

Vadodara Sessions Court Acquits All Acused in BEST Baekry Carnage
Justice HU Mahida's Judgement
June 27, 2003

Session Case No. 248 / 2002

In the Court of the Additional Sessions Judge
Frat Track Court no. 1 (Shri H.U. Mahida) Vadodara

Exhigit-----

State of Gujarat

.....Complainant

Vs.

- 1) Rajubahi Dhamirbhai Baria
resi, Danuman Tekari, Dabhoi road,
Vadodara.
- 2) Nanu Landado alias Mahendra Vishwarao Jadav
resi. Vadodara.
- 3) Tino alias Harish Virendragir Gosai
resi. Best Bakery, Hanuman tekari
Dabhoi road, Vadodara.
- 4) Pankaj Virendragir Gosai
resi. in the lane opp. Best Bakery
Hanuman tekari, Dabhoi road, Vadodara
- 5) Painter alias Yogesh Laxmansinh Verma
resi. as above.
- 6) Jayantibhai Jamsing Gohil
resi. near Tadam Talav, behind Sweage pumping
station, Gajarawadi, Vadodara.
- 7) Ramesh alias Rinku Jayantibhai Gohil
resi. Same
- 8) Mafat alias Mahesh Manilal Gohil
resi. as above
- 9) Munnox alias Harshad Ravjibhai
Solanki, resi. at Hanuman tekari
Opp. Saimohanmad's house, Vadodara
- 10) Pratapsinh Ravjibhai Chauhan
resi. at Hanuman tekri, behind

Sindhi's shop, Dabhoi road Vodadara

- 11) Sanjay alias Bhapa alias Baddo Ratilal Thakkar, resi. Ansuya Nagar, Dabhoi Road, Vodadara.
- 12) Bahadursinh alias Jituchandrasinh Chauhan, resi. at Hanuman Tekari Street Vodadara.
- 13) Yasinkhai Alibhai Mhokhar resi. Hanuman tekari, Dabhoi road, Vadodara
- 14) Jagdish Chunilal Rajput, resi. near Dalal Street, Opp. Tejab mill, Pratapnagar, Vadodara
- 15) Dinesh Fulchand Rajbher resi. Mamta Bakery, Ansukanagar Dabhoi road, Vadodara
- 16) Shanabhai Chimanbhai Baria resi. Hanuman tekari, Dabhoi road Vadodara
- 17) Tulsibhai Bhikhabhai Tadvi resi. same
- 18) Shailesh Anupbhai Tadavi resi. same
- 19) Kamlesh Bhikhabhai Tadvi resi. same
- 20) Suresh alias Lala Devjibhai Vasava resi. Ansuyanagar, near Hanuman tekari, Dabhoi road Vadodara
- 21) Ravi Rajaram Chauhan (Marathi) resi. same

Offence under sections 147, 148, 149, 188, 504, 342, 427, 436, 395, 307, 302, of the Indian Penal Code.

On behalf of the State D.G.P. Shri Raghuvir Pandya, assisted by advocate shri. Mahendra Gupta

On behalf of accused Advocates Shri. Pravinbhai Thakkar, Shri. Rajendra Trivedi, Shri. Ajaybhai Joshi, Shri. Shaileshbhai H. Patel, Shri. Dilipbhai Shrivastava, Shri. Yogesh G. Patel Shri. Pankaj M. Desai, Shri. Anilbhai Desai and Shri. Niraj Jain.

J U D G E M E N T

to the incident

As a reversal action / occurred on 27-2-2002 for brutal massacre of burning railway coach No. S/5 in which Kar Sevaks returning from Ayodhya Ram Jamnabhumi travelling in Sabarmati Express, within railway boundary limits of Godhra, on date 1-3-2002 in the evening time at about 5-30 p.m. the accused persons with the crowd of persons of 1000 to 1200 by committing breach of the Orders issued by the Police Commissioner, Vadodara prohibiting arming weapons and gether in mob, in furtherance of their common intention to damage the lives and properties of the persons of Muslim community, all the accused armed with deadly weapons, with inflammable liquid by forming unlawful assembly in the crowd, came at Gajarawadi, Shivnagar, agree, Ganeshnagar and Hanuman Tekari area, speaking exciting loudly shouts 'beat, cut, drive away the Muslim' - 'burn-set fire toe houses of Muslims' committed house breaking, loot set fire and caused damages (1) to the residential house of Zahirahmed Rasidahmad Asamina for Rs. (2) to the house of Abdulvahab Abdulhasan Shaikh to the extent of Rs. 40,000 (3) to the godown of Rahatali Aasush Mohammad to the extent of Rs. 75000/- (4) to the godown of Shri. Raish Habib Shaikh to the extent of Rs. 150,000/0 (5) to the residential house of Shri. Imtizkhan Basikhan Pathan for Rs. one lac (6) to the house and godown of shri. Liykat Gulamhusen Shaikh for Rs. three lacs and (7) to the residential house of Shri. Imtiazahmad Shamshadahmad Shaikh for Rs. fifty thousand.

(2) Thereafter the accused had attacked on the Building of Best Bakery, pelted stones and set fire to the godown of woods of Lalmohmad Khudabaz located on opposite side and caused damage to the extent of Rs. 130,000/- and caused breaking damage to the house of Aslambhai Shaikh and set it to fire and set fire to the household goods and Hero Majestic Moped and caused damage to the extent of Rs. 155,000/-.

