence of such accused being established through the testimony of a solitary witness who also does not claim to have witnessed any overt act on the part of such accused. At the cost of repetition, I am required to state that PW-4 at Exh.269, is an A.S.I. and was Head Constable at the relevant point of time and in the course of his cross examination, it emerges that the names mentioned by the witness of which accused No.36 was one of them, the witness is able to identify them only because he was aware that some of the accused had criminal antecedents. Again with regard to accused No.36, he does not appear to have any criminal antecedents to the knowledge of the witness PW-4. In my opinion, therefore, there is no valid reason why PW-4 was in a position to positively name and identify accused No.36 in the Court after nine long years of the incident, more

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so when no overt act on the part of such accused was witnessed by PW-4 or any of the witnesses for that matter. In my opinion, therefore, and more so when there is recovery under Sec.27 of the Evidence Act at the behest of the accused, the said recovery does not inspire any confidence and in such circumstances, I am required to give benefit of doubt to accused No.36 also, which I hereby do so.

Accused No.56

708. Now I propose to take up the relative merits of the Prosecution case with regard to accused No.56 Pradip Khanabhai Parmar, who again is arrested belatedly on 29/12/2008 and was in fact anticipatory bail and therefore, granted immediately in compliance of such relief granted by the Court, the said accused was enlarged on bail. There is only a solitary witness who has deposed with regard to accused No.56 and the identification of accused No.56 is also by a solitary witness though a second witness has not identified accused No.56 by name but has pointed him out as being one of the members of the mob which perpetrated the offence.

709. Shri Kodekar, the learned Spl.P.P. in the course of his submissions while dealing with the relative merits of the case of accused No.56, has submitted that PW-191 at Exh.734 being one

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Salim Noormohammad Sandhi in the course of his testimony, has very specifically testified in paragraph No.10 of his testimony that accused No.56 was one of the persons of the mob which indulged in burning the autorickshaws within Gulbarg Society and also being a part of the mob that caused injuries to a large number of persons. The witness, according to Shri Kodekar, has specified that accused No.56 was present from amongst the mob of 4000 to 5000 persons which entered into Gulbarg Society by causing an explosion on the front wall of Gulbarg Society at about 01:30 p.m. and accused No.56 in terms of the testimony of the present witness, is attributed to have been armed with a pipe at that point of time. The said witness according to Shri Kodekar in terms of paragraph No.18 of his testimony, has positively identified accused No.56 in the Court also. It is also pointed Shri Kodekar that over and above this out by aspect, the PW-301 Rashidabanu Dilawer Shaikh whose testimony is on the record of proceedings at Exh.1046, has in paragraph No.17 of her examination-in-chief, in the process of identifying the accused, has identified accused No.56 as being one of the persons who was a part of the mob and who according to the said witness PW-301, was seen in the mob on the fateful day. It is submitted that these aspects are clearly establishing the presence of and perpetration of the offence by accused No.56 and therefore, accused No.56 is required to be

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established as a part of the mob which in fact entered into the Gulbarg Society at about 01:30 p.m., and there is no reason to disbelieve PWs 191 and 301 who have positively identified accused No.56 in the Court and therefore, the charges against accused No.56, according to Shri Kodekar, are established and therefore, accused No.56 is required to be suitably penalized.

710. It is required to be noted that initially a very limited defence was raised with regard to the merits of the Prosecution case against accused No.56 and generally speaking, the veracity of the testimony of PW-191 Salim Sandhi generally challenged and contradictions was emerging from his testimony in comparison to the testimonies of other so-called eye-witnesses, were extensively dealt with by the defence, but however, Shri S.M.Vora, the learned advocate appearing on behalf of the victims, in terms of his limited submissions before this Court, had raised the issue of non-arresting of accused No.56 as a deliberate act on the part of accused No.57 Shri K.G.Erda who was the P.I. and very much present at the site of the incident and who was assigned with the specific duty to protect the members of the minority community in that vicinity, and the accused No.57 having failed in such duty and one of the instances to establish failure of duty on the part of accused No.57 Shri K.G.Erda is, according to Shri S.M.Vora,

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the non-arrest of accused No.56. In rejoinder, Shri T.R.Bajpai, the learned advocate appearing on behalf of the accused concerned, has submitted that accused No.56 was in charge of the investigation for a very brief initial period of about 10 days or so and thereafter, number of IOs were assigned the investigation into the present incident and such IOs have arrested large number of persons, of whom accused No.56 was not one of them. It is submitted that there was nothing which prevented the arrest of accused No.56 and it is submitted that the allegation made by the learned advocate for the victims that accused No.56 was connected to the B.J.P. political party, is devoid of any material and there is absolutely no evidence on the record the proceedings to show the connections of of accused No.56 with the B.J.P. It is submitted that there is no material, no discovery and there is no recovery of any weapon, much less the pipe attributed to be in the hands of accused No.56 at the relevant time and therefore, it is urged on behalf of the accused No.56 that the evidence on record is flimsy, no overt act is attributed to accused No.56 and therefore, there are serious doubts with regard to the testimony of PW-191 as also PW-301 and therefore also, the benefit of doubt must be given to accused No.56 also.

711. Having considered the rival submissions, I am firstly required to consider the

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fact that there is no room for any doubt that PWcourse of 191 in the his testimony more particularly paragraph No.10 thereof, has positively named accused No.56 as being present amongst the mob of 4000 to 5000 persons who broke open the main gate of Gulbarg Society and entered therein at about 01:30 p.m. and there is also no room for any doubt that the witness PW-191 not only stated to the effect that accused No.56 was has armed with pipe, but the witness has а also positively identified accused No.56 in the Court. addition thereto, PW-301 In Rashidabanu Dilawer Shaikh while specifically naming accused No.56, has, when asked if she could identify any of the persons from amongst the mob, pointed a finger at accused No.56 identifying him to be a person from amongst the mob, but she has not named accused No.56 or attributed him to have been armed with any weapon. In the circumstances, what is relevant is the fact that there is no material other than the testimony of PW-191 to show that accused No.56 was a part of the mob. Again, in terms of the testimony PW-191, at the cost of repetition, of it is required to be noted that specific emphasis has been placed by PW-191 that accused No.56 at that point of time when he is attributed to have been part of the mob, was armed with a pipe. However, beyond such mention, PW-191 has attributed no overt act on the part of accused No.56. Even PW-301 who has pointed a finger at accused No.56, has firstly

omitted the fact of accused No.56 being armed with a pipe and she too has attributed no overt act or no specific act on the part of accused No.56 herein. In the circumstances, I am also required to closely mention to whether as there is corroborative material which would cement and establish the presence of accused No.56 as being a part of the mob and in any manner having not only perpetrated the offence, but in my offence, his mere presence would be enough to implicate him. However, I am constrained to note that it is an admitted position emerging from the cross examination of PW-191 on page No.50, paragraph No.65 that the name of accused No.56 was not provided by PW-191 in his application to the Commissioner of Police and accompanying affidavit though the names of number of other persons were supplied in such documents. It is only at а subsequent stage when his statement was recorded and that too possibly before the S.I.T. because there is no specific mention as to when PW-191 first supplied the name of accused No.56 as being a part of the mob, the fact that accused No.56 came to be arrested only as late as on 29/12/2008 is indicative that the arrest was made by the S.I.T. in terms of a statement recorded by the witness PW-191 providing the name of accused No.56 therein and also providing details with regard to establishing his presence as being a part of the mob in the incident. Further, I am also required to note that

there is no recovery or discovery of any material by or at the behest of accused No.56. Again, despite such a large number of eye-witnesses being examined herein and despite PW-191 and PW-301 having in a manner identified accused No.56 as being present amongst the mob, no specific overt act is attributed to accused No.56. In my opinion, therefore, the delayed arrest, grant of anticipatory bail and lack of corroborative material, all create doubts with regard to the Prosecution case and in a case where no less than been examined 338 witnesses have on record, solitary identification by solitary а witness cannot make me come to a conclusion that the Prosecution has proved beyond reasonable doubt the against accused No.56. In my opinion, case therefore, the evidence on the record is not sufficient to make me come to a conclusion that the charges stand proved beyond reasonable doubt against accused No.56. In fact in light of the foregoing discussion, I am of the clear opinion that grave doubts exist with regard to the presence and involvement of the accused No.56 in the offence more so when the star witness PW-106 who has identified a large number of the accused herein and attributed specific roles to each of the accused in specific instance that took place during the entire episode which began from 09:30 a.m. and ended at 06:30 p.m. when such witness PW-106 has not even whispered with regard to the presence of accused No.56 and in absence of any material attributing any specific overt act on the part of the accused No.56, I am of the opinion that grave doubts exist with regard to the Prosecution case against accused No.56 and therefore, benefit of doubts in my opinion, must go in favour of the accused No.56 also.

Accused No.60

712. I now propose to take up the relative merits of the Prosecution case against accused No.60 Bipin Ambalal Patel. It is submitted by Shri Kodekar, the learned Spl.P.P. in the lengthy and detailed submissions made and referred to herein before that accused No.60 is positively attributed to be armed with a sword, is positively attributed to have committed an overt act of inflicting a sword injury on PW-283 Aslamkhan Anwarkhan Pathan whose testimony is on the record of the proceedings at Exh.981. It is submitted that the accused No.60 has been positively identified by PW-283 in the course of his testimony and in the circumstances, not onlv is the presence of accused No.60 established at the scene of the incident on the fateful day and it is required to be held that not only his presence is established but the fact of his being armed with a dangerous and lethal weapon like a sword is further established and also the fact more importantly of accused No.60 having used

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the weapon being sword to inflict injuries on PW-283 are aspects all established in the course of the testimony of PW-283 who is not only an eyewitness but is also a victim inasmuch as, not only has the PW-283 sustained injuries but he has also lost five of his family members including his own father Anwarkhan who was butchered before his own eyes and therefore, since accused No.60 has been positively identified by PW-283 as the person who inflicted the sword injuries, there is no room for any doubt that the Prosecution has established beyond reasonable doubt the involvement and guilt of the accused No.60 in the offences that he stands charged with.

713. My attention is particularly drawn to paragraph No.13 of the testimony which has been reproduced herein before in the course of the submissions of Shri Kodekar, but I am reproducing the gist of such testimony which is а short where the accused No.60 has paragraph been identified by name and as being the person who had inflicted the sword blow on PW-283 as being Bipin Ambalal Patel, and therefore, this is a vital aspect proved reasonable doubt by the Prosecution, according to Shri Kodekar.

"......મેં તલવાર વાગતાં મને ઈજા થયેલી તે તલવાર મારનારને ચહેરાથી ઓળખી શકું. હું કોર્ટમાં હાજર પૈકી ચહેરાથી જેની તલવારથી મને ઈજા થયેલ તેને નામથી ઓળખી બતાવું છું તેનું નામ પુછતાં બીપીન અંબાલાલ પટેલ હોવાનું જણાવે છે. બીજા અજાણ્યા માણસને ઓળકી શકતો નથી."

714. On the other hand, Shri A.M.Bhardwaj, the learned advocate appearing on behalf of the defence, submits that the Prosecution is not as cut and dried as is sought to be made out by Shri Kodekar. The detailed defence arguments have also been reproduced herein before, but I am required to reconsider and reappraise the defence arguments in light of these specific submissions of Shri Kodekar and the fact that the case of the present accused appears to be more specific and on a more serious footing than the case of the previous accused which I have dealt herein before, inasmuch as, not only has the accused No.60 been attributed to be present and being a part of the mob that perpetrated the incident, but he is specifically attributed to be armed with a sword and is further specifically attributed to have inflicted injuries on a specific having survived the attack, person who has positively identified accused No.60 as being the perpetrator of the attack. In the circumstances, the submissions of Shri Bhardwaj are required to be dealt with carefully and I propose to do so.

715. My attention is drawn to the testimony Sandhi of PW-177 Sairaben at Exh.711, more particularly paragraph No.15 on page No.13 wherein is inter alia deposed with regard to the it incident where the late Anwarkhan lost his life and where PW-283 Aslamkhan sustained injuries. The

incident is claimed to have been witnessed by PW-177 as an eye-witness. It would, therefore, be relevant to inter alia reproduce in English what has been testified to by the witness in paragraph No.15 where she has stated that accused No.1 Kailash Dhobi inflicted a sword blow on the late Anwarkhan Pathan and upon PW-283 Aslamkhan attempting to save his father, he too was inflicted a blow by Kailash Dhobi i.e. accused No.1. It is further pointed out by Shri Bhardwaj that confirming this version is the testimony of PW-142 Ashram Sikander Sandhi at Exh.645. My attention is drawn to paragraph No.9 of the examination-in-chief where it has been stated inter alia to the effect [the entire version is reproduced verbatim in the course of submissions of Shri Bhardwaj] that when PW-283 Aslamkhan tried to save his father Anwarkhan who was attacked and given sword blow by accused No.1 Kailash Dhobi, accused No.1 Kailash Dhobi gave a sword blow on the right hand of PW-283 Aslamkhan. This, according to Shri Bhardwaj, is also an eyewitness account which, therefore, has two versions attribute accused No.1 Kailash which Dhobi inflicting sword injuries on PW-283. On the other hand, according to Shri Bhardwaj, the initial version of PW-283 himself is interesting inasmuch as, the witness has very categorically stated in paragraph No.7 of his examination-in-chief on page No.5 and ending on page No.6 that accused No.1 Kailash Dhobi inflicted a fatal blow on Anwarkhan

i.e. the father of PW-283 and when PW-283 attempted to rescue his father in the company of Akhtarkhan, one "unknown person" inflicted injuries on the left of PW-283 with hand а sword. Interestingly Shri Bhardwaj, that according to immediately thereafter in paragraph No.13 of his testimony beginning on page No.9 and ending on page No.10, specific attention is drawn to page No.10 of the testimony where PW-283 has stated that he can positively identify the person who inflicted the sword injury upon his fingers and the person is identified not only by face but the words of the deposition are inter alia to the effect that the identification is also specifically by name and that identification happens to be that of accused No.60 Bipin Ambalal Patel. It is pointed out that these contradictions are so grave and serious that no reliance can be placed on such testimony to establish beyond reasonable doubt the guilt of accused in such a grave and serious offence. My attention is further drawn to the testimony of PW-283 wherein, in the cross examination on page No.28, paragraph No.46, the PW-283 has conceded that he sustained sword injuries, he saw two unknown unidentifiable persons and the witness has further inter alia admitted and accepted to be true that there are number of "Bhaiyajees" meaning persons from Uttar Pradesh who have settled in their vicinity and that those two unknown persons were, according to the witness, looking like

"Bhaiyajees" meaning persons from Uttar Pradesh. It is submitted that in the circumstances, the eyewitness having very conveniently identified accused No.60 by face and by name in the Court, is an absolute after-though made with an intention to rope in as many of the accused as was possible and it is urged that in light of such glaring contradictions, the benefit of doubt is required to be given to the accused since there are grave doubts with regard to the accuracy and veracity of the testimony of PW-283 when two other eveprovide absolute different witnesses an and contrary version. It is pointed out that there is no discovery or recovery of any weapon by or at the behest of accused No.60, there is no material whatsoever other than such uninspiring testimony of PW-283 to even remotely link accused No.60 to the present offence, and therefore, accused No.60 is required to be given a clean acquittal. It is pointed out that the arrest of accused No.60 was made solely on the basis of statement of PW-283.

716. Having considered such detailed submissions, I am firstly required to note that accused No.60 was arrested on 25/02/2009. It emerges that the name of accused No.60 is not provided by any of the star witnesses but was conveniently provided by PW-283 who in the initial portion of his examination-in-chief, claimed ignorance with regard to the identity of his

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attacker which aspect is clearly highlighted and elaborated herein above while considering the submissions of Shri Bhardwaj, and I need not repeat the same verbatim. However, as has been rightly pointed out by Shri Bhardwaj that in the further examination-in-chief on page No.10, paragraph No.13, the witness PW-283 gives an accurate and positive identity of his attacker inasmuch as, accused No.60 is identified by name and by face by witness as the person who perpetrated the the offence inasmuch as, the word injury is claimed to have been inflicted by accused No.60. As against this, a large number of other eye-witnesses have given detailed deposition with regard to noticeable persons from amongst the mob and attributed them to have been armed with specific weapons in the course of the incident. However, I may state that other than PW-283, not a single witness has named accused No.60 as being present or being a part of the mob on the fateful day, let along being armed with a sword, let alone inflicting injury upon any person. Again, I am required to consider the testimonies of PWs 177 and 142 respectively being Sairaben Sandhi and Ashram Sandhi, which also have been referred to herein before and both of them specifically point the finger at accused No.1 Kailash Dhobi to have inflicted the sword injury upon PW-283. Again, I am constrained to note that in his cross examination page No.28, paragraph No.46 of his on cross examination, which is exactly reproduced below in

vernacular language for the sake of convenience, PW-283 Aslamkhan has again resiled from his earlier positive stands and has attributed the injury being caused by one amongst two unknown unidentifiable persons but who according to the witness PW-283, appear to look like persons from Uttar Pradesh (Bhaiyajees), and that it is further conceded that in the course of his statements recorded by the Police, the present witness has made no efforts to seek the names of any such persons who inflicted the injury.

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"મને હાથે તલવારથી ઈજા થઈ ત્યારે મેં બે અજાણ્યા માણસોને જોયેલા. અમારા મેઘાણીનગર વિસ્તારમાં ભૈયાજીઓની વસ્તી છે. એ વાત ખરી છે કે, મને જે બે અજાણ્યા માણસો દેખાયા તે મને ભૈયાજી જેવા લાગેલા. મેં તે દિવસ થી જ્યારે જ્યારે પોલીસે મારા જવાબો લીધા તે દરમિયાન આ અજાણ્યા માણસોના નામ જાણવા કોઈ પ્રયત્ન કરેલ **નહિ**."

717. It is, therefore, strange that at a subsequent stage, PW-283 could specifically point a finger at accused No.60 to be the perpetrator of the sword attack upon his person. Again at the cost of repetition, as is true in most of the cases herein, there is no recovery or discovery of the sword allegedly used by accused No.60 in the incident. There is no investigation worth the name to establish that accused No.60 is or was а resident of nearby locality or was justifiably required to be held to be present at Gulbarg Society on the fateful day. The accused No.60 cannot, in my opinion, therefore, be implicated or

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held guilty beyond reasonable doubt on the basis of such glaring contradictions emerging from the testimony of three eye-witnesses, more so when the other eye-witnesses who claim to know a large number of the perpetrators, having not even whispered the name of accused No.60 as being a part of the mob, let apart having perpetrated the offence as charged with. In my opinion, therefore, the material on the record does not inspire confidence enough to make me come to the conclusion the Prosecution has established that beyond reasonable doubt the presence of accused No.60 at Gulbarg Society, or the fact of accused No.60 being armed with a sword with which he inflicted injury PW-283 Aslamkhan when the said Aslamkhan on attempted to save his father and in such circumstances, I give benefit of doubt to accused No.60 also and acquit him of all charges levelled against him.

Accused Nos.44, 51 and 64

718. I now propose to take up the role of accused No.44 Nagin Hasmukhbhai Patni, accused No.51 Mahesh Ramjibhai Nath and accused No.64 Shivcharan @ Jitendra @ Lallu Ramjibhai Nath, all of whom were arrested post taking over of the investigation by the S.I.T. Accused No.44 was arrested on 17/09/2008 whereas accused No.51 was arrested on 12/11/2008. The accused No.64 was arrested on 11/08/2009. It clearly emerges on a perusal and appreciation of the material that these have been arrested on the accused basis of statement of sole witness in the а form of Imtiyazkhan Sayeedkhan Pathan (PW-106 at Exh.542), and scrutinizing the role played by each of the said accused in the present incident, I am required to look at the submissions advanced on behalf of the State by the learned Spl.P.P. Shri R.C.Kodekar, which have been narrated in detail herein before not be repeated in toto herein. I and need am required to state that the Prosecution case against accused No.44 Nagin Patni is *inter alia* to the effect and emerging from paragraph No.10 on page No.27 of the deposition of PW-106 that when he was informed by the residents of the rear portion of Gulbarg Society that a mob was indulging in stone throwing and throwing burning rags at the Gulbarg Society, he reached the rear portion of the Society and climbed on the terrace of one of the buildings thereat where he saw a mob of at least 10000 to 15000 persons indulging in such activities in which amongst the number of accused name, the name of accused No.44 Nagin Patni clearly is mentioned. Other than the mere presence of such accused, a general statement is made in the concluding three lines of paragraph No.10 on page No.27 inter alia to the effect that all such persons were throwing stones, burning rags and burning tyres towards Gulbarg Society. The witness PW-106 who in any case

has been referred to time and again by Shri Kodekar as his star witness, has testified his identifying such of the accused in paragraph No.10 of his testimony on the basis that most of the accused residents of chawls located in were the neighbourhood of Gulbarg Society. Other than noting the presence of accused No.44 as a member of such mob, no other role is attributed to accused No.44 during the entire testimony of PW-106. Again, it emerges that the presence of accused No.44 was seen outside Gulbarg Society and not within at any stage by PW-106 who incidentally happens to be the sole witness who has seen accused No.44 at any stage of doubt, it the incident. No emerges from the submissions of Shri Kodekar PW-106 that has positively identified the accused in the Court an it is urged that in the circumstances, this evidence is sufficient to establish the presence of the accused No.44 at Gulbarg Society and indulging specific overt act wherein the in role, а involvement and guilt of the accused No.44 is established beyond reasonable doubt and the charges, therefore, could be said to be proved beyond reasonable doubt against accused No.44.

719. Similarly, with regard to the role of accused No.51 Mahesh Ramjibhai Nath and accused No.64 Shivcharan @ Jitendra @ Lallu Ramjibhai Nath, Shri Kodekar has submitted inter *alia* to the effect that PW-106 again is the sole witness who has

identified accused Nos.51 and 64 as being the perpetrators of the offence on the fateful day and PW-106 is the sole witness who has attributed any overt act on the part of accused Nos.51 and 52 My attention is drawn to the part of the also. testimony of PW-106 more particularly contained in paragraph No.10 beginning on page No.9 and ending on page No.11, but particular reference to accused no.51 is made on page No.11 wherein it has been specifically mentioned that some miscreants were firing upon the residents of Gulbarg Society from the terrace of a shop outside Gulbarg Society and it is PW-106 and his cousin (son of paternal aunt) Sharif who claims to have seen "Mahesh Daruwalo" and his brother Lallu who were indulging in firing upon the residents of Gulbarg Society on account of which PW-106 moved away from that area. It is submitted that accused Nos.51 and 64 are also positively identified in the Court by PW-106 and in such circumstances, the testimony of PW-106 is required to be accepted to be correct even with regard to the relative merits of the Prosecution case against accused Nos.51 and 64 also and since according to Shri Kodekar, all the said three accused Nos.44, 51 and 64 are attributed to have committed positive overt acts which were an eyewitness account of PW-106, their presence at Gulbarg Society on the fateful day during the incident is established beyond reasonable doubt and is further strengthened by the positive

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identification of the said three accused in the Court and therefore, they are required to be held guilty of the charges that they face since the Prosecution could be said to have established beyond reasonable doubt the presence and thereby the involvement, role and guilt of the accused Nos.44, 51 and 64 in the presence offence. It is submitted that in the circumstances, the accused be suitably penalized.

720. On the other hand, if the defence in this regard are required to be submissions analyzed in brief at this stage, it is required to be noted that it is the case of the defence that the said three accused have been arrested as late as nearly six years or more after the incident and that too on a belated statement of PW-106 before the S.I.T. It is submitted that mere identification of accused Nos.44, 51 and 64 is no basis to establish beyond reasonable doubt the guilt of the accused since PW-106 is in his statement before the IO of the S.I.T. Shri J.M.Suthar i.e. PW-335 (Exh.1289) clearly established to have stated that the identification and linking of accused No.51 and 64 to the firing is a presumption on the part of PW-106 since the firing was coming from the area where he saw accused No.51 and his brother Lallu i.e. accused No.64 herein. It is pointed out in the course of the submissions of the defence that accused No.44 also is similarly roped in by

signifying his mere presence at a belated stage in a statement of PW-106 recorded on 22/05/2008 and 14/09/2008 and the material emerging against such accused i.e.accused No.44 is non-existent. It emerges from the gist of the defence arguments with regard to accused Nos.44, 51 and 64 that it is contended in the defence that there is no positive I.D. parade held post arrest of the said three accused and no plausible explanation is offerred with regard to such lapse on the part of the investigating agency. It is further pointed out in the course of the defence submissions that no incriminating muddamal has been recovered or discovered by or at the behest of any of the three accused in the course of the entire investigation herein. It is also submitted that it would be unsafe to hold such accused in the circumstances on the sole testimony of an interested witness who has the course of his testimony identified the in accused only because knew them he being as residents of nearby chawls and it is urged that such accused have been roped in out of a sense of vengeance and also on account of the fact that they did not succumb to the demands of extortion and therefore, it is urged that all the said three accused be given benefit of doubt and acquitted herein.

721. I have considered the rival submissions and I have perused the material placed

for my consideration and it is an uncontroverted fact that accused Nos.44, 51 and 64 have been arrested solely on the basis of the statement furnished by PW-106 Imtiyazkhan before the S.I.T. doubt, the presence of accused No.44 No is specifically emerging from the testimony of PW-106 more particularly in paragraph No.10 beginning on page No.9, and specific mention is made in paragraph No.10 itself which is continued on page No.11, wherein accused No.44 is shown to be amongst the mob at the Railway line behind Gulbarg Society and which mob was attributed to be throwing stones, burning rags and burning tyres at Gulbarg Society. However, the witness PW-106 has not attributed any specific overt act on the part of accused No.44 other than the mention that he was a part of the mob. I am required to appreciate and accept the defence that not only there is no T.I. Parade carried out in the course of the investigation, but also the fact that other than the oral testimony of PW-106, there is material whatsoever no to interlink and establish the presence of accused No.44 at the scene of the incident on the fateful day. It is the case of the Prosecution as emerging from the testimony of number of eye-witnesses including PW-106 that both the rear portion of the wall of Gulbarg Society and the front portion of Gulbarg Society were blown open by exploding LPG cylinders and thereafter, the mob entered into Gulbarg Society from both these breaches and

thereafter committed and perpetrated the horrible of carnage, violence, murder, rape acts and destruction of the properties of residents of Gulbarg Society. However, despite such testimonies specifically point fingers at specific accused of having come into Gulbarg Society and thereafter committing acts of perpetration of such offences referred to above, there is not a single whisper emerging from the testimony of any witness including PW-106 that any person saw accused No.44 within the premises of Gulbarg Society. Again, there is no recovery, no discovery and no mention of accused No.44 in any statement or any affidavit either in the Court filed or before the Commissioner of Police or before any authority prior to the year 2007 where the name of accused No.44 was specifically pointed out or provided. In my opinion, therefore, in light of the fact that no other witness has identified accused No.44 or linked him with any incident comprising of the entire offence on the fateful day, since there is no material which establishes any overt act on the part of accused No.44, since there is absolutely no basis other than the sole testimony of PW-106 emerging against accused No.44, since there is no discovery or recovery of any incriminating material by or at the behest of accused No.44, I am of the opinion that grave doubts exist with regard to the Prosecution case against accused No.44 also and therefore, benefit of doubt must go in favour of

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accused No.44.

722. No doubt, accused No.51 is attributed of testimony of in terms the PW-106 more particularly on page No.12 in paragraph No.11 of the testimony to have indulged in firing upon Gulbarg Society together with his brother Lallu (accused No.64 herein) and a bare reading of the said portion of the testimony leaves no room for any doubt that both accused No.51 and his brother Lallu i.e. accused No.64 were indulging in firing. Now other than this aspect emerging from the testimony of PW-106, no other witness examined on the record of the present proceedings has attributed private firing by accused No.51 or his brother Lallu i.e. accused No.64 in the entire gamut of 338 witnesses examined herein. No other witness has positively identified accused Nos.51 and 64 as having indulged in firing upon Gulbarg Society. In fact a closer scrutiny of paragraph No.11 on page No.12 of the testimony of PW-106, clearly establishes that he along with his paternal cousin Sharif, had seen accused No.51 and his brother Lallu i.e. accused No.64 doing the firing. Now the word "firing" is required, in my opinion, to be presumed as "a use of a firearm". It is however, required to be noted that the said Sharif who is sought to be treated as an eye-witness to establish firing and use of firearms by accused Nos.51 and 64, has not been examined as a witness

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herein. I am, therefore, of the clear opinion that there is no corroboration to the testimony of PW-106 with regard to the presence and overt act on the part of accused Nos.51 and 64. Again, there is absolutely no material in the shape of oral evidence or documentary evidence which would even remotely establish any inmate, victim, resident or person who had taken shelter in Gulbarg Society, having sustained bullet injuries in private firing. Again, there is no recovery of any bullet casing or any such private firing by any member of the mob. The only casings and material that have been recovered, at the cost of repetition, are empty cartridge shells and bullet casings, ballistically established to have been fired from the licensed weapon further established to be of the ownership of late Shri Ehsan Jafri. Other than such aspect, no evidence is available to this Court for due consideration. Further damaging the Prosecution version and the testimony of PW-106 with regard to the relative merits of and the accuracy of his overall deposition to establish the quilt of Nos.51 and 64, is accused an admission/contradiction emerging from the testimony of the IO Shri J.M.Suthar i.e. PW-335 at Exh.1289, which damages and shatters in my opinion, the Prosecution case and the accuracy of the testimony of PW-106 inasmuch as, it relates to accused Nos.51 required to point and 64. Ι am out the contradiction emerging from paragraph No.124 of the

deposition of PW-335, more particularly the portion emerging in the concluding part of paragraph No.124 on page No.79 of the deposition where the witness has clearly admitted inter alia to the effect that PW-106 had in his statement before the IO recorded on 14/09/2008, clearly conceded to the fact that he had merely seen accused No.51 and his brother Lallu i.e. accused No.64 as being a part of the mob from the terrace and since the firing was also taking place from that general direction, the witness believed that both accused No.51 and his brother Lallu i.e. accused No.64 were indulging in the is specifically conceded by firing and it the witness PW-106 that he really did not see any weapon in the hand of either accused No.51 or his brother Lallu. In such circumstances, therefore, I cannot, in absence of any cogent corroborative material, find the accused Nos.51 and 64 guilty of such grave charges and hold that the Prosecution has established beyond reasonable doubt the charges against accused Nos.51 and 64 especially when the evidence against accused Nos.51 and 64 also is so flimsy and rests solely on the shaky testimony of PW-106 alone. Again, there is no recovery of any firearm by or at the behest of accused Nos.51 and 64. There is no forensic material or evidence to show that there was such private firing as is claimed which took place upon Gulbarg Society. The circumstance that no inmate or victim or resident of Gulbarg Society has sustained any bullet injury,

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clearly establishes that the entire version against accused Nos.51 and 64 is bogus and got-up and is accepted to be raised on a presumption in terms of the statement dated 14/09/2008 admittedly narrated by PW-106 to PW-335 who was the IO appointed post-S.I.T. and in the circumstances, there are grave doubts, the benefit of which must go to the accused Nos.51 and 64, more so when not a single witness other than PW-106 has even remotely mentioned the of accused Nos.51 and 64 as being the names perpetrators herein. There was, even in terms of the testimony of PW-106, another eye-witness who has conveniently not been examined as a witness and in such circumstances also, adverse inference is required to be drawn against the Prosecution which I have done so.

723. Again, I am constrained to note that despite such lengthy and strong defence raised, Shri Kodekar has chosen not to deal with the relative merits of the Prosecution case as against accused Nos.44, 51 and 64 and therefore also, it is required to be inferred that the Prosecution is not able to explain the flaws in the Prosecution version as against these three accused. I am also constrained to note and I am pained to note that it is extremely unfortunate that accused No.64 has been denied bail all throughout and he has remained in custody for seven long years. However, at the cost of repetition, it is required to be noted that

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the material against the accused is extremely flimsy and the accused cannot be convicted on the strength of such an improbable and incorrect statement of a solitary witness. The Prosecution case is extremely hollow and no other witness has testified about private firing, other than PW-106 and therefore, the Prosecution case *qua* accused Nos.51 and 64 is required to be discarded.

724. In such circumstances, on facts alone, the State has failed in establishing beyond reasonable doubt the charges against both accused No.44 as well as accused No.51 and the logical conclusion would be to confer the benefit of doubt upon both accused No.44 and accused No.51, which I hereby do so and therefore, both accused No.44 and accused No.51 are given the benefit of doubt, which benefit is extended to accused No.64 also, and such three accused are acquitted of all charges herein.

Accused No.49

725. I now propose to take up the relative merits of the Prosecution case against accused No.49 Mahesh @ Pappu Pratapji Thakor, who again has been arrested on 04/11/2008 solely on the basis of a belated statement of a solitary witness being one Firozmohammad Gulzarmohammad Pathan who is examined as PW-129 on the record of the present proceedings at Exh.635.

726. It is pointed out by Shri Kodekar in submissions advanced on behalf of the the Prosecution, a gist of which is being reproduced herein for the sake of convenience and his detailed submissions in this regard have already been reproduced herein before, wherein according to Shri the Prosecution Kodekar, has successfully established beyond reasonable doubt the case against accused No.49 Mahesh Pratapji Thakor who is more popularly known and referred to in the course of the testimony of PW-129 as "Pappu" with regard to which there is no controversy. My attention is drawn to paragraph No.11 on page No.12 of the testimony of PW-129, wherein it is inter alia deposed by the said witness that he heard a loud explosion and on account of which, he and other members of his family rushed outside and when they saw them, one LPG cylinder was exploded to destroy the compound wall of Gulbarg Society and after demolishing the compound wall in such fashion, the witness attributes to have seen four to five persons entering Gulbarg Society, amongst whom he saw accused No.49 as one of them. It is submitted that the witness has positively identified accused No.49 in the Court and according to Shri Kodekar, there is no reason for PW-129 to falsely implicate any person, much less the accused No.49 and it is urged that it is on the basis of the testimony of PW-129 alone that the Prosecution can be said to

have successfully established and that too beyond reasonable doubt the presence and involvement of accused No.49 in the incident and it is urged that the fact of accused No.49 being established as a member of the mob which after entering Gulbarg Society, perpetrated the carnage, is itself enough to establish beyond reasonable doubt the guilt of accused No.49 in the offences that he stands charged with and therefore, accused No.49 is required to be held guilty and suitably penalized herein.

727. The defence submission with regard to accused No.49 is inter alia to the effect that accused No.49 has been belatedly arrested in an attempt to falsely rope in and arrest more accused post taking over of the investigation by the S.I.T. and accused No.49 has been arrested as late as on 04/11/2008 and that too on the basis of a sole statement of PW-129. It is submitted that even if the deposition of PW-129 more particularly in paragraph No.11 on page No.12 of his testimony, is accepted to be correct, then also, no overt act is attributed to accused No.49, and therefore, it has been urged that PW-129 is not a reliable or truthful witness inasmuch the as, presence, involvement and quilt of the accused No.49 is concerned.

728. Having considered the rival

submissions and having perused the material placed for my consideration, it is an uncontroverted fact that accused No.49 has been arrested solely on the basis of the statement furnished by PW-129 before the S.I.T., and accused No.49 is also no doubt, identified by the said witness PW-129 in terms of his testimony referred to herein above. However, a material and significant fact which also emerges, is that neither any overt act has been attributed to have been committed by the accused No.49 by the sole witness being PW-129 nor any T.I. Parade has been carried out so as to positively identify the regard to his No.49 with accused alleged participation in the present offence. Furthermore, other than the testimony of PW-129, there is no other witness even remotely corroborating the version adduced by PW-129 linking the accused No.49 with the offence. There is even no recovery or discovery of any incriminating material by or at the behest of accused No.49, and therefore, in my opinion, mere identification by a solitary witness in the form of PW-129 is not enough to hold accused No.49 guilty of offences that he stands charged with, more so when the version interlinking accused No.49 to the alleged incident emerging from paragraph No.11 on page No.12 of the testimony of PW-129 is not corroborated by any independent evidence or forensic evidence, more particularly so when the deposition categorically states that the witness and other members of his family after

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rushing out upon hearing a loud explosion, saw that four to five persons had entered into Gulbarg Society after demolishing the wall and that such demolition was caused by exploding a gas cylinder on the compound wall. This aspect is not given any corroboration from any of the panchnamas of the entire Gulbarg Society which are on the record of the present proceedings at Exhs.260 and 261, and which were drawn immediately after the incident and even by the S.I.T. after taking over of the investigation. None of these documents even remotely establish the presence of any material which would establish that cylinder LPG was exploded in demolishing the compound wall as is claimed. Furthermore, at the cost of repetition, I may state that no overt act is attributed to accused No.49 and therefore, mere identification by the concerned witness in the Court, is not enough more so when for the first time the PW-129 provided the name of accused No.49 only in his statement recorded before PW-335. There is even absolutely no material to show that accused No.49 was a resident of Bhatiyara Ni Chali, Chamanpura and therefore, the sole testimony of PW-129 cannot form the basis for holding accused No.49 responsible and guilty for the offences alleged to have been committed by him, more so when no other witness has seen accused within Gulbarg Society or his being a part No.49 of the mob. Therefore, in my opinion, grave doubts also arise with regard to the presence of accused

No.49 at the scene of incident on the fateful day, the benefit of which must go in favour of accused No.49. Therefore, in my opinion, the accused No.49 also is entitled for clean acquittal on the basis of benefit of doubts that are highlighted herein above.

Accused No.53

729. I now propose to take up the case of accused No.53 Sushil Sharma who was arrested post investigation by the S.I.T. on 18/11/2008 and even according to the Prosecution version, the accused was arrested by the IO of the S.I.T. Shri J.M.Suthar solely on the basis of a statement of one Altafkhan Gulabkhan Pathan who incidentally has been examined as PW-143 herein and whose testimony is on the record of the proceedings at Exh.655.

730. Drawing my attention to paragraph No.6 of the testimony of PW-143, it is clear according Shri Kodekar that the said witness to has positively identified accused No.53 as one of the persons of the mob of about 150 to 200 persons which dispersed from the scene of the incident upon police firing which took place between 04:30 p.m. and 05:00 p.m. Further according to Shri Kodekar, the accused No.53 is also reflected in terms of paragraph No.13 on page No.12 of the testimony of PW-143 to have indulged in stone throwing from

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outside Gulbarg Society and more particularly from the Railway tracks. It is pointed out by Shri Kodekar that the witness PW-143 has also positively identified accused No.53 in the Court and therefore, accused No.53 is required to be held to be present at the scene of the incident on the fateful day and having participated therein in the company of the principal co-accused and was thus a party to the carnage that took place on the fateful day and therefore, the Prosecution could be said to have established beyond reasonable doubt the guilt of the accused herein as also the charges levelled against him and the accused i.e. accused No.53 is required to be thus suitably penalized.

731. Opposing such submissions, the very brief defence submission made on behalf of accused No.53 is *inter alia* to the effect that mere identification by a solitary witness is not enough and other than such brief defence submission, no detailed arguments have been advanced on behalf of the present accused.

732. carefully considered Т have the material available before me and it appears to be admitted position that accused No.53 an was arrested on 18/11/2008 by the IO Shri J.M.Suthar who took over the investigation post appointment of S.I.T. by the Hon'ble Supreme Court, and it the further appears that the sole basis of arresting

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accused No.53 was such of statement PW-143 Altafkhan. Even in the course of the cross examination of the witness, there is a bare denial sought to be elicited with regard to the presence of accused No.53 in such mob as is reflected in paragraph No.6 of the examination-in-chief of PW-143. Again, I am constrained to note that there is even in terms of the testimony of PW-143, no overt act attributed to accused No.53. Even according to PW-143 who can positively identify the principal perpetrators and who has also, according to the Prosecution and according to the records, positively identified accused No.53 in the Court, the accused concerned is not attributed to have been armed with any weapon of any kind whatsoever. Accused No.53 further has not been linked to any specific incident and in fact the witness PW-143 in the course of his testimony has given details with regard to accused No.53 inasmuch as, in terms of the testimony of PW-143, accused No.53 is shown to the knowledge of the witness to be a Home Guard which is clearly reflected from the testimony of IO J.M.Suthar i.e. PW-335 at Exh.1289 Shri in paragraph No.134 of his testimony that upon recording the statement of PW-143, it clearly emerged from the statement that accused No.53 was known to be working as a Home Guard according to PW-143. In such circumstances, identification in the Court in my opinion, cannot be the sole basis of establishing the guilt of an accused in such a

grave and serious offence when it emerges that the name of such accused has been given to the IO only Again, in post 2008. the course of the investigation by the S.I.T., recoverv no or discovery of any incriminating material by or at the behest of accused No.53 is brought on the record of the proceedings. No other witness of no less than 18 eye-witnesses examined, has claimed to have seen accused No.53 as a part of the mob in any activities which would in any indulging manner prove any of the charges that accused No.53 faces herein. In the circumstances and in light of such extremely limited evidence emerging against accused No.53, I cannot come to a conclusion that mere presence as reflected by a solitary his witness is enough to come to a conclusion that the State has successfully established beyond reasonable doubt all the charges against the accused No.53.

733. No other act other than being a part of the mob throwing stones, is attributed to accused No.53. Therefore, such limited evidence and more particularly when at the cost of repetition, no other eye-witness claims to have seen or attributed any overt act on the part of accused No.53 during the incident, I am of the opinion that there are doubts with regard to the involvement and participation and guilt of accused No.53 in the present offence and therefore also, in my opinion, accused No.53 too is required to be given the benefit of doubt and given an acquittal which I hereby do so.

Accused No.65

734. I now propose to take up the case of accused No.65 Rajesh Dayaram Jinger, who was belatedly arraigned as an accused in the present proceedings by exercise of powers under Sec.319 of the Cr.P.C. by this Court and was subsequently made accused No.65 herein.

735. It is pointed out by learned Spl.P.P. Shri Kodekar that there are a large number of witnesses examined on the record of the proceedings who have specifically identified accused No.65 as being the perpetrator of the offence including stone-throwing from the terrace of Bunglow No.1 of Gulbarg Society which belongs to his father, and also is attributed to have incited the mob into going into the said Gulbarg Society which ultimately resulted in the mob going into Gulbarg Society and committed such grave and serious offences and which resulted into a carnage taking place which had very few precedents in terms of cruelty and savagery. It is submitted that in the circumstances, accused No.65 is required to be treated as one of the prime suspects in the entire incident. My attention is drawn to the testimony of

PW-177 Sairaben Salimbhai Sandhi, who in terms of her testimony at Exh.711, has clearly deposed with regard to the role played by accused No.65 in stone-pelting from the terrace of his residence and in inciting the mob to go inside Gulbarg Society and indulging in activities of murder, rape and arson on such a large scale. It is pointed out that PW-177 has positively identified accused No.65 in the course of her deposition in paragraph No.79 thereof and it is submitted that PW-177 is one amongst many eye-witnesses who has positively identified accused No.65 as being a perpetrator and leading instigator of the present offence.

736. Tt. has been pointed out by Shri Kodekar that further to PW-177, the accused No.65 is also positively attributed to have been established to be on the terrace of Bunglow No.1 of Gulbarg Society which admittedly belongs to his father, along with one Jayesh @ Gabbar i.e. accused No.14 and the said two accused together with some other co-accused, were pelting stones on the said Gulbarg Society and were also instigating the mob as is repeated herein before. It is pointed out that these aspects are completely corroborated and supported in the course of the testimony of PW-192 at Exh.776 being one Mohammadali Shahjadali Saiyed who has verbatim provided an identical testimony and has also positively identified accused No.65 in is pointed out that the Court. It in similar

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fashion, PW-179 at Exh.720 being one Ezajali Fakirmohammad Shaikh has also repeated almost verbatim role of accused No.65 in the present offence which cements further the involvement of the accused No.65 and his guilt the the present offence. It is pointed out that even PW-128 at Exh.633 being Mohammadrafig Abubakar Pathan, PW-116 Saeedkhan Ahmedkhan Pathan at Exh.584, PW-191 i.e. Salim Noormohammad Sandhi at Exh.734 and PW-282 at Exh.978 being Dilawerbhai Sikanderbhai Shaikh, all whom in the course of their testimonies, of attributed a near identical role on the part of accused No.65 in thee present offence, all of whom have also positively identified accused No.65 in court. Τt. is submitted that in the such circumstances, the involvement, participation and quilt of accused No.65 is established beyond reasonable doubt by the Prosecution and accused No.65 is required to be given exemplary punishment since it has com on record that accused No.65 was serving in the Police Force at the time of the incident. It is submitted that the Prosecution has positively thus proved its case against accused No.65 also. It is further pointed out that detailed submissions with regard to the depositions of the witnesses particularized herein above, have already been made and this is only a repetition intended to refresh the Court with regard to the role played by accused No.65.

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On the other hand, a spirited defence 737. has been raised by Shri A.M.Bhardwaj, the learned appearing on behalf of the concerned advocate accused, and it is pointed out that accused No.65 has been arraigned as an accused post commencement of the trial and that too as late as in the year 2010 in compliance of the orders passed below Exh.860 and it is urged that the Prosecution case against accused No.65 which on paper appears to be very strong, is nothing but a tutored attempt made to falsely implicate accused No.65 with an ulterior motive on account of the previous enmity that existed between the residents of Gulbarg Society and the father of accused No.65 being one Dayaram Jinger who admittedly had purchased and occupied Bunglow No.1 of Gulbarg Society and that such person was the only Hindu resident of the entire Gulbarg Society and therefore, all the residents harboured ill will towards the family of Dayaram Jinger of whom Rajesh Jinger is one of them. It has been pointed out in the course of the defence arguments which I do not propose to repeat verbatim because it would only make further bulky an already extremely bulky judgment, but however, it is required to be noted that the gist of the defence arguments are *inter alia* to the effect that in an effort to implicate the entire family of Dayaram Jinger, the residents of Gulbarg Society have not only belatedly falsely accused Rajesh Jinger i.e. accused No.65 herein but have also attempted to

rope in the brother of accused No.65 being one Ashok Dayaram Jinger by attributing a similar role to the said Ashok Jinger also. It is submitted that in the circumstances and more so when the IO Shri while carrying on the investigation N.D.Parmar realized that the accusation against the said Ashok Jinger was totally false since the said Ashok Dayaram Jinger was a driver of the vehicle of IO Shri N.D.Parmar himself, and was very much on duty throughout accompanying the IO Shri and all N.D.Parmar at the time of the incident, and in such circumstances, the said Ashok Jinger was neither arrested nor made accused in the an present proceedings nor did the S.I.T. also deem fit to even question the said Ashok Jinger, let apart arrest him or make him an accused in the present proceedings. It is submitted that even the victims did not make any efforts to get the said Ashok Jinger arraigned as an accused in the manner they sought to against Rajesh Jinger and it is urged that in the circumstances, it is required to be held that like Ashok Jinger, the said accused No.65 Rajesh Jinger also has been falsely implicated in the present proceedings.

738. It has been pointed out that PW-116 initially has very specifically stated that he was not in a position to identify Rajesh Jinger i.e. accused No.65 and it is pointed out that the witness PW-116 was sharp enough to attribute the

stabbing of Ayub to one Bharat Rajput whom he categorically and specifically identified in the Court as being the person who stabbed the said Ayub but in reality the witness had identified an accused Babu Manji i.e. accused No.23 as accused Bharat Rajput. It is pointed out that only one accused Bharat Teli was identified bv PW-116 whereas he could not identify accused No.50 Kapil Dharmesh Prahlad, accused Munna, accused No.47 No.29 Mukesh Pukhraj and accused No.32 Ambesh Kantilal despite providing detailed testimony with regard to the role played by each of them in the present offence. It is submitted that therefore, such identification of accused No.65 by PW-116 is malicious and the dangerous, categorical identification by PW-116 at a belated stage was on account of the witness being tutored or the accused being pointed out to the witness before his testimony in that regard.

739. submitted that It is PW-314 Fakirmohammad Nasirali Saiyed at Exh.1098 has clearly admitted in paragraphs Nos.80 and 81 of his cross examination that he had got served notices through an Advocate upon various persons including No.65 accused Rajesh Jinger for having caused destruction to his property and in fact even civil proceedings in the Ahmedabad City Civil Court for compensation were admitted to have been filed against such persons, however, in the said notice

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the proceedings in the Court, no or criminal offence has been attributed to accused No.65 by PW-314 which conveniently has not been highlighted by Prosecution and it is urged that in the such circumstances, the Prosecution case is based on malicious after-thoughts whereby out of a sense of vengeance the accused No.65 was falsely roped in by the said witnesses who were then ably tutored and even despite such attempts by the witnesses/victims during the investigation by the S.I.T. to falsely frame Rajesh Jinger, the S.I.T. also did not find any worthwhile material to arrest accused No.65 and it is only upon the orders passed by this Court under Sec.319 of the Cr.P.C. that accused No.65 was belatedly arraigned as an accused herein. It is submitted that in the circumstances, the belated allegations and accusations against accused No.65 are required to be discarded and the very fact that so many witnesses have testified with a parrot-like accuracy, establishes that they were all tutored to identify accused No.65 and attribute a role to him. It is submitted that in the circumstances, accused No.65 is required to be given the benefit of doubt.

740. It is pointed out by Shri Bhardwaj that further damaging the Prosecution case is the testimony of PW-107 Mrs.Rupaben Modi at Exh.548, paragraph No.15 on page No.11, wherein she has attributed accused No.65 to be throwing stones from a terrace of a shop located on the rear side of

Shri Ehsan Jafri's residence. It is submitted that further damaging the Prosecution case is the fact that a stone pelted upon her and which caused injuries to her, was pelted by one "Rajesh Mochi". It is submitted that in the circumstances, not only there is a grave and serious contradiction with regard to the place from which the stone-pelting was being done, but she has also wrongly named accused No.65 as the person who pelted stones on is pointed out that conveniently her. Ιt in paragraph No.59 of her testimony which took place subsequent to her identifying the perpetrator as one "Rajesh Mochi", PW-107 provided an accurate name of accused No.65 Rajesh Jinger as the person who perpetrated the offence and who had caused her the stone injury. It is submitted that however, the falsity of the deposition of the witness PW-107 is clearly established when she is unable to identify accused No.65 and in fact accused No.55 was wrongly identified by PW-107 as accused No.65 Rajesh Jinger and therefore, it is submitted that not finding the aspects convenient, Shri Kodekar has same deliberately chosen to not bring this aspect to the attention of the Court in the course of his submissions and it is urged that therefore, adverse inference is required to be drawn against the Prosecution with regard to the merits of the case against accused No.65.

741. My attention is drawn to the testimony

of PW-191 more particularly paragraph No.64 on page No.59 of the cross examination, wherein the said witness has clearly testified that he has not mentioned the name of accused No.65 as being the person indulging in stone-pelting from the terrace of Bunglow No.1 of Gulbarg Society and which stonepelting resulted in injuries of a fatal nature being caused to one Irfan. It is submitted by Shri Bhardwaj in the course of his detailed defence on accused No.65 that accused No.65 behalf of is wrongly attributed to have been the main instigator who instigated the mob to rush into Gulbarg Society and perpetrate the carnage. It is submitted that the mob was infuriated and angered not because of any instigation by any person or persons much less accused No.65, but the mob rushed into Gulbarg Society with a view to avenge the injuries and death caused to persons who were those injured or dead on account of the private firing of Shri Ehsan Jafri which started post 01:30 p.m. and which resulted in the entire carnage taking place where the mob was incited to break open the wall and rush in to Gulbarg Society. It is submitted that all these so-called eye-witnesses who have qiven minutest details about each incident that they claim to have witnessed, have very conveniently forgotten about any role played by Shri Ehsan Jafri wherein he could have fired from the licensed weapon which is established to be in his name and it is urged that in the circumstances, the attack

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on Gulbarg Society was a result of the grave and sudden provocation of the mob by the actions of Shri Ehsan Jafri who fired upon the mob causing injuries and death, which incited the other members who were standing outside Gulbarg Society and till such time the firing took place, no grave or serious incident had taken place. It is submitted that in the circumstances, the role attributed to have been played by accused No.65 in instigating the mob is also not correct and it is urged that in the circumstances, accused No.65 be given the of doubt since the so-called accurate benefit testimonies are got up and tutored testimonies of witnesses who have been holding a grudge against the family of accused No.65 and it is urged that accused No.65 is required to be given an acquittal by giving him the benefit of doubt.

It is pointed out further by Shri 742. Bhardwaj that PW-223 Alihussain Ibrahimbhai Shaikh at Exh.780 has in the course of his deposition, his examination-in-chief, refused in even to identify any of the perpetrators of the offence despite his being present at Gulbarg Society at all times during the incident. My attention in particular is drawn to paragraph No.16 on page No.79 of his deposition wherein the witness has clearly admitted that his father Ibrahimbhai Shaikh was also a resident of Gulbarg Society and that on the fateful day, the said Ibrahimbhai Shaikh had

taken shelter on the terrace of Bunglow No.1 in Gulbarg Society, and the witness PW-223 has further conceded that the Bunglow No.1 belonged to a Hindu and it is submitted that while no specific details are provided about the witness having knowledge with regard to the name of the owner of the said Bunglow, there is no room for any doubt that the Bunglow belonged to Dayaram Jinger, the father of accused No.65. It is pointed out that in any case, PW-223 has in paragraph No.16, further admitted that the property belonged to a Policewala which clearly interlinks the Jingers to the said property. It is pointed out that however, this witness despite testifying in such fashion, was not sought to be declared hostile by the Prosecution and therefore, it is required to be inferred that the witness was accepted to be a truthful witness by the Prosecution. It is submitted that therefore, the theory that accused Nos.1 and 14 were on the of terrace Bunglow No.1 pelting stones or is a instigating the mob, figment of fertile imagination. It is pointed out that if such a mob had indeed gathered on Bunglow No.1, then there was no possibility of such eye-witness being permitted to take shelter on the the terrace and not even being remotely harmed by the mob. It is pointed out that PW-223 has admitted that his father Ibrahimbhai Shaikh had taken shelter on the terrace of Bunglow No.1 for about 48 hours and therefore, this aspect clearly destroys the Prosecution

version and further establishes that the so-called eye-witnesses who have testified in near identical fashion, have been tutored to do so.

743. It is submitted that further damaging the to the Prosecution case, is the convenient omission on the part of the Prosecution to examine the said Ibrahimbhai Shaikh as a witness herein despite the fact of such person being cited as a witness in the chargesheet. It is submitted that the testimony of PW-223 coupled with the omission examine such important witness Ibrahimbhai to Shaikh in light of the testimony of PW-223, requires adverse inference to be drawn against the Prosecution and it is urged that even in such circumstances, the theory of the defence that accused No.65 has been belatedly roped in out of a feeling of vengeance is further cemented.

744. It is submitted by Shri Bhardwaj that PW-107 Rupaben Modi indirectly supports the theory emerging from the testimony of PW-223 and the statement of Ibrahimbhai Shaikh that there was no stone-pelting from Bunglow No.1 but if at all there was any stone-pelting, the same was from a terrace of a shop outside Gulbarg Society. It is submitted that even in such circumstances, the theory of accused No.65 in company of other co-accused i.e. accused No.14 and other members of the mob having climbed up on the terrace of his own property as is claimed by the Prosecution, is bogus and is required to be discarded.

745. Ιt is submitted that in such circumstances, and more so when there is a further witness in the shape of PW-240 at Exh.829 being one Aslam Kasambhai Mansuri, who has failed to identify а single person from amongst the perpetrators despite being a resident of Gulbarg Society, and the witness was declared hostile and even upon the extensive cross examination, the witness did not original testimony. deviate from his Ιt is submitted that the witness has also sufferred the family member in the carnage loss of a and therefore, such witness had no reason to lie. It is pointed out that the witness has truthfully claimed to have remained hidden all through the incidents and therefore, was in no position to identify any accused and therefore, it is urged that the witness is required to be accepted as a truthful witness and who has resisted all attempts to falselv implicate any accused herein. It is submitted that even on such count, the case against accused No.65 is required to be treated as got up and bogus and accused No.65 is required to be given the benefit of doubt and an acquittal as a result thereof.

746. Having considered these voluminous submissions made by the rival parties herein with regard to the relative merits of the case against

accused No.65, it can be seen that largelv speaking, even if the Prosecution case is taken at its very best and assuming the same to be correct, the role emerging from such version as played by accused No.65, is of pelting stones from the terrace of his residence with admittedly is supposed to be Bunglow No.1 of Gulbarg Society, and a further role is attributed to have been played by accused No.65 of instigating the mob to rush into Gulbarg Society and thereafter wreak carnage on the inmates of Gulbarg Society. All the witnesses examined hereat and reference to whom has been provided herein above as also while dealing with the respective arguments in detail made by both the learned Spl.P.P. as also the defence, it is clear that other than this aspect of pelting stones and instigating the mob, there is no other role attributed to accused No.65 inasmuch as, accused No.65 is not attributed to have been present or being a part of the mob in the course of any of the gory incidents which took place post 01:30 p.m. where a large number of innocent people have been mercilessly and brutally done away with by either inflicting them with grievous injuries or burning them alive. No eye-witness has attributed accused No.65 to be armed with any weapon and furthermore, thee is no discovery or recovery of anv incriminating material by or at the behest of the accused No.65. I am further required to bear in mind the fact that accused No.65 was arraigned as

an accused as late as in the year 2010 while entertaining an application made by the victims seeking arraignment of persons as accused herein Sec.319 of the Cr.P.C. under and in such circumstances, it is required to be presumed that even the S.I.T. which took over the investigation following the modes and directions of the Hon'ble Supreme Court in Special Writ Petition (Criminal) No.109/2003, did not find enough material to arrest No.65 though post taking over of accused the investigation the S.I.T. has arrested at least 25 or more of the accused herein. In fact, PW-335 Shri J.M.Suthar at Exh.1289, has categorically mentioned in his deposition with regard to arrest of 25 persons. In such circumstances, I am also required to closely scrutinize the mindset of the victims who sought to implicate the brother of accused No.65 being one Ashok Dayaram Jinger who as has emerged above, was established to be the driver of the then I.O. Shri N.D.Parmar who has clearly testified in that regard and on account of which the hollowness of the allegations against the said Ashok Dayaram Jinger were exposed which resulted in action being taken against the said Ashok no Dayaram Jinger. I am, therefore, required to accept the probability of the defence version that the accused No.65 and his brother Ashok Dayaram Jinger are both sons of one Dayaram Jinger who was the sole Hindu owner of a property in Gulbarg Society inasmuch as, he owned Bunglow No.1 thereof and it

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is emerging from the testimony of number of witnesses that there were disputes between the members of the Society on one hand and Dayaram the other, and precisely for Jinger such on reasons, the sons of Dayaram Jinger were sought to be implicated herein. I am further required to carefully examine the testimonv of PW-223 Alihussain Ibrahimbhai Shaikh at Exh.780 where it has clearly emerged in paragraph No.16 on page No.79 of his deposition where such witness has clearly attributed his father Ibrahimbhai Shaikh to have taken shelter on the terrace of Bunglow No.1 of Gulbarg Society. At the cost of repetition, I may state that Bunglow No.1 is accepted to be of the ownership of Dayaram Jinger. It is also further emerging from the testimony of PW-223 that his father took shelter on the terrace of Bunglow No.1 Gulbarg Society for of about 48 hours and thereafter met the witness PW-223 at the refugee camp. This witness is not declared hostile by the Prosecution and therefore, it is required to be presumed that the version supplied by the witness is accepted to be correct by the Prosecution. Again, there is, in my opinion, merit in the submissions made on behalf of the defence that despite the said Ibrahimbhai Shaikh being cited as a witness in the chargesheet, the said Ibrahimbhai Shaikh has not been examined herein and in the circumstances, I am required to infer that had he been examined, perhaps the real truth with regard

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to the use of terrace of Dayaram Jinger's property would have come out and therefore, adverse inference is required to be drawn against the Prosecution in this regard. Further damaging to the Prosecution case is the testimony of PW-107 Mrs.Rupaben Modi at Exh.548 where in paragraph No.15 on page No.11, the said witness who admittedly was even according to the Prosecution, taking shelter in the residence of Shri Ehsan Jafri, has attributed stone-pelting to be carried out from the terrace of a shop just outside the rear portion of Shri Ehsan Jafri's residence and just outside the compound wall of the said Gulbarg Society and that the said stone-pelting according to her, was done by persons amongst whom "Rajesh Mochi" was one of them. The PW-107 has thereafter surprisingly turned around and converted "Rajesh Mochi" into "Rajesh Jinger" and has verv confidently deposed of her capabilities of positively identifying him by giving an explanation that she knows him very well. However, as is very clear from the deposition of PW-107, she has wrongly identified accused No.65 by pointing a finger at accused No.55 Bharat Rajput.

747. I am also required to consider the fact that even PW-116 in the earlier portion of his deposition which had taken place prior to the arraignment of accused No.65, had categorically stated that he could not or was not in a position to identify Rajesh Jinger, but post arraignment, could surprisingly identify Rajesh Jinger. Though despite having claimed to have categorically identified a large number of the accused, the said witness PW-116 could not identify most of the accused.

748. Furthermore, the startling aspect that comes to my mind is that PW-116 Imtiyazkhan who admittedly is the star witness of the entire Prosecution case and on whose testimony the Prosecution case largely rests and who has in the course of his deposition described in detail all and most of the incidents that have taken place in the course of the entire day at Gulbarg Society, has positively attempted to identify a large set of the accused as being the perpetrators of each particular incident but surprisingly PW-106 has not even mentioned or whispered the mention of accused No.65 Rajesh Jinger in his entire deposition. In fact I am required to refer to paragraph No.14 on page No.13 of the examination-in-chief of PW-106 where the stone-pelting from the terrace of Bunglow No.1 and instigating of the mob to rush into Gulbarg Society at about 01:30 p.m. is attributed to a mob of which only accused No.14 Jayesh @ Gabbar is identified as the perpetrator of such incident by PW-106 who claims to be an eye-witness to the incident. In fact, PW-106 could have very easily identified Rajesh Jinger in the course of

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his deposition. It is strange that the allpervading, all-knowing, all-observing PW-106 has not pointed any finger at accused No.65 in the of his entire testimony. course In such circumstances, I am of the clear opinion that grave doubts exist with regard to the involvement and role of accused No.65 in any incident much less the incident that he has linked to and in the circumstances, I am of the opinion that the Prosecution could not be said to have proven beyond reasonable doubt the involvement and guilt of the accused No.65 in the present offence. As a natural consequence, accused No.65 Rajesh Jinger is also required to be given the benefit of doubt and thereby acquitted, which I hereby do so.

Accused Nos.16, 52 and 66

749. I now propose to take up the relative merits of the Prosecution case as against a set of accused comprising of accused No.16 Dilip @ Kalu Chaturbhai Parmar, accused No.52 Suresh @ Kali Dahyabhai Dhobi and accused No.66 Babu Hastimal Marwadi.

750. The relative merits of the Prosecution case against all the three accused referred to herein above, is being taken up simultaneously in light of the discussion that is to follow. It is clear that the gist of the Prosecution case

inasmuch as, it emerges against these three accused, is inter alia to the effect that accused No.16 was armed with a pipe, accused No.52 was armed with a stick whereas accused No.66 was possessed of container of kerosene а or an inflammable substance with which all three accused attributed to are have caused damage and destruction to the property of the residents of Gulbarg Society, more particularly the vehicles of such residents which were parked within Gulbarg Society. No further role is attributed on the part of these three accused by any of the witnesses that have been examined on the record. In fact accused No.66 Babu Marwadi was arraigned as an accused by exercise of powers under Sec.319 of the Cr.P.C. by this Court by passing orders below Exh.738 dated 08/02/2010. In fact only a solitary witness from amongst the victims has identified accused No.66 and accused No.16, whereas accused No.52 has been identified by two witnesses from amongst the victims. The identifying witnesses also have attributed a role on the part of accused No.52 and accused No.16 as being a part of the mob that damaged and destroyed th vehicles parked within Gulbarg Society. It is very clear from the emerging testimonies of all witnesses that other than their role as being the part of the mob which indulged in and destruction to damage the property more particularly damage and destruction of vehicles parked within Gulbarg Society, no other role is

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attributed to have been played by accused No.16 and 52. On the other hand, the sole pointed finger against accused No.66 is in the shape of testimony of PW-177 Sairaben Salimbhai Sandhi at Exh.711, who has named accused No.66 in her statement before the S.I.T. which led the S.I.T. into carrying out a which resulted T.I.Parade in the positive identification of accused No.66 by PW-177 and which led to his possible arraignment as an accused under Sec.319 of the Cr.P.C. by this court vide orders passed below Exh.738. I am, therefore, required to examine the Prosecution case against these three accused and I am constrained to note that with regard to accused No.16 and accused No.52, there is absolutely no defence worth the name inasmuch as, during the entire length and breadth of the submissions made on behalf of the defence by the number of Advocates who have represented them, no specific argument emerges with regard to the defence of these two accused, whereas a lame and hollow defence has been put forth with regard to accused No.66 which I intend to discuss herein.

751. It has been pointed out by the learned Spl.P.P. Shri Kodekar appearing on behalf of the Prosecution, that accused No.16 Dilip @ Kalu has been identified by a large number of witnesses including a large number of Police witnesses though, of the victims and eye-witness accounts, only one witness PW-216 at Exh.772 being one

Ismailbhai Yasinkhan Pathan who in the course of his testimony on page No.2 in paragraph No.3 of his examination-in-chief, has clearly deposed about an incident which could be said to be the starting point of the entire incident whereby an incident is attributed to have taken place between 09:30 a.m. and 10:00 a.m. when a mob attempted to enforce the by setting afire an autorickshaw, of whom Bandh accused No.16 is specifically identified by PW-216. In fact on page No.3 of his examination-in-chief, further positively identified such witness has accused No.16 as being one of the perpetrators in specific incident of setting fire to the the autorickshaw. Further emerging is the testimonies of PW-5 at Exh.270 being one Indrasinh Himmatsinh Gohil, PW-6 at Exh.271 being one Lalitkumar Ramanbhai Patni, PW-7 at Exh.273 being one Arvindsinh Shankersinh Vaghela, PW-13 at Exh.316 being one Dhaneshsinh Becharsinh Kumpawat, who are all Police witnesses and who are Police personnel posted at Gulbarg Society at the relevant time and all of them have positively identified accused No.16 and positively attributed the fact of accused No.16 being armed with a pipe at the time of the incident. It also emerges according to Shri Kodekar, that accused No.16 is further established beyond reasonable doubt to be guilty of the charges that he faces in light of the fact that there is recovery of an incriminating material in the form of muddamal pipe which was recovered in terms of

the Panchnama Exh.1231 and proved in the course of the testimony of PW-332 being one of the IOs Shri S.S.Chudasama, whereby the recovery of the pipe was proved in terms of the Panchnama drawn under Sec.27 of the Indian Evidence Act. It is submitted that in such circumstances, the Prosecution case could be said to be established beyond reasonable doubt even with regard to accused No.66 Babu Marwadi. It is pointed out by Shri Kodekar that accused No.66 was arraigned as an accused by orders dated 08/02/2010 passed by this Court below Exh.738 by exercising powers under Sec.319 of the Cr.P.C. It is submitted that accused No.66 has been positively identified by PW-177 and it emerges that since the name of accused No.66 was positively given before the S.I.T. in the course of its investigation, the IO Shri J.M.Suthar thought it appropriate to qet arranged a T.I.Parade with regard to accused No.66 and it is pointed out by Shri Kodekar that even in terms of such T.I.Parade as established in terms of the Panchnama Exh.1067, was carried out wherein PWhas positively identified accused No.66 177 as being a perpetrator of the offence of being part of a mob which indulged in criminal activities at Gulbarg Society and accused No.66 was further positively identified by PW-177 as being possessed of a can of kerosene which is presumed to contain some inflammable substance. It is pointed out that in such circumstances, and more so when PW-177 has positively identified accused No.66 in the Court

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and further when the T.I.Parade Panchnama is proved by an Executive Magistrate who can be termed to be an independent witness, there is no room to doubt the involvement and participation and thereby the guilt of accused No.66 in the offence that he stands charged with. It is submitted that in such circumstances, the Prosecution could be said to have proved beyond reasonable doubt the case against both - accused No.16 and accused No.66 and therefore, both of them are required to be suitably penalized.

On the other hand, it is submitted by 752. Shri Kodekar with regard to the role of accused Suresh @ Kali Dahyabhai Dhobi, that the No.52 Prosecution case against such accused No.52 is also proved inasmuch as, the PW-128 at Exh.633 being one Mohammadrafig Abubakkar Pathan has positively identified and positively pointed a finger at the role of accused No.52 in sprinkling petrol on fire in Gulbarg vehicles and setting them on Society. My attention is drawn to paragraph No.5 on page No.5 of the examination-in-chief of the said witness provided where he has а detailed description of the incident where the mob attempted to cause damage and destruction to the shop as well as vehicles wherein the name of accused No.52 is specifically mentioned. My attention is further drawn to paragraph No.9 on page No.89 of the deposition of the same witness PW-128 wherein

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accused No.52 is specifically mentioned to be a part of the mob which destroyed and set afire a tempo vehicle of Aslam Mansuri. The said witness, according to Shri Kodekar, has further in the course of paragraph No.10 of his testimony, positively identified accused No.52 as being the perpetrator. It is conceded that there is no recovery or discovery of any incriminating material by or at the behest of accused No.52, but however, the weight of the testimony of PW-128 and the positive identification by PW-128 in the Court clearly establishes the Prosecution case against accused No.52 also and it is urged that accused No.52 also should be suitably penalized.

753. I have mentioned herein before and I would like to repeat that in the course of the lengthy submissions made on behalf of the defence by the number of Advocates who have represented all accused, there the is no specific defence forthcoming vis-a-vis accused No.16 and accused No.52 and therefore, I am required to scrutinize the cross examination of the relevant witnesses as far as both these accused are concerned. I find, upon perusal of the cross examination of all the relevant witnesses inasmuch as, they concern accused Nos.16 and 52 that there is no effective cross examination worth the name which can establish any sort of valid defence with regard to the role of both these accused in the incident. In

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such fact of the matter, I am required to come to a conclusion that there is no reason for the Police witnesses in the case of accused No.16 and no reason for PW-128 to falsely implicate accused No.16 and accused No.52 respectively, in the perpetration of the offences and in my opinion, there is no exaggeration emerging from the testimony of these witnesses inasmuch as, both these accused are attributed to have caused damage and destruction to the property and vehicles of residents of Gulbarg Society. I am required to conclude that other than participation and being a part of the mob in such activities, both accused Nos.16 and 52 have taken no part in any of the subsequent incidents which led to the huge loss of life and complete destruction of large number of houses in Gulbarg Society. In my opinion, therefore, the common intention on the part of accused Nos.16 and 52 could be said to be extended only to the aspect of causing damage and destruction to vehicles and not beyond that. However, both these accused face common charge of involvement and guilt in offences punishable under Secs.302, 201 of the Indian Penal Code in terms of the charge framed against them, which in my opinion, are not proved beyond reasonable doubt by the Prosecution. However, the charge for the offence under Secs.143, 147, 148, 149, 153(A)(1)(a) 186, 188, 427, 435, 436, 447 and 452 of the (b), Indian Penal Code read together with Sec.135(1) of

the Bombay Police Act, inasmuch as it relates to the said two accused being a part of the mob which caused damage and destruction to property, is established beyond reasonable doubt and I, therefore, find both accused No.16 and accused No.52 to be guilty of having committed such offences and therefore, the charge in my opinion against both these accused, is required to be held to be partly established.

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754. Further cementing the Prosecution case against accused No.16, is also the fact of recovery of the muddamal pipe in terms of Panchnama Exh.1231 and which aspect clearly corroborates the oral evidence of no less than four Police witnesses as per the details provided herein above, and the eyewitness account of another victim PW-216 at Exh.772 Ismailbhai Yasinbhai Pathan, who all have positively attributed accused No.16 to be armed with an iron pipe. In light of such proven facts also, the guilt of accused No.16 to that extent is further established for the offence punishable under Sec.148 of the I.P.C.

755. So far as accused No.66 is concerned, there is a very lame and hollow defence inasmuch as, the S.I.T. is sought to be falsely blamed for arranging the T.I.Parade of accused No.66 which resulted in his being arraigned as an accused herein. I do not find any merit whatsoever in such

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defence. In fact it can be seen that the testimony of PW-335 Shri J.M.Suthar clearly states that upon PW-177 Sairaben positively naming accused No.66 as being a part of the mob and positively attributing accused No.66 to be possessed with a can which was presumably used in setting fire to houses and/or other property. Shri J.M.Suthar rightly arranged for a T.I.Parade in the case of accused No.66 and it emerges from the Panchnama Exh.1067 that accused No.66 was positively identified by PW-177 in the course of such T.I.Parade reflected in Panchnama Exh.1067 which is clearly corroborated by the oral testimony of Executive Magistrate Shri Laxman K.Parghi i.e. PW-309 at Exh.1064, who has provided a detailed testimony with regard to the T.I.Parade carried out. Again, not only has PW-177 positively identified accused No.66 in the course of the T.I.Parade but she has further positively identified accused No.66 in the Court also and in such circumstances, I am required to negate in toto the hollow defence arguments advanced on behalf of accused No.66. However, like in the case of accused No.16 and accused No.52 other than attributing accused No.66 to be a part of the mob and being possessed of a can which presumably contained some substance, there is no role attributed to accused No.66 nor is any mention made with regard to the presence of accused No.66 in the course of any incident which led to the huge loss of life and therefore, I am of the opinion that while the

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Prosecution case is partly established against accused No.66 inasmuch as, accused No.66 is established to be a part of the mob and was possessed of a can, no other material emerges against accused No.66 and therefore, accused No.66 in my opinion, could be said to be having the common intention of the unlawful assembly formed to cause damage and destruction to property more particularly vehicles belonging to residents of Gulbarg Society and nothing beyond that and therefore, I am of the opinion that most of the charges faced by accused No.66 also are required to be held to be not proved beyond reasonable doubt, and in my opinion, therefore, the Prosecution case could be said to be only partly successful against accused No.66 and therefore, I hold that the Prosecution has partially succeeded in proving the charges against accused No.66 also. I hold accused No.66 guilty of having committed an offence punishable under Secs.143, 147, 148, 149, 153(A)(1) (a) (b), 186, 188, 427, 435, 436, 447, 449 and 452 the Indian Penal Code read together with of Sec.135(1) of the Bombay Police Act, and therefore, in my opinion, the charge against accused No.66 also is, therefore, partly established.

756. From the testimony of all the concerned witnesses, it is clear that the accused have entered into the compound of Gulbarg Society and have entered so with the knowledge and

intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eye-witnesses have seen the present accused the compound of Bunglow No.19 being in the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established against accused Nos.16, 52 and 66. I also find that the accused were members of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, are hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused are held positively guilty of some of the charges levelled against them, there is no room for any doubt with regard to even such charges where the accused were charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

Accused No.38

757. I now propose to take up the case of

accused No.38 Manish Prabhulal Jain and according to Shri Kodekar, the learned Spl.P.P. appearing on behalf of the Prosecution, the Prosecution has successfully established the presence of accused No.38 as a part of the mob that broke open the rear portion of the compound wall of the Gulbarg Society, rushed into the Society and as a beginning of the incident, damaged and destroyed the vehicles of the residents of Gulbarg Society that were parked within. It is submitted that no less than three of the eye-witnesses who happen to be victims to have lost large number of members of their family, have deposed in a natural, truthful and corroborative manner and it is urged that in the circumstances the Prosecution could be said to have established beyond reasonable doubt the charges against accused No.38. It is pointed out that accused No.38 was arrested on 21/07/2004 and my particular attention is drawn to the testimonies of PWs, 106, 128 and 177, all of whom have attributed a role and have established the presence of the accused No.38 during the incident as being a part of the mob. It is pointed out that all the said three witnesses have positively identified accused No.38 in the Court and this is added an circumstance which qoes to establish beyond reasonable doubt the case against accused No.38.

758. Drawing my attention to the testimony of PW-106 Imtiyazkhan Saeedkhan Pathan at Exh.542,

particularly paragraph No.15 of his more examination-in-chief, Shri Kodekar has pointed out that the witness has categorically deposed with regard to his witnessing the fact of a huge mob demolishing the rear wall of Gulbarg Society by exploding a gas cylinder and rushing into Gulbarg Society and the mob is further attributed to have damaged and destroyed the vehicles of the residents of Gulbarg Society parked in the rear portion of the Society. The witness, according to Shri Kodekar, has further positively identified accused No.38 as being one of the members of such mob.

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759. It is submitted that corroborating the testimony of PW-106 with regard to the presence and role played by accused No.38 in the present offence, is the testimony of PW-128 Mohammadrafiq Abubakar Pathan at Exh.633, who in the course of his testimony, more particularly in paragraph No.5, has clearly deposed with regard to an incident having taken place near Dr.Gandhi's chawl where a mob of about 5000 plus is attributed to have been witnessed by PW-128 which damaged and destroyed the shops located in the front portion of Gulbarg Society belonging to the members of the minority community and this witness also according to Shri Kodekar, has positively identified accused No.38 as being one of the members of the mob which indulged in such activities. It is submitted that further corroboration is supplied by PW-177 Sairaben

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Salimbhai Sandhi in her testimony at Exh.711 and my particular attention is drawn to paragraph No.12 of her testimony where she has attributed a mob which rushed into Gulbarg Society from the front portion by demolishing the wall and the gate of Gulbarg Society by exploding a gas cylinder and rushed towards the residence of Shri Ehsan Jafri and the witness has further attributed the mob to be armed with deadly weapons and also cans of inflammable substances and according to Shri Kodekar, the witness has positively identified accused No.38 as being one of of the members such mob which thereafter started pelting stones and throwing burning rags at the residence of Shri Ehsan Jafri. It is submitted that since all the three witnesses have positively identified accused No.38 in the Court, there is no reason to reject the testimonies of the said three witnesses who have corroborated each other and have thus successfully assisted the Prosecution in proving beyond reasonable doubt the charges against the accused No.38. It is submitted that since the charges against accused No.38 are thus established beyond reasonable doubt, the accused No.38 also is required to be suitably penalized.

760. Raising a defence, Shri A.M.Bhardwaj, the learned advocate appearing on behalf of the concerned accused, has submitted that the Prosecution case is hollow and the detailed defence

is referred to herein before in the course of the defence submissions which have been dealt with herein before. However, the gist of the submissions indicates that none of the three witnesses, is required to be believed inasmuch as, they have supplied contrary versions and it is urged by Shri Bhardwaj that it is but natural that the witnesses would be in a position to identify the accused in the Court since they knew accused No.38 since long on account of the fact that accused No.38 used to run a grocery shop just outside the Gulbarg Society and therefore, it is but natural that these three witnesses were in a position to identify accused No.38 in the Court. It is submitted that accused No.38 has been falsely dragged into the present offence and the versions supplied by the three witnesses differ greatly inasmuch as, all the three witnesses attribute different actions on the part of accused No.38 on account of their testifying with regard to the presence of accused No.38 in the mob in three separate incidents. It is submitted that in such circumstances, it is not possible for less accused No.38, person, much to any simultaneously participate in an incident outside Gulbarg Society in the front portion and also be a member of the mob in the rear portion of the Gulbarg Society who has to traverse through а considerable distance if the mob has to travel from outside Gulbarg Society. It is submitted that in such circumstances, the accused No.38 has been

falsely roped in and is required to be given a clean acquittal.

761. have considered Ι the rival submissions and have carefully scrutinized the material raised up for consideration, more particularly vis-a-vis the relative merits of the Prosecution case against accused No.38.

762. It is required to be noted at the outset that it is an admitted position that there is no recovery or discovery of any incriminating material by or at the behest of accused No.38. There is also no T.I.Parade with regard to the identity of accused No.38 and Ι am able to appreciate the version of the Prosecution that since there was positive identification there was no need to hold such T.I.Parade. Be that as it may, I am also required to consider that while all the three witnesses being PWs 106, 128 and 177 in the of their respective testimonies, have course clearly and categorically testified with regard to seeing and marking the presence of accused No.38 as a part of the mob in three separate incidents, none of them has attributed any overt act on the part of accused No.38 nor has any of the three witnesses positively identified accused No.38 to be possessed of any weapon or any inflammable substance. At the best, if we examine the testimony of PW-106, he attributes accused No.38 to be a part of the mob

which demolished the rear compound wall of Gulbarg Society by exploding a gas cylinder and rushed inside thereafter started damaging and and destroying the vehicles parked thereat. The PW-106 has linked and associated accused No.38 with this incident alone and no other incident. However, the the cost of repetition, PW-106 at has not attributed any overt act or accused No.38 being possessed of any weapon when he witnessed him as a part of the mob in such incident. Furthermore, a contrary version emerges from the testimony of PW-128 who states that almost at the same time when PW-106 claims to have seen accused No.38 as being a part of the mob which entered into Gulbarg Society from the rear portion by exploding the compound wall, it would mean that it was the mob which had positioned itself near the railway tracks behind Gulbarg Society which thereafter rushed in from the rear portion. On the other hand, PW-128, in my opinion more particularly in the course of his testimony, clearly attributes accused No.38 to be a part of the mob which indulged in looting and destroying vehicles and shops located outside Gulbarg Society, meaning thereby, that such activity took place in the front portion of Gulbarg Society. Now if paragraph No.15 of the testimony of PW-106 is read in conjunction with its previous paragraphs, it would imply that such demolition of the rear portion took place almost immediately after five or six Police vehicles departed from

Gulbarg Society. The PW-128 also has attributed the incident of destruction of vehicle and shops and looting of shops at the front portion of Gulbarg immediately after the Society almost Police vehicles went away from Gulbarg Society, which can be reflected in paragraphs Nos.4 and 5 of the examination-in-chief of PW-128. I have personally visited Gulbarg Society and therefore, Ι find considerable merit in the submissions of Shri Bhardwaj that it would impossible for a person to simultaneously indulge in activities at the front portion of the Society as well as enter into Gulbarg Society from the rear portion i.e. from the railway lines almost at the same time since if one does not go through Gulbarg Society, two ends require a considerable period of time to traverse and one has to take a fairly long route to reach the rear portion of Gulbarg Society i.e. the railway tracks thereat from the front portion of Gulbarg Society. In my opinion, therefore, the testimonies of these witnesses are required to be viewed with some doubt. Furthermore, the testimony of PW-177 attributes a mob demolishing the front gate and compound wall of Gulbarg Society by exploding a gas cylinder, rushing into Gulbarg Society therefrom and thereafter attacking the residence of Shri Ehsan Jafri by pelting stones and throwing burning rags at the residence of Shri Ehsan Jafri, of which mob she saw accused No.38 thereat. I am required to carefully consider the

testimony of PW-177 more particularly paragraph No.12 of her examination-in-chief where she has provided detailed testimony in this regard. If we look at the opening lines of paragraph No.12, the witness claims to be standing in front of Shri Ehsan Jafri's residence when she saw such event taking place and it is surprising that none of the members of the mob, many of whom are claimed to have molested, killed and raped women, did not throw a stone at PW-177 and she could have escaped unhurt and unscathed from such incident. I am also required to carefully consider the submission of Shri Bhardwaj that she could identify accused No.38 in the Court since accused No.38 was operating and running a grocery shop right in front of Gulbarg Society since long. However, such contradictions apart, I do not find any reason as to why the eyewitnesses who have lost members of their family, would want to falsely implicate an accused in such a grievous offence. In my opinion, therefore, and more particularly since the very inception the accused No.38 has been named by the victims in their various applications and affidavits and was arrested pre-formation of S.I.T., there is no reason to doubt the fact of accused No.38 being a part of the mob. However, since no weapon is attributed to have been held by the accused No.38 even according to these three witnesses, since even according to these three witnesses accused No.38 is not attributed to have been instigating the mob and

further since there is no recovery or discovery of any incriminating material by or at the behest of accused No.38, I am required to partially hold the Prosecution charges as proved against accused No.38. I conclude that I have no doubt that accused No.38 was a member of the mob which indulged in activities which comprised of the present offence, but however, I cannot hold that accused No.38 was a member of an unlawful assembly which had a common intention of murdering, attempting to murder, rape or molest any woman or causing any grievous hurt to any person or persons residing in or taking shelter at Gulbarg Society. I hold accused No.38 to be a member of the unlawful assembly which had the common intention to cause damage and destruction to the vehicles parked within Gulbarg Society and therefore, I hold accused No.38 partially guilty of the charges levelled against him i.e. for the offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447 and 452 of the Indian Penal Code. and I propose to penalize accused No.38 on such charges alone.

763. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eye-

witnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. I also find that the accused is a member of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

764. Before parting, I may submit that the version supplied by all eye-witnesses with regard to explosion of gas cylinder to demolish the compound wall, at the cost of repetition, cannot be believed since the Panchnamas of Gulbarg Society carried out in great detail which are on the record

of the present proceedings at Exhs.260 and 261, do not in any manner reflect the presence of any remnants or shrapnel which could have been found in plenty if at all two gas cylinders were exploded in

such fashion. In such circumstances, I discard the Prosecution theory that it is successful in establishing all the charges against accused No.38.

Accused No.3

765. I now propose to take up the case of Surendrasinh @ Vakil Digvijaysinh accused No.3 Chauhan, and it can be seen that the present accused has been denied bail all throughout the trial and is in judicial custody all throughout the present proceedings. The accused concerned has been arrested on 06/03/2002. The Prosecution submission against the present accused, is that the accused was seen by a large number of Police personnel, armed with a can of kerosene. It is submitted that the upon the arrest of the accused, a recovery Panchnama was also effected by which a can of inflammable substance was also recovered from his residence, and such recovery Panchnama being at Exh.1086 on the record of the present proceedings, was in terms of the FSL report Exh.188, established to be containing kerosene and it is urged that in the circumstances, the involvement, participation and guilt of the accused in the present offence is established beyond reasonable doubt and the accused

is required to be suitably penalized. The learned Spl.P.P. Shri R.C.Kodekar has relied upon the evidence of PW-7 being one Arvindsinh Shankersinh Vaghela at Exh.273, who in the course of his examination-in-chief in No.8, paragraph has positively identified the present accused No.3. The witness has further identified the said accused in the Court. Further attention is drawn to the testimony of PW-13 being Dhanesinh Becharsinh Kumpawat at Exh.316, who has also deposed in a similar fashion and paragraph No.9 of his testimony, according to Shri Kodekar, corroborates the testimony of PW-7 inasmuch as, this witness has also limited corroboration provided to the testimonv of PW-7. However, according to Shri Kodekar, this witness also has identified the accused No.3 in the Court. It is pointed out that further corroboration emerges from the testimony of PW-28 being one Pradipsinh Shetansinh Rathod at Exh.349 who was also a Police personnel present at the time of the incident and my attention is drawn to paragraphs Nos.8 and 9 of the testimony of this witness where corroboration is provided to the testimony of PW-7 inasmuch as, this witness has also seen the present accused with a can and this witness also has identified the accused No.3 in the Court. Similarly, Shri Kodekar has relied upon the testimony of PW-29 being one Dhananjay Bhaskerrao Bhagwat at Exh.351, who was also a Police personnel on duty and paragraph No.11 of his testimony also

corroborates the testimonies of PWs 7 and 28, of such PW-29 having seen the present accused No.3 with a can. Shri Kodekar has also relied upon the respective testimonies of PWs 254 and 269 at Exhs.876 and 927 respectively, who both are also Police witnesses respectively being Prahladji Mangalji Barot and Natwarji Jawanji Bhati. It is submitted that the respective testimonies of such two witnesses respectively in paragraph No.9 and paragraphs Nos.13, 15, 16 and 18 in their respective testimonies corroborate the testimonies of other Police witnesses referred to herein above, and that both these Police witnesses also have identified the accused No.3 in the Court. It is urged that in such circumstances, and more so when the forensic evidence establishes the recovery of kerosene in terms of Panchnama Exh.1086 and further in terms of FSL report Exh.188 to be kerosene, and therefore, the involvement, participation and guilt accused No.3 in the present offence of is established beyond reasonable doubt. It is. therefore, submitted that the Prosecution could be said to have proved the charges beyond reasonable doubt and the accused No.3 is required to be suitably penalized.

766. Having carefully and minutely scrutinized the entire length and breadth of the defence arguments, no particular mention or submissions appear to have been advanced on behalf

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of the present accused. It is, therefore, my duty to consider the material on record and decide as to whether the Prosecution has established beyond reasonable doubt all the charges that the accused faces. For the reasons set forth herein after, I am of the opinion that the Prosecution has only partially succeeded in proving the charges against the accused.

767. The reasons for my arriving at such conclusion are, firstly on account of the fact that while most of the eye-witnesses who have lost members of their family and have deposed in the Court, have identified a large number of accused and have given graphic details about the roles played by a particular accused in a particular incident. Such victims and eye-witnesses have further proceeded to positively identify a large number of accused in the Court, whereas in the case of the instant accused i.e. accused No.3, none of victims/eye-witnesses other the than Police witnesses have in any manner even mentioned or provided the whisper of a name of the present accused interlinking him either to the mob or to any particular incident. None of the eye-witnesses from amongst the victims has in any manner, attributed any role or overt act on the part of accused No.3, nor has, at the cost of repetition, any of them identified such accused in the Court. In the circumstances, I am carefully required to

consider the version supplied by the Police witnesses who have provided the basis of the arrest of accused No.3, who appears to have been arrested almost immediately after the taking place of the incident inasmuch as, the accused No.3 was arrested on 06/03/2002 i.e. almost within a week of the incident. The recovery Panchnama doubt, no establishes the recovery of a can of inflammable substance which in terms of the FSL report Exh.188, was established to be kerosene. I may further state that looking to the strata of and the economic class to which the accused No.3 possibly belongs, I think that it would be but natural that kerosene would be found in the homes of such persons since it is in all probabilities used as a cooking medium in their residences. In my opinion, therefore, not much weightage is required to be given to the recovery of kerosene from the residence of accused No.3. The question that arises for consideration, therefore, is that since all the witnesses - there are seven of them - who have positively attributed the presence of the accused No.3 at the time of the incident and most of whom have attributed seeing a can in the hands of accused No.3, there is no room for any doubt with regard to the accused No.3 being a part of the mob, and therefore, being a part of the unlawful assembly and the accused being armed with and possessed of a can which is presumed to be that of kerosene, is also emerging positively from the testimonies of such seven Police witnesses.

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However, try as I might, I find no material from the evidence of any of these witnesses as to whether they have seen the present accused committing any particular overt act linking him to any particular incident from the series of incidents that took place which could be said to have constituted the Gulbarg Society carnage as a whole. In my opinion, therefore, the presence of the accused No.3 is established and his presence as being a member of the unlawful assembly also is established through the testimonies of seven Police witnesses who prescribe different time frames for having seen the accused at the scene of the incident. It, therefore, emerges and is required to be held in my opinion, that the accused No.3 was not an innocent by-stander who could have chosen to go away from the scene of the incident when the same started taking an ugly turn. In fact, the accused No.3 is required to be held to be a part of the unlawful assembly, but however, in my opinion, would be too far-fetched in light of the it evidence discussed herein before, to come to a conclusion that the Prosecution has established beyond reasonable doubt that accused No.3 is established to be a part of the unlawful assembly having a common intention to murder, commit attempt to murder, cause grievous harm or molest and rape any woman victim in the course of the incident. At the best, the accused could be said to be having a common intention and be construed to be a member of

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the unlawful assembly which had the intention of causing damage and destruction to property within Gulbarg Society and therefore, for such reasons, I required to hold that the accused No.3 is am required to be held guilty partially and the Prosecution charges could be said to be proved partially inasmuch as, the involvement and guilt of the accused No.3 in an offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 435, 436 and 452 of the Indian Penal Code, and therefore, the accused No.3 in my opinion, having been found quilty of such offences, is required to be suitably penalized which I hereby proposed to do so herein after.

768. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. I also find that the accused is a member of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby

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held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

Accused No.37

769. I now propose to take up the case of accused No.37 being one Prakash @ Kali Padhiyar who has been arrested on 15/07/2002, and it is pointed out by Shri Kodekar, the learned Spl.P.P. that the present accused is also required to be held guilty of all charges that he faces in light of the positive identification by a number of witnesses including independent witnesses in the shape of Police witnesses as also from amongst the victims. It is submitted that there is recovery of an incriminating muddamal in the shape of a knife which was recovered in terms of recovery Panchnama

Exh.1258 and it is urged that in the circumstances, the accused No.37 is required to be held guilty of the charges that he faces.

770. Advancing his submissions further, Shri Kodekar has conceded that the role of the present accused emerges only with regard to the events that took place after 05:30 p.m. when the survivors of the carnage were rescued by the Police parties and were sought to be taken away to relief shelters for their protection. It is pointed out that PW-129 Fagirmohammad Gulzarmohammad Pathan at Exh.635 has positively identified the present the Court accused No.37 in from amongst the accused, but however, such witness does not attribute any role or specific overt act on the part of the accused in any incident linked to the entire series of incidents that comprised of the present offence. It is pointed out that the positive identification by such witness PW-129 is further corroborated by the positive identification part of Police witness being the PW-4 on Rajendrasinh Kallusinh Rajput at Exh.269, PW-11 Rameshbhai Nagjibhai Pandor at Exh.314, PW-13 Dhanesinh Becharsinh Kumpawat at Exh.316, PW-22 Shailendrasinh Kalusinh Jadeja at Exh.336, PW-37 Exh.385 Kavaji Rupaji Asari at and PW-305 Bhupendrasinh Karansinh Sisodiya at Exh.1052, all of whom in the course of their respective testimonies, have positively identified the present accused

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No.37 as being a part of the mob which tried to prevent the Police from effecting а rescue operation and the present accused No.37 is attributed to be possessed of a knife at such time and it is urged that in the circumstances, the presence and therefore, the involvement and participation and therefore, the guilt of the accused No.37 in the charges that he faces, is established beyond reasonable doubt and the accused No.37 is required to be suitably penalized. It is pointed out that further it is required to be borne in mind that such knife was recovered in terms of the recovery Panchnama Exh.1058 and therefore also, the accused No.37 is required to be suitably penalized since the Prosecution has proved beyond reasonable doubt the charges that he faces.

771. Unfortunately I may repeat that having considered the very lengthy arguments made on defence, there is absolutely no behalf of the material emerging from such arguments with regard role of accused No.37 also. to the Τn the required to scrutinize circumstances, I am carefully as in the case of accused No.3, as to what is the material emerging against the present accused No.37.

772. Again, it is required to be noted that PW-129 Faqirmohammad Gulzarmohammad Pathan who in the course of his testimony at Exh.635, has

graphically described some of the incidents that have taken place as an eye-witness and has given graphic details about the role played by the concerned accused who according to such witness, were involved in the perpetration of such incident. However, on a careful scrutiny of the voluminous testimony of the present witness PW-129, other than the fact of accused No.37 being identified in the Court by the witness, there is no material emerging with regard to any role or even the presence of the accused in the course of any incident on the part of the said witness PW-129 in the course of his entire testimony. Again, I may state that no other eye-witnesses have given any material with regard to the presence of accused No.37 at the time of any of the incidents and even according to the Police witnesses who have been very clear in identifying the accused, the role of the accused is limited to the extent of being present in the mob which tried to prevent the rescue operations. No specific overt act on the part of the accused No.37 is emerging from the testimony of any of these witnesses but however, I cannot lose sight of the fact that all positively identified the witnesses have the accused to be a part of the mob which tried to prevent the rescue of the victims which resulted in Police firing and loss of at least four lives of the rioters. In my opinion, therefore, the presence of the accused in terms of the evidence that has unfolded herein, is not required to be treated as

that of an innocent by-stander, but in my opinion, is required to be treated as to be present as a part of the mob. However, there is grave doubt with regard to the weapon attributed to have been seen by the witnesses allegedly in the hands of accused No.37 inasmuch as, PWs 4 and 13 both claim to have seen accused No.37 armed with a knife at such time, PW-37 attributes accused No.37 to be armed with a sword at the relevant time. It is required to be noted that all the witnesses referred to above are Police witnesses and therefore, they are expected to know, in my opinion, the difference between a knife and a sword. In my opinion, therefore, the fact of the accused being armed with a weapon loses significance in light of such contradiction. No doubt, I am also required to consider the fact that а knife was recovered at the instance of the present accused in terms of Panchnama Exh.1258, however, none of the Panch witnesses have supported such recovery or discovery. No doubt, the law is settled that hostile Panch witnesses do not take away from the efficacy of a recovery Panchnama, but however, in instant case, when there the is contradiction emerging from the eye-witness eye-witnesses accounts, such being Police personnel, I am required to view the recovery Panchnama with a degree of suspicion. Again, it muddamal appears that the weapon recovered allegedly at the behest of accused No.37, is not forwarded to the FSL and therefore, I am of the

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opinion that adverse inference is required to be drawn in that regard against the Prosecution. Furthermore, it also emerges that the muddamal weapon is not even shown to any of these Police witnesses for identification and in fact when PW-37 has attributed the weapon to be a sword, he was not sought to be declared hostile nor was he challenged with regard to such testimony and in such circumstances, the possession of a weapon in the hands of the accused No.37 in my opinion, is not established beyond reasonable doubt but his presence as being a part of the mob is established and in my opinion, lesser punishment is required to be imposed upon the accused No.37 as being a part of the mob, having indulged in no overt activities but having a common intention of causing obstacles while the rescue of witnesses/victims was being effected and in my opinion, therefore, the accused No.37 is required to be penalized under the provisions contained in Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188 and 332 of the Indian Penal Code, and to that extent, I hold the accused No.37 guilty in the present offence and not guilty of the charges framed against him and therefore required to conclude also, Ι am that the Prosecution case against such accused No.37 is required to be held to be very partially established. I also find that the accused is a member of an unlawful assembly which was formed with common object to cause damage а and

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destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

Accused No.25

773. I now propose to take up the case of accused No.25 Mangilal Dhupchand Jain who according to Shri Kodekar, has been successfully established to be a part of the mob that rushed into Gulbarg Society and the offence. perpetrated Ιt is submitted that no less than six eye-witnesses have positively identified accused No.25 as being a part of the mob. It is submitted that of the six eyewitnesses, three are in the shape of PW-3 Babuji Chhaquji Dabhi at Exh.266, PW-5 Indrasinh

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Himmatsinh Gohil at Exh.270 and PW-6 Lalitkumar Ramanbhai Patni at Exh.271, all of whom have positively identified accused No.25 as being a part of the mob and in fact PWs 3 and 5 have positively attributed accused No.25 to be possessed of a can of kerosene. It is pointed out that all the three witnesses have identified accused No.25 in the Court.

774. It is submitted by Shri Kodekar that further cementing the Prosecution case against accused No.25 is the cumulative effect of the testimonies of PW-106 Imtiyazkhan Saeedkhan Pathan at Exh.542, PW-128 Mohammadrafiq Abubakar Pathan at Exh.633 and PW-216 Ismailbhai Yasinkhan Pathan at Exh.772. It is pointed out that both PWs 106 and 128 have in the course of their depositions, clearly testified with regard to the fact of accused No.25 being possessed of а can of inflammable substance which was in fact in terms of the testimony of PW-106, sprinkled at the residence Jafri and which resulted in of Shri Ehsan а devastating fire being caused to the residence of Shri Ehsan Jafri. It is submitted that PW-128 also attributes accused No.25 to have been a part of the mob that caused damage and destruction and setting on fire the vehicles of the residents of Gulbarg Society in an incident that allegedly took place outside Dr.Gandhi's chawl and it is submitted that therefore, there is no room for any doubt with

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regard to the presence, involvement, participation and thereby the guilt of the accused in the present offence and that too beyond any reasonable doubt more so when accused No.25 has been identified positively by all the three witnesses amongst the victims also. It is submitted that there is а recovery of an incriminating weapon in the shape of a pipe at the behest of the present accused No.25 in terms of the recovery Panchnama Exh.1244 and in the circumstances, there is no room for any doubt with regard to the guilt of the accused No.25 and in such circumstances, the Prosecution at the cost of repetition, according to Shri Kodekar, could be said to have established beyond reasonable doubt the charges levelled against the present accused

No.25.

775. Raising a detailed defence on the part of the accused, Shri Bhardwaj, the learned advocate has submitted that the attempt on the part of the eye-witnesses was to rope in as many persons of the opposite community as was remotely possible. It is that there is grave contradiction pointed out emerging from the testimony of such witnesses, the Police witnesses have also not seen any overt act on the part of accused No.25 and it is urged that in the circumstances, there are serious doubts with regard to the involvement of accused No.25. It is submitted that it is an admitted position emerging from the testimonies of the concerned witnesses

including the Police witnesses referred to above, that they knew accused No.25 because he was the owner of a grocery shop specifically known as "Adinath Kirana Stores" and therefore, it is but natural for all such witnesses to positively identify accused No.25. Ιt is submitted that however, if we consider the testimonies of PWs 106, 128 and 216, it is submitted that all the three have given absolutely contradictory versions which do not inspire any confidence inasmuch as, the role accused No.25 is concerned. In fact, the of detailed arguments of Shri Bhardwaj with regard to the fact of PW-106 having climbed up the terrace of Bunglow No.15 to see the mob near the railway lines on the rear portion of Gulbarg Society and the acts attributed to the mob and the persons who where identified by PW-106 to be a part of the mob, are all made at length herein before, and I need not verbatim reproduce the same. However, it is urged by Shri Bhardwaj that in the circumstances, when the PW-106 has admitted that during entire incident, he had into only two properties, meaning his own residence and the residence of Shri Ehsan Jafri, the entire version of PW-106 having climbed the terrace of Bunglow No.15 cannot be accepted. It is submitted that in any case, it can be seen that in terms of testimony of PW-128 and PW-216, accused No.25 is attributed to be a part of the mob which entered into and rushed into Gulbarg Society from the front portion thereof by demolishing the gates

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and the front portion of the compound wall of Gulbarg Society and it is submitted that therefore, on of the versions is not correct. It is pointed out that in the circumstances, none of these witnesses are required to be believed and grave doubts have arisen with regard to the Prosecution case and therefore, it is urged that accused No.25 be given a clean acquittal.