(3) That the fanatic crowd involving the accused persons had attacked on the house building of Best Bakery and committed breacking in it and looted the goods of wheat flour, oil, sugar stored in the Bakery to the extent of Rs. 75,000/- and set fire the house and also to the vehicles like Moped, scooter, motor cycle and tempo parked surrounding to it and caused damage to the extent of Rs. 10,74,000/-, and surrounded the best bakery building for the whole night and confined and detained the persons (1) shri. Nafitulla Habibulla Shaikh, (2) Shri. Nasibulla Habibulla Shaikh, (3) Shaherunissa Habibulla Shaikh, (4) Zahera Habibulla Shaikh (5) Sahera Habibulla Shaikh (6) Sabira Habibulla Shaikh, (7) Yasminbanu Nafitulla Shaikh, (8) Bai Zarinabibi, (9) Kishorbhai Shyammohmad Shaikh, (10) Rakiskhan Aminmohmad Pathan (11) Tukel Habibulla Shaikh (12) Sahejadakhan Hasankhan Pathan, (13) Sailun Hasankhan Pathan (14) Prakash Ugaru Dhobi (15) Baliram Shyamlal Varma (16) Raju alias Ramesh Baijnath Badhai (17) Nasaruddin Mohmad Idiriskant (18) Firoj Akhetarmohmad Ismailkhan (19) Rukshana Firojkhan (20) Sulan Firjo Akhatarkhan aged 5 (21) Manisha Firoj Akhatarkhan aged 3 (22) Sipali Aslambhai Shaikh aged 4 (23) Babali Aslambhai Shaikh aged 4 (24) Sabnambiti Aslambhai Shaikh and (25) Lulo alias Asarat Harunbhai Shaikh who were inside the house and in the morning when out of these detained persons, who came down side Saheraben, her golden in her neck was looted and silver chain in the neck of Yasminbanu was looted and at that time (1) Firoj Akhtarkhan and (2) Nasaru

Pathan, who tried to escape themselves from there and who were in the near by field, were injured by deadly weapons and they were put to fire and caused their death and murdered them and similarly the persons who came out from the Best Bakery house were assaulted by the accused with crowd persons with deadly weapons and thrown planks and shrubs on them and tried to cause their death by setting fire on them and have caused serious injuries on (1) Nasibulla (2) Tufel (3) Rayes (4) Sahejadkhan and caused death by setting fire and murdered (1) Prakash Dhobi (2) Baliram Sharma and Raju alias Ramesh Badhai and at that time also caused death by setting fire of (1) Kausharbai Shaikh (2) Lula alias Asarat Shaikh (3) Child Subhan (4) Child Metar (5) Baby Seep and (6) Baby Babali and thereby the accused have committed offences punishable under sections 147, 148, 149, 188, 504, 342, 427, 436, 395, 307, 302 of the Indian Penal Code and under section 135 of the Bombay Police Act and the charge is accordingly framed against the accused in this police case.

(4) That Shri. Iqbal Ahmad Ansari is the native of Uttar Pradesh and he owns one Bakery named Janata Products at Dabhoi four road junction. At present the Bakery business of Shri. Ansari is run in the name Ralies Food and Bakeries at Sardar Estate and Nabi bulla and Aslam were serving in Janata Bakery since 1990 and thereafter these persons had relieved from the Bakery of Shri. Iqbalbhai Ansari and they have started their own business in the name Best Bakery at Hanuman Tekari.

(5) That Shri. Habibulla Abdulrehman Shaikh the owner of Best Bakery was residing at Vadodara with his family members since years and said Shri. Habibulla Abdulrehman Shaikh had expired only be one one month of this unfortunate incident occurred on 1-3-02 and thereafter his family began to reside in the house touching the Best Bakery building at Hanuman tekari area. In his family, there were Habibulla's wife, three daughters and two sons In this Bakery, ten to twelve boys who came from U.P. were working and these boys were residing in the building of Best Bakery and these boys were muslims and hindus.

(6) On date 27-2-2002 in the area of Godhra railway station compartment number S/6 of Sabarmati Express train was set to fire. In this compartment, Kar Sevaks from Gujarat who went for the Nirman of Ayodhya Ram Mandir were travelling. After this hensus incident occurred at Godhra, with the result there were communal riots in various parts of Gujarat State and communal riots were broke out.

(7) As per the case of the prosecution, during the night of date 1 and 2, the violent mob of 1000 to 1200 persons with shouts 'beat, cut, drive out Muslims' had spread terror in Gujarat wadi, Shiv nagar, Ganeshnagar Hanuman tekari, areas of Vadodara city and this crowd of persons armed with deadly weapons like swords, pipes, stocks, with inflammable liquid had set to fire to property, damaged and looted. As per the case of the prosecution, these 21 accused persons of this case were the members of this illegal crowd armed with weapons and this crowd had pelted stones on Best Bakery building and surrounded the building for the whole night and detained the persons inside the Best Bakery building and they were not allowed to come out of building and they have put fire to the Best Bakery building and in this fire, four children and three females were burnt and died. In the morning whoever came out from this building and tried to escate himself were attacked with deadly weapons and as such five persons who tried to estape by coming out, were murdered and other persons were tied with coir rope and wires at one place and planks and shrubs were placed at them and attempted to set their to fire. Except that, the other dead bodies were found from the nearby ground on the next day.

(8) As per the prosecution case, by this time, the police on coming to know of this incident Incharge Police Inspector Shri. Balvantsinh Udesinh Rathod of Panigate police station Mobile Van No. 1 was first to come at this place with his staff members and shri. Rathod have released the injured bind persons and Shri. Rathod informed the police control and fire brigade. In the mean time, Mobile Van no. 1 of Vadipolice station had reached there There was tense atmosphere in the city and all the police staff persons and officers were patrolling and the messages occurred in the city were passed through wire less and Deputy Police Commissioner Shri. Shailesh Katara on coming to know of this incident, he reached to the place of incident with his staff persons with two vehicles. During this time fire brigade and ambulance had reached there and fire brigade persons had extinguished the fire of Best Bakery and seven dead bodies were recovered from upside of the house and they were brought down. From the first floor of the building, four dead bodies of small children and three dead bodies of females were recovered Shri. Rathod made arrangements for sending the injured persons and dead bodies to the SSG Hospital. In the meantime Shri. Piyush Patel, Deputy Police Commissioner of southern division of Vadodara city had reached there. Considering the circumstances of the place of offence, he had given necessary directions and started combing for finding out the accused persons and he had arranged for police guards for controlling the situation of this place Shri. Patel then went to SSG Hospital.

(9) With reference to the hospital information received from the hospital at 11-50 A.M. on 2-3-02, in charge officer shri. Head constable shri. Manharbhai of Panigate police station had directed police head constable shri. Abhesinh Fatabhai of Inv. Rathod, to go to SSG hospital for investigation to inquire into this incident. In the noon at 12-00 hours H.C. Abhesing went to the SSG Hospital and took statement of injured person Raiskhan Aminmohmad Pathan.

(10) As per the prosecution case, on the date of incident at 10-40 hours morning, on receiving the telephone of Municipal Corporater shri. Chandrakant Bhaththu of Vadodara Municipal Corporation, Police Inspector of Panigate police station Shri. Himatsinh Bariad had immediately rushed to the place of incident and he had made necessary arrangements to cope up with the emergency circumstances and then as per the prosecution case, shri. Baria went to the SSG Hospital and on 2-3-02 at 11-15 A.M. to 3-00 noon he had taken the complaint of Zahiribibi who was the victim of this attack and on the basis of this complaint, he got registered the offence at Panigate police station and started the investigation of this case and made arrangements for inquest and post mortam on the dead bodies and got identified the dead bodies from Zaherabibi.

(11) For further investigation on dt. 3-3-02 P.I. Shri. Baria had made the Panchnama of the place of offence and he made inquest Panchnama on the two dead bodies which were found out from the near by ground at Best Bakery and sent for pot mortam.

(12) Shri. Iqbal Ahmad Ansari had brought shri. Nabibulla from Uttar Pradesh with his family for settlement here but unfortunately this Ansari had to perform the after death ceremonies of these dead bodies after this incident.

(13) On 4-3-02 shri. Baria went to the SSG Hospital and took statements of the injured persons. As per the prosecution case in the statements of these witnesses the names of these accused persons were spoken.

(14) Then on 10-3-02 Police Commissioner, Vadodara had ordered D.C.B. police inspector shri. P.P. Kanani to take investigation of this case in his hand shri. Kanani had verified the case papers and he had taken more statements of the witnesses further and took statements of more witnesses.

(15) Lastly from 27-3-02, the accused were arrested and on 27-3-2002 accused nos. 1 to 5 were arrested and thereafter during Dates 1, 3, 4, 15, 17, 19 and 21 of April the other 21 accused of this case were arrested by P.I. Kanani and the Panch names of physical conditions of the accused persons were drawn and produced before the court and remand order was obtained. As per the prosecution case during remand period, the accused persons had willingly shown and produced the weapons used in this incident and they were attached by the police in presence of panchas.

(16) In this case the report of Forensic Science Laboratory was called for and the P.M. notes and injury certificates are produced in case papers by investigation officer.

(17) On 24-6-02, chargesheet was put in the Court of Chief Judicial Magistrate against the accused.

(18) As the accused were triable by the Sessions Court Chargesheet was framed against the accused and it was read over to the accused and the accused denied these charges.

(19) To prove the charge against the accused, the prosecution has examined total 63 witnesses. The main witnesses in this case are the injured persons in this incident and the star witnesses who had identified the accused in the identification parade to have taken part in this incident. The witnesses are the persons whose properties are damaged. Doctors who performed the postmortam and issued injury certificates are examined and there are other witnesses who gave history of this case and the investigating officer, police officers.

(20) The prosecution for proving its case, has put reliance 73 witnesses and other documentary devidences produced in the case. These documentary evidences are first information report, panchnames of damage occurred in this incident, inquest panchnames, P.M. notes injury certificates issued by doctors, panchnames for the recovery of weapons willingly shown by accused, Forensic science laboratory report, and other documents.

(21) On the evidences produced by the prosecution against the accused, further statements of the accused were taken. As per case of the defence, the police is not able to arrest and put to books the real and true culprits. As per the case of the defence, as the police could not gather information about the true and real culprits, the police have falsely involved the present accused persons in this case, so that their inability to arrest true culprits would not come to light and they have arrested the innocent accused persons and the police have cropped up false evidence against these accused.

(22) Heard the lengthy arguments of the learned P.P. for the prosecution and the defence advocates for the accused.

(23) In this case the following points arise for decision :

- (1) Whether the prosecution proves that on the night of 1st and 2nd March 2002, in furtherance of common intention to cause damage to the lives and properties of Muslim community people, the crowd armed with deadly weapons unlawfully caused damage to the extent of lacs o rupees to the properties of muslim persons in Gajarawadi, Shivnagar, Ganeshnagar, and Hanuman tekari, area of Vadodara city and set fire to the best bakery building situated in Hanuman tekri and caused murder and death of 14 persons and caused injuries to 6 persons?
 - (2) Whether the prosecution prove the charge framed against all the accused of this case before the Court of against any of the accused person who alleged to have taken part in this incident?
 - (3) What order?
- (24) 1/3 My findings on the above points are as under :
- (1) In the affirmative
 - (2) In the negative
 - (3) As per final order.