776. Having considered these rival submissions, I would like to believe that the could be said to have Prosecution case been partially proved against accused No.25 in light of the fact that there is the unquestioned testimony of no less than six eve-witnesses who claim to have seen accused No.25 as being a part of the mob which rushed into Gulbarg Society. There is no doubt, some debate with regard to from which portion of the Society did accused No.25 rushed into Gulbarg Society and what segment of the mob was he a part thereof since has been pointed out as herein is a contradiction between before, there the testimonies of PW-106 on one hand and PWs 128 and 216 on the other hand. It is in my opinion, not natural that a person who has already entered into Gulbarg Society by being a part of the mob which demolished and entered into the Society and thereafter perpetrated acts of damages and destruction to vehicles and properties, a person alleged to have been a part of such mob would then

go out of the Society, take a long detour, make himself a part of the mob at the rear portion, demolish such wall and thereafter rushed into Gulbarg Society. This, in terms of the time frame provided by the Prosecution itself, is not possible and sounds unnatural. In the circumstances, therefore, this is a contradiction which I am required to consider to come to a conclusion as to whether all the charges are proved against accused No.25. Again, the three Police witnesses no doubt, have seen accused No.25 as a part of the mob which rushed into Gulbarg Society, and accused No.25 is 5 and 3 positively attributed by PWs to be possessed of a can of inflammable substance, though I am surprised as to how upon looking at the can itself, the witnesses could say that it contained kerosene when there is no corroborative material to establish such claim. It is in my opinion, improbable for a person to come to a conclusion as to what a container contains and that too from a distance. Be that as it may, the circumstances make me come to a conclusion that the only inference that a prudent man can draw is that such container would have contained inflammable substances. In my opinion, therefore, especially when both PWs 106 and 128 attribute a can of inflammable substance in the hands of accused No.25 and accused No.25 further is attributed in terms of the testimony of PW106 more particularly in paragraph No.15 to have sprinkled kerosene and petrol at the residence of

Shri Ehsan Jafri of which some splatters were on PW-106, there is in my opinion, no room for any doubt that accused No.25 was a part of the mob and was possessed of a can of inflammable substance at the relevant time. However, even in terms of the testimony of PW-106, accused No.25 was not the person who threw the burning embers or rags which caused the fire in Shri Ehsan Jafri's residence. Again, what has been recovered in terms of the recovery Panchnama drawn under Sec.27 of the Evidence Act in the shape of Exh.1244, is the recovery of a pipe at the behest of accused No.25 and this too is a circumstance I am required to consider while deciding the fate of accused No.25 herein. I am also required to consider that all the six witnesses examined by the Prosecution relevant to accused No.25, have positively identified accused No.25 in the Court and it is also required to be noted that the name of accused No.25 was provided by some of the witnesses right since 05/03/2002 itself and therefore, I do not find merit in the submissions of Shri Bhardwaj that accused No.25 has been falsely roped in. The only question that now needs to be decided is the extent of the role of accused No.25. I am of the opinion that accused No.25 could be said to be quilty of an offence punishable under Sec.307 of the I.P.C. read together with Secs.147, 148 and 149 of the I.P.C. on account of having sprinkled kerosene on the residence of Shri Ehsan Jafri more so in light of

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the fact that he had more than sufficient knowledge of the fact that his actions could result in death of a number of persons who had taken shelter in Shri Ehsan Jafri's residence. However, it is not the case of the Prosecution that any person was charred to death within the residence of Shri Ehsan Jafri on account of the actions of accused No.25 and therefore, I cannot hold accused No.25 guilty of an offence punishable under Sec.302 of the I.P.C., but I hereby hold accused No.25 guilty of an offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 307, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, since he had the common knowledge and intention of setting afire the properties of the residents of Gulbarg Society. In the circumstances, the Prosecution charges are in my opinion, partially proved against accused No.25 and in my opinion, accused No.25 also is required to be suitably penalized in this regard.

777. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the

compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. I also find that the accused is a member of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

Accused No.58

778. Considering the case of accused No.58 Meghsinh Dhupsinh Chaudhary, it is urged by Shri Kodekar that he was one of the prime instigators, being an Advocate as also an Ex-Corporator of the Congress Party, and he is attributed to have incited the mob and thereafter having become a part of the mob itself in perpetrating the carnage at Gulbarg Society. It is submitted that in the is circumstances, the accused required be to treated as the prime instigator behind the entire carnage and exemplary punishment is required to be meted out to the accused No.58. It is submitted that the role perpetrated by the accused No.58 is clearly emerging without any reasonable doubt, without serious contradictions from the testimonies of PW-177 Sairaben Salimbhai Sandhi at Exh.711 and PW-191 Salimbhai Noormohammad Sandhi at Exh.734. It is further pointed out that both these witnesses have positively identified the accused No.58 in the Court and there is no room for any doubt with regard to the role played by the present accused in the offence. It is however, conceded that there is recovery or discovery of any incriminating no material by or at the behest of accused No.58 and it is urged that this by itself cannot confer any benefit upon the accused. It is submitted that one does not need any weapon to instigate a mob and the charge against accused No.58 is largely to the effect that after instigating the mob, he i.e. accused No.58 himself became a part of the mob and perpetrated the incidents which in its entirety culminated into the present offence and it is urged that in the circumstances, the Prosecution could be said to have established beyond reasonable doubt the role and thereby the guilt of the accused No.58 the present offence, more particularly the in

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offences that he stands charged with.

779. Kodekar has firstly drawn Shri mv attention to the testimony of PW-177 at Exh.711 more particularly paragraph No.7 of the said testimony, wherein she has inter alia testified to the effect that accused No.58 together with one Jagrupsinh Rajput, was standing outside Gulbarg Society more particularly on the terrace of the office of accused No.58 and both were inciting the mob by gestures to enter into Gulbarg Society and perpetrate the mayhem that was to follow. It is submitted that PW-177 has positively identified accused No.58 in the Court and no serious cross examination of PW-177 has emerged which would make one doubt the veracity or truthfulness of this witness.

780. Drawing my attention to the testimony of PW-191 Salim Noormohammad Sandhi at Exh.734, Shri Kodekar submits that this witness has clearly attributed accused No.58 to be armed with a sword and was a part of the mob that rushed into Gulbarg Society by demolishing the front gates and the front compound wall by exploding a gas cylinder and PW-191 has specifically identified accused No.58, accused No.34 Krishna, accused No.43 Naran Sitaram Tank, accused No.54 Bharat Teli and accused No.59 Atul Vaid, all of whom are attributed to be armed with either swords or guptis and accused No.58

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according to Shri Kodekar is in terms of the testimony of PW-191, attributed to be armed with a sword. It is submitted that this witness has also identified accused No.58 in the Court and therefore, the charges faced by the accused No.58 are, according to Shri Kodekar, proven beyond reasonable doubt and it is urged that the accused being a responsible person who was a Lawyer and also people's representative since he was а Municipal Corporator, exemplary punishment is required to be meted out to the present accused No.58.

781. Opposing such submissions, learned advocate Shri Rajendra Trivedi appearing on behalf the accused, has submitted that there of is absolutely no merit in the Prosecution case against accused No.58. It is submitted that the gist of the testimony of PW-177 inter alia to the effect that accused No.58 and one Jagrupsinh Rajput - both were instrumental in inciting and instigating the mob to into Gulbarg Society and perpetrate rush the carnage, is completely bellied by the actual facts. It is submitted that it is on the basis of such belated accusations that accused No.58 despite being available at all times, and since it is no one's case that accused No.58 was absconding or not available, came to be arrested as late as on 20/02/2009. It is pointed out by Shri Trivedi that not being satisfied with the arrest and filing of

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chargesheet against accused No.58, the victims through their Advocate, preferred an application Exh.738 under Sec.319 of the Cr.P.C., where the said Jagrupsinh Rajput amongst others was sought to be arraigned as an accused herein. My attention is drawn to the fact that this Court vide a detailed order dated 18/01/2010, rejected the said application against the said Jagrupsinh Rajput. Ιt also an admitted position according to Shri is Trivedi that the order passed by the predecessor of this Court was challenged by the victims in the Hon'ble High Court of Gujarat which also upheld the findings of the lower Court inasmuch as the 18/01/2010 impugned order dated passed below Exh.738 herein, came to be confirmed. The matter, according to Shri Trivedi, was thereafter not carried further to the Hon'ble Supreme Court despite the victims having approached the Hon'ble Supreme Court time and again seeking one relief or the other. It is submitted that therefore, it is a matter of record that the alibi of the said Jagrupsinh Rajput with regard to his not being present at the scene of the incident at all on the fateful day, has been accepted by this Court as also by the Hon'ble High Court of Gujarat. It is submitted that the Hon'ble Supreme Court of India in the case of **B.N.Singh & Others v.** State of Gujarat and Ors. as reported in 1990(1)-GLH-256, has laid down a ratio *inter alia* to the effect that when the alibi of a person is accepted in relation

to an offence, the other accused who is attributed be present with such person during the to commission of the offence, cannot be convicted since the entire evidence with regard to the presence and role of such persons in an offence becomes doubtful in terms of the ratio emerging from such judgment. It is submitted that in such circumstances, when the alibi of Jagrupsinh Rajput has been accepted, then the entire evidence against accused No.58 also is required to be discarded as being untrustworthy and therefore, accused No.58 is required to be given a clean acquittal. It is submitted that since accused No.58 was a prominent person, it is but natural that he would have been identified by the two witnesses who were residents of Gulbarg Society and it is urged that in the circumstances, the entire evidence emerging against accused No.58 herein is not creditworthy and is required to be treated as doubtful and the benefit of such doubtful material must go in favour of accused No.58 and accused No.58 at the cost of repetition, it is urged, must be given a clean acquittal.

Having considered 782. such detailed am firstly of the submissions, I opinion that looking to the testimonies of PWs 177 and 191, the role attributed to have been played by accused No.58 is significantly different from both testimonies. Whereas PW-177 attributes accused

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No.58 as inciting the mob together with one Jagrupsinh Rajput, the PW-191 attributes to have seen accused No.58 armed with a sword in the presence of other co-accused as also one Arun Bhatt who has been identified by no other eye-witness and in fact is not even made an accused in the present proceedings, nor was he at any stage even arrested in questioned or connection with the entire incident. Again, I am required to consider a significant fact that there is no discovery or recovery of any weapon by or at the behest of accused No.58 and other than PW-191, no eye-witness from amongst the more than 200 witnesses examined eye-witnesses herein, not one person has as attributed accused No.58 to be armed with a sword having entered into Gulbarg Society at any or stage. Again, the star witnesses in the shape of PWs 106, 128 and 116 have not even mentioned the whisper of the name of accused No.58 in the course of their lengthy depositions and I am, therefore, required to treat the evidence of PW-191 as of doubtful quality more so when he has attributed weapon in the hands of a person who is not even before this Court as an accused. In my opinion, therefore, in light of the judgment in **B.N.Singh's** case (Supra), the ratio is clear. The Hon'ble Apex Court has clearly held with regard to the credibility of the evidence of a witness when an accused whose alibi is accepted, is state to have been present with other co-accused. The Hon'ble

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Supreme Court has proceeded to acquit such persons who were convicted on the basis of such evidence. In my opinion, therefore, I do not find any material emerging against accused No.58 more SO when there is no discovery or recovery of any incriminating material much less a weapon like a sword, when no overt act is attributed or even the presence of accused No.58 is not attributed in the various incidents that have been graphically described by large number of eye-witnesses, I am unable to come to a conclusion that the Prosecution has established beyond reasonable doubt the charges against the present accused as is submitted by Shri Kodekar. In my opinion, without any further discussion, I cannot convict accused No.58 or come to a conclusion that the charges against him are proved beyond reasonable doubt and therefore, I am of the opinion that accused No.58 also like so many co-accused herein before, is required to be given the benefit of doubt and is required to be acquitted of all charges levelled against him, which I hereby do so.

Accused No.48

Appreciating the relative merits of 783. the Prosecution case against accused No.48 Jitendra @ Jitu Pratapji Thakor, Shri Kodekar submits that accused No.48 has been positively identified by an eye-witness in the shape of PW-129 Firozmohammad Gulzarmohammad Pathan at Exh.635 who has clearly

attributed not only the present accused No.58 to be armed with a sword but also has deposed with regard injuries inflicted on himself i.e. PW-129 by to accused No.48 with the sword which is attributed to have been thrown by accused No.48 at the witness PW-129. It is submitted that the witness has been injured in such incident and his injury certificate is on the record of the proceedings at Exh.785. It is submitted that further in the course of his testimony, PW-129 has positively identified accused No.48 as the person who the witness i.e. PW-129 personally saw cutting down the mother of the witness being one Mariambanu together with coaccused being accused No.49 Mahesh @ Pappu Pratapji Thakor, accused No.29 Mukesh and absconding accused Girish Prabhudas Sharma, all of whom were attributed to have been delivering sword blows on the mother of the present witness PW-129. It is submitted that the post-mortem report of the said Mariambanu being the mother of the present witness PW-129 is on the record at Exh.421 as also the injury certificate of PW-129 is also on the record of the proceedings at Exh.785. It is submitted that in such circumstances, the case of the accused No.48 is in perpetration of a serious offence of causing grievous hurt and murder is categorically and clearly established. It is submitted that no doubt no other witness has corroborated the version supplied by PW-129, but however, it is urged that in such circumstances, a person who has lost at

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least five members of his family, has no reason to falsely implicate any person and it is urged that in such circumstances, the accused No.48 is required to be held guilty of the offences that he stands charged with and is, therefore, required to be suitably penalized. It is submitted that the penalty should be of a nature as would stand strong signals in the society and it is urged that the Prosecution having established beyond reasonable doubt the charges against the present accused, the accused No.48 is required to be held guilty herein.

784. A limited defence is raised by the learned advocates appearing on behalf of the accused, with regard to the role of accused No.48 inasmuch as, it is pointed out that PW-129 is not a reliable and truthful witness and should not be believed since he is contradicted by other eyewitnesses and there are inconsistencies in the testimony of PW-129 and it is urged that the accused No.48 cannot be held guilty on the basis of the sole testimony of an unreliable witness and it is urged that there are grave and serious doubts with regard to the genuineness of the Prosecution case against accused No.48 and it is urged that in the circumstances, the accused No.48 be given the benefit of doubt.

785. Having considered the rival submissions, there is no doubt that there is a

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clear and unambiguous identification of accused No.48 by PW-129 and the accused No.48 is attributed to have inflicted a sword injury on PW-129 by throwing the sword at him which caused injuries to the right hand (wrist portion) and the right eyebrow of PW-129. The witness also attributes a specific direct overt act on the part of accused No.48 together with co-accused in the murder of his mother (mother of PW-129) which incident was witnessed by PW-129 from the terrace of a building being Bunglow No.16 in Gulbarg Society. The witness PW-129 has also claimed that a baq (theli) containing valuables which was being carried by his mother Mariambanu, was also snatched away by one of the accused Mukesh i.e. accused No.29. The accused No.48 has also been positively identified by the witness PW-129 in the Court and in my opinion, this is a strong circumstance emerging as far as the Prosecution against accused No.48 is case concerned. There is also the post-mortem report of the deceased Mariambanu which is on the record at Exh.421. however, does not It provide much assistance inasmuch as, the dead body forwarded for post-mortem was burnt to an extent that it was not possible to draw any conclusions from the post The testimony to that effect mortem. has been tendered by PW-56 Dr.Gitanjali L. fukan at Exh.419. However, the post-mortem report does indicate that the skull of the dead body more particularly parts thereof, were identified. However, the entire post-

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mortem does not indicate as to whether any kind of injuries would be reflective of as injuries sustained by the use of a sword by multiple accused, were found in the post-mortem upon the dead body. No doubt, the PW-56 in her examinationin-chief itself, has clearly stated that it was impossible to ascertain as to whether any other injuries were sustained by the deceased. However, there is no indication with regard to any injuries found on the dead body. Be that as it may, I am now required to examine the injury certificate of PW-129 which is on the record at Exh.785. Strangely, witness PW-129 in terms of the the injury certificate Exh.785, was examined as an outdoor patient on 07/05/2002 which is to say, more than two months after the incident. In fact, the complaint of the patient recorded in the injury certificate and emerging from the testimony of PW-224 at Exh.784 i.e. Dr.Mukund M.Prabhakar, is to the effect that the history was recorded by the doctor as provided by the patient. The complaint recorded is to the effect inter alia "pain present on right hand since 10 days", and the history provided was "trauma in riot". This is the brief and cryptic reading of the injury certificate Exh.785. In my opinion, this somewhat damages the Prosecution case inasmuch as, when the injured PW-129 was in a position to personally go to the Civil Hospital and get examined himself as an outdoor patient, he was in a fit state to give a correct

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history and there is not a whisper of any sword injury and the history is silent about who had assaulted the witness. Again, there is mention only of pain in the right hand and there is further mention of trauma in the riots. There is no mention of any injury on the right eye-brow. Furthermore, it can be seen that PW-129 claims that accused No.48 was amongst the first entrants of the mob that rushed into Gulbarg Society from the rear portion of the compound wall of Gulbarg Society after the was allegedly demolished same by exploding a gas cylinder and accused No.48 is categorically seen to be one of the first four or five persons who rushed into Gulbarg Society in such fashion, by PW-129 in terms of paragraph No.11 of his examination-in-chief. However, PW-106 who also claims to be an eye-witness of the so-called intrusion of persons from the rear portion of Gulbarg Society after exploding a gas cylinder, has not named accused No.48 as one of the members of mob. Again PW-106 has not the even remotely identified accused No.48 as being one of the perpetrators from the mob. Again, there is no recovery or discovery of any incriminating material much less a sword by or at the behest of accused No.48. In the circumstances, while it is settled law and I am conscious of the fact that conviction always be possible on the basis of can sole testimony of a witness, in the instant proceedings, in light of such anomalies, there are some doubts

with regard to the genuineness of the Prosecution case and with regard to the so-called positive identification by PW-129. In my opinion, therefore, the benefit of doubt more particularly when there is no proof and there is absence of injuries indicative of sword injuries on the dead body of Mariamben, and there are contradictions with regard to the mob of persons who entered into Gulbarg Society vis-a-vis the testimonies of PWs 129 and 106 when in light of my findings herein before which I need not repeat, there is no material which would indicate that a gas cylinder was exploded as is claimed by all witnesses, I find it difficult to come to a conclusion that the Prosecution has proved beyond reasonable doubt the guilt of the accused No.48 herein, more so when the brother of accused No.48 being one Mahesh @ Pappu Pratapji Thakor is also on the record of the proceedings as accused No.49 and who has been acquitted of all charges levelled against him, I do not find any conclusion that material to come to а the Prosecution has proved beyond reasonable doubt the charges against accused No.48 also, and therefore, I am of the clear opinion that accused No.48 too is required to be given the benefit of doubt and is required to be given acquittal, which I hereby do so.

Accused Nos.2, 46 and 63

786. I now propose to take the case of

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accused No.2 Yogendrasinh Lalo Q Mohansinh Shekhawat, accused No.46 Lakhansing Q Lakhiyo accused No.63 Lalubha Chudasama and Dinesh Prabhudas Sharma, of whom accused Nos.2 and 46 have been enlarged on bail pending trial, whereas accused No.63 has been denied bail at all stages and has remained in judicial custody all throughout the trial. It is required to be noted that accused Nos.2, 46 and 63 were arrested on 06/03/2002, 17/09/2008 and 07/03/2009 respectively. It can thus be seen that two of the said three accused, were arrested post formation of the S.I.T., whereas accused No.2 has been arrested almost immediately after the incident. I propose to take up the case all the three accused together of and simultaneously since the major allegation emerging against all the three accused, is that they were the perpetrators of a major incident where two women and two children were hacked to death by the use of swords with which all the three accused are attributed to have been armed at the relevant time. The accused Nos.2 and 46 are further alleged to have been and charged with having raped the two women, being one Sajedabanu and an unknown woman in the course of the incident wherein two women were hacked to death and two children accompanying these two women, were also hacked to death by accused No.63. All the three accused are attributed to have been present at the time of the incident and therefore, the case of all the three accused has

been taken up simultaneously for the sake of convenience.

787. Shri Kodekar, the learned Spl.P.P. appearing on behalf of the Prosecution, has made detailed submissions herein before, the gist of which is required to be reproduced herein for the sake of convenience. It is submitted by Shri Kodekar that all the three accused are required to be established to have been guilty of the offence that they stand charged with inasmuch as, the Prosecution by leading cogent, believable and corroborative evidence, has established beyond reasonable doubt the involvement, participation and quilt of all the said three accused in all the offence that they stand charged with inasmuch as, their role and involvement and guilt has been proved in the incident involving the murder and rape of two women being one Sajedabanu and an unknown woman and killing of two young children being one Sadabkhan and Yusuf. It is submitted that a number of witnesses have identified the present set of accused as being the perpetrators of this heinous and extremely gruesome incident, where four lives innocent brutally were cut short by perpetrating inhuman and savage excesses thereon by the three accused herein. It is submitted that not only that, but being not satisfied with killing the four persons, they were also set on fire and their bodies were charred beyond recognition by these

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accused. It is submitted that in three such circumstances, the said three accused are required to be meted out the severest punishment since the gruesomeness and the gravity and the extent of cruelty of the actions of the accused is inhuman and extremely rare. It is submitted that a sum no less than five eye-witnesses have total of attributed and positively named these three accused as the perpetrators of the incident in no uncertain terms and in fact, none else has been attributed to have been a party to the present incident. It is pointed out that even the Police witnesses have supported and corroborated with regard to the presence of the three accused in the mob and such Police witnesses are also corroborating the fact of the accused being armed with swords at the time of the incident. It is pointed out that no doubt, there is no recovery and discovery of any weapon by or at the behest of the accused, but however, looking to the fact that two of the accused were belatedly arrested nearly seven years after the that incident, and the fact the initial investigation or the ineffectiveness thereof is what led to the Hon'ble Supreme Court of India stepping in and handing over the investigation to S.I.T. to bring the true perpetrators to justice, no weightage should be given to the lack of recovery or discovery in such extraordinary circumstances. It is submitted that all the eyewitnesses have positively named the three accused

herein as being the perpetrators of the incident, there is no confusion with regard to the names of such accused and it is submitted that barring PWpositivelv 116, all the accused have been identified by the remaining eye-witnesses even in the Court and it is urged that in the circumstances, there is no room for any doubt with regard to the role played by each of the said three accused in the present offence.

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788. My attention is firstly drawn to the testimony of PW-106 Imtiyazkhan Sayeedkhan Pathan at Exh.542, more particularly to the contents of paragraph No.10 on page No.11, wherein it is inter alia deposed by the witness that the mob which rushed into Gulbarg Society from the rear portion by demolishing the wall, comprised of thereof number of persons of whom accused Nos.2 and 63 were a part of such mob. It is submitted by Shri Kodekar that this witness has further been an eye-witness to the incident where his sister-in-law Sajedabanu and an unknown woman, his nephew Sadabkhan and one Yusuf who had taken shelter in Shri Ehsan Jafri's residence, upon such four of them rushed out of Shri Ehsan Jafri's residence because of the plumes of smoke within the room where they were taking shelter, were sat upon by all the three accused and all three of the said accused are in the course of the testimony of PW-106 are positively attributed to have caught hold of the two women and the women

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further alleged to have are been raped and thereafter, butchered by the use of swords and accused No.63 is further attributed to have hacked to death the two young children Sadabkhan and Yusuf in the course of such incident. It is submitted that such testimony is found in paragraph No.16(a) which graphically describes the entire incident as an eye-witness incident found on pages Nos.18, 19 and 20 of the testimony of PW-106. It is submitted that PW-106 has positively identified all the three accused in the Court and it is urged that the accused can be convicted on the basis of the sole testimony of PW-106 alone.

789. Drawing my attention to the testimony of PW-116 Sayeedkhan at Exh.584, Shri Kodekar has submitted that this witness also is an eye-witness and directly affected by the incident inasmuch as, the said Sajedabanu was his daughter-in-law and the young boy Sadab was his grandson. My attention is drawn to paragraph No.8 of the testimony of the said witness, where this witness has testified with regard to having seen all the three accused as being a part of the mob which had gathered in front of Gulbarg Society and had indulged in damage and destruction to the properties of residents of Gulbarg Society. It is submitted that the witness has categorically named all the three accused amongst the other co-accused to be part of the mob. My attention is drawn to paragraph No.15 and

paragraph No.16 of the testimony of PW-116 wherein this witness too attributes the ghastly incident the death of his daughter-in-law relating to Sajedabanu, an unknown woman and two children Yusuf and Sadab being done away with by the three accused and none else. This witness too has positively named the three accused as being the perpetrators of the incident. None else has been attributed to have participated in the present incident. It is pointed out that again PW-116 has also attributed accused No.63 to have hacked to death the two young children Sadab and Yusuf whereas in terms of the testimony of PW-116, accused Nos.2 and 46 are attributed to have caught hold of the women and having raped them. It is submitted that no doubt, there are some contradictions emerging from the testimony of PW-116 and PW-106, but however, it is submitted that these contradictions can also be explained on account of the fact that both the said witnesses have seen the incident from different locations, but however, both of them according to have positively supported Shri Kodekar, and corroborated each other with regard to the presence and role played by all the three accused in the incident, all the three accused in terms of the testimony of PWs 106 and 116 are categorically deposed to be armed with swords and no other accused is alleged to have been a part of the present incident. It is submitted that there is, therefore, large scale corroboration and

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consistency emerging from the testimony of both these witnesses and no doubt PW-116 has not identified accused No.46 in the Court, but however, has positively identified accused Nos.2 and 63 in the Court as being the perpetrators of the incident that he so graphically describes.

790. My attention is further drawn to the of PW-129 being Fakirmohammad testimonv Gulzarmohammad Pathan at Exh.635 and it is submitted that this witness has further corroborated the testimonies of PWs 106 and 116 albeit to a limited extent inasmuch as, this witness has testified with regard to the presence of accused No.63 in the course of the incident, inasmuch as, accused No.63 has been positively identified by this witness in the Court.

791. My attention is drawn to the testimony of PW-142 Ashraf Sikanderbhai Sandhi at Exh.654 wherein this witness has positively identified accused No.63 to be amongst the mob which was armed with deadly weapons and such witness has positively identified accused No.63 as being one of the members of the mob which rushed into Gulbarg Society and perpetrated the present offence. It is submitted that accused No.63 has been identified in Court by PW-142 which lends the further corroboration with regard to the presence of accused No.63 in the offence.

792. It is submitted that therefore, there is overwhelming material emerging against all the three accused herein and it is urged that in such circumstances, all the three accused are required to be suitably penalized since the Prosecution has established beyond reasonable doubt the charges against all the three accused.

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793. Setting up a defence in respect of all the three accused, Shri Bhardwaj has submitted that the Prosecution version is not required to be accepted since there are number of flip-flops, somersaults and large scale contradictions with incident regard to the in question and the incident of probability of an such а nature happening in the manner sought to be projected by these witnesses, is also unrealistic, not correct and cannot be believed. It is submitted that there forensic or medical evidence is no which establishes any rape or sword injury upon any of these victims and it is urged that in the circumstances, and more so when two of the accused are admittedly arrested clearly seven years after the incident, it is submitted that it is clear that they were so roped in on account of a feeling of vengeance on the part of the present witnesses who had lost number of members of their family and therefore, were also tutored by vested interests to rope in as many persons as they could.

794. My attention is drawn to yet one more incident, where on page No.7 in paragraph No.9, the witness PW-116 has attributed one "LAKHIA" i.e. accused No.46 as being a part of the mob whereas in his further examination-in-chief on page No.8 itself, the witness has not been able to identify such accused in the Court. It is submitted that this cements the defence that the witness was merely stating names which were provided to him by somebody else.

795. My attention is drawn to page No.14 of the testimony of this witness where an accused being Lakhia (accused No.46) is attributed with having perpetrated grave and heinous offences like rape and murder and my attention is drawn to page No.14 in paragraph No.15 wherein the witness has deposed that "લાખીયા અને યોગેન્દ્રસિંદે તેમના કપડા કાડી નાખેલા અને તેમની પર બળાત્કાર Sरेस अने ते पछी तेमने मारी नाजेसा." It is pointed out that though serious allegations of a grave and serious offence like rape and murder have been attributed to the accused No.2 and 46, the IO of SIT i.e. Shri J.G.Suthar (PW-335) has clearly admitted on page No.87 of his cross examination *inter alia* to the effect that in the course of recording his statement IO of the SIT, the present witness before the Sayeedkhan has not given the names of both these accused while narrating the incident of rape and murder.

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Drawing my attention to page No.59, it is specifically pointed out by Shri Bhardwaj that the witness PW-116 has deposed "એ पात ਅરੀ છે કે.

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એસ.આઈ.ટી. એ મારા કોમ્પ. નિવેદન સંબંધે પણ પુછપરછ કરેલી. એવુ બનેલ નથી કે, મેં જણાવેલ બળાત્કારના બનાવમાં સંડોવાચેલ આરોપીઓના નામમાં કોમ્પ. ટાઈપ થયેલા નિવેદનમાં આરોપી દિનેશની જગ્યાએ આરોપી લાખીયાનું નામ લખેલ હોય." It is pointed out by Shri Bhardwaj that the witness has further confused the issue by denying on page No.59 inter alia to the effect "જ્યારે રજૂ કરેલ ટાઈપ નિવેદનમાં લાલા યોગેન્દ્ર તથા લાખીયાએ રેપ કરેલાનું લખેલ છે જે સંબંધમાં જણાવુ છું કે, એસ.આઈ.ટી. માં લખાવેલ વિગત સાચી છે. ટાઈપ કરેલ નિવેદનમાં ટાઈપ કરનારે ભૂલથી દિનેશની જગ્યાએ લાખીયાનું નામ લખેલ છે. એ વાત ખરી છે કે, સીટ સમક્ષ રજૂ કરેલા મારા निवेदनमां पान नं. ८ पर में એम જણाવેલ છે કે, जणात्झरना जनावमां લાખીયા સંડોવાયેલ છે." It is submitted by Shri Bhardwaj committing further that а somersault on the concluding portions on page No.59 and the initial portions on page No.60 of his cross examination, the witness has stated that it was accused No.63 who was allegedly mentioned as the perpetrator of rape not accused No.46. Tt. is submitted and that therefore, this entire version has been changing, varying and improving from time to time as was convenient to the witness and this can never form the basis of being treated as reliable and worthy

and credible eye-witness's testimony.

797. It is submitted by Shri Bhardwaj that despite referring to accused No.46 Lakhia by name, by specific role and by innumerable references during the course of his testimony, statements and affidavits before the initial IOs, IO of the SIT, application/affidavit to the Commissioner of Police as also the affidavit to the Hon'ble Supreme Court of India, the witness has interestingly not been able to identify accused No.46 in the Court and that too when the Court permitted the witness to closely study the accused present in the Court. Ιt is submitted by Shri Bhardwaj that in any case, no T.I.Parade also has been conducted with regard to the identification of accused No.46.

798. It is pointed out by Shri Bhardwaj that the star witness Imtiyazkhan i.e. PW-106 in the course of his testimony, has also positively claimed to have witnessed the incident of rape on his sister-in-law Sajedabanu and an unknown woman whom he knew of, but did not know the name, his nephew Shadabkhan and one Yusuf, all of whom were done to death in continuation of the same incident. It is pointed out by Shri Bhardwaj that the entire incident as also the alleged perpetrators of such incident, is a bogus, got up and concocted version and more importantly an afterthought, that too clearly six years after the incident. It is pointed out by Shri Bhardwaj that PW-106 in the course of

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his oral testimony in paragraph No.16(a) of his deposition, has identified three of the accused as the perpetrators of the incident, firstly being accused No.2 Lala Mohansing Darbar, accused No.46 Lakhia and accused No.63 Dinesh Sharma as the perpetrators of the incident. It is pointed out by Shri Bhardwaj that it is admitted by the witness that the incident took place after the incident of doing away with Shri Ehsan Jafri. It is pointed out that it is also an admitted position according to Shri Bhardwaj, that this witness PW-106 witnessed the incident standing in the kitchen of the residence of Shri Ehsan Jafri. It is pointed out that it would, therefore, be necessary to examine the accuracy and genuineness as also the veracity of this witness in light of further admitted positions and utter contradictions emerging from his testimony itself.

799. It is submitted by Shri Bhardwaj that even PWs 142 and 129 have falsely identified accused No.63 and there is no material which would establish beyond reasonable doubt the involvement and guilt of the accused herein.

800. Having considered the rival submissions, I do not agree with the propositions canvassed by Shri Bhardwaj for the reasons set forth herein after.

801. There is consistent material emerging

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from the testimonies of PWs 106 and 116 with regard to the role, involvement and participation of all the three accused in an incident which has resulted in loss of four lives. On the question of rape of inclined to accept the the women, Ι am less Prosecution case on account of the fact that there is absolutely no material to indicate that there was any rape on any woman in the course of the incident. Now if we examine the testimonies of all the eyewitnesses, all such eye-witnesses claim to have seen mobs of more than 5000 to 10000 roaming around in Society. different parts of Gulbarq Having personally taken a site visit and inspection of the entire Gulbarg Society at length, I am of the opinion that looking to the area of the Society in question and the density of the buildings therein, it would have been impossible for more than a 10000 strong mob to have been entering into the Society. Again, the version supplied by the witnesses is that there was constant stone throwing from all areas surrounding the entire Gulbarg Society and not only was there constant stone throwing, but there was also throwing of burning rags doused with inflammable substance and mobs were roaming around at will, more particularly at the time when this particular incident involving the two women Sajedabanu and an unknown woman and two young children Sadab and Yusuf took place. I am required to note that this incident even according to the eye-witnesses, has happened post the incident of the mob having dragged away Shri Ehsan Jafri and alleged

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to have done away with said Shri Ehsan Jafri. This is when the mob fury was at its peak and there was utter frenzy on the part of the mob in indulging in acts of death and destruction. wanton In my opinion, the testimony of the eye-witnesses is also required to be borne in mind when they say that the mob was constantly screaming, shouting which must have created an atmosphere of terror and such fear that it would be impossible for perceiving the actuality of the occurrence. However, I find it extremely debatable that two women could be raped in such an atmosphere as is claimed. No doubt, attempts must have been made to molest or outrage the modesty of the women by ripping open their clothes by the accused as is claimed, but the allegation of rape appears to have been an after-thought more so when the initial statements do not suggest any such rape taking place. However, that being said and discussed, I cannot disregard the testimonies of the two eye-witnesses who have both attributed all the three accused to be armed with swords with which they fell upon the four hapless persons, two of whom were young ladies and two of whom were young children and all four are attributed to have been mercilessly hacked to pieces by all the three accused. The accused No.63 is attributed to have single handedly done away with the two young children Yusuf and Sadab. There is, in my opinion, therefore, no reason to disregard such clear testimony more so when it consistently appears from the testimony of the IOs examined herein at all

stages during the recording of the statements of the concerned eye-witnesses PWs 106 and 116, they have named all the three accused and none of the accused herein was belatedly named as an after-thought. I am required to note that I am not applying the twowitness theory as advocated in Masalti's case (Supra) and applied herein also while concerning some of the accused inasmuch as, it relates to the present set of accused, since the accused are attributed to have done away with, in terms of the testimony of PW-106, the mother and grandmother of such witness and one another woman of the Society, and in terms of the testimony of PW-116, his daughter-in-law, grandson and other victims and therefore, I am required to accept the testimonies of these witnesses inasmuch as, the question of positive identification of the accused is concerned, since I am of the firm opinion that no witness would like to falsely implicate any accused as the perpetrator of an offence of murder in which the victims were his family members. In any case, I am of the clear opinion that while there might be some exaggerations, a witness who is admittedly an eyewitness, cannot and is not likely to make mistakes as far as the identification of such accused is concerned. Again, both these accused have been identified in the Court by both PWs 106 and 116 and therefore also, I find in the instant set of accused that, the two-witness theory as advocated by the Hon'ble Supreme Court in Masalti's case (Supra), is in my opinion, not required to be applied. All the

three accused at the cost of repetition, have been identified positively in the Court by three out of the four witnesses examined in that regard and no doubt, PW-116 has not identified accused No.46 but in my opinion, that can be excused as a lapse on the part of an already traumatized witness who had to relive moments of what he saw when he stepped into the witness box. In my opinion, therefore, there is hardly any room for any doubt with regard to the involvement, participation and guilt of all the three accused in the present incident which resulted in the death of Sajedabanu, an unknown woman, Yusuf and Shadab, and therefore, I hold all the three accused i.e. accused Nos.2, 46 and 63 established to be guilty of having committed the offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act. I propose to penalize these three accused after hearing the parties since actions on the part of the accused could possibly be construed to be an extremely rare case.

802. From the testimony of all the concerned witnesses, it is clear that the accused have entered into the compound of Gulbarg Society and have entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg

Society and looking further to the fact that most of the eye-witnesses have seen the present accused compound of Bunglow No.19 in the being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is established against accused Nos. 2, 46 and 63 also. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused are held positively guilty of some of the charges levelled against them, there is no room for any doubt with regard to even such charges where the accused were charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find that the accused are members of an unlawful assembly which was formed with a common object to cause death in Gulbarg Society and therefore, are hereby held guilty of an offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

803. While appreciating and analyzing the oral evidence of the eye-witnesses concerned, two eye-witnesses in the shape of PW-177 Sairaben Salimbhai Sandhi and PW-116 Sayeedkhan Ahmedkhan Pathan, have deposed with regard to their having

witnessed rape being perpetrated on three women as also on Firdausbanu. This is in stark contradiction to the testimony of PW-106 Imtiyazkhan Sayeedkhan Pathan who claims to be the star witness and who has not even whispered with regard to the element of rape involving any of the accused or any of the victims herein. The PW-106 has testified with regard to the killing of three women of his own family, meaning his mother, grandmother and an unknown woman, but has not even whispered at any incident of rape being perpetrated on any of the women victims. is unfortunately no There forensic or medical evidence which would in any manner even remotely incidents of establish or support the rape. Furthermore, as has emerged from the testimonies of all the eye-witnesses who are termed and treated as star witnesses by the learned Spl.P.P., having minutely scrutinized their testimonies other than PW-177 Sairaben Salimbhai Sandhi at Exh.711 and PW-116 Sayeedkhan Ahmedkhan Pathan at Exh.584, none of the so-called star witnesses, most of whom claim to have been taking shelter in the residence of Shri Ehsan Jafri, and at the cost of repetition, even according to these two eye-witnesses, the alleged incidents of rape took place in the rear portion of the compound of Shri Ehsan Jafri's residence which they have described as the garden. It is, in my opinion, therefore, extremely surprising that other than these two witnesses, no other witnesses who have given graphic details about which accused

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having perpetrated what offence and in what manner, have failed and neglected to even make a whisper of a mention about any rape upon any woman by any of the accused witnessed by such Prosecution Witnesses. In such circumstances also, I do not find any material on the record as would establish the commission of an offence punishable under Sec.376 of the Indian Penal Code by one or more of the accused herein.

804. Furthermore, at the cost of repetition, as has been rightly pointed out by Shri Bhardwaj, the testimony of PW-116 and PW-177 with regard to the incidents of rape, in my opinion, also are not sounding realistic or truthful. No doubt, some elements in the mob would have attempted to disrobe such women or molest them before doing away with such unfortunate and helpless women, but looking to the fact that even in terms of the eyewitness testimony of most of the witnesses, a huge mob of persons had surrounded the Bunglow of Shri Jafri, Ehsan whereat in the backyard, more particularly referred to as the back garden of the residence of Shri Ehsan Jafri, the alleged incidents of rape are testified to have taken place. It is emerging from the eye-witness testimonies that the mob was attempting to burn down the residence of Shri Ehsan Jafri, was indulging in heavy stonethrowing and there was a general atmosphere of in my opinion, it is frenzy and difficult to

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envisage a gang rape happening at the same spot where a huge mob had gathered and was indulging in heavy stone-throwing and throwing of burning rags in a manner as to target the Bunglow of Shri Ehsan Jafri. Again, PW-106 claims to have been present all throughout in the residence of Shri Ehsan Jafri, when all these particular incidents took place after 01:30 p.m. and he has made no mention with regard to having witnessed any rape or for that matter, heard of any rape having taken place even at a subsequent point of time. I have personally visited the site of the incident and looking to the narrow confines within which such a huge mob is attributed to have surrounded the Bunglow of Shri Ehsan Jafri, I do not find it possible even remotely for such gang rape to have taken place on the women, more so when there is material other than the testimony of two no witnesses with regard to such incident. Furthermore, there is neither any material on record nor any specific material has been pointed out from the record by the Prosecution, to show that any of such women victims, was pregnant, which also becomes evident upon careful scrutiny of the evidence available on record. In my opinion, therefore, it is not possible to believe any incident of rape having taken place and therefore, I do not subscribe to the incidents of rape and therefore, in my opinion, the charge of offence punishable under Sec.376 or Sec.376(2)(g) of the Indian Penal Code, has remained unproved against the accused Nos.2, 38,

46 and 63 who stand charged with such offence, and I, therefore, hold against the Prosecution to the extent of the charge under Sec.376 or Sec.376(2)(g) of the Indian Penal Code is concerned.

Accused No.43

805. I now propose to take up the case of accused No.43 Naran Sitaram Tank @ Naran Channelwalo @ Naran Kodhiyo. The said accused No.43 is, in terms of the evidence that has emerged against him in the trial, attributed to course of the have been involved in no less than the cold blooded murders of at least seven persons including that of Shri Ehsan Jafri. In the circumstances, the present accused could be said be one of the to principal perpetrators of the present offence, more so when it also emerges on the record of the proceedings that the present accused on account of having business of providing cable television to the residents of the area which is possibly what has accounted for his alias of "Naran Channelwalo", has been economically stronger than most of the residents of the Gulbarg Society and therefore, is required to be looked at as a leader of sorts. In my opinion, therefore, it would be relevant to consider the relative merits of the Prosecution case, the defence version and thereafter come to a conclusion as to whether the charges stand proved against such accused or not.

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Shri Kodekar, the 806. learned Spl.P.P. appearing on behalf of the State, submits that the present accused No.43 is involved in no less than seven or eight incidents where seven or eight people have been done away to death, amongst whom were young and old women as also the late Shri Ehsan Jafri who was dragged away from his residence by a mob and of whom not even the slightest trace has been found till date, meaning thereby that Shri Ehsan Jafri appears to have been and is presumed to have been done away in such fashion and his body being set afire, not even the embers suggesting his persona have remained for appreciation of evidence therein, however, since Shri Ehsan Jafri who was an Ex-Member of Parliament and a prominent lawyer, having not been heard of and having been declared missing since more than seven years, is required to be presumed to be dead and that too murdered by the mob in the frenzy that took place at Gulbarg Society. It is submitted by Shri Kodekar that no less than five eye-witnesses have pointed out the prominent role played by accused herein in all the incidents that he is linked with. It is required to be noted according to Shri Kodekar, that the accused No.43 was arrested on 17/09/2008 post formation of the S.I.T. and has thereafter been denied bail at all stages and has remained in judicial custody right throughout the trial, but however, it is fairly conceded by Shri Kodekar that the accused No.43 has been granted temporary bail by the Hon'ble High Court of Gujarat from time to time and has thus

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remained outside judicial custody for temporary periods. It is submitted that there is a large scale corroboration with regard to the presence and role played by the accused in all the incidents and in fact all eye-witnesses who claim to have seen the accused No.43 as being a part of a group of persons who perpetrated a particular incident, all such eyewitnesses have positively identified accused No.43 in the Court in the course of their testimonies. It submitted that in such circumstances, is the Prosecution case against accused No.43 could be said to be established beyond reasonable doubt. It is pointed out by Shri Kodekar that PW-106 Imtiyazkhan Sayeedkhan Pathan at Exh.542, PW-129 Firozmohammad Gulzarmohammad Pathan at Exh.635, PW-177 Sairaben Exh.711, PW-191 Salimbhai Sandhi at Salimbhai Noormohammad Sandhi at Exh.734, PW-282 Dilawerbhai Sikanderbhai Shaikh at Exh.978, PW-301 Rasidabanu Dilawer Shaikh at Exh.1046, have all in the course respective testimonies, positively of their identified the accused No.43 as being one of the perpetrators in incidents that have claimed lives of elderly and others innocent women, who were unfortunate to have been sat upon by the mob. All the eye-witnesses have attributed accused No.43 to be armed with a deadly weapon, however, it is conceded that since the accused No.43 was belatedly arrested nearly seven years after the taking place of the incident, no recovery or discovery of any incriminating material could be made at the behest is of the present accused. It submitted that

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however, the same cannot come in the way of establishing beyond reasonable doubt the case against the accused No.43.

807. Drawing my attention to the testimony of star witness PW-106 Imtiyazkhan Saveedkhan Pathan, my attention is drawn in particular to paragraph No.16 on page Nos.16 to 18 of the testimony, where the witness has positively attributed accused No.43 to be amongst the prime leaders of the mob who dragged Shri Ehsan Jafri out of his residence when according to the witness, Shri Ehsan Jafri went out to persuade the mob to not indulge in such activities. It is claimed that the entities of Shri Ehsan Jafri fell on deaf ears and the witness positively claims accused No.43 to be one of the members of the mob which started dragging Shri Ehsan Jafri away and started beating him up after which Shri Ehsan Jafri was not seen or has not been seen or heard of thereafter. This witness, according to Shri Kodekar, has positively identified accused No.43 in the Court.

808. My attention is drawn to the testimony of PW-129 Firozmohammad Gulzarmohammad Pathan at Exh.635, more particularly paragraph No.7 of the testimony of the present witness, and page No.7 thereof is pointed out to me by Shri Kodekar, wherein the witness clearly attributes a mob of more than 5000 persons to have gathered outside Gulbarg Society and where the mob was being incited to kill

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Muslims and that mob is attributed to have been armed with deadly weapons. The witness has specifically, according to Shri Kodekar, identified accused No.43 as being one of the leaders of the mob which then started causing damage and destruction to the properties of Muslims outside Gulbarg Society. My attention is drawn to paragraph No.17 of the deposition of this witness, where accused No.43 is positively identified by the witness in the Court, according to Shri Kodekar.

809. My attention is next drawn to the testimony of PW-177 Sairaben Salimbhai Sandhi, whose testimony is on the record of the present Exh.711. proceedings at My attention is drawn particularly with regard to the role of accused No.43 emerging from the deposition of such witness and particular attention is drawn to the contents of paragraph No.16 of the deposition wherein the witness has clearly deposed that the mob had dragged away one Firdausbanu from the residence of Shri Ehsan Jafri and hearing her cries seeking help, one Shahejadali according to this witness, went out in an attempt to rescue the said Firdausbanu and it is clearly testified to by the witness in paragraph Nol.6 that both - Firdausbanu and Shahejadali were hacked to death by the group of persons comprising of accused No.42, accused No.43, accused No.1 and absconding accused Ramesh Pandey, who according to the witness, killed the above two persons with the weapons in their hands. The said Firdausbanu is also

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attributed to have been molested by such persons. The PW-177 has further in paragraph No.18 of her deposition, clearly attributed her brother-in-law Jehangirbhai and her son Mohammadhussain Sandhi who according to the witness in paragraph No.18 of her testimony, tried to escape from the carnage, but they too were hacked down by a group of persons accused No.1, absconding comprising of accused Ramesh Pandey and accused No.43, by the use of weapons in their hands. The PW-177 has positively identified accused No.43 in the Court is as established from paragraph No.12 of her deposition. It is submitted that therefore, the presence and overt act on the part of the accused is established doubt corroborates beyond reasonable and the testimony of other eye-witnesses.

810. Ιt is submitted that further corroboration is provided to the testimony of the above witness, in the shape of testimony of PW-191 Salim Noormohammad Sandhi at Exh.734, wherein the witness has in paragraph No.10 of his deposition, identified accused No.43 as being one of the perpetrators who had entered into Gulbarg Society being armed with deadly weapons inasmuch as, a specific identification of a weapon in the shape of a gupti is deposed to be in the hands of accused No.43 as per the present witness. It is submitted that this witness has not deposed any further with regard to any overt act having been seen by him, but however, in paragraph No.18 of his deposition,

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accused No.43 is positively identified by the present witness in the Court. It is submitted that there are, therefore, no exaggerations emerging from the testimony of PW-191 who happens to be the husband of PW-177 and it is urged that the testimonies are, therefore, required to be treated as natural and a few contradictions cannot destroy the positive case that the Prosecution has been able to establish against accused No.43.

My attention is next drawn to the 811. testimony of PW-282 Dilawer Sikanderbhai Shaikh at Exh.978, wherein on page No.3 in paragraph No.4 particularly, the witness has positively identified a number of the main perpetrators in the present incident where he has specifically identified accused No.43 as being one of the perpetrators. It is pointed out by Shri Kodekar that this witness has not supported the Prosecution version to a large extent and was, therefore, sought to be and was in fact declared hostile and the then learned Spl.P.P. was permitted to cross examine the witness. However, it is pointed out that even after being declared hostile, when called upon to identify the perpetrators from amongst the present accused, the witness has positively identified accused No.43 as being one of the perpetrators which clearly emerges on page No.6 of the deposition of such hostile witness. It is submitted that even to this extent, Prosecution case against accused No.43 the is corroborated and therefore, could be said to be

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established beyond reasonable doubt.

812. My attention is drawn to the testimony of PW-301 Rasidabanu Dilawer Shaikh at Exh.1046, wherein she has positively identified accused No.43 No.14 of her deposition, which in paragraph establishes accused No.43 as being one of the prime perpetrators who was armed with a weapon at the time of the incident. It is submitted that nothing further emerges from the testimony of such witness and therefore, all these witnesses are required to be treated as having provided an accurate and correct testimony with regard to the role of accused No.43 in the various incidents.

carefully considered 813. Ι have the defence raised on behalf of accused No.43 and particular attention needs to be drawn to an attempt to find contradictions in the testimonies of PWs 106 and 116 who in turn are claimed to be contradicted by PW-314. It is pointed out in the course of the defence arguments by Shri Bhardwaj that PW-116 has wrongly identified accused No.43 as being one of the perpetrators and a part of the mob that dragged away Firdausbanu and then hacked to death Shahejadali when he attempted to go to her rescue. It is submitted that PW-314 Fagirmohammad Nasirali Saiyed at Exh.1098 has contradicted this version when he says that Shahejadali was killed by accused No.42 and not by accused No.43. It is also pointed out that PW-106 has contradicted himself with regard to

some incidents and he, therefore, cannot be believed.

814. The with arguments regard to contradictions are in my opinion, not required to be considered as a valid and strong defence inasmuch as, they are mere attempts in my opinion, to pick holes and raise doubts. In my opinion, the defence has not succeeded in doing so. All the witnesses have positively identified referred to above, accused No.43 who has perpetrated specific acts in specific incidents and all of them have positively identified accused No.43 in the Court and no doubt, while because of the leucoderma all over his body, the accused No.43 is very easily identifiable in the Court, it equally goes to show that because of his physical appearance, he could have been very easily identifiable at the time of the incident also. Therefore, in opinion, the positive my identification of the accused in the Court also, goes a long way and as has been rightly pointed out by Shri Kodekar, it clearly appears that the witnesses have not tried to exaggerate or blow out of proportion what they have witnessed. One can only appreciate without really realizing the full extent of the trauma that such witnesses would have been facing while they were subjected to such terrorizing situation by a mob of more than 5000 strong which had in front of their eyes, slaughtered women, children and aged persons without showing them any mercy whatsoever. In my opinion, therefore, and

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looking to the fact that most of these witnesses are not highly educated or qualified professionals who can be expected to depose in the Court of law coolly and calmly, some stray contradictions in my opinion, cannot go against the Prosecution also. The accused No.43 the of repetition, at cost has been established in the course of the testimonies of no less than seven witnesses as per the details provided herein before, to have perpetrated the gruesome acts in the course of the entire incident and therefore, in my opinion, the charges against the accused No.43 could be said to be established beyond reasonable doubt. Though, not provided in the compilation submitted by Shri Kodekar, upon careful scrutiny of the testimony of PW-116 at Exh.584, more particularly paragraph No.14 thereof more particularly on page No.11, the witness has clearly testified with regard to the active role played by accused No.43 together with other co-accused in the slaughter of Jebunben, Shahejadali, Firdausbanu as being positively witnessed by PW-116. The said witness PW-116 too has positively identified accused No.43 in the Court and in my opinion, in light of the foregoing discussion, there is no room for any doubt with regard to the Prosecution case being established on all counts against accused No.43 and I, therefore, hold accused No.43 established to be guilty of all the charges framed against him i.e. for the offences punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, and accused No.43 is required to be suitably penalized which I hereby propose to do so at a later stage in this judgment.