REASONS

(25) All the witnesses examined in this case state that on 1st and 2nd March 2002 during night the big number of persons gathered in the crowd armed with weapons had gathered and the crowd had caused damages to the properties and set fire the properties and looted in Gajarwadi, Shivnagar, Ganeshnagar and Hanuman tekari areas of Vadodara city. The motive of this mob was to cause damage to life and properties of muslim persons in this incident, as reversal action to the brutal Godhra train incident occurred on 27-2-2002. The fire was set in the building of Best Bakery situated at Hanuman tekari. In the Best bakery building for the use of furnce, tons of wood was stored for bakery purpose on lower part. As the building was set fire, seven persons inside the building were burnt and died and at the same time, the unruly mad crowd had caused fatel injuries to other five persons and murdered them. In this incident, six persons were injured by this mob persons.

(26) In this case Dr. Mina Robin Christian who had given medical treatment to injured persons are examined at ex. 49. The Doctors Dr. K.P. Desai and Dr. Vijaysinh Rathod who had performed the post mortam notes are examined at ex. 56 and 59 respty.

(27) From the evidence of these doctors, it is proved clearly the death of the following persons have occurred due to burns :

1. Sabira Habibulla Shaikh aged 16
2. Sabanbibi Aslambhai Shaikh aged 25
3. Sipali Aslambhai Shaikh aged 4
4. Babali Aslambhai Shaikh aged 4
5. Rukhsana Firoj Akhatar khan aged 20
6. Suban Firoj Akhtar khan aged 5
7. Matasa Firoj khan aged 3

(28) From the evidence of the doctors in this case, it is proved that death of following persons have caused by sharp edged weapons and blunt substances :

1. Raju alias Rajesh Baijnath Badhai aged 20
2. Prakash aged 20
3. Baliram aged 25
4. Nasaruddin Mohmad Idris khan aged
5. Firoj Akhatar Mohmad Isarail khan

(29) Accordingly, the above named 12 persons have been killed in this incident of Best Bakery.

(30) As per the case of the prosecution, over and above these 12 abovenamed persons, (1) Kausharbai Shahmohmad Shaikh aged 50 and (2) Asarad alias Lulo Harunbhai Shaikh aged 18 were also burnt and were killed. The dead bodies of these two persons were not recovered from the place of offence but during police investigation, bones the investigating officer got the forensic examination. Moreover to know further facts whether these bones were of Kausharbai and Asarad alias Luna who were missing, the blood analysis of the relations of these persons were got made by the police but from the report of the Forensic science laboratory it is proved these bones were of human beings. It is also reported by Forensic science laboratory that these bones were of more than one person. But as these bones were burnt to such an extent that it was not possible to take out blood from it for examination. So even from D.N.A. test of these bones, it cannot be said positively that these bones were of Kausharbai and Asarad alias Lula who are missing persons.

(31) But in this case, from the evidence recorded in this case it is clearly proved that in this incident of Best Bakery, total 14 persons are killed and lost their lives.

(32) Over and above the loss of 14 lives in this incident, the properties of lacs of rupees were damaged and looted.

(33) In the attack of Best Bakery building, wheat flour ghee, sugar stores for bakery purpose were looted of the value of Rs. 75,000/- Moreover by setting fire to the building, the scooter, motor cycle and temp vehicles parked surrounded to building were burnt causing damage of Rs. 10,74,000/- Many persons out of the persons present at the time of incident at Best Bakery, were examined in the Court and they support the incident of damage, fire and loot. The godown of Lalmohmad Khudabax situated opposite to best bakery stored with wood and debries was set to fire causing damage of Rs. 1,30,000/- The deposition of Lalmohmed is recorded at ex. 80 Over and above him, there are witnesses of muslim community, who left their places to are places due to communal riots and harmony and they had come to the Court and examined by the Court for the damages caused to their properties. These witnesses only speak about the damages caused to their properties but they do not know about these persons who had caused these damages out of these witnesses Rahatali S. Mohmad examined at 117 deposes about the damaged caused to his godown for Rs. 75,000/- In his deposition Rahish Habib Shaikh at ex. 18 says about damages to his down for Rs. 115,000/-. In her deposition at ex. 119 Zahiraahmad Rasidahmad Shaikh deposes about damage to her shop at Rs. 20,000/- Witness Umteyaz Basirkhan Pathan ex. 120 stated that his house and three wheeler temp were set to fire and he suffered damaged of Rs. one lac. Witness Liyakat Gulamhusen Sheikh ex. 121 stated that in his absence his house and godoen were set to fire and he had

suffered damage of Rs. 5,50,000/-. Witness Abdul Vahab Abdulhusen Shaikh ex. 122 deposed that in his absence his residential house was set to fire and caused damage to Rs. 30 to 40 thousand. Asarafkhan Harunbhai Shaikh residing near the Best Bakery deposed at ex. 123 that he had seen the sitting of fire by the crowd and he himself had suffered damage of Rs. two lacs. But in his police statement, he stated that he do not know who were they persons in the crowd.

(34) In the instant incident, the violent mob had committed breaking, loot and fire and lives of 14 persons were lost and this fact is undoubtedly proved in this case but the prosecution has not led any least evidence or acceptable legal evidence to prove that the accused or any of them before the Court had committed any such offences.