815. the testimony of all From the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes killing the residents of Gulbarg Society and of looking further to the fact that most of the evewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred religions, and therefore, I amongst hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find

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that the accused is a member of an unlawful assembly which was formed with a common object to cause death in Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

Accused Nos.1 and 42

816. I now propose to take up the case of accused No.1 Kailash Lalchand Dhobi and accused No.42 Raju @ Mamo Kaniyo Ramavtar Tiwari, both of whom have been arrested on 06/03/2002 and 17/09/2009 respectively. Both in terms of the charges that they face and in terms of the Prosecution case against them, are the principal perpetrators involved in the murder and killing of a number of victims from amongst the residents or persons who had taken shelter in Gulbarg Society on the fateful day. Both these accused have been all throughout the trial, denied bail and have been in judicial custody for most part of the trial, barring their enlargement on temporary bail by orders of the superior Courts.

817. Firstly, taking up the case of accused No.1 Kailash Lalchand Dhobi, he is the person attributed to have started the entire chain of events of murder, carnage and destruction in Gulbarg Society at about 01:30 p.m. when according to the Prosecution, after the mob broke open the compound wall of Gulbarg society from both - the front as

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well as the rear portions and rushed therein, accused No.1 who is attributed to have been armed with a sword, is firstly attributed to have attacked and killed one Anwarkhan Ahmadkhan Pathan who in terms of the testimonies of a number of eyewitnesses, was sitting on the OTTA of the residence of Shri Ehsan Jafri, and was trying to get into the residence when he was accosted by number of persons of whom accused No.1 is positively identified as being the person who delivered the fatal sword blows upon such Anwarkhan. Accused No.1 is further attributed to have caused injuries with a sword upon the witness Aslamkhan Anwarkhan Pathan (PW-283) when the said Aslamkhan attempted to prevent accused No.1 from inflicting any fatal blows with the sword upon PW-283. Accused the father of No.1 is also attributed to have played a direct role in the killing Shahejadali Fakirmohammad of Saived, Jehangir Noormohammad Sandhi, Mohammadhussain Salimbhai Sandhi, Jebunben Kasambhai Mansuri and Firdausbanu Gulzarmohammad Pathan. It is pointed out that accused No.1 was armed with a sword, though one or two of the Police witnesses have identified accused No.1 positively and have attributed him to be armed with a knife at the time of the incident and in fact what has been recovered in terms of the Panchnama Exh.1084 which was drawn under Sec.27 of the Indian Evidence Act, is a knife recovered at the behest of accused No.1. Shri Kodekar submits that there are a large number of eye-witnesses who have positively identified accused No.1 the as

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perpetrator of all such killings and the testimony of all such witnesses which would be referred to herein after, is further corroborated and supported by the testimony of Police witnesses who have also seen accused No.1 being as one of the leaders of the mob indulging in the carnage that took place post 01:30 p.m. It is further pointed out that accused No.1 as can be seen, was arrested on 06/03/2002 i.e. almost immediately after the incident and the name accused No.1 been mentioned almost of has continuously in all the applications, affidavits and petitions of the victims as being one of the prime perpetrators in thee present incident along with accused Nos.42 43, and therefore, it and is submitted that there is absolutely no room with regard to the involvement and guilt of accused No.1 and the charges against accused No.1 framed herein, are required to be held to be established beyond reasonable doubt.

818. My attention is firstly drawn to the testimony of PW-106 Imtiyazkhan Saeedkhan Pathan at Exh.542, who has in terms of his deposition in paragraph No.15 on page No.15 in the last six lines, the incident with regard to accused No.1 inflicting the fatal blows with a sword on the said Anwarkhan, is clearly testified to. The fact of Aslamkhan (PW-283) attempting to save his father, who was also given a sword injury in his attempt to save his father, by accused No.1, is also borne out from such paragraph. It is submitted by Shri Kodekar that all

the eye-witnesses have positively identified accused No.1 Kailash Dhobi in the Court and since the name and identity were specifically given, the want of T.I.Parade cannot operate in favour of the present accused No.1.

819. My attention is further drawn to the testimony of PW-177 Sairaben Salimbhai Sandhi at Exh.711, who in the course of her such testimony, has positively attributed the role of accused No.1 in the killing of Anwarkhan and inflicting the injury upon Aslamkhan (PW-283) with a sword. It is submitted that thus, the testimony of PW-106 is corroborated in toto by PW-177 inasmuch as, the role of accused No.1 in the incident involving Anwarkhan is concerned. My attention is drawn to paragraph No.16 of the testimony of PW-177, more particularly on page No.14 thereof, where in terms of the testimony of the said witness, one Firdausbanu was dragged away by the mob and hearing her shouts for help, one Shahejadali Fakirmohammad Saiyed rushed to her rescue but both of them were done to death by a group of persons of whom accused Nos.1 and 42 are specifically attributed to have been the leaders who killed both such victims by delivering upon them sword blows attributed in the hands of both the accused Nos.1 and 42. It is pointed out that the witness has positively identified in the Court both the accused Nos.1 and 42. My attention is further drawn to the testimony of PW-177, more particularly paragraph No.18 on page No.15 where again the

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witness has testified to be an eye-witness to the incident where according to this witness, her son Mohammadhussain and her brother-in-law Jehangir were both in an attempt to escape, cornered and butchered by a mob of whom accused Nos.1 and 43 are both attributed to have specifically delivered number of blows, in fact the word used is "upra-upri" which connotes back-to-back multiple blows being delivered on both of them by such accused, which resulted in their death.

820. It is submitted that the testimony of PWs 106 and 177 is further corroborated by PW-283 Aslamkhan who was injured in an attempt to save his father Anwarkhan and my attention is drawn to paragraph No.7 of his testimony, more particularly on page No.5 thereof, wherein the witness has positively identified accused No.1 as the person who inflicted the number of sword blows on the father of PW-283 and thus, was instrumental in butchering the said Anwarkhan. It is pointed out that this cements the corroboration as far as eye-witness testimony is concerned. Even PW-283 has positively identified accused No.1 in the Court.

821. It is submitted that even the Police witnesses in the form of PW-2 Nathusinh Naharsinh Chauhan at Exh.263, PW-28 Pradipsinh Shetansinh Rathod at Exh.349, PW-29 Dhananjay Bhaskerrao Bhagwat at Exh.351, PW-30 Dharmabhai Ramjibhai Bodat at Exh.352 and PW-305 Bhupendrasinh Karansinh

Sisodiya at Exh.1052, have all positively named and positively identified accused No.1 in the Court as being present all throughout the incident including during the attempts by the mob to prevent the rescue operations of the survivors of the carnage. It is submitted that in the circumstances, there is overwhelming material and evidence against the accused No.1 and it is urged that the Prosecution could be said to have established beyond reasonable doubt the charges against the accused No.1 and accused No.1 is required to be given the harshest punishment available under law for his misdeeds.

822. Shri Kodekar, while taking up the case of accused No.42, has submitted that the presence and direct overt act on the part of accused No.42 is firstly testified to by PW-177 Sairaben Sandhi in the course of her testimony at Exh.711 where at the cost of repetition, accused No.42 is positively attributed to have been armed with a sword and together with accused No.1, was instrumental in doing away with Shahejadali, Firdausbanu and causing injury to Ezazali Fakirmohammad Shaikh. According to Shri Kodekar, corroboration to the testimony of PW-177 with regard to the role of accused No.42 is provided by PW-179 Ezazali Fakirmohammad Shaikh at Exh.720, who in the course of his testimony on page No.6, paragraph No.7 and more particularly on page No.7, where the said witness has identified accused No.42 as being armed with a sword and having entered into Gulbarg Society and having started damaging and

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destruction of vehicles including the autorickshaw of one Gulam Master and other vehicles parked in the compound. My attention is drawn to the contents of paragraph No.10 of the testimony of the said witness PW-179 No.10 where accused No.42 is on page positively attributed to have specifically delivered sword blows and killing Shehjadali who was done away while he was attempting to rescue one Firdausbanu from the mob. The witness has also positively identified accused No.42 as the person who flung a brick at PW-179 causing head injury to PW-179. The PW-179 has further positively identified accused Nos.1 and 42 in the Court.

823. Further corroboration, according to Shri Kodekar, emerges from the testimony of PW-192 Mohammadali Shahjadali Saiyed at Exh.736. Ιt is submitted that this witness has also in paragraph No.8 of his deposition, positively identified accused No.42 as being armed with a sword at the time of the incident. The witness in paragraph No.14 of his testimony, according to Shri Kodekar, has positively identified accused No.42 amongst others to have attempted to set fire to the residence of testimony of PW-192 Shri Ehsan Jafri. The in paragraphs Nos.15 and 16 according to Shri Kodekar, further corroborates the testimony of prior witnesses referred to herein before, inasmuch as, this witness too has narrated the incident of the molestation of Firdausbanu and the attempt on the part of Shahejadali to rescue her. Shri Kodekar has

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pointed out that incidentally, the deceased Shahejadali was the father of the present witness and PW-192 has positively attributed accused No.42 to have delivered a fatal blow with a sword on th neck of his father Shahejadali. It is submitted that PW-192 has also positively identified accused No.42 in the Court and it is submitted that looking to the role played by both accused Nos.1 and 42 in such multiple killings and looking to the positive and clearcut, unambiguous testimonies of such witnesses, there is no room for any doubt with regard to the quilt of accused Nos.1 and 42 in the charges that they face and therefore, since the Prosecution has established beyond reasonable doubt such grave and serious charges, at the cost of repetition, Shri Kodekar has submitted that exemplary punishment is required to be awarded to both the accused Nos.1 and 42 for their direct role in such a carnage of unprecedented proportions.

824. Setting up a defence on behalf of accused Nos.1 and 42, some contradictions are sought to be pointed out by Shri Bhardwaj inasmuch as, my attention is drawn to the portion of the testimony of PW-106 where he claims to have seen his father Anwarkhan sitting on the OTTA of his residence, whereas all the other witnesses claim to have seen Anwarkhan sitting on the OTTA of the residence of Shri Ehsan Jafri. However, beyond such contradiction, nothing worthwhile is pointed out as would make me come to a conclusion that there are

such grave and serious contradictions and anomalies emerging from the testimonies of PWs 106, 177, 179, 283, 192 as also the Police witnesses referred to herein before, all of whom have, in my opinion, not only given a clearcut and corroborative testimony with regard to the presence and role of both the accused Nos.1 and 42 in the course of the entire incident, but there is consistence of versions emerging from the testimonies of all such witnesses and furthermore, all the witnesses above, have unhesitatingly identified both the accused Nos.1 and 42 in the Court and it can be seen that the name of accused Nos.1 and 42 as accused or perpetrators of the offence, has emerged in all applications, affidavits and petitions filed by PW-106 and therefore, I am of the clear opinion that there is no room for any doubt with regard to the role played by both the accused Nos.1 and 42 in the present offence and without any further discussion, Ι conclude that the Prosecution has indeed established beyond reasonable doubt the role played by both the accused Nos.1 and 42 as charged and both are required to be held guilty of the charges that they face. I, therefore, hold accused No.1 quilty of having committed offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 307, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, and accused No.42 guilty of having committed offence punishable under Secs.143, 147, 148, 149, 153(A)(1)

(a) (b), 186, 188, 201, 295, 302, 332, 337, 396, 397,
398, 427, 435, 436, 447, 449 and 452 of the Indian
Penal Code read together with Sec.135(1) of the
Bombay Police Act.

825. the testimony of From all the concerned witnesses, it is clear that the accused have entered into the compound of Gulbarg Society and have entered SO with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eye-witnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused are held positively quilty of some of the charges levelled against them, there is no room for any doubt with regard to even such charges where the accused were charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find that the accused are members of an

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punishable under Sec.302 read together with Sec.149 of the I.P.C.

Accused No.14

I now propose to take up the case of accused No.14 Jayeshkumar @ Gabbar Madanlal Jinger, who has been arrested on 19/03/2002 i.e. almost immediately after the taking place of the incident in question, and he has been denied bail all throughout the trial and has thus remained in judicial custody since his arrest.

827. It is required to be noted that accused No.14 also is, according to the Prosecution case, one of the principal perpetrators of the offence and according to Shri Kodekar, the learned Spl.P.P. appearing for the State, a large number of deposed with eye-witnesses have regard to interlinking accused No.14 with а number of incidents that took place at Gulbarg Society on the fateful day and the role of accused No.14 in perpetrating an offence which led to loss of lives as also setting afire the property and vehicles of the residents of Gulbarg Society as also setting afire and burning the dead bodies of the victims and at the same time being armed with deadly weapons,

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are all according to Shri Kodekar, specifically, categorically and without serious any contradictions, aspects emerging from the material and corroborative testimony of at least six eyewitnesses examined on the record of the present proceedings. It is pointed out that there is also in terms of recovery Panchnama Exh.957 recovery of a sword at the behest of accused No.14 which recovery also corroborates the eye-witness testimony of a number of witnesses which would be pointed out herein after, which clearly attributes the fact of accused No.14 being armed with a sword at the time of some of the incidents. It is also pointed out that all such witnesses have positively identified accused No.14 in the Court and therefore, there is no room for any doubt with regard to the fact of accused No.14 being amongst the principal perpetrators of the present offence and his role thus being established beyond reasonable doubt, he is required to be suitably penalized.

828. Shri Kodekar has drawn my attention firstly to the testimony of PW-106 Imtiyazkhan Saeedkhan Pathan at Exh.542, and my attention is drawn in particular to pages Nos.13 and 14, wherein the witness has specifically deposed *inter alia* to the effect that at about 01:30 p.m. he saw a mob of persons having gathered on the terrace of Bunglow No.1 of whom the witness has specifically identified accused No.14 as being one of the miscreants. The accused No.14 is further positively identified from

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amongst the accused in the Court by PW-106. My attention is drawn to the damaging aspect on page No.14 of the testimony in continuation, where PW-106 has specifically testified with regard to the fact of accused No.14 throwing a full brick which caused injuries to the chest of one Irfan Gulzarbhai and which has ultimately resulted in his death. It is pointed out by Shri Kodekar that deposition of PW-106 at such point of time indicates that the injured Irfan after being struck on the chest by the brick thrown by accused No.14, collapsed unconscious but it is submitted that it is an admitted position that the said Irfan never regained consciousness and in fact passed away. It is pointed out that this is the first incident with which the present accused No.14 has been connected by an eye-witness.

829. My attention is drawn to paragraph No.16 on page No.16 of the testimony of PW-106 where accused No.14 is interconnected with and is established to be a part of the mob which had dragged out one Salim Abubakkar and hacked him to death. The accused No.14 is positively attributed to be a member of such mob. It is pointed out that thus, the accused No.14 in terms of the testimony of PW-106 is attributed to have been the prime perpetrator of the incident where two persons from amongst the victims had lost their lives.

830. My attention is further drawn to the testimony of PW-192 Mohammadali Shahjadali Saiyed at

Exh.736, wherein the witness has specifically pointed out at the role played by the accused No.14 in disposing of the dead bodies of victims by burning them by pouring inflammable substance on such dead bodies. My attention is drawn to paragraph No.14 of the deposition of such witness, more particularly on page No.13 thereof, where the witness has categorically deposed inter alia to the effect where accused No.14 together with other principal perpetrators is seen by the witness to have started setting fire to the front portion of Shri Ehsan Jafri's residence. It is pointed out that such deposition is in continuation of the events depicted in paragraph No.14 referred to herein before and it is pointed out that in paragraphs Nos.15 and 16 of the deposition, the witness has deposed with regard to the fact of some of the persons who had taken shelter in Shri Ehsan Jafri's residence, being dragged out by the members of the mob and particular attention is focused on paragraph No.15 on page No.14 of the deposition where the father of the present witness was done away to death by the mob when he tried to rescue one Firdausbanu who was dragged away by the mob, of whom accused No.14 was specifically identified as a member. It is pointed out that the witness has further testified that when Shahejadali was being struck sword blows, other persons of the mob, of whom the accused No.14 was one of them, were sprinkling inflammable substance on the dead bodies which were thereafter set afire according to the deposition emerging on page No.15, paragraph No.16 of the testimony of PW-192. It is submitted that PW-192 has also identified accused No.14 to be armed with a sword at the time of such incident and it is submitted that thus, the role and involvement of accused No.14 in an incident involving the loss of two further lives is also established. It is submitted that not only that but the burning of the dead bodies is also attributed to have been done by accused No.14 amongst other accused in terms of such testimony.

831. Shri Kodekar has further drawn mγ attention to the testimony of PW-177 Sairaben Salimbhai Sandhi Exh.711, more particularly at paragraph No.10 on page No.8, where the incident of stone-pelting from the terrace of Bunglow No.1 of Gulbarg Society and the role played by accused No.14 thereat is specifically mentioned, which in turn corroborates the version supplied by PW-106. The PW-177 too has identified accused No.14 positively from amongst the accused present in the Court during the course of her testimony.

832. Shri Kodekar has also drawn mγ testimony of PW-142 attention to the Ashraf Sikanderbhai Sandhi at Exh.654, where in paragraph No.7 on pages Nos.6 and 7 of his testimony, the witness has positively identified accused No.14 as being one of the members of the mob who had gathered outside Gulbarg Society when the Police vehicles had gone away and which mob then started damaging and

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destroying shops and vehicles belonging to the persons of the minority community. While this witness has not attributed accused No.14 to be armed specifically with a weapon, he has made a general statement that such mob was armed with swords, pipes, tridents etc. It is pointed out by Shri Kodekar that this witness also has testified with regard to the incident of stone-pelting from the terrace of Bunglow No.1 and the role played by accused No.14 therein, where accused No.14 even in terms of the testimony of this witness on page No.9, paragraph No.8, where the witness has honestly and truthfully testified to the fact of the said Irfan being injured fatally by stone-pelting though such witness has not named anybody specifically but has recollected the taking place of such incident and it could be said that in such circumstances PW-106 is corroborated to a limited extent by this witness, according to Shri Kodekar. The witness, according to Shri Kodekar, has categorically pointed a finger at accused No.14 along with the principal perpetrators in paragraph No.8, pages Nos.9 and 10 of his testimony, to be one of the persons of the mob which had surrounded the residence of Shri Ehsan Jafri. It is pointed out that this witness too has positively identified accused No.14 in the Court and this provides a further corroboration to the voluminous evidence and overwhelming material emerging against accused No.14.

833. My attention is further drawn to the

testimony of PW-216 Ismailbhai Yasinkhan Pathan at Exh.772 wherein, in the opening statement starting from paragraph No.3 on page No.2 of his testimony, the witness has deposed with regard to the setting afire of an autorickshaw by the mob of whom he has specifically identified accused No.14 to be one of the two perpetrators. My attention is drawn to page No.6, paragraph No.8 of the testimony of this witness, wherein accused No.14 amongst other members of the mob, is attributed to have rushed into Gulbarg Society after demolishing the front gate and compound wall of the Society and the mob is attributed to have started damaging and destroying the vehicles and property of the residents of Gulbarg Society. According to Shri Kodekar, this witness has further specified that this mob was armed with deadly weapons such as swords, pipes, tridents etc. and the witness has positively identified accused No.14 as being one of the perpetrators and members of such mob and Shri Kodekar submits that the witness is candid enough to concede that he does not remember as to what weapon was in the hands of which accused, but the witness has positively stated that all such accused whom he has mentioned of whom accused No.14 was one of them, were armed with deadly weapons.

834. My attention is drawn to the testimony of PW-128 Mohammadrafiq Abubakkar Pathan at Exh.633, more particularly paragraph No.5 on page No.5, wherein the witness has specifically deposed the

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fact of accused No.14 being one of the members of mob which had indulged in destruction the of property outside Gulbarg Society at the beginning of incident. The witness the entire has further testified to with regard to establishing the presence of accused No.14 on the terrace of Bunglow No.1 and indulging in stone-pelting and also the fact of accused No.14 having thrown a brick which caused the fatal injury to Irfan, and all these facts are deposed as being witnessed by the PW-128 also who has further cemented and corroborated the Prosecution version by positively identifying accused No.14 in the Court. The role played by accused No.14 in damage and destruction to the property and vehicles within Gulbarg Society is also deposed to by the witness and it is submitted that this provides further corroboration to the eyewitness testimonies. The accused No.14 also at the cost of repetition, is identified positively in the Court by PW-128.

835. is submitted that the cumulative Tt. effect of such testimonies is establishing beyond reasonable doubt the involvement, participation and guilt of the accused No.14 and that too, proved beyond reasonable doubt by the Prosecution. It is that testimonies submitted the are largely corroborative, contain an element of truth inasmuch as, the role of accused No.14 is concerned. It is pointed out that therefore, there is no room for any doubt that accused No.14 was one of the principal

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perpetrators of the carnage at Gulbarg Society and exemplary punishment is required to be meted out to accused No.14 also since the charges against accused No.14 are established beyond reasonable doubt.

A strong defence is attempted to be set up by Shri Bhardwaj and while I am not required to reproduce at length the voluminous and weighty defence referred to herein before, I am required to elaborate the material aspects of the defence inasmuch as, the attempt is made to throw and create doubts with regard to the genuineness of the Prosecution version.

837. It is pointed out by Shri Bhardwaj that while the depositions and testimonies of convenient witnesses have been brought to the attention of the Court, the testimony of PW-116 is required to be highlighted where such witness in a parrot-like repetition of the testimony of previous witnesses relied upon by the Prosecution, has established or tried to establish the presence of accused No.14 as the principal stone thrower from the terrace of Bunglow No.1 belonging to Dayaram Jinger. However, according to Shri Bhardwaj, what has damaged the Prosecution case, is that such witness has failed to identify accused No.14 in the Court. It is submitted that therefore, the very presence of accused No.14 as claimed by the Prosecution, becomes doubtful. It is pointed out that there is no T.I. Parade carried out with regard

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to establishing the identity of accused No.14 and it is urged that in the circumstances, when PW-116 amongst others, has after specifically naming accused No.14 as the perpetrator of the incident from the terrace of Bunglow No.1, has failed to identify accused No.14, then the very presence of accused No.14 at the time of the incident, becomes very doubtful.

838. Drawing my attention to the testimony of PW-314 being Fakirmohammad Nasirali Saived Exh.1098, it is submitted that even this witness has failed to identify accused No.14 as also accused No.65 Rajesh Dayaram Jinger though he has positively stated with regard to their involvement in the stone-pelting incident from the terrace of Bunglow No.1. It is submitted that therefore, the apparent false involvement by vested interests is established even from the doubtful testimony of PW-314 which is conveniently omitted to be mentioned by Shri Kodekar.

839. It is submitted by Shri Bhardwaj that most of the witnesses have pointed a finger towards accused No.14 i.e. Jayesh @ Gabbar, but it is pointed out that most of the witnesses have not been able to positively identify accused No.14 as the perpetrator though they have very specifically named him in the deposition. It is submitted that in the circumstances, none of the witnesses can be believed to have given a correct and truthful version of the

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alleged incident.

is 840. Tt. submitted that the star witnesses have greatly contradicted each other and their testimonies at the cost of repetition, are parrot-like and tutored which would indicate that there was a sinister attempt to falsely rope in innocent persons out of the feeling of vengeance and out of a feeling to rope in as many persons as could it is be possible, and urged that in such circumstances, the Prosecution version should not be believed and cannot be accepted as proved beyond reasonable doubt with regard to the involvement and guilt of any of the accused, much less the accused No.14 herein.

841. It is pointed out by Shri Bhardwaj that the PW-128 has identified accused No.14 in the Court amongst other accused. It is submitted that the witness has conceded that in all statements recorded upto 11/06/2002, the names of the accused were not provided nor was any particular about the incident provided. It is submitted that this also throws grave doubts on the genuineness of the testimony of this witness.

842. It is pointed out by Shri Bhardwaj that PW-289 has failed to identify accused No.14 or accused No.65 as being the leaders of the mob that was throwing stones from the terrace of Bunglow No.1 of Gulbarg Society and it is urged that in such circumstances, such theory of accused Nos.14 and 65 playing a prominent role is being destroyed by the testimonies of the so-called eye-witnesses themselves.

843. It is submitted that while PW-289 has positively stated and deposed with regard to the presence of accused No.14 in the mob which had started gathering and caused damage to the property outside Gulbarg Society, he has strangely not connected accused No.14 to the incident of stone throwing from the terrace of Bunglow No.1 and it is, therefore, required to be inferred that while this witness is in a position to identify and knows accused No.14, he has not associated accused No.14 with the stone throwing incident or causing injuries therefore, this to Irfan and is а serious contradiction which is required to be considered.

844. Drawing my attention to the testimony of PW-191 Salim Noormohammad Sandhi at Exh.734, it is submitted that in the entire testimony, nowhere has this witness attributed any role on the part of accused No.14 in causing any injury to the said Irfan Gulzarmohammad despite being in a position to identify accused No.14 as a member of the mob. It is pointed out that while great reliance is placed on the testimony of PW-177, my attention is drawn to page No.68 of her cross examination, where she has conceded not having provided names in any of her applications or affidavits much less the name of

accused No.14 as being the perpetrator of the Ιt is submitted that therefore, offence. the involvement and inclusion of accused No.14 as the perpetrator of the offence, is an obvious afterthought and therefore, in light of such clear contradictions and doubts that have emerged, no should come to a conclusion Court that the Prosecution case has been established beyond reasonable doubt as far as accused No.14 is concerned and it is urged that in the circumstances, the benefit of doubts must go to the accused No.14.

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845. It is pointed out further by Shri Bhardwaj that PW-223 Alihussain Ibrahimbhai Shaikh at Exh.780 has in the course of his deposition, in his examination-in-chief, refused even to identify any of the perpetrators of the offence despite his being present at Gulbarg Society at all times during the incident. My attention in particular is drawn to paragraph No.16 on page No.79 of his deposition wherein the witness has clearly admitted that his father Ibrahimbhai Shaikh was also a resident of Gulbarg Society and that on the fateful day, the said Ibrahimbhai Shaikh had taken shelter on the terrace of Bunglow No.1 in Gulbarg Society, and the witness PW-223 has further conceded that the Bunglow No.1 belonged to a Hindu and it is submitted that while no specific details are provided about the witness having knowledge with regard to the name of the owner of the said

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Bunglow, there is no room for any doubt that the Bunglow belonged to Dayaram Jinger, the father of accused No.65. It is pointed out that in any case, PW-223 has in paragraph No.16, further admitted that the property belonged to a Policewala which clearly interlinks the Jingers to the said property. It is pointed out that however, this witness despite testifying in such fashion, was not sought to be declared hostile by the Prosecution and therefore, it is required to be inferred that the witness was accepted to be a truthful witness by the Prosecution. It is submitted that therefore, the theory that accused No.14 together with other co-accused being accused No.1, was on the terrace of Bunglow No.1 pelting stones or instigating the mob, is a figment of fertile imagination. It is pointed out that if such a mob had indeed gathered on Bunglow No.1, then there was no possibility of such eye-witness being permitted to take shelter on the terrace and not even being remotely harmed by the mob. It is pointed out that PW-223 has admitted that his father Tbrahimbhai Shaikh had taken shelter on the terrace of Bunglow No.1 for about 48 hours and therefore, this aspect clearly destroys the Prosecution version and further establishes that the so-called eye-witnesses who have testified in near identical fashion, have been tutored to do so.

846. It is submitted that further damaging

the to the Prosecution case, is the convenient omission on the part of the Prosecution to examine the said Ibrahimbhai Shaikh as a witness herein despite the fact of such person being cited as a witness in the chargesheet. It is submitted that the testimony of PW-223 coupled with the omission to examine such important witness Ibrahimbhai Shaikh in light of the testimony of PW-223, requires adverse inference to be drawn against the Prosecution and it is urged that even in such circumstances, the theory of the defence that accused No.14 has been belatedly roped in out of a feeling of vengeance is further cemented.

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847. It is submitted by Shri Bhardwaj that PW-107 Rupaben Modi indirectly supports the theory emerging from the testimony of PW-223 and the statement of Ibrahimbhai Shaikh that there was no stone-pelting from Bunglow No.1 but if at all there was any stone-pelting, the same was from a terrace of a shop outside Gulbarg Society. It is submitted that even in such circumstances, the theory of accused No.14 in company of other co-accused i.e. accused No.65 and other members of the mob having climbed up on the terrace of his own property as is claimed by the Prosecution, is bogus and should not be believed and is, therefore, required to be discarded.

848. I have considered the rival

submissions and no doubt, a valiant attempt has been made by Shri Bhardwaj to establish a version in favour of accused No.14 in his defence, that accused No.14 has been subsequently implicated as an accused as an after-thought out of a feeling either of vengeance or a feeling to rope in as many persons as accused as possible. However, I cannot ignore the clearcut, unambiguous and corroborative versions emerging from the testimonies of no less than six eye-witnesses as is specifically pointed out by Shri Kodekar in the course of his submissions and which I need not repeat. I am required to observe and note that accused No.14 is in terms of the testimony of such six eye-witnesses specifically linked to no less than four or five incidents where no less than four or five persons have lost their lives, the dead bodies are attributed to have been burnt by the mob and wholesale damage and destruction to the property of the members of the minority community within and outside Gulbarg Society, are all incidents where accused No.14 is positively identified to have played an active role. No doubt, there are some concessions emerging from the cross examination of these witnesses, more particularly PW-177 that accused No.14 was not named in any of her affidavits or applications, but I am required to come to a conclusion that such omissions cannot take away from the merits of the Prosecution case against accused No.14 more so when there is such overwhelming testimony in the Court. I am also required to look at the fact that accused No.14 has been arrested on

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19/03/2002 i.e. almost immediately after the taking place of the incident and therefore, it could not be said for a moment that the intention was to falsely rope in innocent people out of a feeling of vengeance. The arrest and that too immediate arrest of the accused No.14 clearly destroys the defence theory with regard to false implication of accused No.14 at a belated stage. I am also required to note that Shri Bhardwaj has remained strangely silent with regard to the recovery of the sword in terms of recovery Panchnama Exh.957 at the instance of accused No.14 and accused No.14 being positively identified by no less than six to seven eyewitnesses, would, in my opinion, make this Court come to a conclusion that the role and perpetration of offence and that too as a principal perpetrator on the part of accused No.14 stands established beyond reasonable doubt. Particular attention in my opinion, is required to be paid to the testimony of PW-106 inasmuch as, the witness has in terms of what is pointed out herein before with regard to my attention being drawn to paragraph No.16 of the testimony of PW-106 by the defence, is clearlv establishing the specific identity of the accused No.14 as being one of the miscreants who had gathered on the terrace of Bunglow No.1 and the witness has positively identified accused No.14 as the person who has thrown the brick at Irfan Gulzarbhai, which caused him fatal injuries. The testimony of PW-106, in paragraph No.16 of his deposition with regard to specific naming of accused

No.14 as being a member of the mob which dragged Salim Abubakkar and thereafter hacked him to death, cannot be ignored. The defence in this regard is a bring mere attempt to out on record some contradictions emerging from the testimony of PW-106 with other eye-witnesses and having considered the contradictions, I am of the opinion that the contradictions are not so grave or serious as would completely eradicate the effect of the testimony of PW-106. Again, the PW-106 has positively identified accused No.14 in the Court.

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849. Similarly, I cannot ignore the eyewitness testimony of PW-192 wherein accused No.14 is specifically seen by the witness in the mob which set fire to the front portion of Shri Ehsan Jafri's residence and the testimony of the present witness more particularly paragraph No.15 on page No.14 where the witness PW-192 has specifically attributed a mob to have dragged away his father Shahejadali who had according to PW-192, attempted to rescue one Firdausbanu, cannot be ignored. This witness has further deposed and pointed a finger at accused No.14 as being the person who was armed with a sword and who was instrumental in hacking his father and the said Firdausbanu to death.

850. I cannot also ignore the testimony of PW-177 who has corroborated the testimony of PW-106 with regard to the role played by accused No.14 in the incident of stone throwing from Bunglow No.1.

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The corroborative testimonies of PWs 142 and 216 with regard to the role played by accused No.14 in the damage and destruction to property which is specified herein before which is further corroborated in the testimony of PW-128, are all aspects which cannot be ignored at all. Most of the witnesses have positively identified accused No.14 who at the cost of repetition, as pointed out above, was arrested almost immediately after the incident.

851. The contradictions or omissions on the part of some witness to associate or identify accused No.14 with a particular incident, would not take away from the overwhelming material placed for my consideration by the Prosecution inasmuch as, the role and guilt of accused No.14 in the present offence is concerned. I am of the opinion that therefore, there is considerable strength in the submission made on behalf of the Prosecution that accused No.14 is required to be treated as one of the principal perpetrators of the offence, is required to be held to be linked to a number of incidents where more than four persons have lost their lives and there has been considerable damage to property and vehicles of members of the minority community and therefore, I hold that the State has successfully established all charges against the accused No.14 i.e. Secs.143, 147, 148, 149, 153(A)(1) (a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of

the Bombay Police Act for which accused No.14, in my opinion, is required to be suitably penalized which I propose to do so herein after.

852. testimony of From the all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find that the accused is a member of an unlawful assembly which was formed with a common object to

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Accused Nos.54 and 55

853. I now propose to take up the relative merits of the Prosecution case with regard to the role played by accused No.54 Bharat @ Bharat Taili Shitlaprasad and accused No.55 Bharat Laxmansinh Goud Rajput inasmuch as, both of these accused are required to be dealt with simultaneously inasmuch as, the Prosecution case with regard to their involvement in particular incidents, is identical inasmuch as, both of these accused are named by eyewitnesses as having participated in two specific incidents.

It is pointed out by Shri Kodekar that 854. the Prosecution has established beyond reasonable doubt the involvement and guilt of both these accused in the first incident at Ankur Cycle Works which could be said to be the starting point of the entire incident. It is submitted that both PWs 106 and 116 have positively identified accused Nos.54 and 55 in the incident where one Yusuf being the son of the owner of Ankur Cycle Works, was assaulted and slapped upon by accused Nos.54 and 55 together with an absconding accused Girish Prabhudas Sharma and one another absconding accused Ramesh Pandey also known as Ramesh Choti. It is pointed out that both these witnesses i.e. PWs 106 and 116 have further

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testified specifically in their respective testimonies that the said Yusuf ran away and took shelter in Gulbarg Society, more particularly in the residence of Ehsan Jafri whereas the other son of the owner of Ankur Cycle Works i.e. one Ayub upon his attempting to run away, was according to both these witnesses PWs 106 and 116, given at least two to three gupti blows by accused No.55 and there is a serious contradiction inasmuch as, according to both these witnesses, the said Ayub ran into his own residence to take shelter. It is also pointed out by Shri Kodekar that PW-106 has positively identified both accused Nos.54 and 55 in the Court whereas PW-116 has misidentified accused No.55 by pointing out

to one Babu Manji who is accused No.23, but however, has positively identified accused No.54 in the Court.

855. My attention is drawn to paragraph No.8 on page No.7 which concludes at the opening portion on page No.8 of the deposition of PW-106 Imtiyazkhan Saeedkhan Pathan at Exh.542, where the entire incident and role played by accused Nos.54 and 55, is positively and specifically pointed out. is submitted that on the other hand, PW-116 It Saeedkhan Ahmedkhan Pathan at Exh.584 in the course of his testimony, more particularly on page No.2, paragraph No.3 which concludes on page No.3 itself, has also testified with regard to the fact of both accused Nos.54 and 55 involved in the incident at Ankur Cycle Works and the fact of accused No.55

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inflicting qupti blows on the said Ayub. According to Shri Kodekar, there is further corroboration to the testimony of PWs 106 and 116, in the shape of PW-191 Salimbhai Noormohammad Sandhi at Exh.734 who has testified to accused No.54 being seen to be a part of the mob which rushed into Gulbarg Society and according to this witness also, accused No.54 was armed with a sword at that point of time. It is submitted that partial corroboration is also provided by PW-314 Fagirmohammad Nasirali Saiyed at Exh.1098 who has identified accused No.54 as being a part of the mob which was armed with deadly weapons like knives, swords, guptis etc. It is submitted that therefore, there is clearcut evidence with regard to the fact of accused Nos.54 and 55 together with absconding accused Girish Prabhudas Sharma and other absconding accused Ramesh Pandey moving together as a group, all of whom were armed with deadly weapons.

856. It is pointed out by Shri Kodekar that even damaqinq is fact of more the PW-106 specifically pointing out а finger at the involvement, direct role of both the accused Nos.54 and 55 in the killing of his mother, grandmother and one Zebunben in the incident described in paragraph No.15 on page No.16 wherein the witness has specifically testified with regard to his mother, grandmother and one Zebunben who having rushed out of the residence of Shri Ehsan Jafri on account of the smoke that developed due to the fire inside Shri

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Ehsan Jafri's residence, being cut down by accused Nos.54 and 55 and absconding accused Girish Prabhudas Sharma. It is submitted that in the circumstances, there is no room for any doubt that both accused Nos.54 and 55 are specifically pointed out to be directly involved in the killing of three helpless women and it is submitted that there is no reason for PW-106 to make up any stories especially when two of the women so cut down were members of his own family being his mother and grandmother. It is pointed out that in such circumstances, it is further established that accused Nos.54 and 55 and the absconding accused Girish Prabhudas Sharma were moving together and had the common intention of butchering helpless victims who were residents of Gulbarg Society, and their involvement in the offence that they stand charged with, is established beyond reasonable doubt and both the said accused Nos.54 and 55 are required to be given exemplary punishment for their role in this carnage.

857. Setting up a defence, Shri Bhardwaj has firstly attacked the accuracy and veracity of the testimony of PW-106 with regard to the alleged role of accused No.55 in inflicting gupti blows upon the said Ayub of Ankur Cycle Works. It is pointed out by Shri Bhardwaj that though this witness PW-106 has specifically attributed three gupti blows having been delivered on the back of Ayub, the said Ayub who has been examined as PW-117 has in the course of his testimony Exh.588, clearly deposed that he was assaulted and given blows with a sharp weapon by My attention is drawn unknown person. some to paragraph No.3 on page No.3 of the testimony of PW-117 Ayub who has himself not identified accused No.55 as his attacker. He has, according to Shri Bhardwaj, not identified either accused No.54 or accused No.55 for that matter, and therefore, the entire version put up by PW-106 is а grave exaggeration and an attempt to implicate falsely two innocent persons who are roped in as accused belatedly in the year 2008. It is further pointed out by Shri Bhardwaj that further damaging the version of PWs 106 and 116 who claim to have been eye-witnesses to this incident, is the fact of the untruth of the testimony of both such eye-witnesses being exposed by PW-117 himself who has voluntarily stated in the course of his testimony that he took shelter in the house of a Hindu after he was attacked in such fashion. My attention is drawn to further portion of paragraph No.3 of his deposition on page No.3 itself, where such aspect is clearly disclosed. It is submitted that however, both these witnesses i.e. PWs 106 and 116 claim that after being stabbed in such fashion, the said Ayub ran away to his own residence whereat he took shelter. submitted that therefore, it It is would be dangerous to establish the direct role of accused Nos.54 and 55 in such incident especially when there are such grave and gross contradictions with regard identity and further the convenience to the omissions of the witnesses who were loath to concede

that shelter was provided to Ayub by a Hindu family. It is submitted that in the circumstances, there could be said to be no involvement of both the accused in the incident of Ankur Cycle Works.

858. It is further pointed out by Shri Bhardwaj that one of the incidents allegedly eyewitnessed by PW-106 after he took shelter along with his father, is the incident narrated by him on page No.16 in paragraph No.15 of his testimony, inasmuch as, the same relates to the alleged killing of his mother, grandmother and one Zebunben Kasambhai Mansuri. It is pointed out that no rape is alleged to have been committed on the above three women. It is submitted that it is strange and not believable inasmuch as, while the narrative emerging from the testimony of this witness is inter alia to the effect that these three ladies rushed out of the residence of Shri Ehsan Jafri on account of the smoke that had arisen due to the fire, it is submitted that the alleged incident according to the witness and as seen by him as an eye-witness, was committed by accused No.55 Bharat Rajput, accused No.54 Bharat Teli and absconding accused Girish Prabhudas Sharma. It is submitted that none of the other so-called eve-witnesses have seen any incident wherein the combination of these three women had rushed out together and were simplicitor killed by the mob. It is submitted that it is incredible that PW-116 Sayeedkhan who happens to be the father of PW-106 Imtiyazkhan, meaning thereby that out of the

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three ladies killed, one was his wife, the other was his mother and the third was a woman known to him. It is submitted that despite being admittedly in the residence of Shri Ehsan Jafri, PW-116 does not claim to have seen any such incident and instead PW-116 has concocted an incident relating to the alleged Firdausbanu, Shahejadali killing of one and Zebunben, all of whom were simplicitor killed by the mob. It is submitted that PW-116 has testified that all these three persons rushed out of the residence of Shri Ehsan Jafri on account of the smoke and he does not attribute any of them to have been dragged by any of the members of the mob. It is pointed out that PW-116 has given and identified the names of totally different set of accused from what has been done so by PW-106. It is pointed out that PW-116 has identified accused No.1 Kailash Dhobi, accused No.43 Naran Channelwala, absconding accused Ramesh Choti and accused No.38 Manish Jain as the perpetrators of the incident.

859. On the other hand, according to Shri Bhardwaj, another star witness being PW-177 Sairaben Sandhi who is examined at Exh.711, has given yet another combination of persons who have allegedly accompanied the deceased Zebunben when they were butchered by the mob. It is submitted that according to PW-177 in terms of her testimony on page No.13, paragraph No.15, she has testified inter alia to the effect that Zebunben was accompanied by one Mehmudaben, Mumtazben and Zarinaben, all of whom

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rushed out of the residence of Shri Ehsan Jafri on account of the smoke and fire and were butchered by the mob, of whom she has identified none of them. It is submitted that no other alleged eye-witness has seen Zebunben being done away with. It is submitted that in such circumstances, when all three eyewitnesses claim different versions and all three claim to be eye-witnesses, it would be difficult to accept such gross contradictions. It is submitted that it is incredible that PW-106 who claims to have witnessed the killing of his mother and grandmother, has not narrated anything about the said incident to his own father PW-116 who in any case despite being present in the very same residence of Shri Ehsan Jafri at the relevant point of time, has not seen the incident concerning his wife and mother, but has in fact seen Zebunben being slaughtered along with other sets of persons. It is submitted that while deposing in the Court, PW-116 has clearly testified on page No.21 in paragraph No.25 inter alia to the effect that he has not seen the seven members of his family after the date of the incident nor has he heard anything about them. It is pointed out that it would imply that PW-106 who happens to be the son of PW-116, has not narrated anything about the fate of his mother and grandmother, to his own father which cannot be believed.

860. It is submitted that there is direct contradiction between the name and number of women killed as emerging from the testimonies of PWs 106

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and 177, and under such circumstances also, the convenient involvement of both the accused Nos.54 and 55 in the said incident involving such killings, also cannot be accepted, the depositions in this regard are required to be treated as bogus and in the circumstances, grave doubts exist with regard to any role played by either accused No.54 or accused No.55 in any incident, much less to such grave and serious incidents that they stand charged with and therefore, it is urged that both the accused Nos.54 and 55 be given the benefit of doubt and be acquitted of all charges levelled against them.

861. Having considered these submissions, I do not for a moment accept the defence raised on behalf of accused Nos.54 and 55 and that too in the circumstances and for the reasons set forth herein after.

862. With regard to the incident of the stabbing of Ayub, I believe that there are some serious contradictions emerging with regard to the role of accused No.55 inasmuch as, while PWs 106 and 116 have positively attributed accused No.55 to be perpetrator of inflicting gupti wounds on the back of Ayub, but Ayub himself has not identified his attacker. Again, there is a contradiction emerging with regard to where Ayub took shelter after he was stabbed in such fashion. Again, what is extremely strange is that there is absolutely no material or evidence either oral or documentary to show any

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injury being inflicted upon Ayub inasmuch as, there is no injury certificate, meaning thereby that Ayub did not take treatment for his alleged injuries. Again, in absence of such material, it was incumbent upon the Prosecution to bring to the notice of this Court the scars possible found on the body of Ayub, if he was seriously stabbed three times with a gupti as is claimed. In the circumstances, I am required to treat the entire incident having taken place at Ankur Cycle Works with a pinch of salt. It is again required to be noted that no such gupti has been recovered by or at the behest of accused No.55 and even the blood stained clothes of the said Ayub have not been recovered or forwarded to the FSL for offered examination. Even the who had persons shelter to Ayub, have not been examined who could have possibly thrown light about any treatment given to Ayub to his wounds, if at all he had sustained any. It is in such circumstances that I am required to discard the charges against accused Nos.54 and 55 inasmuch as, it relates to the incident at Ankur Cycle Works. Further creating doubts is the fact that while PW-116 very specifically names accused No.55 as the perpetrator, he is unable to identify accused No.55 in the Court and instead has wrongly identified accused No.23 as accused No.55. The cumulative effect of all such evidence which I have considered, makes me come to the conclusion that there are grave doubts with regard to the incident Cycle Works, the manner of portrayal at Ankur appears to be doubtful as emerging from the

testimony of the eye-witnesses and therefore, I am required to give the benefit of doubt to accused Nos.54 and 55 as far as the incident relating to Ankur Cycle Works is concerned.

863. However, no such benefit can be given to accused Nos.54 and 55 with regard to their direct role as emerging from the sole testimony of PW-106 with regard to the incident where the mother, witness, together with grandmother of the one Zebunben are specifically seen to have been sat upon by accused Nos.54 and 55 and absconding accused Girish Prabhudas Sharma and done away to death. The testimony of PW-106 is guite explicit and clear and leaves no room for any doubt. The PW-106 has positively identified both accused Nos.54 and 55 as the perpetrators and there is no reason to discard the evidence of PW-106 to that extent inasmuch as, I am of the opinion that a person would not like to make false accusations and falsely implicate accused who are directly involve in a savage and brutal killing of his own mother and grandmother. No person would let wrong accused be penalized and the real perpetrators escape especially when it involves such a brutal killing of his own mother and grandmother. Again, I cannot accept the defence that PW-106 is the sole person who has narrated this incident and therefore, should not be believed. It is settled law which hardly needs any elaboration that a sole eyewitness, if he has deposed in a believable manner, can be the sole basis of conviction of an accused.

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In my opinion, therefore, there is no room for any doubt with regard to the role of accused Nos.54 and 55 together with absconding accused Girish Prabhudas Sharma in the killing of three women Zerunnisa, Kherunnisa and Zebunben Mansuri as emerging from the testimony of PW-106 on page Nos.15 and 16 in paragraph No.15 of his testimony. I am also required to note that PW-106 has withstood the test of cross examination quite well and I see no reason even on this count to not accept his deposition as far as it relates to the killing of his mother, grandmother and Zebunben.

864. Again, I am required to accept Shri Kodekar's submission that PW-106 has named both the accused Nos.54 and 55 as being the perpetrators and accused right since the year 2002 and which finger pointing has been consistent and unrelenting in all before various applications made authorities including the S.I.T. No doubt, there is no recovery or discovery of any incriminating material, much less the weapons by or at the behest of either of the accused Nos.54 and 55, but however, it is required to be noted that since both the accused were belatedly arrested in the month of November, 2008 inasmuch as, accused No.54 was arrested on 24/11/2008 and accused No.55 was arrested on 26/11/2008, it is but natural that enough time was in their hands to effect a proper disposal of the incriminating muddamal. In my opinion, therefore, in light of the foregoing discussion, there is clear

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and direct evidence which is required to be accepted as sufficient to make me come to a conclusion that the accused being accused Nos.54 and 55 are required to be held guilty of the charges that they face beyond since the Prosecution has established reasonable doubt their involvement and role in the present offence. I, therefore, hold accused No.54 quilty of having committed offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, and accused No.55 guilty of having committed offence punishable under Secs.143, 147, 148, 149, 153(A)(1) (a) (b), 186, 188, 201, 295, 302, 323, 324, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 the Indian Penal Code read together with of Sec.135(1) of the Bombay Police Act. Both the said accused would be meted out suitable punishment after while deciding the quantum herein of punishment of all convicted accused.

865. From the testimony of all the concerned witnesses, it is clear that the accused have entered into the compound of Gulbarg Society and have entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eye-witnesses have seen the present accused

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the compound of Bunglow No.19 being the in residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused are held positively quilty of some of the charges levelled against them, there is no room for any doubt with regard to even such charges where the accused were charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find that the accused are members of an unlawful assembly which was formed with a common object to cause death in Gulbarg Society and therefore, are hereby held guilty of an offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

Accused No.21

I am now required to take up the case of accused No.21 Sandip @ Sonu Ramprakash Mehra also known as "Ghunghru waalwalo" [meaning, a person with curly hair], who has been arrested on 03/12/2002 and has been denied bail and therefore,

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has been in judicial custody for more than 14 years.

867. It is pointed out by Shri Kodekar that the accused No.21 is attributed in terms of the testimony of PW-284 Mohammadsharif Nasiruddin Shaikh at Exh.987 who has positively identified the present accused No.21 as being a part of the mob and has further attributed the present accused to be armed with a sword which has been recovered in terms of a Exh.1071. is pointed out Panchnama Ιt by Shri Kodekar in such circumstances that the presence of the accused and the fact of the accused being armed with a weapon, is thus clearly established on account of the cumulative effect of the testimony of PW-284 and the recovery Panchnama Exh.1071. It is pointed out that in such circumstances and more particularly when PW-284 has positively identified the accused No.21 in the Court, there is no room for any doubt with regard to the presence of the accused No.21 as being a member of the mob which indulged in the gruesome acts where large number of innocents including children women, and elderlv were mercilessly hacked down by a mob and that too senselessly and it is in urged that such circumstances, the charges against accused No.21 are also required to be held to be established beyond reasonable doubt. It is also pointed out by Shri Kodekar that in the course of the testimony of PW-284 at Exh.987, the witness has positively attributed accused No.21 to be armed with a sword and being a member of the mob that indulged into

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causing destruction and damage to the properties after getting into Gulbarg Society and accused No.21 according to this witness, was one of the members of such mob. However, the PW-284 does not attribute any positive overt act on the part of accused No.21 which can specifically point out any direct role played by the accused No.21 in any incident. Again, I am required to note with concern that PW-284 is the solitary witness who has named and identified accused No.21 in the Court. However, the recovery Panchnama Exh.1071 clearly establishes the recovery of a sword at the behest of accused No.21 and therefore, there is enough material as would interlink the sword to accused No.21.

Having carefully considered the other 868. evidence emerging against accused No.21, there is independent testimony in my opinion, since the Police witnesses are required to be treated as independent witnesses and not interested witnesses having an alleged vested interest. My attention is drawn testimonies of PW-7 Arvindsinh to the Shankersinh Vaghela at Exh.273 and PW-39 Chandubhai Vashrambhai Rami at Exh.387, of whom PW-39 has attributed clearly in terms of paragraph No.5 of his testimony inter alia to the effect that he had witnessed accused No.21 armed with a sword in the course of the incident. Both the Police witnesses have positively identified accused No.21 in the Court and therefore, there is, in my opinion no room for any doubt with regard to the role played by

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accused No.21 more particularly with regard to his presence and being a part of the mob and being therefore, a part of the unlawful assembly which had entered into Gulbarg Society on the fateful day. However, the FSL report Exh.185 which discloses results of analysis and tests upon the muddamal sword allegedly recovered in terms of the recovery Panchnama Exh.1071, does not indicate or find any blood stains thereupon. Again, none of the witnesses has attributed any positive overt act on the part of the accused No.21 in the course of the examination of no less than 338 witnesses examined herein.

raised 869. The defence behalf on of accused No.21 is also obscure and insignificant and not required to be considered since the submission that no Muslim witness has identified accused No.21 is bellied by the positive identification of accused No.21 by PW-284. The fact of accused No.21 in terms of the defence submissions, not attributed to any overt act, is something that I agree with. However, there is no denying the presence of accused No.21 and the fact of accused No.21 being armed with a sword and the fact of accused No.21 being a part of the mob which indulged in damage and destruction to property after entering into Gulbarg Society and which in furtherance of the testimonies of two Police witnesses being PWs 7 and 39, the accused No.21 was also a part of the mob which attempted to prevent the Police from taking away the rescued residents/persons who had taken shelter in Gulbarg

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Society to a refugee relief camp, is also required to be borne in mind. In my opinion, therefore, without any further discussion, I hold that the charges against the accused No.21 are only partially established inasmuch as, from the foregoing discussion, I am of the clear opinion and I hold that accused No.21 is required to be held quilty of having committed offences punishable under Secs.143, 147, 148, 149, 186, 188, 153(A)(1)(a)(b), 332, 435 and 436 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, on account of being armed with a sword and to that extent, the charges stand proved and accused No.21 is required to be suitably penalized at a later stage in this judgment. I also find that the accused is a member of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts

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which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

Accused No.34

870. I now propose to take up the role of accused No.34 Krishnakumar @ Krishna (son of Champaben), whose role is to an extent interlinked to that of accused No.43 inasmuch as, accused No.34 is largely linked to the specific incident where the late Shri Ehsan Jafri was dragged away by the mob and in light of my foregoing discussion with regard to the relative merits of the Prosecution case with regard to accused No.43, was presumed to have been done away with at that point of time in such fashion as not even a trace of the remnants of the body of Shri Ehsan Jafri could be identified or recovered. It is in the background of such facts that I am required to appreciate the submissions made by Shri Kodekar which inter alia run to the effect that the successfully established Prosecution has beyond reasonable doubt the presence and overt act on the part of accused No.34 in the incident more particularly in the incident related to the dragging away of Shri Ehsan Jafri by the mob of whom accused No.34 as also accused No.43 as also accused No.38 were the leading members of such mob. Shri Kodekar submits that number of eye-witnesses have positively

identified accused No.34 as being seen in the mob which perpetrated different acts of damage and destruction of property within and outside Gulbarg Society, accused No.34 is further attributed to have been seen possessing deadly weapon like gupti as also seen having possessed of flaming rags which were drawn to cause fire in Gulbarg Society and at the cost of repetition, is linked to a specific incident as one of the prime identified persons who were instrumental in identifying and announcing to the mob of having caught hold of Shri Ehsan Jafri and which accused are attributed to have dragged away Shri Ehsan Jafri, kept on beating Shri Ehsan Jafri and are presumed to have done away with Shri Ehsan Jafri and burnt him alive in a fashion that there is no possibility of any remnant of the body

there is no possibility of any remnant of the body of Shri Ehsan Jafri recovered or identified. It is pointed out that in such circumstances, the accused is required to be suitably penalized for having indulged in such ghastly acts.

871. My attention is drawn to the testimony of PW-106 Imtiyazkhan at Exh.542, where in paragraph No.16 at the end of page No.17 and first portion of page No.18, PW-106 has positively identified accused No.34 as being one of the persons who dragged away Shri Ehsan Jafri when Shri Ehsan Jafri opened the grill to request the mob not to indulge in such activities. It is pointed out by Shri Kodekar that corroboration is emerging from the testimony of PW-116 Saeedkhan at Exh.584 more particularly in

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paragraph No15 on page No.13 thereof when the incident with regard to dragging away of Shri Ehsan Jafri is deposed by PW-116, who also identifies accused No.34 as being one of the main persons who dragged away Shri Ehsan Jafri.

872. My attention is further drawn to the testimony of PW-179 Ezazali Fakirmohammad Shaikh at Exh.720, who in paragraph No.7 on pages No.6 and 7, has clearly deposed to have seen accused No.34 being possessed of burning rags at the time when the mob was shouting slogans and indulging in damaging and destruction to properties and vehicles of members of the Muslim community. It is submitted that PW-1709 has also positively identified accused No.34 in the Court.

873. It is submitted that PW-301 in terms of her testimony at Exh.1046, has in terms of paragraph No.11, identified accused No.34 as being one of the persons who she shaw as being a part of the mob indulging in the incident and perpetrating acts of violence as described in paragraph No.9 of her testimony. It is required to be noted that though the witness has not identified accused No.34 by name, she has identified him as being one of the perpetrators by identifying him in the Court. It is submitted that the cumulative effect of such testimonies clearly establishes beyond reasonable No.34 of the accused doubt the presence all throughout the incidents at Gulbarg Society, his

being armed with deadly weapons and destructive material at various stages and his direct role in the murder of Shri Ehsan Jafri. It is pointed out that in such circumstances and more particularly when the body of Shri Ehsan Jafri was disposed of in a fashion where no recovery or identification whatsoever is possible till date, all the charges which the accused No.34 faces, could be said to have been established against him beyond reasonable doubt and it is urged that accused No.34, therefore, be suitably penalized.

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874. The gist of the defence emerging on behalf of accused No.34 does not convince me in the least. The defence largely tries to impeach the testimony of PWs 106 and 116 inasmuch as, а contradiction and denial is elicited form the testimony of PW-335 IO Shri J.M.Suthar of the S.I.T. who admits that PW.106 did not name accused No.34 in a statement recorded before the S.I.T. as being one of the perpetrators in the incident involving the death of Shri Ehsan Jafri. It is sought to be canvassed by the defence that therefore, the testimony of PW-106 and PW-116 could be said to be improvements in the testimony more so when according to the defence, though PW-116 has specifically attributed such specific overt act on the part of accused No.34, no other witness other than PW-116 according to the defence, has corroborated such version and therefore, such version could not be said to be proved beyond reasonable doubt. It is

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strangely argued that no burning rags have been recovered and therefore, the accused No.34 being attributed to be armed and possessed of a burning rag, should not be believed.

875. I do not accept any of the defences posed herein. It is clear that both PWs 106 and 116 have positively attributed the role and specific overt act on the part of accused No.34 in dragging away Shri Ehsan Jafri and thereafter, it is required to be treated as an admitted position that Shri Ehsan Jafri after being dragged away, was done away to death. I am also required to take note of the testimony of PW-191 Salim Sandhi at Exh.734 in terms paragraph No.10 of his testimony, who of has attributed accused No.34 to be armed with a gupti. The PW-191 too has positively identified accused No.34 in the Court.

876. Having considered the rival submissions, I am required to accept the Prosecution version inasmuch as, there is, in my opinion, clear, and corroborative testimony which unambiquous clearly establishes the presence of accused No.34 at all times during the incidents that took place within and outside Gulbarg Society. The accused No.34 together with accused No.43 and accused No.38, clearly attributed to have been prime are perpetrators of dragging away Shri Ehsan Jafri from his residence and doing away with him. In my opinion, therefore, in light of such direct evidence

emerging against the present accused No.34 who has been positively identified in the Court by all such witnesses, there is, in my opinion, no room for any doubt that the accused No.34 is required to be held guilty of all charges i.e. Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, levelled against him which I hereby do so. The quantum of punishment would be decided later at а subsequent stage of the judgment.

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877. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of

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some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred religions, and therefore, I hold amongst the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find accused is a member of an unlawful that the assembly which was formed with a common object to cause death in Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

Accused No.32

878. I now propose to take up the case of accused No.32 Ambesh Kantilal Jinger @ Mochi.

879. According to Shri Kodekar, the present accused No.32 also has been positively identified by a number of eye-witnesses as being a part of the mob which indulged in damage and destruction to properties and vehicles belonging to the persons of the minority community, both within and outside Gulbarg Society on the fateful day. It is submitted that there has been recovery of a stick at the instance of accused No.32 in terms of recovery Panchnama being Exh.794 and it is urged that on this count, the Prosecution could be said to have established the charges against the accused No.32 also. It is pointed out that accused No.32 has been positively identified by most of the eye-witnesses in the Court and therefore, there is no reason to discard the Prosecution version emerging against accused No.32.

880. My attention is drawn to the testimony of PW-106 Imtiyazkhan Sayeedkhan Pathan at Exh.542, where the accused No.32 is positively identified as one of the perpetrators who destroyed and set afire the autorickshaw of one Gulam Master which is clearly reflected in paragraph No.8 on page Nos.7 and 8 of the deposition of this witness. It is submitted that further corroboration to the deposition of PW-106 is provided by PW-128 Mohammadrafiq Abubakar Pathan at Exh.633 and my attention is drawn to paragraph No.5 of his examination-in-chief where the incident where the mob gathered outside Dr.Gandhi's chawl after the Police vehicles having driven away and indulged in and destruction of shops and vehicles damage outside Gulbarg Society, is categorically deposed, accused No.32 amongst other accused, and is positively identified by PW-128 as being one of the members of the mob which indulged in such damage and destruction to property. The PW-128 further in paragraph No.9 of his deposition, according to Shri Kodekar, attributes accused No.32 to be a part of the mob which after rushing into Gulbarg Society, had destroyed an Eischer Tempo vehicle of one Aslam

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the role of No.32 Mansuri and accused is specifically pointed out by this witness in that regard. It is submitted that further corroboration No.129 Firozmohammad is provided bv accused Gulzarmohammad Pathan at Exh.635 who has also deposed in a similar fashion in paragraph No.7 of his testimony with regard to the role played by accused No.32 in damaging and destruction to property and vehicles. A similar deposition, according to Shri Kodekar, is also provided by PW-142 Ashraf Sikander Sandhi at Exh.654 who has attributed a similar role played by accused No.32 in damaging and destruction of the property as deposed by other witnesses. It is pointed out that this witness has further attributed accused No.32 to be present in the mob, with a can of kerosene in surrounding Shri Ehsan Jafri's residence. Tt. is pointed out that PWs 177 and 301 in terms of their respective depositions at Exhs.711 and 1046 respectively have also identified accused No.32 as being a member of the mob which indulged in damaging and destruction to the vehicles of the Gulbarg Society. It is submitted that in such circumstances, the presence and direct role played accused No.32 in the present offence is by established and therefore, accused No.32 is also required to be suitably penalized in respect of the charges that he faces.

881. A very cursory defence has been taken

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up on behalf of this accused inasmuch as, it has been pointed out by Shri Bhardwaj that the Prosecution case is required to be treated as weak against accused No.32 inasmuch as, PW-116 after specifically naming accused No.32 and after specifically indicating that he is not in а position to identify accused No.32, has in fact in the course of his cross examination, conceded that he cannot identify accused No.32. It is submitted that in such circumstances, the Prosecution case against accused No.32 is in any case, very limited and very hollow and accused No.32 likewise is required to be given the benefit of doubt and acquitted of all charges levelled against him.

882. I am in partial agreement with both the Prosecution and the defence. The cumulative effect of the testimonies of the number of eyewitnesses examined on behalf of the Prosecution leaves no room for any doubt that accused No.32 was very much present as a part of the mob which indulged in damage and destruction to property, more particularly the autorickshaw of Gulam Master, Eischer Tempo of Aslam Mansuri and damage and destruction to shops and vehicles near Dr.Gandhi's chawl and within Gulbarg Society. However, beyond that, I do not see much merit in the Prosecution case against accused No.32. Accused No.32 in my opinion, other than being mentioned as being present in the mob, is attributed with no direct

overt act which caused loss of life or destruction of evidence or any incident relating to molestation of women of any such grave and serious offence which the accused stands charged with. Ι am the testimony of PW-177 required to take up Sairaben Sandhi at Exh.711 with a pinch of salt inasmuch as, no other witness has seen accused No.32 with a can of kerosene and all attribute to him a role in damage and destruction of vehicles and property. Therefore, PW-142 deposing that accused No.32 was a part of the mob that surrounded Shri Ehsan Jafri's residence, is uncorroborated by any other witness including PWs 106, 116, 177 and 191, all of whom were within Shri Ehsan Jafri's residence and none of them has attributed accused No.32 to be a member of the mob that surrounded Shri Ehsan Jafri's residence. In my opinion, therefore, I am also required to conclude that there is enough material in the shape of eyewitness testimony of the above witnesses to establish the role and thereby the guilt of accused No.32 in damage and destruction of Gulam Master's autorickshaw, Aslam Mansuri's Eischer Tempo, and other properties, and no other offence is made out to be committed by accused No.32. Again, I am required to note that accused No.32 even in terms of the recovery Panchnama, could be said to be armed with a stick, since that is what was recovered as an incriminating muddamal in terms of the Panchanama Exh.794 and therefore also, no other

role emerges against accused No.32. In my opinion, without any further discussion, accused No.32 is required to be penalized for damage and destruction to property i.e. for the offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act, and would be suitably penalized while deciding the quantum of punishment in th case of each convicted accused herein.

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883. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. I also find that the accused is a member of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the

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defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A) (1) (a) (b) of the I.P.C.

Accused No.29

884. I now propose to take up the relative merits of the Prosecution case as it emerges against accused No.29 Mukesh Pukhraj Sankhla.

885. Shri Kodekar submits that accused No.29 also is positively identified by a large number of eye-witnesses being PWs 106, 128, 129, 142, 177 and 301 on the fateful day as being a part of the mob which indulged in damage and destruction to properties and vehicles belonging to the persons of the minority community, both within and outside Gulbarg Society on the fateful day. It is further submitted that not only has accused No.29 been positively named by the eye-witnesses as being one of the perpetrators and being one of the members of the mob which indulged in such criminal acts at

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Gulbarg Society, but accused No.29 is also positively identified in the Court by most of the eye-witnesses who have deposed herein and therefore, there is no need to discard such voluminous material against accused No.29 and it is urged that under such circumstances, the Prosecution could be said to have established beyond reasonable doubt the charges against accused No.29 also.

886. It is pointed out by Shri Kodekar that the testimony of PW-106 Imtiyazkhan at Exh.542, is required to be referred to more particularly in paragraph No.8 on page Nos.7 and 8 where the role of accused No.29 in damaging and setting afire the autorickshaw of Gulam Master, is clearly deposed. The PW-106 has also positively identified accused No.29 in this regard. According to Shri Kodekar, further emerging against accused No.29 is a more damaging part of the deposition of PW-106 where according to PW-106, accused No.29 was also a member of the mob which dragged out one Salim Abubakkar and hacked him to death. My attention is drawn to paragraph No.16 on pages Nos.16 and 17 of the deposition where such specific role played by accused No.29 in the incident pertaining to the killing of Salim Abubakkar is clearly deposed. It is submitted that this eye-witness has withstood the test of cross examination and there is no reason to discard the positive evidence against accused No.29 emerging from the testimony of PW-106.

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887. It is submitted that corroboration to the testimony of PW-106 is provided by PW-192 Mohammadali Shahejadali Saiyed at Exh.736 in paragraph No.4 of his deposition, with regard to the incident where the autorickshaw of Gulam Master was destroyed as also some other vehicles and shops outside Gulbarg Society were damaged by the mob, of which even according to this witness, accused No.29 was one of them.

888. My attention is drawn to the testimony of PW-129 Firozmohammad Gulzarmohammad Pathan at Exh.635, more particularly in paragraph No.7 wherein further corroboration is provided to the testimonies of PWs 106 and 192 with regard to the role of accused No.29 in destroying the autorickshaw of Gulam Master as also the shops and vehicles outside Gulbarg Society in the incident taking place at about 10:30 a.m. It is pointed out that all these witnesses have identified accused No.29 in the Court.

It is submitted by Shri Kodekar that 889. further corroborating the testimonies of these witnesses, is the recovery of a stick at the instance of the present accused No.29 in terms of a Exh.499recovery Panchnama which in turn is corroborated by a Panch witness PW-86 Jitusinh Kalusinh Chauhan at Exh.498, who identifies the muddamal stick as being recovered in terms of Panchnama Exh.499. It is conceded that the said

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witness has however, failed to identify accused No.29 in the Court. It is submitted that in such circumstances, there is enough material to establish beyond reasonable doubt the involvement and role of accused No.29 in the offence that he stands charged with and it is urged that looking to the gravity and seriousness of the offence, accused No.29 be suitably penalized.

890. Setting up a defence with regard to accused No.29, Shri Bhardwaj has submitted that the witness PW-116 Sayeedkhan Ahmedkhan Pathan at Exh.584, in the process of identifying the accused, claims to be in a position to identify six of the accused as being the perpetrators of the various incidents narrated by him. It is submitted that the witness has categorically stated that he is not in a position to identify accused No.29 Mukesh Pukhraj, together with other accused being Kapil Munna (accused No.50), Dharmesh Prahlad (accused No.47) and Ambesh Kantilal (accused No.32).

891. Drawing my attention to the testimony of PW-116, it is submitted that with regard to the first incident of the burning of an autorickshaw of one Gulam Master, on page No.4, paragraph No.4 of examination-in-chief of PW-116, the present witness has positively identified and provided names of four of the accused as being perpetrators of such offence. The names of Kapil Munna (accused No.50), Dharmesh Prahlad (accused No.47), Mukesh Pukhraj

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(accused No.29) and Ambesh Kantilal (accused No.32) have been specifically provided. My attention is drawn further to paragraph No.6 of his examinationin-chief, wherein, in the opening lines of the said paragraph, the witness has reiterated that he can positively identify all the above four persons. However, on page No.5, paragraph No.6 of his examination-in-chief itself, the witness has categorically stated that "હું ઠાજર આરોપીઓ પૈકી કપીલ મુન્નાને ઓળખી શકતો નથી. દું હાજર આરોપીઓ પૈકી ધર્મેશ પ્રહલાદને ઓળખી શકતો નથી. દું દાજર આરોપીઓ પૈકી મુકેશ પુખરાજને ઓળખી શકતો નથી. દું દાજર આરોપીઓ પૈકી અંબેશ કાંતિલાલને ઓળખી શકતો નથી." It is submitted that therefore, this witness was obviously provided with the names of such four persons, but however, the witness has completely exposed himself in his examination-in-chief itself by not being able to identify a single person out of the four socalled accused. It is pointed out that this is so despite the witness confirming that he is in a position to identify all the four accused. It is submitted that in such circumstances, this is a very serious contradiction which is required to test the very credibility of the present witness who also is cited as a star witness and an eye-witness who has

892. It is pointed out by Shri Bhardwaj that with regard to accused No.29 Mukesh Pukhraj, there is a grave and serious doubt with regard to

seen most of the incident.

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his presence or role inasmuch as, initially in terms of the testimonies and statements given by PW-106, the person who is attributed to have been a part of the mob which entered into the Gulbarg Society from the rear portion of the Society, was one Mahendra Pukhraj and not Mukesh Pukhraj. It is pointed out that even as per the testimony of PW-106, the role of said Mukesh Pukhraj was inter alia only to the effect that he was present in the mob which set fire to an autorickshaw of one Gulam Master during the period from 10:00 a.m. and 11:00 a.m. It is pointed out that no other role is attributed to said Mukesh Pukhraj. It is submitted that on the other hand, said Mahendra Pukhraj is attributed to have been a part of the mob and leader of the mob which entered Society and which incident could be safely the narrated as the main incident herein. It is pointed that thereafter, the said PW-106 out has somersaulted inasmuch as, he categorically declared before the SIT that he got mistaken in identifying Mahendra Pukhraj since both Mahendra Pukhraj and Mukesh Pukhraj are similar in looks and on account of their being brothers, and it is submitted that strangely acting on such statement, the said Mahendra Pukhraj was not arrested and it is Mukesh Pukhraj who has been arrested and made an accused herein. It is submitted that these are the instances which establish, at the cost of repetition, that the so-called star witnesses were in the habit of altering adding, amending, and conveniently forgetting the identities of the perpetrators of the

incidents as and when it suited to them.

893. Τt. is pointed out that PW-106 Imtiyazkhan Saeedkhan Pathan in his testimony at Exh.542, has alleged to have in continuation of the incident of three women being killed, testified to the butchering of one Salim Abubakkar. My attention is drawn to page No.16 in paragraph No.16 of his testimony wherein PW-106 has attributed the killing of Salim Abubakkar to and identified accused No.59 Atul Vaidya, accused No.14 Gabbar Madanlal, accused No.50 Kapil Munna, accused No.47 Dharmesh Prahlad, accused No.29 Mukesh Pukhraj as the perpetrators of the killing of the above referred Salim Abubakkar. It is pointed out that none of the large number of the witnesses who have claimed to have seen all such other incidents from the residence of Shri Ehsan Jafri or other places from where they were located, have even remotely mentioned about the doing away of these two persons or the role of any of the accused in the perpetration of any of the incidents. It is pointed out that it emerges from the testimony of the IO appointed by the SIT i.e. Shri J.M.Suthar, PW-335 in paragraph No.237 of his testimony that no such names or no such incident were provided by PW-106 in his statement recorded before the SIT. It is pointed out that strangely PW-128 Rafig Abubakkar who happens to be the real brother of deceased Salim Abubakkar, has testified on page No.15 in paragraph No.15 of his testimony that till the time he deposed in the Court, he had not heard anything about the

fate of his brother Salim Abubakkar. It is submitted that if PW-106 was in the same refugee relief camp as PW-128, it is strange that PW-106 despite having witnessed such incident, would not have narrated anything about the incident or its perpetrators to the real brother of the victim.

894. It is submitted that in light of such grave contradictions emerging from the testimonies of the so-called eye-witnesses with regard to the role of accused No.29 Mukesh Pukhraj in the alleged incidents, the Prosecution could be said to have not proved beyond reasonable doubt the successfully involvement and quilt of accused No.29 and therefore, it is submitted that the accused No.29 is required to be given the benefit of such grave doubts, and consequently acquitted of the charges levelled against him.

895. Т have considered the rival submissions and I am in partial agreement with both the Prosecution as also the defence. I do not for a moment doubt the Prosecution witnesses inasmuch as, the involvement and role of accused No.29 with regard to damage and destruction of the autorickshaw of Gulam Master, damage and looting of destruction and possible shops and vehicles outside Gulbarg Society in the incident that took place at 10:30 a.m. is concerned, but I very much doubt the presence and direct role of

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accused No.29 in the killing of Salim Abubakkar inasmuch as, not a single witness has seen or deposed to have witnessed accused No.29 being in possession of any weapon of any sort whatsoever. Even PW-106 who attributes the co-accused involved in the incident pertaining to killing of Salim Abubakkar, has in the course of his testimony, attributed such other persons to be armed with lethal weapons whereas nowhere during the entire testimony of all the witnesses examined on behalf the Prosecution, not a single witness of has attributed accused No.29 to be armed with any kind of weapon whatsoever. In my opinion, therefore, not much weight can be attached to the recovery of a stick which in any case is not identified as the muddamal weapon in terms of the testimony of any Investigating Officer. The Panch witness has only partially supported the Prosecution inasmuch as, he has not identified accused No.29 as being the person at whose behest such stick was recovered. examination of the The Panch cross has also elicited no further material against accused No.29 I am of the opinion that the and therefore, Prosecution has been only partially successful in establishing beyond reasonable doubt the charges against accused No.29. In my opinion, from the evidence that has unfolded herein, accused No.29 is required to be held guilty on account of his being established to be a part of the mob which set fire to Gulam Master's autorickshaw, caused damage and

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loot to the shops and vehicles outside Gulbarg Society, but is not required to be held guilty of any other offence whatsoever and therefore, accused No.29 is hereby held quilty of causing damage and destruction to property, and is thereby required to be held quilty of the offence punishable under Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code, and is required to be suitably penalized, which I propose to do at the time of imposing the quantum of punishment later on in this judgment. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. I also find that the accused is a member of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the

defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A) (1) (a) (b) of the I.P.C.

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Accused No.41

896. I now propose to take up the case of accused No.41 Jayesh Ramjibhai Parmar, who according to Shri Kodekar, has been interlinked with an incident involving the killing of four or five innocent women and children who rushed out of the residence of Shri Ehsan Jafri after parts thereof were set on fire by the riotous mob.

897. The accused No.41 is, according to Shri Kodekar, positively identified together with absconding accused Girish Prabhudas Sharma to have been seen positively by the eye-witness PW-283 Aslamkhan Anwarkhan Pathan at Exh.981 to be removing the ornaments from the dead bodies of the mother of the witness being one Jetunbibi and his sister-in-law Sajedabanu, and this witness

according to Shri Kodekar, has positively identified accused No.41 in the Court in the course of the trial.

898. attention is drawn the My to deposition of the witness PW-283, more particularly paragraph No.8 on page No.6 where the witness had generally testified about a mob having surrounded Shri Ehsan Jafri's residence and having hacked to pieces the women and children who attempted to escape from the residence of Shri Ehsan Jafri on account of the smoke arising out of the fire set to the parts of the residence of Shri Ehsan Jafri. It that paragraph No.9 of is pointed out the this witness very deposition of specifically mentions that when he together with some others attempted to go up from the staircase to the first floor of Shri Ehsan Jafri's residence, he saw accused Ho.41 and absconding accused Girish Prabhudas Sharma robbing the dead bodies of his mother Jetunbibi (mother of PW-283) as also his sister-in-law Sajedabanu, and it is pointed out that the positive identification of the accused No.41 by the witness is established in paragraph No.13 of his deposition.

899. Shri Kodekar has thereafter drawn my attention to the testimony of PW-177 Sairaben Sandhi at Exh.711, where in paragraph No.12, more particularly on pages Nos.10 and 11 thereof, the

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accused No.41 has been positively identified as one of the persons of the mob who had demolished the front gates and compound wall of Gulbarg Society and rushed therein and it is pointed out that PW-177 has not specifically attributed accused No.41 being armed with a weapon but she has generally stated in paragraph No.12 that the mob was armed with lethal weapons like swords, guptis, tridents, pipes etc. It is pointed out by Shri Kodekar that furthermore, PW-177 has positively identified accused No.41 in the Court which is reflected in paragraph No.12 of her deposition on page No.10. It is pointed out that PW-177 has further attributed accused No.41 to be armed with a deadly weapon and accused No.41 is positively identified to be a part of mob who in terms of her testimony in the paragraphs Nos.18 and 19 on page No.15 of the said deposition, is attributed to have attacked her brother-in-law Jehangirbhai and her son Mohammadhussain and hacked both of them to death. While accused No.41 is not specifically mentioned by PW-177 to have been seen inflicting any blows on such victims, paragraph No.19 of her testimony, according to Shri Kodekar, positively attributes accused No.41 to be a member of the mob which did It is pointed out that PW-177 has positively so. attributed accused No.41 to have been armed with a gupti at that point of time. It is pointed out that the accused No.41 was arrested on 11/03/2004 and it is further pointed out that there is recovery of

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incriminating material inasmuch as, a sword has been recovered at the instance and behest of accused No.41 in terms of the recovery Panchnama Exh.1218 drawn in that regard. It is submitted that there is, therefore, considerable material emerging from the testimony of two of the victims who have deposed truthfully and have corroborated each other with regard to the role played by accused No.41 in the incident.

900. My attention is further drawn by Shri Kodekar to the fact of no less than four Police personnel who were on duty at the scene of the incident on the fateful day, have positively identified accused No.41 as being a part of the mob which had perpetrated the offence at Gulbarg Society.

901. My attention is drawn to the testimony of PW-2 Nathusinh Naharsinh Chauhan at Exh.263 on page No.6, paragraph No.5, wherein the accused No.41 is specifically attributed to have been armed with a sword when seen by this Police witness. It is submitted that the accused No.41 has been specifically named and specifically attributed to have been armed with a sword and positively identified by the said witness as is reflected in paragraph No.6 of his testimony.

902. Shri Kodekar submits that the Police

witness PW-4 Rajendrasinh Kallusinh Rajput at Exh.269, has also corroborated and supported the Prosecution case and my attention is drawn to paragraph No.8 on page No.5 of the testimony of the witness, where accused No.41 is attributed to be armed with a sword and positively identified by PW-4 as being amongst the mob which had tried to prevent the rescue of the survivors of the carnage Police. The said witness has positively bv the identified accused No.41 which is clearly reflected in paragraph No.10 of his deposition on page No.6 and it is pointed out that this cements the Prosecution case against accused No.41.

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903. Shri Kodekar has further drawn my attention to the testimony of PW-22Shri Shailendrasinh Kalusinh Jadeja at Exh.336 who was also as Police Officer on duty at the time of the incident and my particular attention is drawn to paragraph No.10 on page No.5 of the deposition of PW-22 where the witness has positively attributed accused No.41 being armed with a sword and being one of the members of the mob who tried to prevent the Police from effecting a rescue. It is submitted that PW-22 has also positively identified accused No.41 in the Court as is reflected in paragraph No.10 itself.

904. My attention is further drawn to the testimony of PW-28 Pradipsinh Shetansinh Rathod at

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Exh.349, more particularly paragraph No.8 on page No.5, where the witness according to Shri Kodekar, has identified amongst others accused No.41 and has positively attributed accused No.41 to be armed with a sword and has further attributed accused No.41 to have attempted to prevent the rescue operations which were being effected by the Police. Ιt is pointed out that this witness also has positively identified accused No.41 in the Court as is reflected in paragraph No.9 of his deposition. It is submitted that under all such circumstances, there is huge material against accused No.41 where he has been positively identified by no less than two of the eye-witnesses from amongst the victims and four Police personnel who have also positively identified accused No.41. T+ is submitted that accused No.41 is further attributed and established to have been armed with a sword as is reflected in the testimonies of all four Police personnel which sword has been recovered in terms of recovery Panchnama Exh.1218. It is pointed out that PW-177 has also attributed accused No.41 to have been armed with a deadly weapon inasmuch as, she has attributed a gupti in the hands of accused No.41 which is a minor contradiction which can be excused as a mistake on the part of an old woman who was terrorized by the traumatic events which she was submitted witnessing. It is that in such circumstances, the role of accused No.41 in the perpetration of а series of incidents which

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resulted in the death of a series of persons and further in preventing the rescue operations which were being effected by the Police and which also resulted in the death of many of the rioters in Police firing, is all established beyond reasonable doubt and therefore, the accused No.41 could be said to be guilty of all the charges that he faces and the State having discharged the burden of establishing beyond reasonable doubt the guilt of the accused No.41, accused No.41 is required to be meted out exemplary punishment herein.

905. There is hardly any defence elicited on behalf of accused No.41 and a general attack on the veracity and truthfulness of the witnesses has been canvassed as a general defence for all accused, but there is no specific defence emerging from the submissions of the defence Advocates, either in the shape of oral submissions or in the shape of written submissions.

906. Be that as it may, I am required to carefully scrutinize the available material on the record to decide the merits of the Prosecution case as far as accused No.41 is concerned.

907. I am required to accept and agree with the submissions advanced by the learned Spl.P.P. Shri R.C.Kodekar inasmuch as, the four Police personnel who had no axe to grind, have positively

identified accused No.41 from amongst the mob of persons whom they had seen, more particularly in the context of the mob that was attempting to prevent the Police from effecting a rescue of the survivors of the incident. All the four Police witnesses as referred to by Shri Kodekar, upon scrutinv of their testimonies, have positively identified accused No.41 in the Court and in the course of their respective testimonies, have at the cost of repetition, positively stated that accused No.41 was armed with a sword at the relevant time. I see no reason to discard the testimony of PW-283 Aslamkhan Ahmedkhan Pathan who has seen his mother Jetunbibi and his sister-in-law Sajedabanu being hacked to pieces by a mob when they attempted to rush outside Shri Ehsan Jafri's residence, being overwhelmed by the smoke, in terms of the testimony of the said witness. I am particularly disturbed by the testimony emerging in paragraph No.9 of the deposition of this witness where he has categorically identified and attributed accused and absconding accused Girish Prabhudas No.41 Sharma to be removing the ornaments from the dead bodies of the mother and sister-in-law of the witness. The witness has positively identified accused No.41 in the Court which in my opinion, is an aspect which cannot be ignored. Again, looking to the fact that this version of victims being hacked to pieces by the mob, is directly and immediately preceding the eye-witness PW-283 seeing

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accused No.41 removing ornaments from the dead body of the women who happened to be his mother and sister-in-law respectively. Therefore, the onlv inference that can be drawn more so when all the four Police witnesses have attributed accused No.41 to be armed with a sword, is that accused No.41 was a member of the mob which hacked these two women amongst others when they attempted to rush out of Shri Ehsan Jafri's residence to escape the fire and the resultant smoke. The PW-177 too has attributed a specific overt act to the mob of whom accused a part thereof, and even No.41 was seen as according to PW-177, accused No.41 was seen by her as being armed with a lethal weapon. Both PWs 283 and 177 at the cost of repetition, have positively identified accused No.41 in the Court. Further material required to be considered in my opinion, is the recovery of a sword at the behest of accused No.41 in terms of Panchnama Exh.1218 and in my opinion, therefore, there is no room for this Court to come to any conclusion other than a conclusion Prosecution that. the has established beyond reasonable doubt all the charges that accused No.41 faces and therefore, I am of the opinion that accused No.41 is required to be held guilty of all the charges framed against him i.e. Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 Indian Penal Code read together with of the Sec.135(1) of the Bombay Police Act, which I hereby

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do so. It is required to be noted that accused No.41 after his arrest on 11/03/2004, has been denied bail all throughout and has remained in judicial custody all throughout the trial.

908. From the testimony of all the concerned witnesses, it is clear that the accused has entered into the compound of Gulbarg Society and has entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg Society and looking further to the fact that most of the eyewitnesses have seen the present accused in the compound of Bunglow No.19 being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused is held positively guilty of some of the charges levelled against him, there is no room for any doubt with regard to even such charges where the accused was charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C. I also find accused is a member of an that the unlawful

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assembly which was formed with a common object to cause death in Gulbarg Society and therefore, is hereby held guilty of an offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

Accused Nos.47, 50 and 59

909. I now propose to take up the relative merits of the Prosecution case against accused No.47 Dharmesh Prahladbhai Shukla, accused No.50 Kapil Devnarayan @ Munnabhai Mishra and accused Indravadan Vaid. The reason No.59 Atul Ι have decided to take up the case of all the three simultaneously is on account of the fact that all three together with accused the No.38 Manish Prabhulal Jain and accused No.14 Jayesh @ Gabbar Madanlal Jinger, are in terms of the testimony of a single witness PW-106, attempted to be interlinked with the killing of one Salim Abubakkar. The above three accused are interlinked with a number of incidents where witnesses have seen the three accused as being a part of the same mob that entered into Gulbarg Society from the rear portion of the Society and thereafter, started damaging and destroying the vehicles and property of the residents of Gulbarg Society. The accused are also in terms of the eye-witness testimony, interlinked to incidents outside Gulbarg Society in the early hours of the day when an attempt was made by the mob only to enforce the Bandh and particular role

of the accused herein emerges with regard to the damage and destruction to an autorickshaw belonging to one Gulam Master as also an incident of Ankur Cycle Works where two of the accused being accused Nos.47 and 50 are attributed in terms of eyewitness accounts to be members of the mob which assaulted both Ayub and Yusuf at about 10:00 a.m. It is in the background of such common facts emerging against these three accused that I propose to take up their case simultaneously.

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910. It is pointed out by Shri Kodekar, the learned Spl.P.P. appearing on behalf of the State, that all the three accused positively are established to be members of the mob, they are interlinked with at least two or three incidents that took place on the fateful day. It is submitted that more than one eye-witness has identified all the three accused as being a part of the mob which perpetrated the offences. The PW-116 according to Shri Kodekar, is the sole witness who claims to have seen all the three accused herein as being members of the mob which dragged away and hacked to death one Salim Abubakkar. It is submitted that in the circumstances, there is overwhelming material emerging against all the three accused and therefore, all the three accused are required to be suitably penalized since the Prosecution could be said to have proved beyond reasonable doubt the charges against the accused (all three of them).

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Expanding his submissions, 911. Shri Kodekar submits that all the three accused have been identified positively by PW-106 and mν attention is drawn to paragraph No.16 of the examination-in-chief on page No.16 of the testimony of PW-106, wherein he has categorically stated inter alia to the effect that thereafter a mob also dragged away one Salim Abubakkar and hacked him to death. The witness, according to Shri Kodekar, has positively stated with regard to having seen accused No.59 Atul Vaid, accused No.14 Jayesh @ Gabbar, accused No.50 Kapil @ Munnabhai, accused No.47 Dharmesh Prahladbhai Shukla and accused No.29 Mukesh Pukhraj as being members of the mob.

It is conceded by Shri Kodekar that 912. however, other than PW-106, there is no other witness who can corroborate the version with regard to the killing of the said Salim Abubakkar, but however, it is pointed out by Shri Kodekar that the said Salim Abubakkar is as on today missing and therefore, presumed dead. It is submitted that PW-106 in the course of his testimony, has also established the presence and role of accused No.50 and accused No.47 as being the members of the mob which attempted to enforce the Bandh, which indulged in damage and destruction of vehicles including the specific burning of Gulam Master's autorickshaw and it is submitted that accused No.50

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is attributed to be present amongst the members of the mob where the incident at Ankur Cycle Works including the stabbing of Ayub is established from the testimony of PW-106. It is submitted by Shri Kodekar that such testimony of PW-106 clearly emerges in paragraph No.8 on page No.7. He has specifically named both the accused Nos.47 and 50 in the said incident. It is submitted that in paragraph No.15 of his testimony, PW-106 has narrated another incident where the mob rushed into Society from the Gulbarg rear portion bv demolishing the rear compound wall of the Society and thereafter, causing damage and destruction to vehicles and houses of residents of Gulbarg Society and a specific mention emerges from the testimony of this witness in paragraph No.15 with regard to damage to the Eischer Tempo vehicle of one Aslam Kasam Mansuri. It is submitted that all the three accused i.e. accused Nos.47, 50 and 59 are positively identified as being members of such mob and it is pointed out that since PW-106 knew all the three accused very well, even much prior to the incident, he has naturally positively identified all the three accused in the Court. It is submitted that this is a strong piece of evidence emerging against all the three accused herein.

913. It is submitted by Shri Kodekar that lending corroboration to the testimony of PW-106, is the testimony of PW-128 Mohammadrafiq Abubakkar

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Pathan at Exh.633, who has in the course of his deposition in paragraph No.11, clearly mentioned with regard to accused Nos.47 and 50 having been a part of the mob which rushed into Gulbarg Society from the rear portion and PW-128 has attributed both accused Nos.47 and 50 to be armed with pipes at that point of time and the witness has, according to Shri Kodekar, further specified the role of both the accused in causing damage and destruction to the vehicles and properties of the residents of Gulbarg Society. It is pointed out that PW-128 also has positively identified both accused Nos.47 and 50 in the Court as is reflected in paragraph No.12 of his deposition.

914. My attention is drawn to the testimony of PW-129 Firozmohammad Gulzarmohammad Pathan at Exh.635 who has also in the course of his testimony in paragraph No.7 on page No.7, positively identified accused No.47 and accused no.50 as being the members of the mob indulging in damaging the properties and shops of the members of the minority community. This witness has positively identified according to Shri Kodekar, accused Nos.47 and 50 in the Court.

915. Further corroborating the version supplied by all the witnesses, is PW-142 Ashram Sikanderbhai Sandhi at Exh.654, who has in the course of his testimony, attributed the presence of

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accused Nos.47 and 50 as being members of the mob which firstly were involved in damaging and setting fire to the autorickshaw of Gulam Master as is specifically reflected in paragraph No.6 of his testimony and it is pointed out that this witness has further testified with regard to the role played by both these accused in paragraph No.9 of his testimony where according to Shri Kodekar, this witness has positively identified accused No.47 and accused No.50 as being members of the mob who having rushed into Shri Ehsan Jafri's residence, were pouring some inflammable liquid which was contained in cans held by both accused Nos.47 and according to this present witness. 50 It is submitted that both accused Nos.47 and 50 are positively identified by this witness in the Court in terms of paragraph No.12 of his deposition and therefore, there is wholesale corroboration to the Prosecution material against all the three accused.

916. T+ is further submitted that the testimony of PW-106 with regard to the role played by accused Nos.47 and 50 in enforcing the Bandh, is corroborated by the testimony of PW-143 Altafkhan Gulabkhan Pathan at Exh.655, where he positively identifies accused Nos.47 and 50 as being members of the mob and such reference according to Shri No.3 Kodekar, emerges from paragraph of the testimony of this witness wherein both the accused Nos.47 and 50 are positively identified by the

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witness in the Court also. It is submitted that according to this witness, as emerging in paragraph No.6 of his testimony, the presence of accused Nos.47 and 50 is established as being persons of the mob which attempted to prevent the rescue operations carried out by the Police with regard to the survivors of the carnage.

917. My attention is drawn to the testimony Sikanderbhai PW-282 of Dilawerbhai Shaikh at Exh.978, who in paragraph No.4 of his testimony, has identified accused Nos.47 and 50 as being the members of the mob and who were seen by this witness in setting fire to a bakery and a cycle shop located outside Gulbarg Society. It is submitted that even this witness has positively identified both accused Nos.47 and 50 in the Court.

918. My attention is further drawn to the testimony of PW-301 Rasidabanu Dilawer Shaikh at Exh.1046, who has in the course of her testimony in paragraph No.4, specifically mentioned accused Nos.47 and 50 as being the members of the mob which destroyed and set on fire the autorickshaw of Gulam Master in one of the incidents that took place. It is submitted that the said witness has positively identified accused Nos.47 and 50 in the Court, in terms of paragraphs Nos.5 and 6 of her testimony, as being the members of the mob.

Shri

919.

Rupaben Modi

Kodekar submits that

corroborating the involvement of accused No.59 in the present offence, is the testimony of PW-107 Exh.548 who in terms of her at testimony in paragraph No.24, has specifically mentioned that she was directed to accused No.59 and accused No.54 Bharat Teli by accused No.57 i.e. the then P.I. Shri K.G.Erda as the persons who were behind the carnage. It is accepted by Shri Kodekar that however, this could be treated to be hearsay evidence and there is no corroboration to these aspects which emerge from the testimony of PW-107.

Tt. is submitted that in such circumstances, however, there is sufficient material, large number of eye-witness evidence which positively establishes and that too beyond reasonable doubt the presence of all the three accused in separate incidents during the perpetration of the entire offence, all the accused have been identified by all the eye-witnesses and in the circumstances, there is no room for any doubt that the Prosecution established beyond reasonable doubt has the involvement, participation and guilt of all the three accused in the charges that they face and therefore, all the three accused are required to be suitably penalized.

920. Setting up a spirited defence on behalf of the three accused, Shri Bhardwaj has submitted that the witness PW-116 Sayeedkhan

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further

Ahmedkhan Pathan who has been examined as a witness and his testimony is on the record at Exh.584, in the process of identifying the accused, claims to be in a position to identify six of the accused as being the perpetrators of the various incidents narrated by him. It is submitted that the witness has categorically stated that he is not in a position to identify accused Kapil Munna (accused No.50), Dharmesh Prahlad (accused No.47), Mukesh Pukhraj (accused No.29) and Ambesh Kantilal (accused No.32).

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921. Drawing my attention further to the testimony of PW-116, Shri T.R.Bajpai submits that with regard to the first incident of the burning of an autorickshaw of one Gulam Master, it is pointed out by Shri Bajpai that on page No.4, paragraph No.4 of his examination-in-chief, the present witness has positively identified and provided names of four of the accused as being perpetrators of such offence. The names of Kapil Munna (accused No.50), Dharmesh Prahlad (accused No.47), Mukesh Pukhraj (accused No.29) and Ambesh Kantilal (accused No.32) have been specifically provided. My attention is drawn further to paragraph No.6 of his examinationin-chief, wherein, in the opening lines of the said paragraph, the witness has reiterated that he can positively identify all the above four persons. However, on page No.5, paragraph No.6 of his examination-in-chief itself, the witness has

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categorically stated that "હું ઠાજર આરોપીઓ પૈકી કપીલ મુન્નાને ઓળખી શકતો નથી. દું દાજર આરોપીઓ પૈકી ધર્મેશ પ્રદલાદને ઓળખી શકતો નથી. હું ઠાજર આરોપીઓ પૈકી મુકેશ પુખરાજને ઓળખી શકતો નથી. હું ઠાજર આરોપીઓ પૈકી અંબેશ કાંતિલાલને ઓળખી શકતો નથી." It is submitted that therefore, this witness was obviously provided with the names of such four persons, but however, the witness has completely exposed himself in his examination-in-chief itself by not being able to identify a single person out of the four socalled accused. It is pointed out that this is so despite the witness confirming that he is in a position to identify all the four accused. It is submitted that in such circumstances, this is a very serious contradiction which is required to test the very credibility of the present witness who also is cited as a star witness and an eye-witness who has seen most of the incident.

922. It is also further pointed out that there are admitted contradictions/omissions inasmuch as, it clearly emerges from the deposition of I.O. Shri N.G.Parmar (PW-328) at Exh.1164 and the IO, SIT Shri J.G.Suthar (PW-335) at Exh.1289 that the present witness while recording depositions before both such IOs, has not given the names of such four persons as persons who indulged in the act of burning the autorickshaw.

923. It is pointed out that after failing

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to identify the four accused, the witness has the audacity to give further names of perpetrators of another incident and my attention is drawn to the testimony of the witness in paragraph No.9, page No.7 wherein the witness has referred to nine (09) persons as being a part of the mob of the second incident referred to in his testimony, where the witness has again provided the names of Kapil Munna (accused No.50) and Dharmesh Prahlad (accused No.47). It is submitted that this clearly shows that he is a tutored witness who has been given the names which he has to utter in the course of his testimony and he has done so without actually being able to identify a single so-called accused and it is urged that in such circumstances, this consistency is unnatural and raises suspicion with regard to the credibility of the present witness.

924. My attention is drawn to the testimony of PW-241 Firoz Dilawer Shaikh at Exh.831, who according to Shri Bhardwaj, is the only witness who even made a suggestion with regard to has а conspiracy having taken place between the accused and others to perpetrate the offence pertaining to the Gulbarg Society. It is pointed out that this witness does not make any head or tail and in fact has solely been instrumental in destroying the conspiracy theory and also destroying the Prosecution case against accused No.50 Kapil Munna by testifying in the manner that he has done so. It is pointed out that this witness has not been

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declared hostile and therefore, whatever he has deposed, is required to be accepted as truth and is required to be believed as palatable evidence. My attention is drawn to paragraph No.3 of the testimony of PW-241, where the witness has deposed that "તા. ૨૮/૨/૦૨ ના સવારના સમયે હું મારા ઘરે હતો ત્યારે સવારના નવ દસ વાગે હું મારા ઘરેથી નીકળી બહાર આવી રીક્ષામાં બેઠો હતો . રીક્ષામાં સાથે મારો મિત્ર દતો જેના નામની મને ખબર નથી. દું બેઠો દતો તે સમયે અમારી સાથે રદેતો કપીલ નામનો છોકરો અમારી પાસે આવેલ. તેની સાથે તેનો એક મિત્ર હતો તેના નામની મને ખબર નથી. મારી સાથે બેસેલ મિત્ર તેનો મિત્ર હતો તેણે આ કપીલે આવીને જણાવેલ કે, ચાલ આજે મીટીંગમાં જવાનું નથી ચાલ આજે મીટીંગમાં જવાનું નથી. તેમ જણાવેલ. મીંચાકો મારનેકે મીટીંગમાં જાના હૈ તેમ કહેલ. તેમ કઠીને કપીલ જતો રહેલ. તે પછી ઠું મારી સાથે મારો મિત્ર એક કાલુ મારવાડી ઠતો तेनी साथे तेना धरे ४तो रहेल." It is pointed out that that this testimony clearly establishes that the socalled ingredients and elements of a conspiracy were initiated at about noon on 28/02/2002. Ιt is submitted that this sounds ridiculous inasmuch as, it is the Prosecution case supported by a large number of so-called eye-witnesses' testimony that the incident had started around 9:00 a.m. on 28/02/2002. It is submitted that therefore, the version of the witness that accused No.50 Kapil Munna was boasting about attending meeting where it was planned to kill Muslims could not have been done so since the same does not make any logical sense since the same is attributed to have taken place at

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a time subsequent to 12 noon. It is submitted that there is no support to the version of this witness, no material on the aspect of the other three passengers of the autorickshaw in which the witness claims to have been sitting and if the incident had already started as is the Prosecution case, there was no reason as to why the person who was publicly proclaiming to attend a meeting where it was going conspire to kill members of the minority to community would not have touched or threatened the present witness. It is submitted that this witness has clearly taken away any role played by accused No.50 since according to this witness, accused No.50 sitting firstly in the autorickshaw was and thereafter he had gone away therefrom. It is pointed that in such circumstances, the presence of out accused No.50 as being a part of the mob since the very beginning, therefore, is contradicted grossly by the testimony of this witness. It is submitted that in such circumstances, this witness makes a laughing stock of the conspiracy theory and it is pointed out that in the circumstances, the defence version that it was a spontaneous action which led to the perpetration of the incident at Gulbarg Society and that too according to Shri Bhardwaj, was instigated only by the firing from a private weapon by the deceased Shri Ehsan Jafri that spurred the mob into taking such actions which resulted in loss of life and destruction of property to the extent that took place in the incident herein. Ιt is

pointed out that the defence does not deny the

taking place of such incidents, the events which led to such large scale deaths, but it is pointed out that the role of the accused in the incidents is what is being denied. It is submitted that from the contradictions emerging from this entire set of evidence, the entire Prosecution case is now full of grave and serious doubts and it is urged that in the circumstances, benefits must go in favour of the defence.

925. submitted that Ιt is the present witness is contradicted by his own father Dilawer Shaikh who is examined as PW-282 and who has clearly testified that after the incident relating to the Ankur Cycle Works stabbing, all the members of the family of Dilawer Shaikh were scared and therefore, at about 9:00 a.m. all the family members took shelter in the residence of Shri Ehsan Jafri. It is submitted that therefore, if all family members had taken shelter as is testified, then the present could not have been witness sitting in the autorickshaw of Hindus at 12 noon as is claimed. It is pointed out that this witness has only referred to the incidents where the mob was indulging in violence but has not named a single person as the perpetrator from amongst the accused. It is pointed out that the witness was in a position to at least identify accused No.50 Kapil Munna since he is referred to by name and identity as the person who was the initiator or part thereof of the conspiracy, the witness could have positively identified accused No.50, was he really a member of the mob and it is pointed out that this also is a serious flaw in the Prosecution case.