(35) Learned PP Shri. Pandya in his argument most respectfully submitted that witnesses Saherabanu Habibulla Shaikh ex. 39, Virsinh Chandrasinh Zala ex. 41 Nafitulla Habitulla Shaikh ex. 42, Bharatbhai Ishwarbhai Tadavi ex. 43, Zahirabibi Habibulla Shaikh ex. 46, Saherunisa Habibulla Shaikh ex. 47 and Rajualias Habibulla Shaikh ex. 48 examined in this case have given their police statements and in their police statements, they have identified the accused persons who are now before the Court. The learned Government Pleader further argued that these statements given by these witnesses before the police during investigation are proved during their cross-examination and in the evidence of the Investigating officer and so it should be believed that the case against the accused persons is proved and the accused should be punished severely.

(36) These arguments of the learned Government pleade cannot be accepted considering the depositions given by these witnesses before the court and circumstantial evidence produced in this case.

(37) Saherubanu deposed at ex. 39 that he had not identified any of the persons of the mob at the time of incident because there was darkness there and I had seen only the house burnt and nothing else. At that time of incident, everybody was frightened and sat at one place concealing themselves.

(38) Virsinh Zala deposed at ex. 41 and he stated in his examination in chief that he do not know anything about riots took place at Best Bakery building and it has not so happened that he had identified any of the culprits running here and there.

(39) Nafitulla Shaikh at ex. 42 deposed that I do not know how our house was burnt. When the fire took place, we all screened ourselves in the terrace of the house. Due to fire there was heavy smoke and lights were closed. There was mob of ten thousand to fifteen thousand persons and due to smoke, I became unconscious and regained consciousness in the hospital. Had not seen anybody setting fire or doing anything else.

(40) Bharatbhai Tadavi ex. 43 stated that on the date of incident in the evening he went to his native place at Naswadi. He flatly denied the story that he had identified the accused persons and given names to the police. He has stated before the court that he heard the news about this incident in the newspaper.

(41) Shaikh Zahirabibi Habibulla ex. 46 is the most important witness on the prosecution side. As per the case of the prosecution, on 2-3-02 between 11-15 A.M. to 3-00 p.m. noon police recorded her statement in the S.S.G. hospital which is at ex. 36/2 It was also argued that this statement should be considered as First Information report. But

before the statement of Zahiraben was taken, H.C. Abhesing of Panigate Investigation sward had recorded the statement of injured person Rahiskhan Amin Mohmad Pathan at ex. 180 in the SSG hospital. As per the provisions of sec. 154 of Cri. P. Code the first information report should be considered recorded first in time and of Raishkhan at ex. 180 In the statement of Raishkhan, no names of any of the accused are given. No importance could be put on the statement of Zahirabibi at ex. 36/2 because Zahiraben herself in her deposition at ex. 46 do not support her statement ex. 36/2 before the police. Under the provisions of sec. 157 Cri. Pro. Code the report of the occurrence of cognizable offence is required to be sent to the Magistrate. In number of Rulings it was held by the Supreme Court, that if there is delay of more than 24 hours in sending the FIR, such delay is impardonable. The learned advocate shri. Rajendra Trivedi has rightly cited the Ruling of the Supreme Court in 1994 C.A.R. page 175 in the case of Arjun Marik V. State of Bihar on this point. That the so called FIR of Zahiribibi was sent to the Magistrate after four to five days. So there is every reason to believe that factually this FIR was cropped up afterwards in the manner suitable to the police similarly, it is not safe to rely upon the police statements of the star witnesses of this case which are shown to have been proved through the deposition of the investigating officers. It seems that these statements were recorded afterwards. Any of the witnesses do not support their alleged statements before the police before the Court. Here it is most necessary to cite some portion of the deposition of Lalmohmad Khudabax Shaikh ex. 80 in the interest of justice. He deposed that :

“Next day to dt. 28-2-02 was Friday and on that day this incident had occurred in the evening at 7-30 to 8-00 p.m. At that time there was mob of people uncountable. There were more persons than if the full people residing at Hanuman tekari are gathered at one place. These people had set to fire my godown stored with wood I was seeing all from the floor of my house. All the goods in my godown were burnt out and some steel articles were looted and taken away. Police took my statement on 9-3-02 for this incident through Panigate police station. My godown was set to fire and damaged on 1-3-02 in the evening at about 7-30 or 8-00 p.m. I went to the residential house with my family members who are 18 in number. At the labourer Habib and his wife, Abdul Nai and his wife, Sabbir brother of Chhotu, all these persons had taken shelter in the house of Munna. In the house to the house of Munna, thirty-five members of the family of the four brothers of Yar mohmad had taken shelter. Here Shradhdha Bakery is run by Iqbal Husen and his family members 25 persons had also taken shelter in house near by the house of Munna. We all were knowing these accused persons and because of the accused persons, our lives are saved. He has deposed in his cross-examination that there were cordial relations between my family members, the persons residing in the compound of Best Bakery and all the accused persons before the court and all resided cordially That the property of Best Bakery is located at the end outside our locality and because of this situation, this property could not be saved. The mob arrived at the time of incident, there were many persons and they were outsiders The 65 persons who are saved in this incident are all before the Court and all these persons were saved by and due to the reason of the accused and their family members. From the house of these persons, telephone message was given to the police at night as the houses were burning and to save the lives of public, the telephone message was given. Best Bakery was very big bakery and daily thousands of mounds wood were used daily. On that night the mob came there and set fire and run away and then mob persons come and again set fire. In highly respect my religion and do not speak lie at any time. I took part in the burial ceremony of the three babies, one boy and three females who burnt and died in the best bakery building. Looking to the fire broke out at that night, we are seeing our death nearly and we found that we are not safe

in our houses too and so we came out of our house and if we had proceeded further, we would have been killed in the way on any road. These accused persons had called us and saved of our lives. At that time of incident in darkness we silently came out of our house. Without 65 persons whose lives are saved by these persons, out of them many of them were females and children. If the residents of Best Bakery came out of the building, these persons might have been saved by these persons.”