926. My attention is drawn by Shri Bhardwaj to the fact that the so-called conspiracy theory testified to by the witness PW-241 Firoz Dilawer Shaikh, has emerged on the record of the present proceedings in its entirety for the very first time when the witness deposed in the Court. My attention is drawn to paragraph No.17 of the testimony of the on page No.9, wherein the witness witness has testified that "હું રાહત કેમ્પમાં રહ્યો તે દરમિયાન ગુલબર્ગ સોસા.ના આ રહીશોને કપીલે તેના મિત્રને મીંચાઓને મારવાના છે તેની મીટીંગમાં જવાનું તેવી વાત કરેલ તેવી કોઈ વાત મેં કરેલ નહિ. મેં મારા કુટુંબના પણ કોઈ સભ્યને આ વાત કરેલ નિંદ. આ વાત મેં અન્ય કોઈને પણ કરેલ નદિ." It is submitted this testimony, therefore, would that clearly establish that the theory of conspiracy or involvement of accused No.50 was not pointed out to any persons by the present witness while he was taking shelter at the relief camp together with other residents of Gulbarg Society. Ιt is also pointed out that the witness had an opportunity to establish the theory of conspiracy in the course of his statement which was recorded by the IOs and my attention is drawn to paragraphs Nos.18 and 28 of his testimony wherein the witness has clearly admitted *inter alia* to the effect that no such theory of conspiracy was narrated to the IO in the

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course of recording of his statement on 11/03/2002. It is pointed out by Shri Bhardwaj that thereafter, even in the year 2008, the witness had an opportunity of bringing on the record of the present proceedings when in terms of paragraph No.19 of his cross examination the witness has clearly conceded summoned by the Crime Branch that he was in connection with the 2008 serial bomb blasts. My attention is drawn to a categorical admission that even during his entire interactions with the Police Officers in connection with the present offence as also in connection with the serial bomb blasts, the present witness has not whispered a word about any meeting, the alleged involvement of Kapil Munna i.e. accused No.50 and nor has he identified a single person as a perpetrator of the offence. Ιt is submitted that in the circumstances, this conspiracy theory has been floated for the very first time through this solitary witness and that too when the witness entered into the witness box merely eight years after the incident. It is submitted that in the circumstances, this conspiracy theory is not believable or palatable and since this particular witness also has not been declared hostile, nor any re-examination of this witness was carried out to remove such ambiguities that were emerging, the veracity of the witness and his credibility are both completely shattered by grave and serious contradictions that have emerged along with his admissions and complete silence with regard to such conspiracy. It is pointed out that the witness has

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been contradicted by his own father Dilawerkhan as stated herein before and further contradictions emerge according to Shri Bhardwaj, from the contents of paragraph No.20 of his cross examination wherein the witness clearly claims that when he climbed up on the terrace of his building, he found his father present. It is pointed out that since Dilawerkhan in the course of his testimony as stated herein before, has clearly testified that at about 9:00 a.m. his entire family had taken shelter in the residence of Shri Ehsan Jafri, then the present witness Firoz Dilawerkhan Shaikh having gone on the terrace of his building and having seen his father Dilawerkhan on the after 10:30 is terrace a.m. serious а contradiction which the State and Prosecution has failed to convincingly explain. It is submitted that therefore, this entire conspiracy theory which is based on the solitary witness Firoz Dilawerkhan Shaikh, is required to be discarded in toto. Alternatively, it is submitted that in any case, this witness has effectively ensured the exoneration of accused No.50 Kapil Munna since according to this witness, accused No.50 after having the dialogue in the autorickshaw, had gone away to attend the meeting and it is pointed out that nowhere in the course of his testimony has this witness Firoz testified that he saw Kapil Munna in the mob nor is any overt specific act attributed to have been committed by accused No.50 according to the present witness, and therefore, according to the present witness, accused No.50 is stated to have taken no

part in the offence or incidents since he had gone away to attend an alleged meeting. It is submitted that in any case, in all such circumstances, the testimony of this witness is required to be discarded in toto.

927. It is further pointed out that even the claim of PW-106 Imtiyazkhan Sayeedkhan Pathan at Exh.542 that he climbed up on the terrace of Bunglow No.15 of Gulbarg Society and thereafter was able to see a mob of about 5000 strong, trying to attack the Society from the rear portion, of whom PW-106 has conveniently been able to identify accused No.59 Atul Vaidya, one Mahendra Pukhraj who is not an accused in the present proceedings, accused No.25 Mangilal Jain, accused No.44 Nagin Patni, accused No.2 Lala Mohansing Darbar, accused No.63 Dinesh Sharma, accused No.50 Kapil Munna, absconding accused Ramesh Pandey and accused No.38 Manish Prabhulal Jain. It is pointed out by Shri Bhardwaj that PW-106 claims that the residents of Bunglows No.15 and 16 came over to him and informed him that such stone throwing and an attempt to break open the rear wall of the Society is being done by the mob comprising of a large number of persons as also the above referred persons, acting upon which the PW-106 went on the terrace of Bunglow No.15. It is pointed out that the two persons who allegedly came over to call PW-106, are Firoz Gulzarbhai i.e. PW-129 who is examined at Exh.635 and Athar Vaid Khan who is missing. It is submitted that on the other hand PW-

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129 Firoz Gulzarbhai in his entire deposition has nowhere mentioned that he went over to PW-106 and took him to the terrace of Bunglow No.15 and in fact PW-129 Firoz Gulzarbhai has given an entirely different version, but has failed to identify a single accused as being the perpetrator of the incident wherein the Society was attacked from the is claimed by PW-106. rear portion as It is submitted by Shri Bhardwaj that it has been argued while referring to the incident of Irfan as to whether PW-106 was present even during the incident of Irfan and it is urged that therefore, the presence of PW-106 on the terrace of Bunglow No.15 is not supported and is doubtful. It is pointed out that in any case, PW-106 in his cross examination has on page No.29 in paragraph No.23, clearly during the entire incidents conceded that of 28/02/2002, PW-106 had gone to only two houses in Gulbarg Society, firstly his own house and secondly the residence of Shri Ehsan Jafri. It is submitted that thus PW-106 has himself contradicted the version of his climbing on the terrace of Bunglow No.15 and thus identifying such a large number of accused as perpetrators. It is submitted by Shri Bhardwaj that the persons allegedly accompanying PW-106 to the terrace of Bunglow No.15 are conveniently not available since unfortunately all such persons have lost their lives in the incident. Ιt is submitted that in any case, all such above referred accused who PW-106 claims to have seen from the terrace of Bunglow No.15, were named for the first

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time by PW-106 post 2008 and it is submitted that in such circumstances, and more particularly when one of the alleged members of the mob named by PW-106 i.e. Mahendra Pukhraj was also later on given a clean chit by PW-106, the reliability of PW-106 is further damaged.

928. Ιt is pointed out that PW-106 has thereafter alleged to have in continuation of the incident of three women being killed, testified to the butchering of one Salim Abubakkar. My attention is drawn to page No.16 in paragraph No.16 of his testimony wherein PW-106 has attributed the killing of Salim Abubakkar to and identified accused No.59 Atul Vaidya, accused No.14 Gabbar Madanlal, accused No.50 Kapil Munna, accused No.47 Dharmesh Prahlad, accused No.29 Mukesh Pukhraj as the perpetrators of the killing of the above referred Salim Abubakkar. It is pointed out that none of the large number of the witnesses who have claimed to have seen all such other incidents from the residence of Shri Ehsan Jafri or other places from where they were located, have even remotely mentioned about the doing away of these two persons or the role of any of the accused in the perpetration of any of the incidents. It is pointed out that it emerges from the testimony of the IO appointed by the SIT i.e. Shri J.M.Suthar, PW-335 in paragraph No.237 of his testimony that no such names or no such incident were provided by PW-106 in his statement recorded before the SIT. It is pointed out that strangely PW-128 Rafiq Abubakkar

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who happens to be the real brother of deceased Salim Abubakkar, has testified on page No.15 in paragraph No.15 of his testimony that till the time he deposed in the Court, he had not heard anything about the fate of his brother Salim Abubakkar. It is submitted that if PW-106 was in the same refugee relief camp as PW-128, it is strange that PW-106 despite having witnessed such incident, would not have narrated anything about the incident or its perpetrators to the real brother of the victim.

929. It is submitted by Shri Bhardwaj that even in the chargesheet, accused No.21 Dharmesh is described as an absconder named Dharmesh Dhirubhai Patel, resident of Parth Society, whereas the present accused arrested herein is accused No.47 Dharmesh Prahlad Shukla who in turn has been identified by Aslam before SIT as Dharmesh Mochi.

It is in such circumstances that it is 930. submitted by Shri Bhardwaj and Shri T.R.Bajpai, that in liqht of grave and serious doubts and contradictions emerging from the eye-witness testimonies more particularly referred to above, with regard to the role played by the present three accused Nos.47, 50 and 59, the Prosecution could not be said to have established beyond reasonable doubt the involvement, participation and guilt of the said three accused in the present offence, and that benefit therefore, the of such doubts and contradictions must go to the said three accused.

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931. Having considered such extremely voluminous rival submissions, I am firstly required to take up the judgments of the Hon'ble Supreme Court delivered in the case of (i) Masalti v. State of Uttar Pradesh as reported in AIR-1965-SC-202 and (ii) Binay Kumar Singh v. State of Bihar as reported in AIR-1997-SC-322. The judgment of the Hon'ble Supreme Court in the case of Masalti (Supra) is a landmark judgment delivered by a four-Judge Bench of the Hon'ble Supreme Court, and the judgment has laid down the law which is good law inasmuch as, the laid down with regard to what ratio has been constitutes an unlawful assembly, whether a person is a member of an unlawful assembly and the tests in respect thereof, and in fact the most important aspect emerging from the said judgment is also the fact which is borne out in paragraph No.16 of the said judgment, where the Hon'ble Supreme court has where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not

think that any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case."

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932. The said judgment has been heavily relied upon by the Hon'ble Supreme Court in a later judgment delivered in the case of **Binay Kumar Singh** (Supra) where the observations of the Hon'ble Supreme Court as reflected in paragraph No.30 is required to be borne in mind.

"30. We have noticed that Mritunjaya (A-23) and Parmanand Sharma (A-20) and Madan Mohan Sharma son of Ambika (A-24) were identified by more than two eye-witnesses as participants in the occurrence. Out of those witnesses the testimony of PW-10 and PW-32 was accepted by both Courts. As for the remaining appellants both Courts have accepted the testimony of at least three witnesses each as referring to each appellant. There is no rule of evidence that no conviction can be based unless a

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certain minimum number of witnesses have identified a particular accused as member of unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of the single witness, if wholly reliable, is sufficient to establish the identification of an accused as member of an unlawful assembly. All the same, when the size of the unlawful assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as participant in the rioting. In Masalti v. State of Uttar Pradesh, AIR 1965 SC 202, a bench of four Judges of this Court has adopted such a formula. It is useful to extract it here (para 16):

"Where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.""

933. The judgments referred to herein above, in my opinion, apply squarely to the present proceedings inasmuch as, the role of accused Nos.47, 50 and 59 is concerned inasmuch as, it

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relates to killing of one Salim Abubakkar. I am, therefore, required to carefully scrutinize the testimony of PW-106 Imtiyazkhan Saeedkhan Pathan at Exh.542, who is the only witness who in any manner, refers to the death of said Salim Abubakkar. The relevant material emerges from paragraph No.16 on page No.16 of the testimony, which is a very short reference to the incident involving the said victim Salim Abubakkar inasmuch as, the witness has merely deposed inter alia to the effect that thereafter the mob dragged away one Salim Abubakkar who was then hacked to pieces. The witness does not attribute any specific overt role to any person, mentions in the same breath that accused but Nos.47, 50 and 59 together with accused No.29 and 14, were the members of the mob. Again, PW-106 while deposing in such fashion, does not recollect having seen any weapon in the hands of any of the persons whom he has named in connection with this incident. Now such is the quality of the single witness testimony which is required to be appreciated by this Court while deciding as to whether the Prosecution has successfully established the role of these three accused in the charges that they face inasmuch as, the charges relating to an offence under Sec.302 read together with Secs.147, 148, 149 of the I.P.C. inasmuch as, their role with regard to the killing of the said Salim Abubakkar is concerned. While conscious of the fact that a single eye-witness can always be

believed even if his testimony is not corroborated, the test insisted upon by the Hon'ble Supreme Court in both Masalti's case (Supra) and followed subsequently in Binay Kumar's case (Supra), cannot be ignored.

934. Ι am further required to come to a conclusion that the testimony of PW-106 does not inspire much confidence inasmuch as, it relates to incident describing the killing of the Salim Abubakkar, since the brother of the victim Salim Abubakkar, being one Mohammarafig Abubakkar Pathan has been examined on the record of who the proceedings as PW-128 at Exh.633, who happens to be the real brother of the deceased Salim Abubakkar, and I am particularly required to mention with regard to the deposition of this witness on page No.11 in paragraph No.11 wherein the witness who happens to be the real brother of the deceased Salim Abubakkar, has clearly testified in the seventh line from the top, where he has clearly stated that he and his brother Salim Abubakkar took shelter in the residence of Shri Ehsan Jafri. It would imply that the said witness was present with Salim Abubakkar when both of them took shelter in the residence of Shri Ehsan Jafri where admittedly PW-106 was also taking shelter. It emerges from the testimony of all the eye-witnesses that most of them had taken shelter in the residence of Shri Ehsan Jafri, so therefore, in my opinion, an

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incident could not have been witnessed by a single person from amongst all such who had taken shelter in the residence of Shri Ehsan Jafri. I, therefore, find it strange and unnatural, the testimony of PW-106 who is the sole claimant to have witnessed an incident where Salim Abubakkar was hacked away and done to death by the mob. No other witness including the brother of said Salim Abubakkar, has narrated any incident describing the death of Salim Abubakkar. In fact, the name of Salim Abubakkar does not find mention in the testimony of any other eye-witness, other than the stray mention referred to herein above emerging from the testimony of PW-128 Mohammadrafiq Abubakkar Pathan. Again, as can seen and which would be highlighted herein be after, number of eye-witnesses have attributed number of weapons of different nature in the hands of these accused. Some of the eye-witnesses have attributed these accused to be armed with swords, some of them have attributed these accused to be armed with pipes and some of them have attributed only cans of inflammable liquid in the hands of these accused, while PW-106 while recounting having seen them as members of the mob which hacked to death the said Salim Abubakkar, has not attributed any weapon in the hands of these accused, and also further damaging in my opinion, is the fact that there is no recovery of any incriminating material including an incriminating weapon by or at the best of any of the three accused herein. In my opinion,

therefore, it would be unsafe to rely on the single eye-witness testimony of PW-106 more particularly when the same is not inspiring confidence in the circumstances narrated herein above.

935. I am also required to observe that describing other incidents, while PW-106 Imtiyazkhan has furnished great details with regard to the members of the mob and which of the accused perpetrated a specific overt act and the weapons held by the concerned accused are also described in great detail in the testimony of PW-106, whereas a very cursory and short testimony emerges with regard to the incident pertaining to Salim Abubakkar which is covered only in three or four lines in the deposition of PW-106, as is reflected in the opening three lines of paragraph No.16 on page No.16 of his deposition.

936. While dealing with the testimony of PW-107 Rupaben Modi at Exh.548, I am required to observe that the testimony of PW-107 has to be taken with a pinch of salt inasmuch as, though she claims to be an eye-witness who had taken shelter in the residence of Shri Ehsan Jafri, her versions are largely established to be untrue, uncorroborated and she has attempted to rope in accused No.57 K.G.Erda, accused No.59 Atul Vaid and accused No.54 Bharat Teli as an after-thought based on her testimony which refers to an incident where

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she attempted to meet these accused in an effort to trace out her missing son. I am of the opinion that it was only upon her coming to a conclusion that her son too had become an innocent victim in the entire incident that she has tried to rope in accused Nos.50 and 54 as the perpetrators of the incident though in her entire testimony while claiming to be taking shelter in Shri Ehsan Jafri's residence, while claiming to having closely interacted with Shri Ehsan Jafri, she has not mentioned the names of accused Nos.54 and 59 as being the members of the mob. In my opinion, therefore, the testimony of PW-107 also does not inspire any confidence more so when she has blundered while identifying accused No.65 Rajesh Jinger and her testimony generally Dayaram speaking, appears to be in my opinion, untrue.

Again, I am fortified, at the cost of 937. repetition, by the judgments of the Hon'ble Supreme Court in Masalti's case (Supra) and Binay Kumar's (Supra), where in fact the Hon'ble Supreme case Court in Binay Kumar's case (Supra), has observed the same, when the size of the unlawful assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to <u>insist</u> (emphasis supplied by this Court) on at least two reliable witnesses to identification of an accused vouchsafe the as

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participant in the rioting....."

938. Applying these observations, I am of the opinion that, it would, therefore, be unsafe in the circumstances above, to establish and come to a conclusion with regard to the guilt of the accused in the offence inasmuch as, their participation in the incident pertaining to the hacking and doing to death of said Salim Abubakkar cannot in my opinion, therefore, be sustained. In my opinion, therefore, what remains is as to whether the Prosecution has successfully established the involvement, participation and thereby the guilt of the accused herein referred, in an unlawful assembly which committed the acts of damage and destruction to the property of the residents of Gulbarg Society as also their vehicles and also the shops outside Gulbarg Society on the fateful day and the answer to this question, in my opinion, has to be in the affirmative.

939. As can be seen from the submissions of Shri Kodekar, a number of eye-witnesses have deposed with regard to having seen accused Nos.47, 50 and 59 as being members of the mob which indulged in wholesale damage and destruction to the property within and outside Gulbarg Society in different incidents which are highlighted in the submissions of Shri Kodekar made in this regard. The PWs 106, 129, 128 142, 143, 177, 282 and 301

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are all in the course of their depositions, established to have identified the three accused amongst the members of the mob which participated in different incidents described herein before, which caused damage and destruction to vehicles, shops and property of the residents of Gulbarg Society as also members of the minority community during the incident that took place on the fateful day, and therefore, without any hesitation, I come conclusion that the the Prosecution to has established beyond reasonable doubt that accused Nos.47, 50 and 59 were members of the unlawful assembly which had the common intention for causing damage and destruction to the property of members of the minority community and more particularly the residents the Gulbarg Society in the incident in question and the charges against the said three accused to that extent alone i.e. Secs.143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code, are held to be established and I propose to suitably penalize accused Nos.47, 50 and 59 in this regard at a later stage in this judgment.

940. From the testimony of all the concerned witnesses, it is clear that the accused have entered into the compound of Gulbarg Society and have entered so with the knowledge and intention after forming an unlawful assembly for the purposes of killing the residents of Gulbarg

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Society and looking further to the fact that most of the eye-witnesses have seen the present accused Bunglow No.19 in the compound of being the residence of late Shri Ehsan Jafri, the charge of Sec.452 of the I.P.C. is also established. I also find that the accused are members of an unlawful assembly which was formed with a common object to cause damage and destruction to properties and vehicles within and outside Gulbarg Society and therefore, are hereby held guilty of an offence punishable under Sec.149 of the I.P.C. Looking to the fact that the entire incident is an incident which can be termed to be communal in nature - a fact not denied by the defence also, there is no room for any doubt that looking to the provocative slogans that were generally being chanted, looking to the fact that the accused are held positively quilty of some of the charges levelled against them, there is no room for any doubt with regard to even such charges where the accused were charged with having perpetrated acts which would have incited hatred amongst religions, and therefore, I hold the accused to have committed the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

Accused No.57

941. I now propose to take up the peculiar case of accused No.57 K.G.Erda who was the Police Inspector in charge of the Meghaninagar Police Station at the time of the incident, and who at the

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time of the incident, was present all throughout and consequent to the happening of the event, it is accused No.57 who filed his complaint which is on the record of the proceedings at Exh.267, and also got drawn a Panchnama of the scene of the incident and also was the I.O. till 08/03/2002 when the investigation was taken over by a successor I.O. It is required to be noted that in fact accused No.57 arrested by the I.O. of the S.I.T. was Shri J.M.Suthar on 08/02/2009 and was made an accused herein on account of the allegations of criminal negligence on the part of accused No.57, as also on account of the complaints of the victims that there was deliberate and malafide inaction on the part of accused No.57 in preventing the incident at Gulbarg Society from taking place. It is, therefore, required to be pointed out that there is very little to no material emerging on the record of the present proceedings with regard to accused No.57 other than the bare allegations made by the victims and eye-witnesses before the investigating agencies more particularly the S.I.T. and before the Hon'ble Supreme Court of India In Writ Petition (Crim.) No.109/2003. In such circumstances possibly, and more so when during the entire course of the trial, other than PW-107 Rupaben Modi and PW-335 being the J.M.Suthar, I.O. Shri in the course of their respective testimonies have mentioned even remotely the tole of accused No.57 in the present incident.

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942. The learned Spl.P.P. Shri R.C.Kodekar in the course of his submissions at the initial stage, chose not to advance any serious arguments with regard to the merits of the Prosecution case as against accused No.57 because obviously no material had emerged on the record to substantiate his arguments and thus help the Prosecution in establishing beyond reasonable doubt the guilt of accused No.57 in the offence that he stood charged with.

It is in the background of such facts 943. and circumstances that Shri S.M.Vora, the learned advocate appearing on behalf of the witnesses/victims, who is permitted to appear and participate at all stages in the present proceedings, sought permission and in fact was granted permission to argue with regard to the role and complicity of accused No.57 in the present offence.

944. Shri Vora has argued largely on two aspects, i.e. the involvement and deliberate criminal intent on the part of accused No.57 in abetting the offenders of Gulbarg Society by his deliberate actions, inactions and lack of actions during the incident, and according to Shri Vora, also on account of the deliberate and malafide attempts on the part of accused No.57 in derailing the investigation so as to give maximum number of

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accused the benefit of doubt and exploit and abuse a poor investigating process.

945. detailed submissions Making with regard to the role played by accused No.57, the first line of submissions made by Shri Vora against accused No.57, is to the effect that no effective firing was ordered by accused No.57 which could have prevented the use of gas cylinders to explode and consequently destroy the compound walls and properties of Gulbarg Society which establishes malafides and criminal negligence on the part of accused No.57. It is pointed out that the sting operation also carried out by PW-313 Ashish Khaitan clearly establishes the complicity on the part of accused No.57 in the entire incident and such sting operation is corroborated by PW-336 Shri Nirmalsinh Raju being a CBI officer, who has clearly s. established that the material comprising of sting operation was in no manner tampered with. It is submitted that in such circumstances, the testimony of PW-313 is required to be treated as a good material to establish the guilt of accused No.57 in respect of the charges that he faces. Tt. is submitted that accused No.57 deliberately derailed the investigation despite knowing fully well that he himself being the complainant, had no business to carry out the investigation in the present which admittedly he has done offence SO upto 08/03/2002. It is submitted that the Panchnama with

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regard to the scene of the incident, was drawn on 01/03/2002 and thereafter, there was discovery of more and further bodies and no effort was made by accused No.57 to investigate properly into the identities of such dead bodies and his deliberate inaction permitted the dead bodies to decay and therefore, accused No.57 has directly aided the accused by his deliberate inactions. Ιt is submitted that accused No.57 took all possible ensure that the investigation was steps to defective and carried out in a manner as would not serve the cause of justice. It is submitted that in the circumstances, the accused No.57 was rightly arrested and made and accused herein and it would be in the hands of justice if the accused No.57 is given exemplary punishment inasmuch as, being the protector of law, he has chosen to abuse his official position in a manner as would shield and protect the perpetrators of one of the most heinous crimes which borders genocide and it is urged that exemplary punishment is required to be meted out to accused No.57.

946. Shri Vora has also submitted that one accused No.56 Dipak @ Pradip Khanabhai Parmar was named by the accused No.57 himself in his complaint, but no steps were taken to arrest such accused. It is submitted that accused No.56 could be arrested only after the appointment of S.I.T. and it is urged that in the circumstances, accused

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No.57 was instrumental in and criminally negligent taking the investigation in to its proper conclusion. My attention is drawn to the testimony of Shri J.M.Suthar i.e. PW-335, wherein it clearly emerges according to Shri S.M.Vora, that the I.O. of the S.I.T. Shri J.M.Suthar has clearly pointed out the deliberate defects on the part of accused No.57 in carrying out investigation and deliberate attempts to delay the identification process of freshly discovered and further discovered dead bodies which completely derailed the investigation. It is submitted that in the circumstances, accused No.57 is found to have committed criminal lapses even by his fellow Police Officer being a senior Police Officer of the S.I.T. and it is urged that in the circumstances, the accused No.57 is required to be suitably penalized.

947. is submitted that the criminal T+ negligence on the part of accused No.57 is further established from the undue haste in the conduct of 38 inquest Panchnamas Exhs.278 to 295, 297 to 310, 482 to 485 and 488, which were all mechanically carried out in a short time of twenty minutes each. Ιt is submitted that such undue haste was deliberate attempt derail and an to the investigation process for malafide reasons. It is pointed out that even the Panchnama with regard to the seizure of muddamal jewellery, was effected at the same time when an inquest Panchnama was

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effected, being the inquest Panchnama Exh.576, both of which were carried out on 08/03/2002 during the same period between 14:00 Hrs. and 15:00 Hrs. which shows that there was no seriousness attached to the investigation and therefore, accused No.57 was rightly made an accused on account of his criminal negligence and criminal intent in derailing the investigation and thus directly abetting the commission of the offence and therefore, according Shri Vora, accused No.57 is required to be to suitably penalized. It is submitted that PW-335 Shri J.M.Suthar has also corroborated in the course of his testimony, more particularly in paragraph No.62 of his deposition in this regard.

948. It is submitted that further establishing the criminal intent and the criminal negligence on the part of accused No.57 is the fact that no preventive arrests were ordered to be taken place by accused No.57 prior to the date of the incident when it was obvious to everyone concerned that the situation had become very sensitive and was communally fraught with danger. It is submitted that if preventive arrests were effected, then the entire massacre could have been possibly prevented.

949. It is submitted that accused No.57 is also required to be punished on account of the fact that when the carnage was at its height and the mob fury was at its peak, he has not taken effective

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steps to use the Police personnel at his disposal in a manner which would have possibly brought the situation under some control. It is submitted that at least eight reserve Police personnel were not utilized by accused No.57 as is pointed out by PW-335 in the course of his deposition and such nondeployment was deliberate as is urged by Shri S.M.Vora.

950. It is submitted that even when the gas cylinders exploded in his presence as is reflected from the evidence on record of the proceedings, no effective firing was ordered by accused No.57 which could have prevented the explosion of gas cylinders to permit the mobs to rush in and this also establishes the criminal negligence on the part of accused No.57, according to Shri Vora. Tt. is submitted that in such circumstances, the accused No.57 is clearly guilty of deliberate criminal intent and criminal negligence pre-incident, during the incident and investigation post incident, and for all of such actions, the accused No.57 is required to be suitably penalized.

951. Since Shri Kodekar had not advanced any serious submissions, naturally the defence had not chosen to make detailed submissions with regard to the culpability and guilt of accused No.57, but only after Shri S.M.Vora was permitted to make submissions herein, and when Shri S.M.Vora has

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entirely focused his arguments with regard to only two aspects, notably the aspect of a pre-planned criminal conspiracy involving the highest Government officials and Police officials and with regard to the role of accused No.57, Shri T.R.Bajpai, the learned advocate appearing on behalf of the accused No.57, was permitted to make a counter to the submissions of Shri S.M.Vora.

952. Shri T.R.Bajpai, the learned advocate appearing on behalf of accused No.57, makes his submissions with regard to providing a response to the submissions of Shri S.M.Vora about the involvement and guilt of accused No.57 herein. It is submitted that accused No.57 faces a charge of having committed offences punishable under Secs.201, 217 and 218 of the I.P.C.

It is submitted by Shri Bajpai that 953. with regard to the submissions advanced on behalf of the witnesses by Shri S.M.Vora, that accused No.57 maliciously and deliberately made the real brother of accused No.1 as the Panch witness in one of the Panchnamas, is an unfounded allegation inasmuch as, malice presupposes previous knowledge. Ιt is submitted that there is no material on the record to show that accused No.57 was at any stage aware at that point of time that such Panch witness was the real brother of accused No.1. It is submitted that in any case, the other panch witness who has been

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cited on the record of the proceedings, has not been record, therefore, examined on and adverse inference is required to be drawn and this aspect cannot be used in any manner to establish any charge against accused No.57. It is submitted that in any case, with regard to the second allegation advanced against accused No.57 *inter alia* to the effect that the name of accused No.56 which was provided by accused No.57 in his own complaint, was mysteriously dropped and no efforts were made to bring to justice such accused, is, according to Shri Bajpai, baseless and unfounded allegation. It is submitted that accused No.57 had handed over further investigation to other IOs after 08/03/2002 i.e. within ten days of the incident and it is submitted that there was nothing which prevented the other IOs from arresting or taking action vis-a-vis accused No.56. Ιt is submitted that in any case, there is no material on record to suggest that it was accused No.57 who had in any manner filed any report or made any recommendation with regard to dropping the name of accused No.56 as an accused herein. It is submitted that therefore, even such allegation is baseless furthermore in light of the fact that there is no material to show that accused No.56 was in any manner associated with the BJP political party. It in the circumstances, these is submitted that arguments are devoid of any basis or merit and are required to be negated. It is submitted that with regard to the allegation that accused No.57 himself became the complainant, disregarding the need to

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lodge complaints of any of eye-witnesses or victims, is also baseless inasmuch as, it is a matter of record that none of the eye-witnesses or survivors was willing to make any statements or record any kind of complaint before 05/03/2002. It is submitted that it is not alleged or complained of by any of the eye-witnesses including the victims *inter alia* to the effect that they had attempted to lodge their complaints but accused No.57 or anyone else for that matter, refused to record such complaint. It is submitted that under such circumstances also, the entire allegation or submissions made in this direction are also devoid of merits.

954. It is submitted by Shri Bajpai that the allegation that Shri Erda had deliberately not attempted to the services of secure videographer/photographer to record the state of affairs immediately after the incident, is also baseless. It is submitted that the document Exh.1151 establishes that accused clearly No.57 was instrumental in sending such message to the Control immediately on 28/02/2002 itself at 17:15 Hrs. Room seeking the services of a videographer/photographer. It is submitted that if thereafter there was no response to such requisition or demand, the accused no.57 cannot be blamed for such non-happening since he at the very first instance, made attempts to is such services. Ιt submitted secure that therefore, such accusation is without any basis whatsoever. It is submitted that videography of the

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scene of incident in presence of independent Panchas took place on 01/03/2002 as is emerging from the testimony of the IO Shri J.M.Suthar who is examined as PW-335 and therefore, it cannot be said that there was no effort on the part of accused No.57 to do so.

My attention is drawn to the document 955. on the record of the proceedings at Exh.1571 which is the document which establishes and negates the arguments made by Shri Vora that no efforts were made by accused No.57 to avail of services of an expert of FSL at the site of the incident immediately. It is submitted that it clearly establishes the lack of confides on the part of the Prosecution inasmuch as, document Exh.1571 and the testimony of PW-335 IO Shri Suthar on page No.71 in paragraph No.115, clearly establish that the FSL expert had indeed visited the scene of the incident 01/03/2002 and it is urged that on in such circumstances, this allegation also be treated as baseless and be negated.

956. With regard to the allegation that the inquest Panchnamas were not drawn or carried out by accused No.57 or were carried out in a manner as would be prejudicial to the Prosecution, or would be in any manner helpful to the accused, is also baseless. My attention is drawn to the testimony of PW-335 Shri Suthar who has admitted on page No.103 in paragraph No.162 of his testimony *inter alia* to

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the effect that there is no material on record as would even remotely establish that the inquest Panchnamas were drawn in a manner as were counter to the post-Morten reports or were in any manner contradictory to the post-mortem reports. Ιt is submitted that this witness has further admitted that the Police Manual does not provide any time frame for carrying out such Panchnamas. It is submitted that looking at the enormity of the incident and enormity of the incidents that took place on 28/02/2002, it cannot be said that less time attributed to each inquest Panchnama would in any manner establish any criminal intent on the part of accused No.57. It is further submitted that in such circumstances and more so in light of the context of entire sequence of events, such submissions are required to be discarded.

957. With regard to the allegation that accused No.57 was deliberately negligent in not making efforts to bring the Fire Brigade to the scene of the incident and put out the fire raging in the Society, it is submitted that the document on the record of the proceedings at Exh.1153 clearly belies and completely contradicts this allegation inasmuch as, it is accused No.57 who has clearly on the date of incident itself, sought the services of Fire Brigade at the scene of incident and it, therefore, cannot be said that no efforts were made by accused No.57 in this regard. It is submitted that in any case, PW-335 in the course of his

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testimony on page No.70 in paragraph No.112 has clearly admitted *inter alia* to the effect that a message was forwarded to the Control Room *inter alia* seeking the services of Fire Brigade at the site of the incident on 28/02/2002 itself at about 19:50 hrs. It is submitted that therefore, there is no merit in the allegation levelled against accused No.57 in this regard. It is submitted that Shri Suthar has further admitted in paragraph No.113 on page No.70 itself that even at 05:00 p.m. on the date of the incident, a message was sent to secure the services of the Fire Brigade at the site of the incident. It is submitted that such allegations against accused No.57 are devoid of any basis.

958. It is further argued that the serious allegation with regard to the Panchnamas hurriedly being drawn to a close on 28/02/2002 and a further recovery of more and other bodies right upto 08/03/2002, cannot be attributed as an act of negligence on the part of accused No.57. Ιt is submitted that such allegation is baseless inasmuch as, the entirety of the situation as it prevailed on 28/02/2002 is required to be borne in mind. It is submitted that this was a situation where nobody could have anticipated such a sequence of events and it is not as if that accused No.57 deliberately chose to ignore what was apparent and evident while drawing the Panchnamas. It is submitted that the subsequent recovery of bodies was much after the raging fire was put out and efforts were required to

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be made to find and recover such bodies which were recovered after efforts were made to sift through the rubble and embers of the burnt fire which led to recovery of more bodies, and therefore, no overt malice could be attributed to accused No.57 who made the possible efforts to best carry out the investigation herein. It is submitted that if the accused really wanted to derail the investigation, he would not have provided names in his complaint and would not have attributed acts to such names. It is submitted that the bodies recovered and referred to in the Panchnama on the fateful day, also cold have been not referred to if there was any deliberate intention on the part of the accused No.57 to subvert the investigation process. It is submitted that therefore, looking to the totality of the circumstances and the entirety of the offence that took place in Ahmedabad on 28/02/2002, accused No.57 is required to be not attributed with any malafides or charge for any criminal intent or any offence punishable under any of the provisions of the I.P.C. and it is submitted that all submissions made by the other side in this regard be discarded.

959. It is submitted that the allegation with regard to accused No.57 not taking any preventive steps prior to the Bandh call, is also falsified from the testimonies of PW-281 Shri P.B.Gondiya who is examined at Exh.972 and who is a senior Police officer examined herein, who clearly establishes that efforts were made to arrest anti-

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social elements of respective localities but antisocial elements were not found available despite due efforts of accused No.57. It is also pointed out PW-278 Ratansinh B. Chavda that being who is examined at Exh.963 and who is a P.S.I., and PW-274 being Ramaji Gangaji Katara who is examined at Exh.946 and who is also a P.S.I. - both were attached to the Meghaninagar Police Station, have testified inter alia to the effect that they made efforts anti-social elements to arrest on 27/02/2002, but were not successful in their efforts. It is submitted that in such circumstances, the Prosecution has not only failed in establishing beyond reasonable doubt any inaction on the part of accused No.57 in this regard but the PWs themselves disapprove this theory. It is submitted that in such circumstances also, this allegation also be negated.

It is pointed out by Shri Bajpai that 960. with regard to the allegation that despite having eight Police personnel as reserved force, accused No.57 did not utilize their services and kept on more force, itself establishes demanding the criminal intent on the part of accused No.57, is also an allegation which is devoid of merit and is required to be discarded. My attention is drawn to the testimony of PW-243 being Pratapji Siraji Waqhela at Exh.838 who is a P.S.I., who has clearly admitted on page No.10 in paragraph No.11 of his testimony *inter alia* to the effect that he was allotted two personnel from the reserve force. My

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attention is also drawn to the testimony of PW-92 being Baldevbhai Jivabhai Chavda who is examined at Exh.505 and who was the Crime writer Head Constable of Meghaninagar Police Station at the relevant time and my attention is drawn in paragraph No.11 on page No.6 of the testimony of this witness where he has clarified and explained inter alia to the effect that the members of the reserve Police force were required to provide Police protection to Muslims who took shelter in the Police Station. It is submitted that therefore, there is no basis in the allegation that the services of eight reserve Police personnel were not utilized by accused No.57. My attention is drawn to the testimony of PW-245 being Udesinh Pratapsinh Baraiya who is examined at Exh.840 and who was the PSO of the Meghaninagar Police Station, and who has clearly admitted that of the members of the reserve force, there were some Police personnel who were physically handicapped. It is submitted that this is also factor required а to be considered. My attention is drawn to the document at Exh.1470 which is communication а from the Police to the concerned Police Commissioner of Stations where the need to keep Police personnel in is clearly reflected. It, therefore, reserve, according to Shri Bajpai, cannot be heard to be said that accused No.57 thereby deliberately chose not to press for the services of the eight reserve Police personnel, as is charged.

961. It is urged by Shri Bajpai, that in

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such circumstances, there is no material emerging against accused No.57 and accused No.57 be, therefore, given a clean acquittal.

962. Т have considered the rival upon careful scrutiny of submissions and the relevant evidence available in this regard, I am of the clear opinion that Shri T.R.Bajpai, the learned advocate appearing for the accused No.57, has provided largely speaking, effective answers to all charges levelled against accused No.57 with regard to his alleged criminal negligence and deliberate intent in derailing the investigation at all stages while the same with within his control.

963. Firstly taking up the question of the indolence and criminal negligence allegedly on the part of the accused No.57 in not making any preventive arrests as is urged by Shri Vora, I am required to consider the testimony of PW-281 Shri P.B.Gondiya at Exh.972, as also the testimonies of PW-278 Ratansinh B.Chavda at Exh.963 and PW-274 Ramaji Gangaji Katara at Exh.946, both of whom are PSIs who were attached to the Meghaninagar Police Station at the relevant time. The testimonies of both these witnesses make it very evident that efforts were being made to take preemptive action and preventive action pre-28/02/2002. The specific material emerging from the testimony of both these witnesses is that both the PSIs have clearly

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testified that the efforts were made bv Meghaninagar Police Station which was under the leadership of accused No.57 at that time, to arrest anti-social elements on 27/02/2002 itself, but that there was no success being achieved in such actions because of the non-availability of such accused. The PW-281 at Exh.972 clearly supports such aspects inasmuch as, efforts to arrest anti-social elements were made in all Police Stations which fell within communally sensitive areas and in the circumstances, the accused No.57 cannot be held to be criminally responsible for such lack of efforts.

964. With regard to the submissions made by Shri S.M.Vora that no effective firing was ordered by accused No.57 which would have prevented the use of gas cylinders for explosion to blow away the walls of Gulbarg Society to perpetrate further incidents, is required to be duly considered. Ιn the first place, having previously held that there is absolutely no material on the record of the proceedings to show that a gas cylinder was exploded either in the front or in the rear Gulbarg Society by portions of any of the miscreants since the detailed Panchnama drawn on 01/03/2002, the accuracy of which is not very seriously challenged by either the S.I.T. or the victims for that matter, does not in any manner reflect the presence of any pieces or remnants of a gas cylinder which would have been very evidently

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found if such explosions had indeed taken place. Again, there is no material to suggest any raging fire caused at any place where such gas cylinders were alleged exploded. It is only a presumption which seeks to explain the large sound heard by the victims and eye-witnesses which was followed by the rush of the mob within Gulbarg Society that gas cylinders were exploded. I have not accepted the version that such cylinders were in fact used by the mob for explosion and I, therefore, do not propose to go any further into the merit of such charge.

965. However, there is always room for an argument with regard to what is effective firing or what is non-effective firing. The use of the word "effective" would be based on the perspective of every individual and therefore, in absence of any material which would reflect as to what is deemed to be effective firing or ineffective firing, I am opinion that it would be difficult of the to conclude that it is established beyond reasonable doubt that accused No.57 deliberately did not order effective firing in this regard. It is very easy in hindsight to assume and argue that such actions could have been prevented if such steps were taken. These are all hypothetical assumptions made after the event which is relatively easier to make. One has to only put oneself into the shoes of the persons who were facing the enormity of a situation

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where admittedly a huge mob had gone out of control, had gone berserk and the members of the mob had embarked on a killing spree. In my opinion, therefore, looking to the totality and enormity of the incident, it would be very easy to blame a single individual for not having taken appropriate measures without defining such measures.

966. Again, there is an allegation that the reserve Police personnel were not utilized appropriately by accused No.57, which is clearly negated by the testimony of PW-243 Pratapji Siraji Waghela at Exh.838, on page No.10, paragraph No.11 which clearly states that he was allotted two persons from the reserve force. This witness has further deposed that one of the eight reserve Police personnel, was physically handicapped and therefore, the presumption is required to be drawn that such person could not have been utilized to huge mob. Again, corroboration control such а emerges from the testimony of PW-92 Baldevbhai Jivabhai Chavda at Exh.505, who was the Crime Writer Head at the Meghaninagar Police Station and who has clarified on page No.6 in paragraph No.11 that the members of the reserve force were intended to provide protection to Muslims who had taken shelter in the Meghaninagar Police Station. Further corroboration to this version, is provided by PW-245 Udesinh Pratapsinh Baraiya at Exh.840, who was the PSO of Meghaninagar Police Station, who has

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also testified that the members of the reserve force were some Police personnel who were physically handicapped. It is submitted that in such circumstances, accused No.57 cannot be held criminally negligent in holding back the reserve Police force, as is charged.

967. With regard to the inaction on the part of accused No.57, I am required to examine carefully the testimony of PW-3 Babuji Chhaguji Dabhi at Exh.266, PW-2 Nathusinh Naharsinh Chauhan at Exh.263, PW-37 Kavaji Rupaji Asari at Exh.385 and PW-305 Bhupendrasinh Karansinh Sisodiya at Exh.1052, all of whom have clearly testified to accused No.57 having personally fired upon the mob from his revolver and having ordered further firing upon the mob in the course of the incident. Therefore, in my opinion, it cannot be said that accused No.57 was complicit and had actively abetted in the taking place of the incident. I am of the opinion that the limited Police force available with accused No.57 was in no manner sufficiently equipped to handle such a large and frenzied mob which had gone out of control on account of at least 15 persons having fallen to the private firing carried out by Shri Ehsan Jafri and therefore, accused No.57 in my opinion, cannot be said to be ineffective on account of any deliberate criminal intent to aid or abet the mob. Ι am required to pay particular attention to the

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testimony of PW-269 Natwarji Jawanji Bhati at Exh.927 who is established to have fired six rounds from his weapon, PW-46 Mavjibhai Hakshibhai Bodar at Exh.400 who is established in the course of his testimony to have fired 14 rounds from his weapon, PW-28 Pratapsinh Shetansinh Rathod at Exh.349 who has testified to and is established to have fired from his six rounds weapon, PW-21 Motibhai Dahyabhai Vaqhela at Exh.335 who admits to have fired four rounds and three personnel of the CISF who have not been examined as witnesses herein despite being cited as witnesses, have all fired is corroborated from the from their weapons as paragraph No.73 of the testimony of PW-335 Shri J.M.Suthar who clearly concedes and agrees that 61 rounds were fired by the Police personnel on the mob at Gulbarg Society in the course of the incident that took place between 12:00 noon and 04:00 p.m. In my opinion, therefore, it would be very difficult to conclude that the Prosecution has established beyond reasonable doubt the criminal negligence and complicity on the part of accused No.57 or that accused No.57 by such inaction could be said to have aided or abetted the mob in perpetration of such offence.

968. It also emerges from the testimony of PW-45 Rajeshbhai Kuberbhai Parmar at Exh.399, more particularly page No.3, paragraph No.4, wherein it is specifically deposed that at least four persons

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were killed in the Police firing upon the mob during the course of the incident. For all such reasons, at the cost of repetition, I conclude that it is increasingly difficult to come to a conclusion that accused No.57 had with criminal intent, malafide not taken any active action to prevent the mob from perpetrating the offence.

969. With regard to the submissions of Shri S.M.Vora that accused No.57 while handling the investigation, was deliberately trying to derail the investigation and the Panchnamas were drawn in a slipshod manner and in a very short time and in a would not bring out any conclusive manner as material against the actual perpetrators, I am of the opinion that again there is no material to make me come to a conclusion that the Panchnamas, more particularly the inquest Panchnamas with which the complaint is made, were drawn in a manner as would suggest any criminal intent on the part of accused No.57 to derail the investigation. There is even according to Shri J.M.Suthar, PW-335, nothing in the Police Manual which draws a time frame within which a Panchnama has to be concluded or the time to be taken in drawing a Panchnama and therefore, it would be imprudent on my part to come to a conclusion in the absence of any material that accused No.57 by drawing inquest Panchnamas in such а hurried fashion, had attempted to derail the investigation. Again the fact of there bing names

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of eleven accused in the complaint, of whom two repeat names, again does not were have any substance inasmuch as, the person shown as accused No.2 is one Ramesh who is attributed to be residing near a Temple whereas the person shown as accused No.9 is also named Ramesh but however, he is identified as the person associated with on Sadhna Stores. Therefore, in my opinion, it cannot be said that the same person was shown as accused twice, and therefore, even this allegation against accused No.57 in my opinion, is unfounded.

970. Further, with regard to the serious charge of drawing Panchnamas on 08/03/2002 as reflected in the submissions of Shri S.M.Vora, is required to be scrutinized very carefully. It is emerging from the submissions of Shri S.M.Vora that accused No.57 had got drawn Panchnama Exh.576 with regard to recovery of jewellery from inside the Shri residence of Ehsan Jafri and an inquest Panchnama Exh.488 which was the inquest upon a dead body found within the residence of Shri Ehsan Jafri, between the period 14:00 Hrs. and 15:00 Hrs. which would suggest that both the Panchnamas were deliberately drawn in such fashion to derail the investigation. I have perused the panchnama Exh.576 which relates to the discovery and recovery of jewellery in a box found in Shri Ehsan Jafri's residence. The said Panchnama is established to have commenced from 14:00 Hrs. and concluded at

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15:00 Hrs. The inquest Panchnama Exh.488, on perusal thereof, has commenced at 14:45 Hrs. meaning thereby that it commenced 45 minutes after the recovery and discovery Panchnama Exh.576 had commenced. Therefore, in my opinion, it cannot be said that both the Panchnamas were drawn simultaneously in a manner so as to derail the investigation. I am of the opinion that when the about to Panchnama Exh.576 was be concluded, the accused No.57 appears to have ordered commencement of Panchnama Exh.488 and therefore, in my opinion, there is, looking to the duration and extent of the Panchnamas, reasonable time afforded to both aspects in the Panchnamas, and therefore, I cannot agree with the submissions advanced by Shri

S.M.Vora that there was criminal intent on the part of accused No.57 in such action.

971. Again, with regard to the fact that there was an attempt to delay the identification process of the dead bodies, is also, in my opinion, unfounded and I do not find any material to support such deliberate action or omission on the part of accused No.57 which could construe as a deliberate attempt to delay the identification process and that too with malafide intention to aid and abet the offenders. In the circumstances, and more so when on specific questioning Shri Kodekar with regard to the fate of the inquiry if any, initiated against accused No.57, for his alleged criminality,

I do not find any material emerging from the Prosecution which will give me a clear answer in that regard and therefore, I am required to draw adverse inference in that regard.

972. There is another aspect emerging from the submissions of Shri Vora that accused No.57 deliberately did not summon the Fire Brigade despite raging fires in Gulbarg Society. I am required to note that the document Exh.1153 clearly bellies this allegation inasmuch as, the same clearly establishes that it was accused No.57 who had on the date of the incident itself, sought the services of a Fire Brigade and if for reasons which were obviously, in my opinion, beyond his control if the Fire Brigade did not reach Gulbarg Society immediately, it cannot be on account of anv inaction on the part of accused No.57 and therefore No.57 cannot also, accused be held to be responsible in any manner for the Fire Brigade having not been summoned to Gulbarg Society. The PW-335 in my opinion, has laid this aspect to rest in the course of his testimony where on page No,.70, paragraph No.12, Shri J.M.Suthar has clearly admitted that a message from accused No.57 forwarded to the Control Room inter alia was seeking the services of a Fire Brigade at the site the incident on 28/02/2002 itself. of In mν opinion, therefore, and more particularly in light of a further aspect emerging from paragraph No.113

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on page No.70 of the testimony of PW-335, that a message was also sent to secure the services of the Fire Brigade at 05:00 p.m. itself, on the date of the incident, such allegations are, in my opinion, also devoid of merits and are required to be discarded.

973. A further aspect of alleged criminal neglect and attempt to derail the investigation on the part of accused No.57 is a charge that the brother of accused No.1 was selected as a Panch witness by accused No.57 for the recovery Panchnama Exh.1086 dated 06/03/2002 which was in respect of the recovery of a can of inflammable substance at the instance of accused No.3. I am required to examine this allegation carefully. There does not appear to be any doubt that the Panch witness was the real brother of accused No.1. However, there is no material to show that accused No.57 was fully aware of the fact of accused No.1 and such Panch witness being brothers. I am required to accept the submissions of the defence that if such Panch witness PW-73 Suresh Lalchand Dhobi Exh.471 was examined on the record and as is the case with most Panch witnesses, this witness had turned hostile. In my opinion, when such witness had not supported the drawing of the Panchnama, there was available to the Prosecution a second Panch witness in the shape of Pradyuman Jatashanker Joshi who admittedly was not related to any of the accused and by

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choosing not to examine such witness, it cannot lie in the mouth of the Prosecution to attempt to establish that accused No.57 is required to be held guilty of criminal negligence merely on this count. It was always open for the Prosecution to have examined the second Panch more so when the first Panch was hostile. In such circumstances, I do not find any substantive material in such allegation also.

974. It is also emerging from the submissions of Shri S.M.Vora that accused No.57 did not get done videography and photography of the site of the incident which was deliberately not done so with a view to hide the real culprits and perpetrators. In am of the opinion that it would have been impossible for every Police outpost to keep present with them videographers and photographers in such a large expanse of the city therefore, even if it is and accepted that videographers and photographers were not present all throughout during the incident that took place, I cannot hold accused No.57 responsible for such absence of videographers and photographers. In fact videographer and photographer was immediately а summoned by accused No.57 as is clearly emerging from the document Exh.1151 that a message was sent the Control Room immediately on 28/02/2002 to itself at about 17:15 Hrs. seeking the services of opinion, videographer/photographer. а In my

therefore, there cannot be said to be any criminal negligence or intent on the part of accused No.57 in this regard also.

975. aspect emerging from Another the submissions of Shri S.M.Vora, is inter alia to the effect that no FSL expert was summoned at the scene of the incident at the earliest possible instance. I am required to note that the document Exh.1571 establishes that a FSL expert was sought to be made almost the site of the incident present at immediately. The testimony of PW-335 IO Shri J.M.Suthar on page No.71 in paragraph No.115, clearly establishes that the FSL had indeed visited the scene of the incident on 01/03/2002 and in my opinion, therefore, there is no merit in the defence submissions even in this regard and there is no material which would establish bevond reasonable doubt any criminal intent on the part of accused No.57 to conspire with or abet offenders and perpetrators of this ghastly incident.

976. Even considering the aspect of nonarrest of accused No.56 despite naming him in the complaint, I do not find any substance inasmuch as, accused No.57 was in charge of the investigation only upto 08/03/2002. It is a matter of record that no less than ten Investigating Officers including the IO of the S.I.T. Shri J.M.Suthar i.e. PW-335, have right upto the year 2009, arrested a number of

accused. In my opinion, therefore, a seven-day delay or non-arrest of an accused would not make accused No.57 in any manner criminally negligent or for that matter, in any manner be said to be aiding or abetting in the commission of the offence or shielding the real perpetrators of the offence. Again, I may state that at least five of the principal perpetrators of the offence are as yet and till date shown to be absconding and despite the best efforts of even the highest level of Police Officers including a S.I.T. formed by the Hon'ble Supreme Court of India, none of such five absconding accused have been arrested till date. Therefore also, accused No.57 cannot be blamed in this regard also.