(42) Medical certificates exs. 50 to 55 of the injured persons are proved through the deposition of the medical officer. Each injured person had narrated the history of incident before the medical officer. All the injured persons have stated before the Medical officer to have been injured by the unknown persons—culprits. Looking to the injuries in the medical certificates, it seems that every injured persons was capable to give the history of incident. Still however, it was so submitted by the Investigating officer before the Court that these witnesses were not capable to give their statements before the police at the relevant time Considering to the circumstances of this case, such submission of the prosecution side is not worth acceptable at all. It seems that the statements of these witnesses were recorded by the police to suit their purpose and it seems that the names of the present accused persons were cropped in afterwar and there are clear circumstances in the police investigation to believe this fact.

(43) In this case the police had arrested all these accused person during 27-3-02 to 21-5-02. As per the case of the prosecution, when the accused were in police custody, they have shown their willingness to show and produce before the police the weapons concealed by them like swords, gupti (knife), Samurai, big knife, iron pipes and sticks. The prosecution had relied upon these discovery panchnames considering section 27 of the Indian Evidence Act But in fact, in this case, all the panch witnesses like the eye witnesses have turned hostile to the prosecution and they do not support at all the prosecution case.

(44) In this case in his lengthly arguments Shri. Raghuvir Pandya, learned P.P. has put more stress to believe by the Court, the case against tea lorrywala Jayanti, Lalo and Kiran. Shri. Pandya putting reliance on the evidence of Deputy Police Commissioner Shri. Pitush Patel ex. 181 who deposed that at the time at the scene of offence, one Zahiraben aged about 35 to 40 years was found crying and on asking her, Zahiraben had given the names of these three accused persons for this incident. In this case the age of Zahira is 19 years. It is possible that Police Commissioner might be stating about the mother of this girl named Saherunissa who is aged 50 years. It may be possible that the police commissioner may have been given the names of these alleged accused persons by Zahira or Saherunissa but these witnesses deny before the Court have given such names of accused to the police commissioner. Zahira ex. 46 and Saherunissa ex. 47 deny to have given the names of any of the accused persons to any of the police officers. So it is not safe and proper to put reliance on this piece of evidence.

(45) It brief, in this case, no legal or acceptable evidence at all is produced by the prosecution against the accused involving the accused in this incident In this case considering the circumstances of the case it has come out during the trial of this case by the Court that false evidences were cropped up against the present accused falsely to involve the accused in this case.

(46) In this incident of Best Bakery, total 14 persons are killed and properties of lacs of rupees were set to fire or looted. If in such brutal incident in judicial process, if any

person is not found responsible or culprit and if he is not punished then in such circumstances, a man of ordinary prudence could not tolerate it and it causes doubts in the mind of such persons.

(47) Number of Legislative Members are elected during the more than five decades of our independence and these members took place in Assembly But uptill now the judiciary runs on the laws framed in the regime of British. Prior to British Rule, the Kings—Badshahs were obtaining foot –prints of criminals through their army and office bearers and taking rest only after punishing the real culprits. The system of judiciary in those days were so resultant that Emperor Jehangir of Hindustan had not avoided the order of his death warrant.

(48) But as per the judicial system awarded by this English Rulers in accordance with their suitability the Court has to work as Empire only. The Court has to decide on evidence before him, whether the accused produced by police before the court is culprit or not. The Judge has to take care to remain sensitive for the accused that, let one hundred accused are acquitted, but one innocent person is not punished. When the accused is not offender, then who is the real offender, it is not within the jurisdiction of the Court to find out or to give compensation to the sufferers from the Government. The court of law or judiciary in the true meaning and sense, is not the court of justice but the court of evidence.

(49) From the experience of number of years, it can be said that when the incidents of riots took place its police investigation is always weak than the police investigation of other cases. On reaching the police on the spot of incident, the real but unknown miscreants run away. At that time the passers-by at the place of incident and the innocent persons gathering there in the confidence that the police would not do anything to them, but the police is trying to put such persons as accused or the persons residing in the neighbourhood locality. During such course, if any otherwise person is found out during interrogation or the person speaking in loud tone, the police definitely put such person as accused persons definitely Because of such working method of the police and such practice of police, the truthful witnesses who know about the incident, are frightened to appear before the police. There are many reasons to believe that public do not consider police as their friend and for this reason, the police do not get support at all from the public members.

(50) Likewise the cropping in false accused, the police is cropping in the false witnesses and falsepanch witnesses. Due to false accused persons, the evidence of truthful witnesses is proved futile in context to false accused.

(51) In courts, the Government pleader is taking responsibility of proving the case of the police. In such circumstances, it is on the head of the Government pleader to ride over the spiritless horse and reach at the wiring point and it is difficult responsibility on the head of the Government pleader. Despite giving so many kicks of legs and beating by hunter, this spiritless horse could never run further.

(52) The situation of this case is not at all different In this case not even least acceptable legal evidence is produced by the prosecution to bring the accused to books involving the accused persons in this crime.

(53) In last some years, in this country there were many riots against the interest of the country and due to such riots, the development of the country is ceased and get disreputation. In these circumstances, it is requirement of today to carry out the highly difficult task to make solution, finding out the reasons liable for creation of such riots.

(54) Mostly the caused after the riots are (1) communal harmons – tense situation, (2) failure in industrial police, (3) uneasiness of reservation.

(55) Due to communal tense situation, there are continuous communal riots. ‘Divide and rule’ was unscrupulous statecraft of English persons. Hindu and Muslim are the main communities of this country. English Rulers made both the communities to fight each other and separated the country. In the time of Mahabharat, just to avoid separation of the country, Bhisma Pita and Dronaaccharya great persons had cooperated to dis-religion and similarly with a view to avoid separation of India-Bharat, Lord Krishna considering the war necessary, co-operated the religion. Though there was war of Mahabharat, the country remained intact one.

(56) As per true realistic of history, friendly States have concurred against Hitler in Second world war but England become lessar strong and England was not in a condition to main imperialism. It was not possible for Britain to keep the grim of kingdom and so English people left India and at that time, Chuchil uttered words, you are handing over the innocent public of Hind to cheaters and robbers. Today looking to the economic rackets domij out daily and kidnappers take forcibly ban amounts, we see that the words of Churchill are true today. But when the English rulers suited India, at that time our leaders failed to show their utmost intelligence in ruling and accepted the separation. Those persons wanted to sit in rulling chair behind the back and keeping burning problems permanently they wanted to become world fame figures.

(57) The present disputed incident was the reaction to the incident of Godhra carnage. But in this country, it was the English policy, divide and rule, is responsible for the standing creation for riots between communities. English Rulers were successful in making creak between Hindu and Muslims and thereafter our politicians made out this creak – distance so broad, that it cannot be wiped off. At present the boys of 14-15 years of Hindu – Muslims see the opposite community people as blackcobra. The old aged persons of both these communities still remember their sweet harmony between the two community people. Mutual friendship was common. There was always respect towards the elders of other community in the family of one community for the reason of such relations. Not only that on social and family occasions, but also in religious ceremonies occasions both he persons of Hindu and Muslims were taking part diligently, were enjoying themselves to each other. At present everything like this is lost. It is prayed to God for being well in future.

(58) Imitation follow up is death. After English Rulers left India, the attempt to make India, an industrial country, following blindly to Russia, was the second blunder of our leaders. The nature and characteristic of each country are different. The characteristic of our nation is that of agriculture. Industrial development can it be required in agriculture country. But here in the whim of industrial development, the fact of agriculture as well as animal husbandary are forgotten. The villages started to be broken and the pressure of human stream increased on the cities. The capable farmers left the beautifulap of nature in villagers and became helpless to reside in the hut like heel of the cities with a view to bring the green and white revolution. As the fundamental natural characteristic of the

country is agriculture we remained unsuccessful in achieving the steps of progress and the mills and factories started to be closed. As the persons residing in huts became unemployed they fell in anti-social activities and becoming frustrated, they became addicted of intoxication. The power of rights is always being high in cities and the areas of huts affected clutched by persons during the riots. Now the huts should not be increased. Here it is sufficient to say that if the policy of our Rulers in our country remains more developing in the field of agriculture in accordance with the characteristic of our country in comparison of industrial development, then the success can be achieved to control such riots.

(59) In the Constitution of India the provision for ten percent reservation was made only for the period of first ten years. Thereafter concretely only the vote banks the high increase of reservation being made off and on which remained painful for the country forever. Here there is no motive of digression. But it remains fact that violent riots are being spread for the reason of reservation. The reservation may be considered necessary only for persons who are physically and mentally crippled and retrained can live respectfully and they may get the work which they can do. The brain drain is being pulled to go to foreign countries for the reason of unreasonable reservation system. In this world no other person has been born who can be similar to Chanakya. In the opinion of Chanakya, in economics, only the merits can be the criteria for the appointment for any post. In good State the opportunity should be given in accordance with the qualification. No atrocity or harassment may be done on Dalit victim and tight protection should be given for their safety and security. Similarly, if there is intelligence in a person of any class of the society, he should be encouraged. It is the duty of the State to see that the development of such persons may not be obstructed for the reason of such deficient means. But if the qualified person do not get the opportunity and the advantage is being given to non-qualified person for the reason of reservation, then it is against the human right. Here there is no other logic except to attract the vote banks. The rationalist and supporters of human rights should raise the voice on the issue of reservation and remove the dissatisfaction of public at large.

(60) It is not impossible to form the harmony between the different communities residing in India. For that purpose there is no need of intelligence of the politicians but that of seniority is necessary there is necessity to enkindle the patriotic feeling and national spirit in every citizen of the country. At present nobody has patriotic feelings. Let us be separated individually in the classification of community, caste and religion but there should be feeling of unity as a citizen of India, feeling we all are Indians. Let us be Hindu, Muslims, Christian and Parsi, but as a citizen of India, we are 'Indian Muslim' 'Indian Hindu' 'Indian Christian' and 'Indian Parsi' and that should be our identity. We are all Indians and accordingly we all are one. The brotherhood is not possible without patriotic feeling.

(61) The attitude of considering anti-patriotism while residing in India, is very dangerous. There was high domination of the Britishers upon Kings and Kingdoms of Hindustan in British Rule. The children being born in Royal families were being brought up by European Nurses and education was also being given by European teachers. The pet names of the children such as Anna, Billy, Dicky and Harry were given. The royal families were considering their other family members and public as natives. In spite of their being Hindustani the Raja Maharajas developed European attitude and committed mistake of become anti-patriotic despite living in the native. As they committed such sin,

they were abolished. It is necessary to say that if our identity as well as loyalty is not towards the native then we will be ruined.