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977. To conclude, I may state that it is very difficult to establish beyond reasonable doubt the culpability, involvement and guilt of a single Police Officer when the entire Police Force could be said to have been highly ineffective on that fateful day on 28/02/2002 where all throughout the State of Gujarat, wholesale carnage was committed which resulted in a huge loss of human lives and huge loss and destruction of property of the members of the minority community took place, and therefore, in my opinion, a single Police Officer cannot be made responsible for such incidents and be held guilty on account of his alleged criminal negligence in such incidents. I am of the opinion

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that accused No.57, therefore, cannot be held responsible in any manner whatsoever for the ineffectiveness on the part of the Police Force to prevent the present incident and therefore, the accused No.57 in my opinion, cannot be held to be guilty of any of the charges that he faces and therefore, I am of the opinion that accused No.57 is required to be given the benefit of doubt and thereby given a clean acquittal.

978. I may further state that with regard to the grievance raised that despite being the complainant, accused No.57 K.G.Erda himself took Ι the investigation, am required over and to observe that constrained lookina to the situation prevalent all over Gujarat and more particularly in Ahmedabad where there was complete break down of law and order machinery, if the investigation was commenced by K.G.Erda, that could have at the best been required to be treated as an irregularity which could have possibly vitiated the investigation if the investigation was allowed to be completed by K.G.Erda. But, the same cannot be said so herein on account of the fact that the investigation was taken over from accused No.57 K.G.Erda from 08/03/2002 i.e. nearly within a week from the incident, and in such circumstances, this does not show any criminal intent or criminal negligence or deliberate inaction on the part of K.G.Erda, which in my opinion, could be said to

have established beyond reasonable doubt the charges levelled against him.

979. Before parting, I may state that large number of judgments and authorities have been cited by all the contesting parties, and looking to the overwhelming facts and unprecedented nature of the events that have taken place hereat, I propose to rely more on the facts than on the general ratio emerging from the judgments of the Hon'ble Supreme Court as also the Hon'ble High Court of Gujarat, which have been pressed into reliance herein. I have, therefore, placed limited reliance on some of the judgments which I deem absolutely essential, relevant and applicable on all facts of the present proceedings. I do not propose to lengthen mv already enormously lengthy judgment by referring to and discussing each judgment pressed into reliance by the parties herein.

980. In light of the foregoing discussion, the points for determination No.1 to 6 more particularly referred to herein before, are accordingly answered and disposed of.

Point for determination No.7

981. In the circumstances, in light of my findings arrived at on the above points for determination No.1 to 6, I pass the following order:-

<u>Order</u>

1. The Prosecution partly succeeds. The accused No.4 Mangaji Pokarji Marwadi, accused No.5 Jayesh Ramubhai Patni, accused No.6 Kishorbhai Mangabhai Patni, accused No.7 Shailesh @ Kalu Hiralal Patni, accused No.8 Kanaiya @ Bablu Chaichau, accused No.9 Kantibhai Popatbhai Patni, accused No.10 Shakrabhai Sendhabhai Patni, accused No.11 Manojkumar Premjibhai Parmar, accused No.12 Somabhai Solanki, accused Dipakkumar No.13 Vinodbhai Arvindbhai Solanki, accused No.15 Ajay Somabhai Panchal, accused No.18 Sanjaykumar Shankarbhai Patni, accused No.19 Shailesh Natwarlal Patni, accused No.20 Naresh @ Nariyo Bansilal Prajapati, accused No.22 Babubhai Mohanbhai Patni, accused No.24 Shankarji Hakaji Mali, accused No.26 pannalal @ Prabhu Mochi Premchand Sisodiya, accused No.28 Prahlad Rajuji Asori, accused No.30 Madanlal Dhanraj Raval, accused No.31 Mahendra Mulchandbhai Parmar, accused No.33 Prahlad Omprakash Songara, accused No.36 Chirag Dilipbhai Shah, accused No.39 Mukesh Atmaram Thakor, accused No.40 Parbatsinh tarsangsinh @ Darshansinh Darpansinh, accused No.44 Nagin Hasmukhbhai Patni, accused No.48 Jitendra @ Jitu Pratapji Thakor, accused No.49 Mahesh @ Pappu Pratapji Thakor, accused No.51 Mahesh Ramji Nath, accused No.53 Sushil Brijmohan Sharma, accused No.56 Pradip Khanabhai Parmar, accused No.57 Kiritkumar Govindji Erda, accused No.58 Meghsing

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Dhupsing Chaudhary, accused No.60 Bipin Ambalal Patel, accused No.62 Dilip Kantilal Jinger and accused No.65 Rajesh Dayaram Jinger, are given the benefit of doubt and are ordered to stand acquitted of all charges levelled against them vide Exh.109 in connection with the offence registered at I-C.R.No.67 of 2002 with the Meghaninagar Police Station, Ahmedabad.

2. All the above referred accused have been enlarged on bail during the pendency of the trial and in such circumstances, it is hereby specifically ordered that the bail bonds of the accused referred to above, shall stand continued till expiry of the appeal period.

3. accused No.64 The Shivcharan ß Jitendra @ Lallo Ramji Rai is also hereby given the benefit of doubt and is ordered to stand acquitted of all charges levelled against him vide Exh.109 in connection with the offence registered at Τ-C.R.No.67 of 2002 with the Meghaninagar Police Station, Ahmedabad. The accused No.64 has been denied bail all throughout the trial and has been in judicial custody during the pendency of the trial. He is, therefore, ordered to be set free forthwith unless required to be kept in judicial custody in connection with any other offence or proceedings.

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As far as the remaining accused are e accused No.1 Kailash Lalchand Dhobi

concerned, the accused No.1 Kailash Lalchand Dhobi is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A) (1)(a)(b), 186, 188, 201, 295, **302,** 307, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

5. The accused No.2 Yogendrasinh @ Lalo Mohansinh Shekhawat is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

6. The accused No.14 Jayeshkumar @ Gabbar Madanlal Jinger is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

7. The accused No.34 Krishnakumar @ Krishna (son of Champaben) is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

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8. The accused No.41 Jayesh Ramjibhai Parmar is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153 (A) (1) (a) (b), 186, 188, 201, 295, **302**, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

9. The accused No.42 Raju @ Mamo Ramavtar Tiwari is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act. 10. The accused No.43 Naran Sitaram Tank @ Naran Channelwalo @ Naran Kodhiyo is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

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11. The accused No.46 Lakhansing @ Lakhiyo Lalubha Chudasama is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

12. The accused No.54 Bharat @ Bharat Taili Shitlaprasad is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read

together with Sec.135(1) of the Bombay Police Act.

13. The accused No.55 Bharat Laxmansinh Goud Rajput is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 201, 295, 302, 323, 324, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

14. The accused No.63 Dinesh Prabhudas Sharma is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153 (A) (1) (a) (b), 186, 188, 201, 295, **302**, 332, 337, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

15. The accused No.25 Mangilal Dhupchand Jain is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153 (A) (1) (a) (b), 186, 188, **307**, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act. 16. The accused No.3 Surendrasinh @ Vakil Digvijaysinh Chauhan is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 435, 436 and 452 of the Indian Penal Code.

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17. The accused No.16 Dilip @ Kalu Chaturbhai Parmar is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

18. The accused No.21 Sandip @ Sonu Ghunghruwaalwalo Ramprakash Mehra (Punjabi) is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 186, 188, 153(A)(1)(a)(b), 332, 435 and 436 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

19. The accused No.29 Mukesh Pukhraj Sankhla is hereby found guilty of the charges

framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 396, 397, 398, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code.

20. The accused No.32 Ambesh Kantilal Jinger is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

21. The accused No.37 Prakash @ Kali Khengarji Padhiyar is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188 and 332 of the Indian Penal Code.

22. The accused No.38 Manish Prabhulal Jain is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447 and

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452 of the Indian Penal Code.

23. The accused No.47 Dharmesh Prahladbhai Shukla is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code.

24. The accused No.50 Kapil Devnarayan @ Munnabhai Mishra is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code.

25. The accused No.52 Suresh @ Kali Dahyabhai Dhobi is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

26. The accused No.59 Atul Indravadan Vaid is hereby found guilty of the charges framed

against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code.

27. The accused No.66 Babu Hastimal Marwadi is hereby found guilty of the charges framed against him vide Exh.109 and is hereby ordered to stand convicted for having committed the offences punishable under sections 143, 147, 148, 149, 153(A)(1)(a)(b), 186, 188, 427, 435, 436, 447, 449 and 452 of the Indian Penal Code read together with Sec.135(1) of the Bombay Police Act.

28. The convicted accused are ordered to be taken into judicial custody forthwith and lodged with the Central Jail, Sabarmati, Ahmedabad.

29. The proceedings are kept for hearing the convicted accused with regard to the quantum of punishment to be imposed on such accused. Further orders would be passed after hearing all parties with regard to quantum of punishment.

30. The proceedings are ordered to stand adjourned to 6th June, 2016 for detailed hearing with regard to quantum of punishment.

31. It is further ordered that after

detailed orders on the quantum of punishment are passed, certified copies of the entire judgment and charges be provided free of cost to all the convicted accused immediately.

Dictated and pronounced in the open Court on this 2^{nd} day of June, 2016.

City Sessions Court,	(Pranav Bhadramukh Desai)
Ahmedabad.	Special Judge, Designated Court
Date: 02/06/2016	for speedy trial of riot cases
	(Gulbarg Society),Ahmedabad.
	Unique ID Code No.GJ00004

*ashwin

Further order

06/06/2016

1. Heard the learned advocates appearing on behalf of the respective parties, on the question of quantum of sentence to be imposed upon the accused who are convicted.

2. At the outset, the learned Spl.P.P. Shri R.C.Kodekar appearing on behalf of the State, submits that before making his submissions with regard to the quantum of punishment to be imposed on each of the convicted accused, the peculiar case of accused No.1 Kailash Dhobi is required to be considered.

3. It is submitted by Shri Kodekar that

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the accused No.1 is not available and was not available even on the date of pronouncement of the judgment, but however, since the law permits, this Court had pronounced the judgment. It is submitted that the sentence was not passed and the present hearing today is for ascertaining, deciding and fixing the quantum of punishment to be imposed on each of the accused convicted herein.

4. It is submitted by Shri Kodekar that Sec.353 of the Cr.P.C., more particularly subsection (5) thereof, clearly mandates that an accused should be brought up to hear the judgment pronounced and it is submitted that since accused No.1 has not been available, and even the sentence is to be passed in absentia, it is urged that the quantum of sentence *qua* accused No.1 Kailash Dhobi be kept in abeyance.

5. It is submitted by Shri Kodekar with regard to the quantum of sentence to be imposed on all the accused concerned, that since the Court has convicted 11 (eleven) of the accused under Sec.302 read together with Sec.149 read together with other provisions of the I.P.C., it could be classified as a major punishment as far as these eleven accused are concerned. It is submitted that with regard to the other accused, since those accused are convicted for lesser offences, but however, since the provisions of Sec.149 of the IPC are made applicable to those accused also, it is urged that in such circumstances, all the 24 accused are required to be imposed the major punishment more so when the magnitude and gravity of the present offence is kept in mind.

6. It is submitted that here is an unprecedented case where 69 persons comprising of innocent men, women and children were done away to death in a most ghastly manner and their bodies were also burnt in a manner as were charred beyond recognition and that such persons were roasted to death. It is also pointed out that all the bodies were found to have anti-mortem multiple injuries on them and were also roasted and charred beyond recognition in most cases. It is submitted that in such circumstances, the offence is an exceptional offence and would and should, therefore, be required to be viewed as one of the rarest of rare cases.

7. It is pointed out by Shri Kodekar that the accused have committed this offence without any fault on the part of the victims and the only fault that could be attributed to the victims, was that they belonged to a particular community and more particularly, the minority community.

8. It is submitted that most of the surviving victims have lost large numbers of the members of their family in this unprecedented incident and that is also an aspect required to be considered while deciding the quantum of punishment

to be imposed on the accused.

9. It is submitted that the extent of horrendous and barbaric acts on the part of the accused can be analyzed from the fact that out of the 69 victims, 20 of the fatalities were females, six of the fatalities were children, and out of the 13 male fatalities, one was a handicapped person. It is pointed out that this aspect referred to above, relates to the recovered bodies. It is pointed out that 30 further persons are not traceable till date and of such missing persons, 14 persons were females, 08 children and 08 adult males.

10. It is submitted that in such circumstances, this is a case of mass killings and mass murders and therefore, exemplary punishment is required to be meted out to all the accused found guilty herein.

11. It is submitted that to establish as to whether an offence falls within the term "rarest of rare cases", the Hon'ble Supreme Court according to Shri Kodekar, has laid down three parameters as herein after follows.

12. It is pointed out that the first parameter is "crime test". It is pointed out that a crime test is what is meant by the totality of the crime where the extent and gravity of the crime is required to be borne in mind. It is pointed out that

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the appravated circumstances where the only aspect required to be borne in mind is that the mob had mercilessly done away with the members of а particular community only on account of their being members of such community. It is submitted that in such circumstances, all the accused convicted herein, are required to be treated as a menace to the society. It is submitted that thee is no possibility of reforming or rehabilitating such convicted accused. It is submitted that in such circumstances, when both - the crime test as also mitigating circumstances which could operate in favour of any of the accused herein, are operating against the accused convicted herein, the test and parameters required to establish as the "rarest of the rare case" is established herein.

13. My attention is drawn to a judgment of the Hon'ble Supreme Court which according to Shri Kodekar, is the case law on the subject, delivered in the case of **Shankar Kisanrao Khade v. State of Maharashtra** as reported in (2013) 5 SCC 546. My attention is particularly drawn to the contents of paragraph No.52 of the said judgment.

"52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the

"R-R test" and not the "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even if satisfied, that both the tests are is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional

compulsion, reflected by the will of the people and

not the will of the Judges."

14. A judgment of the Hon'ble Supreme Court delivered in the case of **Santosh Kumar Singh** v. State of Madhya Pradesh as reported in (2014) 12 SCC 650 is pressed into reliance and my attention is drawn to paragraph No.29 of the judgment, wherein the judgment of Shankar Kisanrao Khade (Supra) is cited with approval.

"29. Recently, this Court in Shankar Kisanrao Khade v. State of Maharashtra, dealing with a case of death sentence, observed: (SCC p.576, para 52)

' 52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the

aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges.'"

15. It is argued by Shri Kodekar that as alternative argument and that too the an on assumption that this Court does not accept that the present case and the accused convicted herein deserve capital punishment, it is alternatively argued that if under any circumstances, the Court does not accept the Prosecution arguments with regard to imposition of capital punishment, then in such case, an imprisonment for life which means until the death of that particular accused, is

required to be imposed herein.

16. It is further urged that in any case, as a further alternative argument, the State submits that since the accused are found guilty of having committed offences punishable under other provisions of the IPC also, the Court is bound to order that the sentences should run consecutively and not concurrently.

17. With regard to other 13 accused who have been found guilty of offences involving what would be termed as a lesser punishment to be imposed by the Court, the original submission that they should be treated at par with the accused who have been found guilty of the more serious offences, remains. It is submitted that such 13 accused are:

Sr. No.	Accused No.	Name of accused
1	3	Surendrasinh @ Vakil Digvijaysinh Chauhan
2	16	Dilip @ Kalu Chaturbhai Parmar
3	21	Sandip @ Sonu Ghunghruwaalwalo Ramprakash Mehra (Punjabi)
4	25	Mangilal Dhupchand Jain
5	29	Mukesh Pukhraj Sankhla
6	32	Ambesh Kantilal Jinger
7	37	Prakash @ Kali Khengarji Padhiyar
8	38	Manish Prabhulal Jain
9	47	Dharmesh Prahladbhai Shukla
10	50	Kapil Devnarayan @ Munnabhai Mishra
11	52	Suresh @ Kali Dahyabhai Dhobi
12	59	Atul Indravadan Vaid
13	66	Babu Hastimal Marwadi

Judgment

18. It is urged that the sentences imposed should run consecutively and not concurrently.

19. Shri S.M.Vora, the learned advocate appearing on behalf of the victims/witnesses, adopts the submissions of learned Spl.P.P. Shri R.C.Kodekar with regard to the sentence to be imposed when all the accused are found to be guilty under Sec.149 of the I.P.C. It is submitted that the all the convicted accused, therefore, are required to be given the maximum available sentence under these provisions.

20. Shri S.M.Vora has relied upon а judgment of the Hon'ble Supreme Court, delivered in the case of Hazara Singh v. Rajkumar & Ors. as reported in (2013) 9 SCC 516, and reliance is more particularly placed on paragraphs Nos.10, 11 and 17 of the said judgment, which are reproduced herein below. A judgment of the Hon'ble Supreme Court as reported in 2015 (1) SCC (Crim.) 18 is also pressed into reliance in that regard.

"10. In order to understand the reasoning of the High Court for reduction of sentence, it is but proper to refer Section 307 IPC which reads thus:

'307. Attempt to murder.- Whoever does any act with such intention or knowledge, and under

such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinabove mentioned.'

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From the above, it is clear that the maximum punishment provided therein is imprisonment for life or a term which may extend to 10 years. Although Section 307 does not expressly state the minimum sentence to be imposed, it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has judiciary this bestowed upon the enormous discretion in the sentencing policy, which must be exercised with utmost and caution. care The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict."

"11. the cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of

offenders in numerous cases."

We reiterate that in operating the "*1*7. sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature all other of weapons used and attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment."

21. Shri S.M.Vora has also relied upon a judgment of the Hon'ble Supreme court delivered in the case of **Shabnam v. State of U.P.** as reported in (2015)6 SCC 632 and reliance is more particularly placed on paragraph No.25 of the said judgment, which is reproduced herein below.

"25. The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this court in the aforesaid cases have been succinctly summarised in Ramnaresh v. State of Chhattisgarh. The said are extracted as under: (SCC pp. 285-86, paras 76-77)

"Aggravating circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money for monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8)

The murder or the

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committed to prevent a person lawfully carryout out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10)When the victim is innocent, helpless a person relies the trust or upon of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not

was

offence

indulging in commission of the crime again and probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though prosecution has brought home the guilt of the accused.

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

<u>Principles</u>

(1) The court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2)In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."

22. It is pointed out by Shri Vora with regard to those accused who are found guilty with the offence punishable under Sec.436 of the I.P.C., that wide discretion has been imposed by the said provision and а maximum sentence of life imprisonment can be imposed under this verv provision and it is urged that looking to the special facts and circumstances of this case, such maximum punishment is required to be imposed.

23. It is also pointed out by Shri Vora that under the provisions contained in Sec.357 of

the Cr.P.C. and in terms of the judgment of the Hon'ble Supreme Court delivered in the case of **Sunil Dutt Sharma v. State** as reported in (2014) 4 SCC 375, compensation of an exemplary nature is also required to be awarded to the survivors and victims and it is urged that in the circumstances, such exemplary punishment is required to be meted out to ensure that there is no repetition of a similar offence. It is also urged that supporting Shri Kodekar's stand, the victims also press that all the sentences imposed should run consecutively and not concurrently.

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24. Submitting on behalf of the concerned accused, Shri A.M.Bhardwaj, the learned advocate argues that since this Court has not convicted any of the accused under the provisions of Sec.120B of the I.P.C. or Sec.34 of the I.P.C. for that matter, the only aspect that remains is whether a conviction under Sec.436 would apply in the present case or not. It is pointed out by Shri Bhardwaj that by not believing the Prosecution on many aspects including the offences under the Arms Act and offence under Sec.376 of the I.P.C., and also offence under Sec.120B read together with Sec.34 of the I.P.C., this Court has not believed the Prosecution evidence to be entirely trustworthy and relevant enough for all purposes to impose maximum punishment on the herein. It is submitted that in such accused circumstances, as has been laid down by the Hon'ble Supreme Court in the case of Ashok Debbarma @ Achak

Debbarma v. State of Tripura as reported in **2014(2) SCC(Cri.) 417**, the degree of certainty is not established in the present case.

25. It is submitted that in cases where the Hon'ble Supreme Court has agreed with the principles and award of capital punishment, it is submitted that in all such cases, it was established that there was no provocation of any kind from the other side i.e. the victims. It is pointed out that in the present case, it cannot be said that there was no provocation or any act on the part of the victims which led to such aggravated circumstances taking place. Ιt is pointed out that Shri J.M.Suthar, the I.O. of the S.I.T. who has been examined as PW-335 at Exh.1289 on the record of the proceedings, in paragraph No.74 on page No.46 of his deposition, has accepted that in the firing i.e. private firing by Shri Ehsan Jafri, there was a death of one person and injury to 15 persons. It is submitted that in such circumstances, it cannot be said to be a one-sided act on the part of the accused who did away with the victims without any provocation. Ιt is submitted that in the circumstances, the Court is required to consider the mindset of the accused who were already disturbed by the incident that took place on 27/02/2002 with regard to the burning of Coach at Godhra Railway Station and consequent thereto upon seeing a number of their brethren having fallen to private firing, where one person had died and 15 persons were

injured, it is submitted that at that point of time, the victims had only seen the people fall, without being fully aware as to whether such persons were merely injured or all of them had died. It is submitted that in such circumstances, the entire incident has to be appreciated from this aspect also and the mindset of the accused at that point of time is to be looked at while deciding as to whether the case made out by the Prosecution is required to be accepted or not.

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26. pointed out that number It is of witnesses examined herein and referred to in the course of defence arguments herein before, have clearly established that the mob went out of control only on account of the firing done by Shri Ehsan Jafri. It is submitted that therefore, it cannot be incident said that the unprovoked, was an unwarranted and unilateral action on the part of the accused. It is submitted that in imposition of capital punishment in all cases, various Courts including the Hon'ble Supreme Court, have found that a cold-blooded, calculated, designed there was offence committed by the accused. It is submitted that looking to the peculiar facts and circumstances looking to the herein and more SO surcharge atmosphere, this aspect has to be borne in mind that there was cold-blooded, pre-planned, no preconceived intent on the part of the accused to commit the offence of the nature and extent that has taken place herein. It is submitted that the actions

of the accused were spontaneous and sudden reaction to what had transpired in the course of the day and which has been highlighted herein before.

27. Shri Bhardwaj has firstly relied upon judgment of the Hon'ble Gujarat High Court а delivered in the case of Patel Rasiklal Bhagwandas v. State of Gujarat as reported in 1999(1) GLR 717 wherein the Hon'ble High Court has laid down the parameters while deciding the quantum of punishment and emphasis is laid down on paragraphs Nos.25 and 26 of the said judgment in support of the contention that the quantum of punishment is required to be carefully considered and parameters laid down by the Hon'ble High Court are also required to be borne in mind while imposing the quantum of sentence herein.

***25**. The principles and parameters required to be examined and kept in the mental-radar while adjudicating upon the issue of sentencing for the offences are very well, exhaustively propounded and expounded in number of decisions. Learned Advocate Mr.Shah has placed reliance on the decision in the case of Bishnum Deo Shaw v. State of W.B., reported in AIR 1979 SC 964. Relying on the observations made in paras 25 and 26 and 27 he has submitted that victimology as well as personal the accused factors referable to persons and peculiar aspects ought to be reflected in the process of imposing sentence:

Judgment

354(3) 'Apart from Sec. there is another provision in the case which also uses the significant expression "special reasons". It is Sec. 361, Sec. 360 of the 1973 Code re-enacts, in substance, Sec. 562 of the 1989 Code and provides for the release on probation of good conduct or after admonition any person not under 21 years of age who is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or any person under 21 years of age or any woman who is convicted of an offence not punishable with death or imprisonment for life, if no previous offence is proved against the offender, and it appears to the Court having regard to the age, character and antecedents of the offender and to the circumstances in which the offence was committed that it is expedient that the offender should be released on probation of good conduct or after admonition. If the Court refrains from dealing with an offender under Sec. 360 or under the provisions of the Probation of Offenders Act or any other law for the treatment, training or rehabilitation of youthful offenders, where the Court could have done so. Sec. 361 which is a new provision in the 1973 Code makes it mandatory for Court to record in its judgment "special the reasons" for not doing so. Sec. 361 thus casts a duty upon the Court to apply the provisions of Sec. 360, wherever, it is possible to do so and to state

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"special reasons" if it does not do so. In the of Sec. 360 the "special context reasons" contemplated by Sec. 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, the foremost objects among of the are now administration of criminal justice in our country. Secs. 361 and 354(3) have both entered the Statute Book at the same time and they are part of the picture of acceptance by the emerging Indian Parliament of the new trends of criminology. We will not, therefore, be wrong in assuming that the personality of the offender as revealed by his age, character and antecedents and other circumstances and the tractability of the offender to reform himself must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal Justice system is not a computer machine. It deals with complex human problems and diverse human beings. It deals with persons who are otherwise like the rest of us, who work and play, who laugh and mourn, who love and hate, who yearn for affection and approval, as all of us do, who

think, learn and forget. Like the rest of us they too are the creatures of circumstances. Heredity, neighbourhood, environment, home, upbringing, school, friends, associates, even casual acquaintances, the book that one reads, newspapers, radio and TV, the economics of the household, the opportunities provided by circumstances, and the calamities resulting therefrom, the success and failures of one's undertakings, the affairs of the heart, ambitions and frustrations, the ideas and ideologies of the time, these and several other extraordinary incidents ordinary and of life contribute to person's personality and influence his conduct. Differently shaped and differently circumstanced individuals react differently in given situations. A Judge has to balance the personality the offender with the circumstance, of the situations and the reactions and choose the appropriate sentence to be imposed. A Judge must try to answer a myriad questions such as was the offence committed without premeditation or was after due deliberation? What was the motive for the crime? Was it for gain? Was it the outcome of village feud? Was it the result of a petty, drunken street brawl or a domestic bickering between a hapless husband and a hapless wife? Was it due to sexual jealousy? Was the murder committed under stress, emotional or otherwise? What is the background of the offender? What is his social and economic status? What is the

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level of his education or intelligence? Do his actions betray a particularly callous indifference towards the welfare of a society or on the other hand do they show a great concern for humanity and are in fact inspired by such concern? Is the offender so perpetually and constitutionally at war with society that there is no hope of ever reclaiming him from being a menace to society? Or he is a person who is patently amenable to reform? Well, may one explain with Prof. Vrij "What audacity is involved in these three tasks to interpret life, explain an act, predict the latest inclination of a human mind.'"

°26. HE has also placed reliance on the decision in the case of Hari Kishan v. Sukhbir Singh, reported in AIR 1988 SC 2127 and has contended that it highlights the issue of compensation to victims of offence. In this connection, it is submitted that it is a case wherein proper balance can be struck if the period undergone by the accused Nos. 2 and 3 were ladies and period of imprisonment undergone by them respectively for the purpose of the amount of fine out of which reasonable amount of compensation was determined under Sec. 357. In that case amount of compensation awarded to the victim for the offence punishable under Sec.307 came to be enhanced to Rs.50,000.00.

He has also placed reliance on the decision of the Division Bench of this Court in Lakhdhirsingh v. State of Gujarat, in Criminal Appeal No.553 of 1983 decided on 16-1-1984. We have gone through the said decision. In that case, the accused came to be convicted under Sec. 304 Part II and was awarded R.I. For four years by the trial Court and in appeal before this Court the conviction appeal and the final order of the trial Court was not pressed and it was urged that the benefit of probation of good conduct may be granted to the accused. In the facts and circumstances, it was accepted by this Court and accused was permitted to be released on probation for a period of two years with appropriate condition. While suspending the sentence imposed by the trial Court and appellate Court the appeal was partly allowed.

Mr. Shah has also placed reliance on the decision of the Division Bench of this Court in Criminal Appeal No.1016 of 1984 decided on 23/24-1-1995 and 24-2-1995 (Coram: B.C. Patel and Y.B.Bhatt, JJ). In that case, the Court relied upon the decision in the case of Hari Kishan (supra) the benefit of Sec. 357 of the Code was considered and amount of fine of Rs.50,000.00 was imposed for the offence punishable under Sec.307. The conviction under Sec. 307 was confirmed and the sentence

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imposed already undergone by the accused was considered sufficient while imposing fine of Rs.50,000.00 out of which sum of Rs.45,000.00 was ordered to be paid by way of compensation under Sec. 357 of the Code. Mr. Shah states that he had appeared in the said matter and the period undergone was three months."

28. It is submitted that the arguments advanced by the State that it is not possible to reform or rehabilitate any of the accused convicted herein, is without any basic material or support inasmuch as, there is no material to show that the accused are seasoned campaigners or have repeatedly committed offences and it is urged that in the circumstances, the arguments advanced on behalf of the State are to that extent not required to be accepted.

29. It is pointed out that none of the judgments relied upon either by the State or by the victims for that matter, establish in any manner any retaliatory role played by any of the victims in such cases. It is submitted that the Hon'ble High Court has further held that reformation and rehabilitation of the accused is to be given prime importance over retribution and the Court according to Shri Bhardwaj, herein also should consider this aspect before deciding on the quantum of punishment to be imposed herein. It is submitted that the Hon'ble Court has observed on page No.741 of the said judgment that "We would therefore be wrong in assumingspecial reason must have some relation to these factors."

30. It is submitted that of those accused enlarged on bail, the State has not been able to show a single incident where any of the accused upon their being enlarged on bail, has committed other and further offences and it is urged that this is also a factor required to be considered while deciding the quantum of punishment required to be imposed. It is submitted that even those accused who have been in Jail for a long period, there is no material placed for the consideration of this Court which would show that even while in jail, there were offences registered against or complaints against any of such accused. It is submitted that there has been no attempt on the part of the State to even attempt to seek cancellation of bail or other such reliefs with regard to any of the accused pending the trial. It is pointed out that neither in the present circumstances, past in the after nor enlargement on bail, any offence or incident of a communal nature has been registered against any of the accused herein and therefore also, this is required to be a major factor to be considered while imposing the quantum of punishment to the present accused. It is submitted that in the circumstances, the Court is required to consider that this is only once in a lifetime act committed by the accused and

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in the circumstances, capital punishment should not be imposed on the accused. It is submitted that in such circumstances, especially when all the factors are highlighted herein before, it cannot be for a moment said that any of the accused herein is a menace to the Society. It is submitted that under all such circumstances, the accused are required to of circumstances be treated as creatures and especially in light of what has been highlighted herein before, the accused be given leniency and the demand of the State for capital punishment should be negated.

31. Bhardwaj has relied Shri upon а judgment of the Hon'ble High Court of Gujarat delivered in the case of Girishbhai Mohanbhai Sharma of as in v. State Gujarat reported 2012 LawSuit(Guj.) 1854 wherein the Hon'ble High Court of Gujarat has laid down a ratio to the effect that the accused cannot be held accountable for those persons who are missing and are required to be held account only for those persons whose bodies have been found and considered. It is submitted that on most of the victims who are established to be burnt to death, there was no evidence that any inflammable substance was poured over such victims and therefore also, the accused cannot be held responsible for such deaths.

32. It is submitted that in any case, the powers granted to the State under the provisions contained in Sec.433A of the Cr.P.C. read together

with other provisions analogous thereto, cannot be taken away by this Court while passing the sentence.

33. It is submitted that the alternative arguments of the Prosecution and Shri Vora are also required to be negated inasmuch as, if at all it was the intention of the legislature to mean and conclude that a sentence of imprisonment for life would mean that the sentence would continue till the time the convicted accused died i.e. till the remainder of his natural life, then the provisions contained in Sec.302 would have been amended as has been done so in the amended provisions of Sec.376 of the IPC where such specific clarification has been raised that a sentence of imprisonment for life would mean till the remainder of life of the person so convicted. It is submitted that in absence of any such amendment in the provisions contained in Sec.302, it is clearly established that the intention was never to infringe upon any rights and the executive as authority of provided under Sec.433A and only a reasonable restriction has been imposed on the State while remitting or commuting the sentences.

34. A judgment of the Full Bench of the Hon'ble Supreme Court delivered in the case of **B**. **Kumar @ Jayakumar @ Left Kr. @ S. Kumar v. Inspector of Police Tr Cbcid** as reported in **2015(2) SCC(Crim.) 78** is pressed into reliance, which lays down the parameters where capital punishment can be imposed

and ought not be imposed.

35. Τt. is submitted that the Hon'ble Supreme Court has concluded that if the accused are a grave danger to the society and it has been established is that there no chance of rehabilitation or reformation of such accused, then and only then capital punishment be imposed. It is pointed out that in the instant case, the State as failed has been urged above, completely in establishing that accused are a menace to the society and do not deserve to exist or co-exist in the society and it is urged that upon such failure on the part of the Prosecution to establish such aspect, the accused cannot be sentenced to capital punishment.

36. judgment of the Hon'ble Supreme А Court delivered in the case of Ajaykumar Pal v. Union of India and Anr. as reported in 2015(2) SCC (Crim.) 108 is also pressed into reliance wherein the factor pertaining to the delay in disposal of the proceedings is considered to be material. It is submitted that in the instant case, the incident took place in the year 2002 and today on conclusion of the trial we are in the year 2016. It has been pointed out that the delay of 14 years in the conclusion of the trial is not on account of any fault of any of the accused herein, but it is pointed out that it is only on account of various applications moved by the victims that there is a

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delay in disposal of the proceedings and it is pointed out that even when the matter was finally heard by the predecessors of this Court, no judgment because of the could be pronounced various applications tendered by the victims and it is urged that thus some of the accused have remained in detention for more than 14 years and all the accused have undergone the trauma of trial for more than 14 years and therefore, their rights under Art.21 of the Constitution of India, are recognized by the Hon'ble Supreme Court of India in the present judgment cited and it is therefore, urged that in such circumstances also, this Court should negate the demand for capital punishment to be imposed on the accused.

37. At this stage, the proceedings are adjourned to 09/06/2016 for further hearing on the quantum of sentence.

Dictated and pronounced in the open Court on this 6^{th} day of June, 2016.

City Sessions Court, Ahmedabad. Date: 06/06/2016 (Pranav Bhadramukh Desai) Special Judge, Designated Court for speedy trial of riot cases (Gulbarg Society),Ahmedabad. Unique ID Code No.GJ00004

Further order

09/06/2016

Shri Bhardwaj, while beginning his 38. submissions today, has firstly relied upon а judgment of the Hon'ble Supreme Court delivered in the case of Md.Jamiluddin Nasir v. State West Bengal as reported in LAWS(SC)-2014-5-55, wherein even when the Hon'ble Supreme Court agreed with the findings of the lower Court and Hon'ble High Court with regard to the fact of the accused having established to have committed the gravest and most serious offence including that of waging war against the nation where number of Policemen on duty were killed, and the findings of the lower Court was accepted and affirmed by the High Court, even in a case, the Hon'ble Supreme Court while such discussing at length and discussing large number of judgments of the Hon'ble Supreme Court, which according to the Hon'ble Supreme court, were reflecting the recent trends in penology, came to a conclusion that where there is the remotest possibility of reformation, the chance of reform must be given and capital punishment should not be imposed upon the accused.

39. It is urged by Shri Bhardwaj that in the instant case, the accused have shown that they are not a menace to the society, not only there are no antecedents established on the record against the accused convicted herein, but there is nothing on

record to show that even after they the were enlarged on bail, they have committed any act which would constitute an offence and which would even remotely hint at a fact that the accused are incapable of reformation. It is pointed out by Shri Bhardwaj that in the instant case, even after being enlarged on bail and even after considering the fact that a number of witnesses from amongst the victims had positively identified such accused in the Court and despite the admitted position of the accused and the victims residing in the same locality, there was no attempt made by any of the accused herein to even lay a finger, let apart, threaten in any manner or commit any violent act on any such victim who had deposed in the Court. It is submitted that despite being enlarged on bail and even after the conclusion trial, all the accused have presented of the themselves before this Court barring accused No.1, to accept the verdict of the Court. It is submitted that therefore, these accused cannot be treated in any manner as persons who are incapable of being reformed or rehabilitated and it is urged that in such circumstances, when even the terrorists are thought to be capable of being reformed as was held Hon'ble Supreme Court in the case by the of Md.Jamiluddin Nasir (Supra), it is urged that the accused herein are required to be given the lesser punishment and not capital punishment as has been urged by the State. It is pointed out that in such circumstances, the Prosecution arguments in this regard be negated.

40. It is also pointed out by Shri Bhardwaj that in fact one of the factors considered Supreme Court in the case by the Hon'ble of Md.Jamiluddin (Supra), is also the aspect of provocation and other mitigating circumstances. It is submitted that there are sufficient mitigating circumstances where the balance is in favour of the accused rather than the Prosecution and it is submitted that the provocation on the accused to commit the offences, also cannot be lost track of, while deciding the quantum of punishment.

41. Shri Bhardwaj has also relied upon a judgment of the Hon'ble Supreme Court delivered in the case of Ram Pal v. State of Uttar Pradesh as reported in LAWS(SC)-2003-8-43, and my attention is particularly drawn to the highlighted portion on page No.3, paragraph No.3, wherein the Hon'ble Supreme Court has inter alia laid down the ratio to the effect that the number of deaths cannot be made maximum the sole criterion for awarding the punishment of death. While in a given case, death penalty may be appropriate sentence even for a single murder, it would not necessarily mean that in every case of multiple murders death penalty has to be the normal punishment.

42. The Hon'ble Supreme Court, according to Shri Bhardwaj, also on page No.4 of the said judgment, laid down the parameters as to what are

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the mitigating circumstances, and it is particularly pointed out that the State shall by evidence prove that the accused does not satisfy the conditions that probability of reformation and rehabilitation of the accused does not exist. The other aspects are also according to Shri Bhardwaj, pointed out by the Hon'ble Supreme Court while showing as to what circumstances, could be said to be mitigating circumstances. It is pointed out that in such circumstances, the Hon'ble Supreme Court commuted the sentence of death awarded by the lower Court and Hon'ble High Court to one of undergoing imprisonment for life. Shri Bhardwaj has specifically emphasized the observation of the Hon'ble Supreme Court in the concluding lines on page No.4 of the judgment, which is to the effect that "The fact that the accused has spent nearly 17 years in custody after the incident in question can also be treated as a mitigating circumstance while considering the question of sentence."

43. Ιt is also pointed out by Shri Bhardwaj that the Hon'ble Supreme Court in the said judgment, has ordered that all the sentences should concurrently with the substantive sentence run imposed by the trial Court. It is submitted that this judqment should apply to the facts and circumstances herein also.

44. A judgment of the Hon'ble Supreme Court delivered in the case of **Vyas Ram @ Vyas Kahar**

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v. State of Bihar as reported in LAWS(SC)-2013-9-71 has been pressed into reliance where particular emphasis is placed on the contents of paragraphs Nos.22 and 23 of the said judgment, wherein according to Shri Bhardwaj, the economic condition of the appellants i.e. the convicted accused has been favourably considered by the Hon'ble Supreme Court while commuting the death sentence to one of life imprisonment. It is submitted by Shri Bhardwaj that the Hon'ble Supreme Court has clearly held that "it would be advisable to fall in favour of the 'rule' of life imprisonment rather than involving 'exception' of death punishment." the It is submitted by Shri Bhardwaj that in such circumstances also, the judgment is squarely applicable to the present case on all counts and the accused are required to be dealt with accordingly.

45. The judgment of the Hon'ble Supreme Court delivered in the case of Ashok Debbarma @ Achak Debbarma v. State of Tripura (Supra), is again pressed into reliance and my particular attention has been drawn with regard to the findings of the Hon'ble Supreme Court which lay down that even if there is residual doubt with regard to the guilt of the appellant, even if such accused has been held to be guilty beyond reasonable doubt, then also the accused has to be awarded the lesser punishment of imprisonment of life and the Hon'ble Supreme Court to commute the proceeded sentence of capital punishment to life imprisonment herein as has been

***28**. have already explained WE few circumstances which favoured the accused in the instant case, to hold it as not a rarest of rare case, which are that the appellant alone could not have executed such a crime, which resulted in the death of 15 persons and leaving so many injured and 23 houses, that is the entire setting ablaze elements of the crime could not have been committed by the appellant alone. Further, the appellant is a tribal, stated to be a member of the extremist group raging war against the minority settlers, apprehending perhaps they might snatch away their livelihood and encroach upon their properties, possibly such frustration and neglect might have led arms, thinking they are them to take being marginalized and ignored by the society. Viewed in that perspective, we are of the view that this is not a rarest of rare case for awarding death sentence. All the same, considering the gravity of the crime and the factors like extreme social indignation, crimes against innocent villagers, who are a linguistic minority, which included women and children, we feel it would be in the interest of justice to apply the principles laid down in Swamy Shradananada (2) v. State of Karnataka (2008) 13 SCC 767.

Consequently, while altering the death

sentence to that of imprisonment for life, we are inclined to fix the term of imprisonment as 20 years without remission, over and above the period of sentence already undergone, which, in our view, would meet the ends of justice. Ordered accordingly."

46. It is submitted that in the instant case, at the cost of repetition, there has to be a lingering doubt as to whether the accused would have reacted in such fashion had there been no firing from Shri Ehsan Jafri. It is submitted that in such circumstances, this is also a factor which is required to be considered in light of the ratio laid down in this judgment by the Hon'ble Supreme Court, while deciding the quantum of punishment.

47. is pointed out by Shri Bhardwaj Ιt that a similar situation has arisen in the present case, as was considered in Ashok Debbarma's case (Supra), where there was a large number of persons originally attributed to have been involved in the offence, and very few of them were charged, and out of the charged accused, number of accused were therefore, acquitted and that was а factor considered by the Hon'ble Supreme Court while deciding the sentencing aspect. It is submitted that in the instant case also, a number of accused have been acquitted by this Court, and therefore also, this aspect needs to be borne in mind while deciding the quantum of punishment herein.

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48.

judgment of the Hon'ble Supreme

Court in a matter arising out of Gujarat, in the case of Jashubha Bharatsinh Gohil v. State of Gujarat as reported in LAWS(SC)-1994-4-38 has been pressed into reliance, wherein the sentence of life imposed the lower Court altered by was and interfered with by the Hon'ble High Court and was converted to sentence of death and it is pointed out by Shri Bhardwaj that in paragraph No.12 of the said judgment, the Hon'ble Supreme Court has upheld the lower Court and commuted findings of the the sentence of death passed by the Hon'ble High Court to life imprisonment especially keeping in mind the fact that the time factor of 10 years between the date of occurrence and the date of sentence and six more years after the death sentence was imposed, having passed, this was a relevant factor considered by the Hon'ble Supreme Court while commuting the death sentence to life imprisonment. It is pointed out by Shri Bhardwaj that the present convicted accused have already undergone the trauma of a trial for a considerable length of time and the present incident occurred 14 years before today and it is urged that in such circumstances also, this court should consider in favour of the accused by imposing lesser sentence.

49. A judgment of the Hon'ble Supreme Court in the case of **Gyasuddin Khan @ Md.Gyasuddin Khan v. State of Bihar** as reported in **LAWS(SC)-2003-**

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11-2 has been pressed into reliance, wherein the Hon'ble Supreme Court according to Shri Bhardwaj, has held that "Nevertheless, in deciding whether the case merits the less severe of the two penalties prescribed for murder a history of relations between the parties concerned, the background, the context, or the factual setting of the crime, and the strength and nature of the motives operating on the mind of the offender, are relevant considerations. The state of feelings and mind produced by these, while insufficient to bring in an exception may suffice to make the less severe sentence more appropriate."

50. It is also pointed out by Shri Bhardwaj that the Hon'ble Supreme Court held that acts done out of panic reaction and in a state of frenzy, are cases where the exception is not required to be applied. It cannot, according to the Hon'ble Supreme Court, reveal that the accused is a the society or that collective menace to consciousness of the community would be shocked if death sentence is not inflicted in the instant case.

51. It is submitted by Shri Bhardwaj that in such circumstances, the Hon'ble Supreme Court commuted the sentence of death to life imprisonment. It is pointed out that in a number of these judgments cited and relied upon, the number of deaths is held to be not the sole criteria while deciding the quantum of punishment.

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The judgment of the Hon'ble Supreme Court delivered in the case of B.Kumar @ Jayakumar @ Left Kr @ S. Kumar (Supra) has been relied upon, where the Hon'ble Supreme Court has observed that "This Court must remain mindful of two fundamental objectives of penology which apply even in such

grotesque cases: (a) deterrence and (b) reformation. Other factors such as seriousness of the crime, the criminal history of the appellant and also his propensity to remorselessly commit similar dastardly crimes in the future, must be considered. In the having the aforesaid present case, assessed mitigating factors including the Appellant's conduct after the commission of the crime, we observe that this case does not fall into the category of rarest of the rare. Consequently the conviction and other sentences except the death sentence are hereby upheld. The appellant thus stands convicted for the remainder of his life for the offence of murder."

53. It is pointed out that in the circumstances, the Hon'ble Supreme court has clearly ratio that where laid down the there is а possibility of reformation and rehabilitation, where the State is unable to establish that the accused is a menace to the society, then in such circumstances, no capital punishment can be imposed.

54. judgment of the Hon'ble А Supreme Court delivered in the case of Birju v. State of

Judgment

M.P. as reported in LAWS(SC)-2014-2-27 is relied upon where the factual matrix clearly established that the accused had no less than 24 offences registered against him and was held guilty in the present case and was thereby ordered to capital punishment. But however, even in such a case, the Hon'ble Supreme Court has held that the Prosecution must satisfy the R-R test which is reformation and rehabilitation. Shri Bhardwaj while drawing mγ particular attention to paragraph No.12 of the judgment in the said case, has submitted that the that Hon'ble Supreme Court has observed ".....We find, in several cases, the trial Court while applying the criminal test, without any material on hand, either will hold that there would be no possibility of the accused indulging in commission of crime or that he would indulge in such offences in future and, therefore, it would not be possible to reform or rehabilitate him....." It is submitted that Hon'ble Supreme Court in the said case, commuted the death sentence to sentence of 20 years without remission.

55. A judgment of the Hon'ble Supreme Court delivered in the case of Mahesh Dhanaji Shinde v. State of Maharashtra as reported in LAWS(SC)-2014-2-65 is pressed into reliance, wherein the Hon'ble Supreme Court has held that in a case where pre-meditated, cold-blooded murders of nine innocent and unsuspecting victims were committed and some of the victims were young and hapless children, the

young age of the four accused was also considered by the Hon'ble Supreme Court а mitigating as circumstance. It is submitted that in the circumstances, where the Hon'ble High Court had confirmed two death sentences on the appellant therein, the Hon'ble Supreme Court still came to the conclusion that there was no material to show that the accused were beyond reformation and are not capable of living a changed life if they were to be rehabilitated in the society. It is submitted that the accused had spent over ten years' incarceration and therefore, the Hon'ble Supreme Court commuted the death sentence to sentence of life.

56. It is urged that in such circumstances, these are all factors which operate in favour of the accused and therefore, none of the convicted accused, is required to be awarded capital punishment herein.

57. It is submitted by Shri Bhardwaj while dealing with the alternative arguments of the State and Shri S.M.Vora, that under Sec.302 of the I.P.C., the Sessions Court has power to sentence an accused to imprisonment for life, and it is submitted that imprisonment for life would necessarily mean till death and it is pointed out that there is no need by the Sessions Court to specify the time frame as to what means life imprisonment. It is also pointed out that the power granted to the State to remit or commute a sentence is discretionary and if the power

of remission is not exercised by the State, then the convict necessarily undergoes imprisonment till he dies when imposed a sentence of life imprisonment. It is submitted that in such circumstances, this Court should not specify the quantum of punishment beyond what is prescribed in law.

58. While refuting the arguments of the Prosecution with regard to as to whether the sentencing and quantum of punishment to be imposed herein, should run consecutively or concurrently, it is pointed out by Shri Bhardwaj that there is only one offence and different provisions are found attracted to the accused for which they are required to be differently punished. It is submitted that the offence is the same and only different punishments for different provisions are required to be imposed and it is submitted that since there is only one offence, all the other sentences under whatever other provisions attracted, should therefore, be running concurrently required to be and not. consecutively. It is submitted that when an accused is sentenced and punished for one major offence and also found quilty of other ancillary provisions, then all the sentences should be required to be ordered to run concurrently and not consecutively.

59. At this juncture, Shri T.R.Bajpai, the learned advocate appearing on behalf of some of the accused, has drawn the attention of this Court towards a judgment of the Hon'ble Supreme Court,

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delivered in Criminal Appeal No.2063 of 2013 in the case of Manoj @ Panu v. State of Haryana, which appears to be an unreported judgment delivered on 09/12/2013, where the Hon'ble Supreme Court has clearly held "Further having regard to the age of the appellant at the time of committing the offences, we feel it would not be just and proper to allow the sentences to run consecutively. As the offences committed by the appellant have been committed under a single transaction, it is well settled position of law that the sentences must run concurrently and not consecutively." (Emphasis supplied)

60. It is submitted that, therefore, the Hon'ble Supreme Court has settled the law beyond any controversy and has clearly held that when an accused has been sentenced on different counts in a single transaction as is true in the instant case, the sentences must run concurrently and not consecutively as is urged by the State and by Shri S.M.Vora, the learned advocate appearing on behalf of the victims herein.

61. It is urged by Shri Bhardwaj that with regard to the lesser punishment being imposed on the accused, merely because the accused are found guilty under Sec.149 of the I.P.C., they cannot be dragged with the accused or clubbed with the accused and treated at par with such accused who are punished under Sec.302 read together with Sec.149 of the

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I.P.C. especially when the Court has not accepted the case of the Prosecution with regard to finding in favour of the Prosecution and against the accused under Sec.302 of I.P.C. as far as the lesser punishment is imposed. It is submitted that Sec.149 of I.P.C. cannot be meant to be all encompassing and be applicable to offences which are held to be not proved against such accused. It is further pointed out with regard to the other offences which are established to have been held against the accused which constitute lesser punishment, that the statutory provisions provide for two alternative punishments, and it is urged that in such cases, the minimum punishment should be imposed against the concerned accused. Shri Bhardwaj clarifies that this is not a position of law that he has canvassed, but it is an argument on behalf of the accused that leniency is required to be shown and minimum punishment is required to be imposed herein.

62. is further submitted Tt. by Shri Bhardwaj that as far as the accused who are undergo punishment, sentenced to lesser are concerned, looking to the mitigating circumstances, looking to the fact that there was provocation, looking to the age of the accused in some cases, that one of the accused looking to the fact convicted has only recently got married as in the case of accused No.47 Dharmesh Prahladbhai Shukla, it is pointed out that this is an unfortunate case where more than 14 years have passed after the

incident has taken place, and it is pointed out that a number of accused after being enlarged on bail, integrated themselves into the society and have after being so enlarged on bail, are even leading fairly normal lives for more than six years and therefore, it would be expected that utmost leniency be shown to such accused to allow them to continue to exist in the society as normal citizens more so when the theory of reform and rehabilitation is strongly advocated by the Hon'ble Supreme Court in its recent judgments. It is submitted that in such circumstances, leniency be shown to the accused while deciding the quantum of punishment to be imposed on each of the convicted accused. It is submitted that many of the accused have young children, aged parents or in some cases, have lost their near and dear ones pending the trial and it is pointed out that there are unfortunate repercussions of the trial and in such cases, utmost leniency is

required to be shown to the accused and it is urged that in such circumstances, all these factors be borne in mind while imposing the quantum of sentence.

63. It is pointed out with regard to accused No.34 Krishna that the said accused is required to be shown leniency on account of the fact that the mother of the said accused is established on the record of the present proceedings to have in this surcharge atmosphere also saving lives of two members of the minority community and it is

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submitted that this aspect is also required to be borne in mind while imposing sentence on such accused, more so keeping in mind the trauma that the mother of such accused would undergo if her actions are to be disregarded while ascertaining the quantum of sentence *qua* accused No.34.