(62) In this country, the Arya public had come the region of north pole, Muslims came from Persia And Gazni and Parsis had come from Iran. As all this entire public settled here, the land of the country is their native for generations of the said people. As unsettled and colonists people had come to exhaust the gist and it is natural that they may not have little love like the domicile of this country towards this land. The word native is very great. It is out of reach for the court to give understanding of emotion and feeling lying in the meaning of word 'native'. The residents of the country are distributed in number of sects by criteria of observation of religion. There are Siya- Sunni – Khoja – Vora in Muslims and number of sects in –Vaishnavs, Ramanand, Shivanandi, Sahjanandi which cannot be counted in Hindu. But the natives are only one – Hindu, Muslim, Isai and all residing in this country. There are treasures of universal truth for how the human life may become prosperous and generous. But nowhere it is mentioned to quarrel intersay. If we quarrel in the name religion, then our immaturity is not able to understand the religion and this fact is disclosed, by this.

(63) But this people of India believing in differences of opinion is tied in one harmony. Swami Vivekanand in Vishwa Dharma Parishad had commenced his unforgettable address with 'Brothers and Sisters' when Shri. Dadabhai Avroji, the then Diwan of Baroda state resounded the Parliament of England, while giving his identity as 'Indian'. It is required that our heart may experience an impatience and grief for two yards, native land to sleep forever by Jahapanah Bahadurshah Jafar the Ruler of entire Hind territory, than our brain may be pleased to hear the verse of Jafar. The calm peace which we get by the softness of earth of native and small of air, is not available even by becoming prosperous materially reaching abroad. We are born here we are grown up here playing in this soil. The crop, vegetables, fruits produced from our earth have given nutrition to our bodies. Bharat Ratna Ustad Bismillah Khan says says- against my Kashi, even paradise is nothing. We are to be merged in this soil after death. There is our own elegance and welfare if we reside in peace and brotherhood as Indians.

(64) The tolerance and euuanimity are woven in dignity of this country since ancient times. The word 'secular' cannot incarnate the feeling of our culture. Religion means Rules – Regulations – good conduct, faith belief acts in accordance with shastras. Disinterest means without expectation, independent maintaining automatically. Hence the feeling as to freedom without rule appears in words 'secular'. Freedom without rule means eantonnes. This is not our identity. Infact we own characteristic of culture of this nation. Religious generocity means – all religious are equal. It is the right of the human being of any community or caste to survive with assurance and peace in this country in accordance with his personal belief which is religion. It is more reasonable to say that Parsi community have provided the pride to the feeling of all religions are equal instead of this community is considered the pride of our country. The people of this community have remained leading in each field in India like economic, administration, Judiciary and defence without any obstruction. We have tolearn the patriotic feeling to be Indian alongwith personal religious observations from Parsis. The personal religion of true Indian has not become the cause of obstruction in getting status, and dignity as per his qualification and ability. The number of examples like Hon. President Shri. Abdul Kalam is present by this time.

(65) The reports and figures are being given as to the India will be fully developed country in 2020 these are illusive facts. The incident of Godhra, Nao Naroda Patiya, Chamanpura, Sardarpur and Best Bakery obstruct the development of country. The development of riots hit country in impossibility. If such riots are not stopped considering with honesty of her heard and mind regarding the causes of riots and the remedies to cease the same then the nations will go towards jungle raj instead of development.

(66) The nature is pleased on this country. Whatever natural sources, prosperity and fertility being available with us is nowhere in the world. The intelligence of our people is bright. There is necessity of only enkinding the patriotic feelings in the people If the sentiment of patriotic feeling, national spirit is in every Indian, the nature and characteristic of the feeling of the public interest and public welfare is in centre instead of vote banks in the policies being thought by the politicians, then there is our efficiency to be established as the greatest all over the world.

(67) The black stigma is affixed due to Best Bakery incident in the sheet of cultured Baroda city. This was absolutely cruel, brutal act. This is not bravery but cruelty. The psychology of fanatic mob is dangerous and senseless. Any person associated in crowd may lose his temper and anger and fanaticism of group mind stops the process of mind of individual. The anger is the biggest enemy of the mankind. The owner of Best Bakery haddied by heart failure just before one month of this incident. The widow was in Iddat—cannot meet anybody. Bakery is managed by her sons. The maintenance was being given to Hindu boys. There is no fault of small children, they are being considered as messengers of God in that age. Four children and three women are burnt absolutely in fire as a result of fanatic anger of crowd and Hindu crowd itself has killed three Hindus youths considering them Muslims. This is very shameful, thoughtless incident. The conscience of Baroda people may sting to their heart and brain forever for this incident and cause repentance. Hence forth, it is expected from the residents of this cultured city that this incident may teach a lesson to be allert for avoiding such shameful incident in future.

(68) Considering the evidence led in this case the following final order is passed :

(69) The cause against the accused persons is not proved and hence the accused are acquitted.

(70) As the accused Ravi Rajaram Chauhn (Marathi) is on bail, his bail bonds are ordered to be cancelled.

(71) The other accused if no longer required in other case for trial, then they should be released from the jail. Necessary yadi be written to jail aut orities accordingly.

(72) The muddemal articles of this case shall be destroyed after the period of appeal.

Pronounced in open court, dated this 27th day of June 2003.

sd H.U. Mahida
Additional Sessions Judge,
Fast track court no. 1
Vadodara.