Rajendra Trivedi, the 64. Shri learned advocate appearing on behalf of the concerned accused herein, has submitted that while he supports and adopts in toto the submissions advanced by Shri Bhardwaj, the learned advocate appearing for some of the accused herein, Shri Trivedi has sought to rely on some judgments of the Hon'ble High Court of Gujarat as also the Hon'ble Supreme Court of India after follows, as herein in support of his contention for imposing the minimum punishment on the concerned accused. It is submitted by Shri Trivedi that he too urges that in light of the settled legal position, the sentences should run concurrently and not consecutively.

65. Shri Rajendra Trivedi has relied upon a judgment of the Hon'ble High Court of Gujarat as reported in 1987(2) GLH 424 in the case of State of Gujarat v. Anwar Hasam Subhania, wherein the Hon'ble High Court had considered the aspect of there being no antecedents against the accused and held that the extreme penalty was not sustainable against the concerned accused.

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66. A judgment of the Hon'ble Supreme Court delivered in the case of Sadha Singh v. State of Punjab And Haryana as reported in 1985(0) GLHEL-SC 24880 has been pressed into reliance, wherein the quantum of punishment in a case where conviction was sustained under Sec.307 of the I.P.C. read together with Arms Act, was imposed to the tune of three years by the Hon'ble Supreme Court. It is urged that even in the instant case, similar leniency be shown.

67. It has been pointed out by Shri Rajendra Trivedi, that in light of such settled law emerging, utmost leniency should be shown while imposing the quantum of sentence and each of the convicted accused should be punished appropriately and with a minimum sentence.

68. Shri T.R.Bajpai, the learned advocate appearing for the concerned accused, submits that he firstly adopts in toto the arguments and submissions advanced by the learned advocate Shri A.M.Bhardwaj, and in furtherance thereto, submits that the Hon'ble Supreme Court in the case of Kishori v. State of Delhi as reported in (1999) 1 SCC 148, clearly held that if in a case of communal riots, a chain of events had occurred prior to the incident and the acts attributed to the mob could be said to be a result of temporary frenzy and not any organized systematic activity, the riotous mob was not expected to follow high ideals of secularism in such a situation, and the Hon'ble Supreme Court imposed

life sentence instead of the death sentence as imposed by the Hon'ble High Court.

69. It is submitted that admittedly the present case also is a case of communal situation which was in the aftermath of a previous grave and serious incident being the Godhra Train incident and therefore, the facts of the judgment in Kishori's case (Supra) would apply squarely to the instant proceedings, and therefore also, capital punishment should not be imposed on any of the convicted accused herein. It is submitted that the judgment clearly discloses in paragraph No.10 thereof that though the accused was convicted for murders for the seventh time, even in such circumstances, the Hon'ble Supreme Court found that enough mitigating circumstances existed to commute the death sentence to life imprisonment.

70. It is submitted that since in the instant case, the Court has accepted that there was no pre-planned, pre-conceived meeting of minds and that there existence of а criminal was no conspiracy, the accused can be qiven lesser punishment and the minimum punishment prescribed under the provisions where they have been found guilty. It is submitted that in such circumstances, the bare minimum sentence be imposed on the accused concerned. It is submitted that when there is no material to show that the entire offence or incident was for any personal gain, then also, no capital

punishment can be imposed. It is pointed out that the State has failed in establishing any previous personal enmity between the accused and the victims and therefore also, that aspect should be borne in mind while imposing the quantum of punishment.

71. In the circumstances, all the three learned advocates for the concerned accused, have in a nutshell, submitted that this is not a fit case in which capital punishment is required to be imposed, and this is a case where with regard to the accused who have been awarded lesser punishment, the minimum sentence prescribed in the law should be imposed and that too, all the sentences be ordered to run concurrently and not consecutively, and it is also urged that the Court should not go beyond the strict provisions contained in Sec.302 of the I.P.C. with regard to the sentence prescribed and therefore, not not specify the time frame of the term "life imprisonment".

72. Bhardwaj at this Shri stage also requested that additional arguments be heard with regard to the question of compensation under Sec.357A raised by Shri S.M.Vora and considered, and at this stage firstly there being no material on the record to establish as to whether any compensation has been paid over to the victims by the State or not, was required to be ascertained. The quantum of compensation also required such was to be ascertained and in the circumstances, today this

73. The State has sought an opportunity to deal with the submissions made on behalf of the defence, which also are duly considered and Shri Kodekar is permitted to make limited submissions in rejoinder to the submissions of the defence tomorrow.

The proceedings stand adjourned to tomorrow i.e. 10/06/2016 for further hearing, after which the quantum of sentence would be decided.

Dictated and pronounced in the open Court on this 9^{th} day of June, 2016.

City Sessions Court, Ahmedabad. Date: 09/06/2016 (Pranav Bhadramukh Desai) Special Judge, Designated Court for speedy trial of riot cases (Gulbarg Society),Ahmedabad. Unique ID Code No.GJ00004

*ashwin

Further order

10/06/2016

74. Continuing from his earlier submissions, Shri Bhardwaj has also drawn my attention to some other judgments of the Hon'ble Supreme Court.

75. Firstly, my attention is drawn to a judgment of the Hon'ble Supreme court delivered in

the case of Ramesh Chilwal @ Bombayya v. State of Uttarakhand as reported in LAWS(SC)-2012-7-50, wherein the Hon'ble Supreme Court has held that when a question of number of sentences are awarded in different offences, whether the sentences should run concurrently or not, and it is submitted that the Hon'ble Supreme Court has held that the sentences should run concurrently.

76. A further judgment of the Hon'ble Supreme Court being the landmark judgment in the case of Hussainara Khatoon Iii v. Home Secretary, State of Bihar, Patna as reported in LAWS(SC)-1979-2-79, is also pressed into reliance to support the contention that the delay in completion of the trial will have a bearing in favour of the defence i.e. the accused while deciding the quantum of punishment.

77. On the other hand, Shri T.R.Bajpai, the learned advocate appearing on behalf of some of the accused, has also drawn my attention to the judgment of Hon'ble Patna High Court delivered in what is infamously known as the "Bhagalpur Case" where in a communal riot more than 100 victims belonging to the minority community, were killed, the Hon'ble Patna High Court has held that the case would not fall within the rarest of rare cases warranting capital punishment and it is urged that applying the ratio emerging from the said judgment wherein the Hon'ble High Court of Patna has

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considered the mitigating circumstances which did not categorize a case involving fatalities of nearly 100 victims belonging to the minority community as the rarest of rare cases and it is urged that in such circumstances, the accused who are facing major punishment, be awarded the lesser punishment as prescribed under Sec.302 of the I.P.C. and not capital punishment as is urged by the State.

78. In rejoinder thereto, an opportunity was already indicated to be given to the State as also the learned advocate for the victims and the submissions made by Shri Kodekar appearing for the State as also Shri S.M.Vora, the learned advocate for the victims, in rejoinder to the lengthy defence arguments, are elaborated as herein after follows.

79. It is pointed out by Shri Kodekar that the Hon'ble Supreme Court has in terms of the latest judgments delivered in the case of Raj Bala v. State of Haryana and Others as reported in 2016(1)-SCC-463 and in the case of State of Madhya Pradesh v. Udaibhan as reported in (2016(4)-SCC-116, clearly laid down the sentencing policy. According to Shri Kodekar, the Hon'ble Supreme Court has consistently followed the sentencing policy in the rarest of rare cases and it is submitted that in the present case, unlike terrorist acts where persons who have hatred towards the country, indulge and perpetrate in ghastly acts, the present case is on an entirely different footing inasmuch as, these are the known

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persons, neighbours, acquaintances, friends who have betrayed such relationships in perpetrating such ghastly acts where large number of persons have been mercilessly done to death for no fault of theirs. It is submitted that in such circumstances, the crime test has to be viewed in terms of the perception arising in the society in relation to the present offence and therefore, the message required to be sent out to society according to Shri Kodekar, should be such that it should be exemplary and should send a signal to the society that such incidents will not be tolerated. Ιt is urged therefore, yet again that the strictest view be taken in the present proceedings.

80. Ιt is submitted that the arguments advanced by the defence with regard to a reaction to an action, have no place in the present proceedings. It is submitted that the Indian culture which is centuries old, be and is established to the world at large as a peaceful co-existence between members of the same society irregardless of their caste, creed submitted that or religion. Ιt is in such circumstances, the defence arguments are required to be disregarded inasmuch as, justification is sought to the actions being a reaction to the previous action having taken place. It is submitted that revenge and retribution have no place in the Indian society and therefore also, the strictest view is required to be taken herein by imposing the sentence.

81. It is submitted that since a large number of eye-witnesses have deposed in the trial that there were slogan shoutings *inter alia* to the effect that "*kill the members of the minority community*", it is required to be inferred that the intention of the riotous mob was to kill right since the very inception. It is submitted that in the circumstances, this is an aspect which cannot be lost track of.

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82. is submitted Tt. that in such circumstances, the Hon'ble Supreme Court while laying down the law on the sentencing aspect, has clearly held that sympathy is not a factor relevant to the quantum of sentence. Therefore, it is urged by Shri Kodekar that the quantum of sentence to be reflected imposed has to be seen and in proportionality, gravity, extreme cruelty of the accused in perpetrating the offence, and that is why the State according to Shri Kodekar, presses for the maximum punishment.

83. It is pointed out by Shri Kodekar that the provisions contained in Sec.31 of the Cr.P.C. empower the Court to exercise discretion while imposing sentence on multiple offences as to whether the sentences are required to run consecutively or concurrently and it is urged that looking to the exceptional circumstances in the present case, the State insists that the sentences be ordered to run

consecutively and not concurrently since the statute itself provides for such discretion to be exercised.

84. Shri Kodekar while making submissions on the alternative arguments advanced earlier by the State, submits that the term "life" is defined and provided for in Sec.45 of the I.P.C. where the term "life" is defined to denote the life of a human being unless the contrary appears from the context. A judgment of the Hon'ble Supreme Court delivered in the case of **Sandesh v. State of Maharashtra** as reported in (2013)2-SCC-479 has been pressed into reliance by Shri Kodekar to support his arguments that sentence of life imprisonment would mean till the death of such accused, according to the said Judgment.

85. Shri Kodekar has, in an effort to counter the submissions made on behalf of the defence with regard to the encompassing of the provisions of Sec.149 of the I.P.C., has relied upon a judgment of the Hon'ble Supreme Court delivered in the case of **Susanta Das and others v. State of Orissa** as reported in (2016(4)-SCC-371.

86. It is urged by Shri Kodekar in conclusion that the State insists in the present harshest punishment case for the and as an alternative, if capital punishment is not awarded, the sentence should be awarded in the manner as would specifically clarify that life imprisonment

would mean till death. It is urged that in such circumstances, appropriate orders be passed herein.

87. is pointed out by Shri Kodekar It lastly on the aspect of delay that the Prosecution also cannot be held responsible for any delay caused herein if at all any is caused herein. It is submitted that previous Presiding Officers had concluded the arguments also, but were unable to judgment, and the S.I.T. took bare deliver the minimum time after its appointment to conclude the investigation and the State has also always cooperated for the speedy trial wherein and therefore, it cannot be a factor which would be required to be considered while imposing the quantum of punishment upon the accused.

88. At this juncture, the details with regard to the period spent by the accused in judicial custody being not available to this Court, was called for from the prosecuting agency, but Shri Kodekar has not been able to bring forward an accurate and authentic data with regard to such details and he seeks time till Monday to provide such details. In such circumstances, further orders would be passed with regard to the date for announcing the sentence.

89. It is submitted by Shri S.M.Vora, the learned advocate appearing on behalf of the victims, that applying the judgment of the Hon'ble Supreme

Court as reported in 2015(1)-SCC(Cri.)-81, it is urged that when all accused have been held guilty of an offence under Sec.149 of the I.P.C., in light of the ratio laid down by this judgment, all accused are required to be punished on the same footing. It is submitted that in such circumstances, awarding of lesser punishment is against the principles enunciated by the Hon'ble Supreme Court.

90. It is submitted by Shri S.M.Vora that the arguments of provocation and in context of the defence with regard to the firing by Shri Ehsan Jafri, it is pointed out that the incidents could be said to have taken place right from 09:00 a.m. when there was no question of any firing by Shri Ehsan Jafri and therefore, there was no provocation at such time and therefore, it is submitted that the transaction could be said to have begun from 09:00 a.m. and therefore, justification to the provocation is groundless. It is pointed out by Shri S.M.Vora that right from 09:00 a.m. even till the time the senior Police Officers arrived at about 11:00 a.m., there was a continuous perpetration of the offence by the mob and therefore, it cannot be seen to be accepted that the mob acted only upon any provocation by any event. It is submitted that in such circumstances, the common intention of the mob can be reflected right since 09:00 a.m. much before the alleged time of the firing. It is submitted that the control message at about 12:30 p.m. clearly indicates that Gulbarg Society was surrounded by a

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huge mob which was indulging in heavy stonethrowing, throwing burning embers and therefore, there is no question of any provocation on the part of the residents of Gulbarg Society. It is submitted that therefore, the compilation submitted today contains sufficient material to establish that there was no provocation from within Gulbarg Society, but the mob had acted in furtherance of its common intention. Tt. is submitted that in such circumstances, supporting the contentions raised by the State, exemplary punishment is required to be meted out herein.

91. It is submitted by Shri Vora that the judgments pressed into reliance by the defence have no applicability to the facts and circumstances herein.

92. It is submitted by Shri Vora that the age and other mitigating factors like economic strata cannot be adequate consideration while imposing the quantum of sentence especially when the case falls within the rarest of rare category.

93. It is urged that in the circumstances, exemplary punishment be meted out to the accused. Though it is made clear that the victims do not press for capital punishment in any of their submissions, it is urged by Shri Vora that harshest punishment is required to be imposed. provided by Monday, and hence, proceedings are ordered to stand adjourned to 13/06/2016.

Dictated and pronounced in the open Court on this <u>10th</u> day of <u>June</u>, 2016.

City Sessions Court,	(Pranav Bhadramukh Desai)
Ahmedabad.	Special Judge, Designated Court
Date: 10/06/2016	for speedy trial of riot cases
	(Gulbarg Society),Ahmedabad.
	Unique ID Code No.GJ00004

*ashwin

94.

Further order

95. Having thus considered such voluminous material in the shape of submissions, judicial precedents and statutory provisions extensively relied upon by all the parties concerned, meaning to say, the Prosecution, the learned advocate who has been permitted to address this Court on behalf of the victims/witnesses, as also the learned advocates for the concerned convicted accused, I am required to address the contentions and questions raised in the course of such submissions and after expressing my opinion on the various aspects argued, I would propose to then award the quantum of punishment to each of the convicted accused herein.

96. At the outset, I may state that the first question that I am required to decide is as to

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whether the accused who have been awarded major punishment, are required to be awarded capital punishment as is urged by Shri Kodekar or the lesser punishment of imprisonment for life as prescribed and provided for in Sec.302 of the I.P.C., as is urged by the defence, or accept the alternative arguments made by Shri Kodekar and also supported by the learned advocate for the victims Shri S.M.Vora who made a statement at the bar which is reflected herein before, that the victims do not press or seek capital punishment herein, that the accused are required to be specifically awarded to undergo imprisonment for life which is further required to be clarified to mean till the remainder of the life of such convicted accused.

97. The second aspect which I am required to consider is as to whether those accused who have not been convicted under Sec.302 of the I.P.C., but are found guilty under Sec.149 of the I.P.C., are required to be convicted for life as is urged by the learned Spl.P.P. Shri Kodekar as also Shri S.M.Vora, or accept the submissions made on behalf of the defence that the accused be awarded lesser punishment and as not found guilty under Sec.302 of the I.P.C., cannot be awarded life imprisonment herein.

98. The next aspect required to be paid serious attention to is the aspect as to whether the sentences under various provisions are required to

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be ordered to run consecutively as is urged by Shri Kodekar and also Shri S.M.Vora, or run concurrently as is urged by the defence.

99. Another aspect that is required to be considered is as to whether the sentence with regard to accused No.1 Kailash Lalchand Dhobi who is admittedly absconding after violating his temporary bail, and against whom a non-bailable warrant is in force, whether sentencing of such accused is required to be kept in abeyance as is urged by Shri Kodekar or whether the sentence can be pronounced in absentia.

100. Lastly, I also need to, after considering all the above factors, hereby conclude these proceedings by awarding the specific quantum of sentences to each of the convicted accused herein and thereby conclude this exceptional, highly contentious, highly surcharged and highly publicized trial by so doing.

101. Firstly dealing with the question as to whether the present proceedings falls into the rarest of rare cases, and by classifying it to be so, are the accused required to be handed over the severest punishment of capital punishment as is provided in Sec.302 of I.P.C., or am I required to come to a conclusion that there are circumstances, possibilities of factors and reform and rehabilitation of the convicted accused which

thereby could be treated as mitigating circumstances which would require me to negate the contention raised by the State that this case is required to be treated as the rarest of rare cases and thereby capital punishment would be a necessary outcome which would, as has been pointed out by Shri Kodekar, send a strong message to the society and thereby address the societal perceptions with regard to the quantum of punishment to be meted out to such offenders. such circumstances, would In Ι be required to closely scrutinize the recent trends of the Hon'ble Supreme Court and the recent trends in penology emerging from the landmark judgments of the Hon'ble Supreme Court cited herein, as to what is the general trend reflected by such judgments of the Hon'ble Supreme Court while deciding the quantum of emerges from a large number punishment. Ιt of judgments produced by Shri Bhardwaj that even in the gravest of offences involving attempts to wage war against the nation as in the case of Md.Jamiluddin Nasir (Supra), a case where the accused had been convicted by the lower Court in offences involving Sections 120B, 121, 121A, 122, 302, 333 together with the Arms Act and where the trial Court as also the Hon'ble High Court had confirmed the sentence of capital punishment awarded, the Hon'ble Supreme Court had commuted a death penalty into life the imprisonment and factors such as the circumstances extenuating or aggravating of the offence, prior criminal record of the offender, age and background of the offender with reference to

education, home life, sobriety, emotional mental conditions, and prospects for rehabilitation and reforms after being so duly considered, were found to be favourable enough to commute the death penalty into one of imprisonment for life. The Hon'ble Supreme Court while commuting the death penalty, has dealt with a large number of judgments of the Hon'ble Supreme court delivered in equally gruesome and grave and serious offences where large number of victims were done away by the accused, and came to a conclusion that Md.Jamiluddin's case (Supra) was a case, where it was established that the accused fired upon and did away with by killing a large number of Policemen in furtherance of a criminal conspiracy to commit a Jehadi act against the nation. Despite such circumstances, the Hon'ble Supreme Court for the reasons reflected in the said judgment, commuted the death sentence to that of imprisonment for life.

102. The Hon'ble Supreme Court in the case of Ram Pal (Supra) held that "It is true that the incident in question has prematurely terminated the life of 21 people, but then the number of deaths cannot be the sole criterion for awarding the maximum punishment of death. While in a given case, death penalty may be an appropriate sentence even in a single murder, it would not necessarily mean that in every case of multiple murders the death penalty has to be the normal punishment." (Para-3 of the said judgment). 103. The Hon'ble Supreme Court while relying on the landmark judgment of **Bachan Singh v. State of Punjab [(1980)-2-SCC-684],** considered the following circumstances as mitigating circumstances:-

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(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

104. In such case also, the Hon'ble Apex

Court came to the conclusion that the fact of accused having spent 17 long years in custody, was also required to be treated as a mitigating circumstance while considering the quantum of sentence. Even in the present case, the death penalty was commuted to imprisonment for life.

105. The judgment of Vyas Ram (Supra) also upon due consideration, clearly relies on Bachan Singh's case (Supra), where also after relying on a Supreme Court judgment delivered in the case of Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra reported in 2009(6)-SCC-498 where it was observed by the Hon'ble Supreme Court that ".....it would be advisable to fall in favour of the 'rule' of life imprisonment rather than invoking 'exception' of death punishment." In such the circumstances also, in this case also, the Hon'ble Supreme Court commuted capital punishment to that of life imprisonment.

106. It may be noted that the accused herein have already undergone and faced the trauma of a trial which is the first stage and is likely to be followed by two more appellate stages, such trauma having lasted at the trial stage for about 14 years is also a factor which is required to be considered herein, and therefore, in light of the judgment in **Bachan Singh's case (Supra)** where the length of time spent by the accused in custody was also required to be treated as a mitigating

circumstance by the Hon'ble Supreme Court, and as a result, death sentence was commuted to one of imprisonment for life.

Similarly in Ashok Debbarma's 107. case (Supra) also, the same Santosh Kumar's case (Supra) been relied upon and a further aspect of has reasonable doubt and residual doubt is brought into play where if we look at the instant proceedings also, I am bound to accept the submissions made by Shri Bhardwaj that in the instant case where there were 60 surviving accused facing same charges and the charges were believed only against 24 of the accused and not believed against 36 accused, then there is what is entertained as a concept of residual doubt with regard to the guilt of such accused and in such circumstances, even in Ashok Debbarma's case (Supra), the Hon'ble Supreme Court commuted the sentence from death to imprisonment for The said judgment has also laid down the life. possibility that where there is a possibility of the accused being rehabilitated or there is a prospect of the accused being reformed for the rest of his life, he cannot be sentenced to death.

108. A recent judgment of the Hon'ble Supreme Court delivered in **B. Kumar @ Jaykumar's case (Supra),** has clearly considered all offences of murder to be grave, gruesome and heinous and one cannot imagine a murder which is not heinous or

cruel under any circumstance. However, the Hon'ble Supreme Court has held that while considering as to whether the extreme sentence is required to be awarded, a Court has also to inquire and believe that the condemned accused cannot be reformed or rehabilitated and are likely to continue with the criminal acts.

109. In such circumstances, I am required to accept the submissions made by Shri Bhardwaj that a large number of the present accused, particularly accused Nos.3, 16, 25, 29, 32, 34, 37, 38, 46, 47, 50, 52, 54, 55, 59 and 66 who have been enlarged on bail pending trial, are established to be persons who had no previous antecedents and as has been pointed out by Shri Bhardwaj in the course of his submissions, such accused even after being enlarged on bail, have not committed any offence which could even remotely indicate that the accused continue to be a menace to the society as has been canvassed by Shri Kodekar while advocating his arguments for justifying award of maximum sentence to the accused herein. Again, I am also required to appreciate the submissions made by Shri Bhardwaj that it is a matter of record that even after being enlarged on bail and during the time when a large number of the eye-witnesses identified such accused as the perpetrators of such grave and serious offence, named them in the Court, identified them in the Court, then also, not a single complaint has emerged either from the victims or from the State which

would indicate in any manner that any of the accused have even remotely directly or indirectly threatened the witnesses or have created a situation which would establish in any manner that the accused cannot be allowed to continue their existence in society or that they deserve to be awarded capital punishment. Even with respect to the accused who have been denied bail all throughout, I agree with the submissions of Shri Bhardwaj, that there is neither any complaint about any misbehaviour or criminal activity on the part of such accused within the Jail premises nor has any untoward incident taken place as and when such accused have been enlarged on temporary bail by the superior Courts, which has been done so on numerous occasions. The accused, as has been pointed out by Shri Bhardwaj, are even leading normal lives, of whom accused No.47 Dharmesh Prahladbhai Shukla has even got married during the pendency of the trial and therefore, it can be seen that while being enlarged on bail, the accused have made special efforts to integrate themselves into the main stream society and no further untoward incident involving the accused has emerged during the lengthy duration of the present proceedings. In my opinion, therefore, I cannot accept the submissions of Shri Kodekar that the accused are incapable of being reformed and are required to be treated as a menace to the society. In fact, while accepting the submissions of Shri Bhardwaj stated above, Ι find as that the submissions made by Shri Kodekar are devoid of merit

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in this regard and in such circumstances, without any further discussion herein, I am of the opinion that while the present carnage is one of the darkest days of civil society in Gujarat, and cannot be in any manner excused or condoned, I cannot but come to the conclusion that the accused deserve a chance to reform and rehabilitate and I, therefore, propose to award the lesser punishment of imprisonment for life on the concerned accused.

110. The next question that needs to be answered as a necessary consequence of my findings above, is as to what would be the quantum of punishment required to be meted out to the accused who have been found guilty and ordered to stand convicted of having committed an offence punishable with Sec.302 of IPC read together with Sec.149 of IPC read together with other provisions under which they stand convicted.

111. The alternative submission advanced by Shri Kodekar, is *inter alia* to the effect that this life Court can while imposing a sentence of imprisonment, specify and order that life imprisonment would mean the remainder of the life of such accused, i.e. the conviction is to continue till the time of death of such convicted accused. This argument and submissions are also pressed into reliance by Shri S.M.Vora, the learned advocate who appears on behalf of the victims, and he too has said that the accused be shown no leniency and it be

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specifically provided for while deciding the quantum of punishment by this Court, that all the accused convicted of such serious offences, be sentenced to undergo imprisonment for life which means the entire remaining lifetime of such accused. The Prosecution and the learned advocate for the victims, have relied upon some judgments of the Hon'ble Supreme Court where the Hon'ble Supreme Court has clearly specified a time frame which would connote and denote the sentence of life imprisonment. The State, therefore, reiterates that in case this Court for any reasons, does not find the present offence to fall within the category of rarest of rare cases and does not deem it appropriate to award capital punishment to the concerned accused, then such specific mention be made while deciding the quantum of sentence, which would ensure that such accused remain incarcerated and serve out the sentence for the entire remainder of their life.

112. Shri Kodekar has further relied upon the definition clause contained in Sec.45 of the I.P.C., where the word "life" has been defined as follows:

"45. The word 'life' denotes the life of human being unless the contrary appears from the context."

113. It is in the background of such facts and circumstances that I am required to reproduce for the sake of convenience the specific provision

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contained in Sec.302 of the I.P.C., which reads as thus:

"Punishment for murder

302. Whoever commits murder, shall be punished with death or imprisonment for life and shall also be liable to fine."

114. In the circumstances, the nature of and quantum of punishment prescribed by the present provision of Sec.302 of I.P.C. is punishment with death or punishment with imprisonment for life and a discretion is further vested on the Court with regard to imposition of fine together with or in addition to such substantive sentence. It would also necessary to decide this vexed question to be firstly reflect upon the provisions contained in Sec. 433 of the Cr.P.C. where the appropriate Government, meaning either the State Government or the Central Government may, without the consent of the person sentenced, commute a sentence of death sentence of imprisonment for life, and a for imprisonment for a term not exceeding 14 years or for fine, a sentence of rigorous imprisonment, for simple imprisonment for any term which that person might have been sentenced, or for fine, and lastly a sentence of simple imprisonment. I am required to, therefore, reproduce the provisions contained in Sec.433 of the Cr.P.C. which prescribes and empowers the appropriate Government being the State Government and the Central Government which aspect is clarified in sub-section (7) of Sec.432 of the

Cr.P.C., to mean a State Government or the Central Government.

Sec.433 of Cr.P.C.

"433. The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, or fine."

Sec.432, sub-section (7) of Cr.P.C.

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(a) in cases where the sentence is for an offence against, or the order referred to in subsection (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

115. The provision contained in Sec.433A however imposes a restriction on the powers of the State of remission or commutation. I am, therefore, required to reproduce the provisions contained in Sec.433A of the Cr.P.C. for the sake of convenience.

Section 433A of the Cr.P.C.

"433A. Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

116. A bare reading of the said provision clearly establishes that there has been imposed a restriction on the Government while exercising powers under Sec.432 and Sec.433 while commuting a sentence of death or imprisonment for life and it has been specified that such accused so sentenced, shall not be released from prison unless he had served at least fourteen years of imprisonment. In the circumstances, therefore, the statute provides and empowers the State Government to commute or apply principles of remission in appropriate cases. It does not mean that the State Government or the Central Government as the case may be, is required to exercise this discretion in all cases where sentence is awarded. The said provision only imposes a restriction on the State Government only in cases where it has chosen to exercise the discretion and use its powers conferred under Secs.432 and 433 to either commute or remit the sentence. This, in my opinion, would mean that the State need not exercise such discretion in all cases and if found necessary and prudent, the State which is obviously being a democratic State, would therefore, for the greater good of the people in some cases, decide not to exercise the powers and discretion vested to it under Sec.432 and 433 of the Cr.P.C. It can, therefore, be said in my opinion, that such exercise of powers by the appropriate Government is discretionary. Section 433A of at the cost repetition, however, imposes a restriction on the appropriate Government and provides that even where appropriate Governments have exercised their the powers under Secs.432 and 433, no such person convicted in such fashion, will be released from he has fourteen years prison unless spent in incarceration. Such restriction, therefore, is

imposed by Sec.433A. However, the recent statutory reflected in the newly inserted amendments as provisions of Sec.376, clearly take away completely the power of the appropriate Government to remit or commute sentences and in fact confer jurisdiction on the Court by specifically mentioning the time frame which would cover the life imprisonment of an accused. In such circumstances, the amended provisions inserted in the I.P.C. in the form of Secs.376A, 376D and 376E are required to be reproduced which I hereby do so.

Section 376A of the I.P.C.

"376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment. for life, which shall mean the remainder of that person's natural life, or with death."

Section 376D of the I.P.C.

``376D. Where a person is sexually assaulted by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to

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have committed the offence of sexual assault, regardless of gender and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

EXPLANATION: - For the purposes of this section, imprisonment for life shall mean imprisonment for the remainder of that person's natural life."

Section 376E of the I.P.C.

***376E.** Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376C or section 376D and is subsequently convicted of an offence punishable under any of the said sections <u>shall be punished</u> with imprisonment for life, which shall mean the remainder of that person's natural life or with death."

117. It can be seen in all the three provisions which are newly inserted in Sec.376 of the I.P.C., that the words ".....imprisonment for life, which shall mean the remainder of that person's natural life" are specifically provided for and mentioned in such newly inserted provisions.

118. In such circumstances, a power has been vested and discretion has been granted and

conferred upon a Court convicting a person guilty of offences punishable under Secs.376A, 376D and 376E, to specify as to whether the imprisonment for life shall mean the remainder of such convicted accused's life. Therefore, in my opinion, the clear intent of legislature in providing for such specific the terminology in the statute itself empowers a Court and in fact enjoins a duty upon the Court to specify that imprisonment for life shall mean the remainder of that person's natural life, while deciding the quantum of punishment. In my opinion, therefore, the provisions contained in Sec.302 do not specify such clear powers and no such discretion is granted to the sentencing Court whereby the Court can exercise powers to specify that life imprisonment means the remainder of the natural life of that person. In my had there been opinion, legislative intent, а suitable amendment would have necessarily followed in the provisions contained in Sec.302 also. No doubt, in some of the judgments of the Hon'ble Supreme Court cited in the course of the present submissions, i.e. in the cases of (i) Birju and (ii) Ashok Debbarma (both supra), as also in the case of Sangeet v. State of Haryana as reported in LAWS(SC)-2012-11-21, while commuting the sentence of death to that of life imprisonment, the Hon'ble Supreme Court has specified the period of sentence to be 20 years and in other cases till the remainder of the life of the accused.

119. However, such powers can be exercised

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by the constitutional Courts alone while exercising inherent powers either under Sec.482 of the Cr.P.C. in the case of Hiqh Courts or exercise of extraordinary jurisdiction under Article 32 of the Constitution by the Hon'ble Supreme Court of India. In my opinion, therefore, it would be improper on the part of this Court to go beyond the provisions contained in the statute, meaning Sec.302 of the I.P.C. and by so doing, divest the appropriate Government of its statutory powers conferred under Secs.432 and 433 of the Cr.P.C. In such circumstances, therefore, I am of the clear view that this Court cannot specify in the terms the imprisonment for life to mean sentence of the remainder of the life of the accused as is sought for by the learned Spl.P.P. Shri Kodekar and by Shri Vora, the learned advocate appearing for the victims. However, while departing from this point, I am required to observe that the powers conferred in Secs.432 and 433 of the Cr.P.C. need not be exercised by the appropriate Government in all cases convictions if of and in а given case, the appropriate Government choses not to exercise such powers, then naturally imprisonment for life for such convicted accused would mean till the remainder of life of such accused. In such circumstances, while being conscious that even such recommendatory observations might not strictly fall within powers authority vested upon this Court, I would and venture to recommend to the appropriate Government that looking to the grave and serious nature of the

incident and the offence herein, the State may not exercise any such powers under Secs.432 or 433 of the Cr.P.C. as the case may be, with regard to the accused convicted herein.

120. The question that is now required to length, is as to whether the be answered at imposed on all the convicted accused sentences herein who have been found guilty of substantive and substantial offences as also ancillary offences arising out of the incident, should run consecutively or should run concurrently, and I am required to consider the submissions of Shri Kodekar and Shri Vora that the sentences to be imposed on all convicted accused, must be ordered to run consecutively and not concurrently. Shri Kodekar has in fact sought to rely on the provisions contained in Sec.31(1) of the Cr.P.C., where the Court is empowered to inflict such punishments to run consecutively, meaning one after the expiration of the other, unless a specific direction has been given by the Court that such punishments shall run concurrently. However, it is conceded that the proviso to Sec.31 clearly indicates that in no case shall such consecutive punishment run for a period longer than fourteen years. It is however, submitted that in the present circumstances, the accused be awarded consecutive sentence. However, it is required to be noted that while Shri Vora has adopted the arguments of Shri Kodekar, and he too has pressed for sentences to run consecutively and

not concurrently, I am required to observe that other than pointing out to the discretionary powers conferred on the Court under Sec.31 of the Cr.P.C., no material has been pressed into reliance in support of such submissions, either by Shri Kodekar or by Shri Vora for that matter.

121. On the other hand, Shri T.R.Bajpai, the learned advocate appearing on behalf of some of the accused, has, while interrupting the submissions made by Shri Bhardwaj, pressed into reliance a judgment of the Hon'ble Supreme Court which appears to be an unreported judgment delivered in the case of Manoj @ Panu in Criminal Appeal No.2063/2013 arising out of S.L.P.(Crl.) No.7707 of 2013, where the Hon'ble Supreme Court while delivering the judgment on 09/12/2013, has completely provided a contrary answer to the submissions made by Shri Kodekar and Shri Vora, and in such circumstances, I am required to negate completely the submissions made by Shri Kodekar and Shri Vora in this regard, and accept in toto the submissions made on behalf of the defence. While laying the controversy to rest, Hon'ble Supreme Court firstly relied upon a the previous judgment of the Hon'ble Supreme Court delivered in the case of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Asst. Collector of Customs (Prevention), Ahmedabad & Anr. as reported in (1998) 4 SCC 183, wherein the relevant portion of the Supreme Court judgment read as thus:

The basic rule of thumb over the years **`10.** has been the so called single transaction rule for concurrent sentences. If а given transaction constitutes two offences under two enactments it is have generally, wrong to consecutive sentences."

122. The Hon'ble Supreme Court further relied upon a judgment of the Hon'ble Supreme Court delivered in the case of **State of Punjab v. Madanlal** as reported in (2009) 5 SCC 238, wherein another judgment of the Hon'ble Supreme Court delivered in the case of **State of Maharashtra v. Najakat Alia Mubarak Ali** as reported in (2001) 6 SCC 311 was cited with approval, as under:-

`17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well."

123. The Hon'ble Supreme Court has thereafter clearly concluded the said judgment in Manoj @ Panu's case (Supra) by making these observations in paragraph No.12 of the judgment, as

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thus:-

"12. Further, having regard to the age of the appellant at the time of committing the offences, we feel it would not be just and proper to allow the sentences to run consecutively. As the offences committed by the appellant have been committed under a single transaction, [Emphasis supplied by this Court], it is well settled position of law that the sentences must run concurrently and not consecutively."

124. A further judgment of the Hon'ble Supreme Court as in the case of **Ramesh Chilwal** (Supra) has clearly laid down a ratio that when number of sentences are awarded in different offences, the sentences are required to be ordered to run concurrently.

125. Having considered the settled legal position emerging from the judgments of the Hon'ble Apex Court which is undeniably the law of the land and sacrosanct and completely binding to this Court, I am required to observe that there is no room for any doubt that the present offence in which the concerned accused have been convicted under different provisions of the I.P.C., clearly is the result and is admittedly arising out of what can be 'single transaction' since all termed to be a concerned have admittedly referred to the present proceedings as the incident and offence committed by the accused at Gulbarg Society which covers the

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time frame from 09:00 a.m. to 06:30 p.m. on that fateful day. Therefore, reiterating the fact that the present offence could be said to be arising out of a single transaction, there is no merit, in my opinion, in the submissions made by Shri Kodekar for the State or Shri S.M.Vora for the victims, that the required to be directed to sentences are run consecutively. In my opinion, therefore, this question also is appropriately answered and disposed of, and I clearly specify that I intend to direct that the sentences of all accused in each of the provisions that they stand convicted, shall run concurrently.

126. The last aspect required to be considered is as to whether by finding most of the convicted accused guilty under Sec.149 of the I.P.C., are all accused required to be conferred the same quantum of punishment as is urged by Shri Kodekar and Shri S.M.Vora. I do not wish to dwell at length on this aspect, but in light of my findings herein before that while the provisions contained in Sec.141 which define as to what constitutes an unlawful assembly and the provisions following thereafter including the provisions contained in Sec.149, apply to most of the accused who stand provisions, is convicted under such well established, I have chosen not to hold 13 of such accused being accused Nos.3, 16, 21, 25, 29, 32, 37, 38, 47, 50, 52, 59 and 66 not guilty of having committed an offence punishable under Sec.302 of the

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I.P.C. In fact, in light of my earlier findings which I need not repeat at length, I have held that there was not one single unlawful assembly formed with a common intent and knowledge by all the accused involved herein, of which the present convicted accused only formed a minuscule and microscopic strength since it is the case of the Prosecution as also the victims where even at the present juncture, Shri S.M.Vora in submitting his written arguments, has pointed out with regard to a presence of a mob of about 10000 strong, of which unfortunately the State has been able to hold only 66 accused as responsible, of whom accused No.57 is admittedly not a member of the mob, but was a Police Officer in charge of the area where the offence has taken place. In such circumstances, when I have held the accused to be members of distinct and separate unlawful assemblies and having distinct and separate common intentions and knowledge, it would be improper on the part of this Court to hold all the accused guilty of the substantive offences only on account of the fact of their being found quilty under the provisions contained in Sec.149 of the I.P.C. In my opinion, therefore, such submissions made on behalf of the State as well as the victims are also required to be negated and the submission made by Shri Bhardwaj in this regard as is reflected herein before, is required to be held to be accepted. In the circumstances, even this aspect is, in my opinion, accordingly answered.

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Consequent to the submissions made by 127. Shri Kodekar with regard to accused No.1 Kailash Dhobi and the submissions made on behalf of the Prosecution that further orders with regard to the fate of accused No.1 Kailash Dhobi be kept in abeyance in light of the fact that the accused is absconding and has violated his temporary bail granted by the Hon'ble High Court of Gujarat, has now become infructuous and is not required to be addressed in light of the fact that the accused No.1 Kailash Dhobi surrendered before this Court on 13/06/2016 and was ordered to be taken into custody to serve out the sentence, and therefore, there is no need to keep in abeyance the quantum of sentence required to be awarded to accused No.1 Kailash Dhobi.

128. Again, another submission made by Shri S.M.Vora, the learned advocate appearing on behalf of the victims/witnesses, is *inter alia* to the effect that since it is provided under the statute, more particularly under Sec.357 and under Sec.357A of the Cr.P.C., this Court do hereby award to the victims compensation from the convicted accused. However, the quantum of compensation sought to be awarded is not specified and only a submission is made with regard to passing orders under Sec.357 and Sec.357A of the Cr.P.C. for compensation to the victims.

129. I am required to note that in terms of

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Exh.2070, which are produced by the State in compliance with the directions of this Court, a Government Resolution dated 23/04/2002 has firstly awarded an amount of Rs.1,50,000/- to the family members of the victims who met with an unfortunate and fatal end in the incidents that took place all the relevant time. A further over Guiarat at Government Resolution dated 24/09/2007 has also been produced where such compensation to the kin of the deceased victims further enhanced was by Rs.3,50,000/- in case of each death of a victim and therefore, the family members i.e. the surviving family members of such deceased victim, were paid compensation to the tune of Rs.5,00,000/- for each incident. The death in injured victims any themselves, by the same G.R., were paid an amount of Rs.1,25,000/- and an annexure to the said G.R. clearly indicates that compensation in terms of the amounts specified against each victim who had sustained damages to property, was also paid over by the State under the provisions of the G.R. In my opinion, therefore, it would be improper to direct the State Government under Sec.357A of the Cr.P.C. to pay any further amount of compensation. As far as an order to pay compensation to the victims by exercise of powers under Sec.357 of the Cr.P.C. is concerned, I am of the opinion that it is difficult to specify as to which of the accused is required to pay compensation to which of the victims and to what In any case, the provision to order the extent. payment of compensation is discretionary and not

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mandatory and in such circumstances, looking to the complexity of the proceedings herein, I am of the clear opinion that it would be difficult to quantify compensation and specify as to which of the accused is required to pay compensation to which of the victims and therefore, in such circumstances, I negate the submission seeking an order directing the accused to pay compensation to the victims.

130. In the circumstances and keeping in mind the law of the land laid down by the Hon'ble Supreme Court in its numerous judgments which have been discussed herein before, and also looking to the fact that the accused, at the cost of repetition, have faced a trauma of this trial for which they have been incarcerated in some cases for more than 10 years and since all the accused have been facing the trauma of this trial for an incident that took place in the year 2002, and also looking to the fact that post enlargement on bail/temporary bail, there has been no complaint of any offence being committed by the accused and also looking to the various factors like age and other mitigating circumstances, I impose the quantum of punishment convicted accused per following upon the as details:-

<u>Order</u>

The accused No.1 Kailash Lalchand Dhobi is hereby ordered to undergo imprisonment as specified herein below:-

1) Rigorous imprisonment for life for the

offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

Rigorous imprisonment for 10 (ten)
 years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 04 (four) years for the offence punishable under Sec.307 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

10) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

11) Rigorous imprisonment for 01 (one)

year for the offence punishable under Sec.147 of the I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

13) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

14) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

15) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

16) Rigorous imprisonment for 06 (six)
months for the offence punishable under Sec.332 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.337 of the I.P.C.

18) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

20) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

21) Simple imprisonment for 15 (fifteen)

days for the offence punishable under Sec.**188** of the I.P.C.

22) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.1 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.2 Yogendrasinh @ Lalo Mohansinh Shekhawat is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 10 (ten) years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.148 of the
I.P.C.

12) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.295 of the
I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.2 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.14 Jayeshkumar @ Gabbar Madanlal Jinger is hereby ordered to undergo imprisonment as specified herein below:-

1) **Rigorous imprisonment** for **life** for the offence punishable under Sec.302 read together with

Sec.149 of the I.P.C.

2) Rigorous imprisonment for 10 (ten) years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.147 of the
I.P.C.

11) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the

I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the

Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.14 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.34 Krishnakumar @ Krishna (son of Champaben) is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 10 (ten) years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two)

years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.148 of the
I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three)

months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.34 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.41 Jayesh Ramjibhai Parmar is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 10 (ten) years for the offence punishable under Sec.396 of the I.P.C. 3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.147 of the
I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.148 of the
I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C. 13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.41 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.42 Raju @ Mamo Ramavtar Tiwari is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

 Rigorous imprisonment for 10 (ten)
 years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

11) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of

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the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.42 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.43 Naran Sitaram Tank @ Naran Channelwalo @ Naran Kodhiyo is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 10 (ten) years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven)

years for the offence punishable under Sec.**398** of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.148 of the
I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one)

year for the offence punishable under Sec.427 of the
I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.43 in judicial custody is ordered to be set off while computing the total quantum of sentences. The accused No.46 Lakhansing @ Lakhiyo Lalubhai Chudasama is hereby ordered to undergo imprisonment as specified herein below:-

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 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

 Rigorous imprisonment for 10 (ten)
 years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

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10) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.148 of the
I.P.C.

12) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.295 of the
I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.46 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.54 Bharat @ Bharat Taili Shitlaprasad is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

 Rigorous imprisonment for 10 (ten)
 years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of

the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.147 of the
I.P.C.

11) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of

16) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.337 of the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.54 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.55 Bharat Laxmansinh Goud Rajput is hereby ordered to undergo imprisonment as specified herein below:-

1) Rigorous imprisonment for life for the

offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

Rigorous imprisonment for 10 (ten)
 years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.324 of the I.P.C.

11) Rigorous imprisonment for 01 (one)

year for the offence punishable under Sec.323 of the I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

13) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

14) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.295 of the
I.P.C.

15) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

16) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.427 of the
I.P.C.

17) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

18) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.337 of the I.P.C.

19) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

20) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

21) Rigorous imprisonment for 02 (two)

months for the offence punishable under Sec.447 of the I.P.C.

22) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

23) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.55 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.63 Dinesh Prabhudas Sharma is hereby ordered to undergo imprisonment as specified herein below:-

 Rigorous imprisonment for life for the offence punishable under Sec.302 read together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 10 (ten) years for the offence punishable under Sec.396 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.397 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C. 5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.201 of the I.P.C.

6) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

8) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

9) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

10) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.147 of the
I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.148 of the
I.P.C.

12) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.295 of the I.P.C.

13) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

14) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C. 15) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

16) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.337 of
the I.P.C.

17) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

18) Rigorous imprisonment for 02 (two)
months for the offence punishable under Sec.186 of
the I.P.C.

19) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

20) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

21) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.63 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.25 Mangilal Dhupchand Jain is hereby ordered to undergo imprisonment as

specified herein below: -

Rigorous imprisonment for 10 (ten)
 years for the offence punishable under Sec.307 read
 together with Sec.149 of the I.P.C.

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2) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

3) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.436 of the I.P.C.

5) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

7) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

8) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

9) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.143 of
the I.P.C.

10) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

11) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

12) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

13) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.25 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.3 Surendrasinh @ Vakil Digvijaysinh Chauhan is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

3) Rigorous imprisonment for 03 (three)

years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

6) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

7) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

8) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

9) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.3 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.16 Dilip @ Kalu Chaturbhai Parmar is hereby ordered to undergo imprisonment as specified herein below:- Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

4) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

7) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

8) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

9) Rigorous imprisonment for 02 (two)
months for the offence punishable under Sec.186 of
the I.P.C.

10) Rigorous imprisonment for 02 (two)

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months for the offence punishable under Sec.447 of the I.P.C.

11) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

12) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.16 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.21 Sandip @ Sonu Ghunghruwaalwalo Ramprakash Mehra (Punjabi) is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

3) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

4) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the

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5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.153(A)(1) (a)(b) of the I.P.C.

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6) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

7) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

8) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

9) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

10) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.21 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.29 Mukesh Pukhraj Sankhla is hereby ordered to undergo imprisonment as specified herein below:-

1) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.396 read together with Sec.149 of the I.P.C.

 Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.397 of the I.P.C.

3) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.398 of the I.P.C.

4) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.436 of the I.P.C.

5) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

6) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

7) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

8) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

9) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

10) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

11) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)

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(a)(b) of the I.P.C.

12) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

13) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

14) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

15) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.29 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.32 Ambesh Kantilal Jinger is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

3) Rigorous imprisonment for 03 (three)

years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 02 (two) years for the offence punishable under Sec.452 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

7) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

8) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

9) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.143 of
the I.P.C.

11) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

12) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

13) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

14) Imprisonment for 06 (six) months for

the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.32 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.37 Prakash @ Kali Khengarji Padhiyar is hereby ordered to undergo imprisonment as specified herein below:-

1) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 read together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

3) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

4) Rigorous imprisonment for 06 (six) months for the offence punishable under Sec.332 of the I.P.C.

5) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

6) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C. 7) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.37 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.38 Manish Prabhulal Jain is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

Rigorous imprisonment for 03 (three)
 years for the offence punishable under Sec.435 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

4) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

6) Rigorous imprisonment for 01 (one)

year for the offence punishable under Sec.148 of the I.P.C.

7) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

8) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

9) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

10) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

11) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.38 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.47 Dharmesh Prahladbhai Shukla is hereby ordered to undergo imprisonment as specified herein below:-

1) Rigorous imprisonment for 07 (seven) years for the offence punishable under Sec.436 read

together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

7) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

8) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

9) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.143 of
the I.P.C.

10) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

11) Rigorous imprisonment for 02 (two)

months for the offence punishable under Sec.186 of the I.P.C.

12) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.47 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.50 Kapil Devnarayan @ Munnabhai Mishra is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

Rigorous imprisonment for 05 (five)
 years for the offence punishable under Sec.449 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

7) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

8) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

9) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.143 of
the I.P.C.

10) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

11) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

12) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.50 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.52 Suresh @ Kali Dahyabhai Dhobi is hereby ordered to undergo imprisonment as specified herein below:- Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

4) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

7) Rigorous imprisonment for 01 (one)
year for the offence punishable under Sec.153(A)(1)
(a)(b) of the I.P.C.

8) Rigorous imprisonment for 03 (three) months for the offence punishable under Sec.143 of the I.P.C.

9) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

10) Rigorous imprisonment for 02 (two)

months for the offence punishable under Sec.**186** of the I.P.C.

11) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

12) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.52 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The accused No.59 Atul Indravadan Vaid is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

7) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

8) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

9) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.143 of
the I.P.C.

10) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

11) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

12) Simple imprisonment for 15 (fifteen) days for the offence punishable under Sec.188 of the I.P.C.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.59 in judicial custody is ordered to be set off while computing the total quantum of sentences. The accused No.66 Babu Hastimal Marwadi is hereby ordered to undergo imprisonment as specified herein below:-

Rigorous imprisonment for 07 (seven)
 years for the offence punishable under Sec.436 read
 together with Sec.149 of the I.P.C.

2) Rigorous imprisonment for 05 (five) years for the offence punishable under Sec.449 of the I.P.C.

3) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.435 of the I.P.C.

4) Rigorous imprisonment for 03 (three) years for the offence punishable under Sec.452 of the I.P.C.

5) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.427 of the I.P.C.

6) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.147 of the I.P.C.

7) Rigorous imprisonment for 01 (one) year for the offence punishable under Sec.148 of the I.P.C.

8) Rigorous imprisonment for 01 (one)year for the offence punishable under Sec.153(A)(1)(a)(b) of the I.P.C.

9) Rigorous imprisonment for 03 (three)
months for the offence punishable under Sec.143 of
the I.P.C.

10) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.447 of the I.P.C.

11) Rigorous imprisonment for 02 (two) months for the offence punishable under Sec.186 of the I.P.C.

12) Simple imprisonment for 15 (fifteen)
days for the offence punishable under Sec.188 of the
I.P.C.

13) Imprisonment for 06 (six) months for the offence punishable under Sec.135(1) of the Bombay Police Act.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently. The time spent by the accused No.66 in judicial custody is ordered to be set off while computing the total quantum of sentences.

The muddamal articles are ordered to be appropriately disposed of after expiry of the appeal period.

Certified copies of this judgment be supplied immediately to all the convicted accused.

A copy of this judgment be also placed

with the record and proceedings of each of the connected Sessions Cases.

Dictated and pronounced in the open Court on this 17^{th} day of June, 2016.

City Sessions Court, Ahmedabad. Date: 17/06/2016

(Pranav Bhadramukh Desai) Special Judge, Designated Court for speedy trial of riot cases (Gulbarg Society),Ahmedabad. Unique ID Code No.GJ00004

*ashwin

.....End of Judgment.

*ashwin